

Letter to the Editor
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In response to *The Globe's* Editorial of Saturday, April 20, 2013:
<http://www.theglobeandmail.com/commentary/editorials/child-abduction-the-crime-that-ends-in-near-impunity/article11428655/>

[NOTE: also reproduced on pages 2 and 3 of this PDF]

As a family law lawyer with 20 years of experience practicing in Ontario, I commend *The Globe and Mail's* editorial board for emphasizing in the newspaper "Robbery that ends in impunity" and on the web "Child abduction: the crime that ends in near-impunity," that child abduction is a real crime, not treated seriously enough.

When criminal court judges lean over backwards to minimize punishment of those parents who abduct children in violation of court orders and judicial decisions, the family court system is being demeaned.

Family court judges who decide with great care what custody arrangements are in "the best interests of the child," an underlying principle of Canadian Family Law, are being undermined, and the parent who loses access is being denied justice.

Alienation from either parent scars children for life. Child abduction is a real crime that should have real consequences.

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<http://www.theglobeandmail.com/commentary/letters/april-23-cause-versus-root-causes-and-other-letters-to-the-editor/article11482518/>

GLOBE EDITORIAL

Child abduction: the crime that ends in near-impunity

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It came as no great surprise earlier this month when Patricia O'Byrne was given a sentence of house arrest and probation for abducting and concealing her daughter for 18 years.

Courts have consistently mishandled sentencing when faced with what is arguably the worst horror one parent can inflict upon another. In fact, one would be hard-pressed to find a crime that combines such heart-rending consequences with such rock-bottom accountability.

The O'Byrne case epitomizes the problem. In 1993, Ms. O'Byrne signed a custody order that provided her estranged partner, Joe Chisholm, with generous access to their three-year-old daughter. Unhappy with the result, just 18 days later she executed a premeditated plan to abscond to South Carolina, using false documents. From there, she hid out for many years in Ireland.

Oblivious to the past, the child grew up knowing nothing about her father. Meanwhile, frantic with worry and loss, Mr. Chisholm scoured the ends of the earth to find her. Police investigators finally ran Ms. O'Byrne to ground in 2011. She had returned to Victoria, B.C. and was continuing to live under the legal radar.

At her sentencing hearing, Ontario Court Justice Mara Greene, a thorough and compassionate judge, noted that Ms. O'Byrne would never – indeed, *could* never – repeat her offence. The judge reasoned that imprisonment would do little more than cause anguish to Ms. O'Byrne and her daughter. Justice Greene remarked in passing that Mr. Chisholm is clearly a fine human being who would have made a remarkable father.

Parental abduction is a uniquely troubling crime; it twists the principles of sentencing into knots. Abductors are frequently educated, presentable middle-class types. Their well-rehearsed rationales portray their criminal conduct as a last-ditch attempt to “rescue” a child from an obsessive mother or a potentially violent father.

Sometimes, these excuses may be rooted in reality. Others are fabricated, confabulated or simply blown out of all proportion.

Ms. O'Byrne's excuse was typical. She claimed to have been sexually molested as a child. As a new mother, she said, the memories of the abuse left her terrified that Mr. Chisholm would hire male babysitters who might sexually exploit her daughter.

When she appeared for her sentencing, Ms. O'Byrne had another sizable advantage. As is the case with many abducted children, her daughter is intensely loyal to her and suspicious of her father, a virtual stranger in her world.

Faced with this reality, Mr. Chisholm expressed forgiveness for what his former partner had done. He implored Judge Greene not to send Ms. O'Byrne to prison, lest it shatter his fragile, developing relationship with his long-lost daughter. Realistically, what choice did he have?

The public interest, however, has entirely different considerations. The principle of deterring others should be paramount in these cases.

Several hundred children are abducted each year in Canada, most of them by their mothers. One can easily picture these individuals surfing the Internet in advance, discovering the transparent rationales of previous abductors and the lenient penalties that result, and thinking: Why hold back?

The notion of committing a crime in order to prevent a potential crime – as Ms. O'Byrne claims to have done – is one that has been rejected by appellate judges innumerable times. It invites an anarchic society in which people decide which laws they will or will not abide by. We have courts, social agencies and child welfare organizations to help parents who feel a child is in danger; there is no excuse for flouting the law.

In Ms. O'Byrne's case, Justice Greene candidly observed that the defendant never considered giving herself up even after her "male babysitter" rationale had been rendered moot, when her daughter reached adolescence.

If you run a hydroponic operation to cultivate marijuana, you can expect to spend several years in jail. But deprive an anguished parent of a child – robbing that child of the opportunity to grow up with both parents – and you are likely to spend, if you are particularly unlucky, a few weeks or months behind bars.

Legal history helps explain this astounding disconnect. Before 1983, parental abduction was not even a Criminal Code offence; it was viewed more as a domestic dispute between parents. The new offence carried a maximum punishment of ten years behind bars.

Trial judges commenced giving abysmally low sentences. Appellate courts affirmed them, even lowering sentences they felt were too stringent. If a trial judge departs from those ranges now, the sentence is liable to be overturned.

In another recent case, *R v. Neundorf*, the Ontario Court of Appeal took just such an approach. Presented with an already light sentence for a woman who had abducted her two sons and kept them in Singapore for several months, it lowered her penalty to an absolute discharge – in part, so that she can travel freely to the United States.

It is puzzling that appellate judges are willing to abandon their native skepticism and accept the thinnest of excuses in parental abduction cases. Their indulgence is even more difficult to understand given that abductors rarely display a morsel of genuine remorse. On the contrary, they tend to stoutly assert that they would do it over again.

Most of these abduction cases also feature the violation of a custody order. One can scarcely picture a greater insult to justice than the flouting of a court order, yet the maximum penalty that can be imposed is two months in jail.

Ms. O'Byrne played the entire justice system for fools. Worse, her case will lead others to believe they can do the same with relative impunity. The Ontario Crown should pursue an appeal, but the issue is broader than this one case. The judiciary must show that it intends to get serious about deterring future abductors.

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