## By E mail - 8 pages + attachments

November 12, 2003.

Mr. Pietro Niro 46 Maple Ave. Grimsby, Ontario L3M 3B8 Tel: (905) 333-3359

Mr. Gary Nicholls, Chief of Police Niagara Regional Police Service Headquarters 68 Church Street

St. Catharines, Ontario L2R 3C6

Tel: (905) 688-4111 Fax: (905) 685-5081

Dear Chief Nicholls

RE: Request for emergency intervention and charges to be laid for parental kidnapping under section 283 of the Criminal Code of Canada and investigation into the illegal possession and possible use of blank signed doctor prescription forms.

Recently, I went into the Niagara Region Police regional office in Grimsby to file a report about the abduction of my three children by their mother, a Susan Niro of Grimsby, Ontario. I provided detailed documentary evidence to officers at the Grimsby detachment in support of my claim that my children had been abducted in violation of section 283 of the Criminal Code of Canada.

I also provided evidence that my wife had in her possession, illegally obtained signed, blank copies of doctor prescription forms prior to her flight with my children. For all I knew at the time, my wife may have been using the illegally obtained prescription forms to administer drugs to the children in order to keep them sedated while she kept them and out of school contrary to their wishes to be back in school. I also provided officers with evidence to show that my wife had also taken out a one million dollar life insurance policy without my knowledge prior to the abduction of my children. This was of concern as I wondered if she might be planning to use the medical prescription forms to obtain some form of lethal drugs to harm myself or the children.

The specific section of the Criminal Code which I was asking your officers to enforce states the following:

## PART VIII OFFENCES AGAINST THE PERSON AND REPUTATION Kidnapping, Hostage Taking and Abduction

**283.** (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, whether or not there is a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person, is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction.
- (2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General or counsel instructed by him for that purpose.

```
R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.
```

The wording of the Criminal Code in section (1) seems quite clear and seems very applicable to the situation I was and still am facing. The mother (the parent) had taken the children from their home without any prior notice to myself with the intent to deprive me (the other parent) of my lawful possession of the children. I provided officers with extensive documentation which I had copied to the Attorney General's Office which should have been more than adequate to meet the threshold of being "reasonable" enough for police to proceed with the processing of charges.

I came in good faith as a citizen and taxpayer to the Niagara Regional Police with the understanding:

- 1) That police are the authorities who are appointed under Legislation to enforce the Criminal Code of Canada.
- 2) That police are compelled to lay charges where reasonable evidence would suggest that the Criminal Code has been willfully broken by any individual.
- 3) That police are not supposed to assume the role of judge and jury by interpreting the Law or to prejudge any individual based on personal biases.
- 4) That it is the role of the Court after charges are laid to interpret the Law and to weigh the evidence brought before the court and to provide a judgement on the matter after a proper court hearing held in a public courtroom.
- 5) That all citizens in this country have the right be entitled to their day in court, to face those who have done them wrong and to be heard by a Justice.

Unfortunately, your officer at the Grimsby detachment gave me a barrage of excuses as to why the Niagara Regional Police would not get involved in my matter and as to why the police would not enforce the Law! I left feeling totally unsatisfied and feeling that my rights to justice and protection under the law totally ignored by your officers. I felt brushed off by the treatment I had received.

According to your officer, the main reason why Niagara Regional Police would not enforce section 283 of the Criminal Code of Canada (parental abduction) in my case was because the mother of my children had at the time she was getting ready to abduct my children, notified the police of her intent to take the children away and that she was doing this at the advice of her lawyer. She also told officers that she would not obstruct access to my children in an attempt to mislead them into not enforcing section 283 of the Criminal Code and misleading officers into believing that she had no intention of violating the law. Your officer indicated to me that because the mother had reported her intentions first and that she had said her lawyer had approved this action, that somehow her

actions must be OK and that this move by her would exempt her from being held responsible under the Law. Your officer clearly emphasized, however, that police had been told that my access to the children would not be interfered with and that the children would go to the same school.

It has now been almost a month and to this day, I have not seen my children. My children have not been in school and remain somewhere in hiding in the community. My wife remains in hiding and has told me on tape that what she is doing must be OK because the Niagara Regional Police know where she is, the Children's Aid know where she is and her lawyer know where she is. She has taken the position that because everyone except me knows where the children are, and that no one has come to take the children from her, that this is somehow makes it OK for her to deprive me of my rights to see my children.

With this e mail, I have attached a copy of the audio file where my wife has made this statement along with other statements in which she has said that I cannot see the children until I sign the court agreement drawn up by her lawyer giving her custody of the children.

The only thing I can report to date is that my wife has called me on more than one occasion and has repeatedly told me that unless I sign the court documents that her lawyer has drawn up which gives her custody of the children, that I will not see the children nor will the children be returned to their school. I have this evidence which I have attached with this E mail message in MP3 format.

Your officer at the Grimsby detachment further went on to say that the mother had alleged violence in the home. Of course, my wife did not provide any evidence to support her statements to police. It seems as if officers with the Niagara Regional Police just take the word of a child abductor without any questions and then refuse to enforce the laws based on the abductor's lies which are very clearly apparent as being a part of a elaborate plan to abuse the court and police services to gain an advantage in a custody battle.

When I told your officer that there had never been any problem with domestic violence in our home and no reports to police in the past, your officer came immediately to the defense of my wife by giving me a lecture on how most domestic violence goes on unreported. I got the impression from your officer that because of his perception that most domestic violence goes unreported, that my case was just another one of these "unreported" cases. I got the feeling from your officer that I was already guilty of abusing my wife. Your officer gave me the impression that just because my wife said it was so, it must be the truth.

When I told your officer that the mother, who was a registered nurse, was illegally in possession of stolen or fraudulently obtained signed, blank medical prescription forms, he did not seem interested in knowing more about it. I provided your officers with reasonable evidence (a copy of a blank medical prescription form) supporting my claim that another crime may have been committed, yet your officer just shrugged me off. His response to me was to tell me to deal with matters in family court and that the Niagara Regional Police would not act. It was clear he was not interested in listening to me and that only what my wife and her lawyer had said was going to be believed.

Even with all the documentary evidence I had to support that the abduction was preplanned and showed her to be involved in some kind of criminal activity, it seemed that just the word of the mother was all that was required to have the Niagara Regional Police ignore their duties not to enforce the Criminal Code. Your police officer went on to advise me that under the Criminal Code that the mother could use the following defense:

## Defence:

285. No one shall be found guilty of an offence under sections 280 to 283 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm or if the person charged with the offence was escaping from danger of imminent harm.

R.S., 1985, c. C-46, s. 285; 1993, c. 45, s. 6.

Your officer told me that because my wife had alleged abuse at the same time as she was abducting the children, that somehow this made it OK in the eyes of the Niagara Regional Police to not act.

It all boiled down to your officer telling me that basically all that a parent has to do in the Niagara Region to successfully be able to abduct their children is to come down to a Niagara Regional Police Offices and report being abused, no evidence required. After that then it seems these abductors are free to walk away with the kids and that Niagara Regional Police will do nothing to intervene. In fact, it would appear that the police help the mother by helping to conceal her whereabouts and in effect lead her to believe that what she is doing is legally correct.

If you look at the defense clause for abduction as written in the Criminal Code it clearly gives the court the discretion not to find a person guilty of an offence. Nowhere under Section 285 does it give Police the authority not to investigate or to lay charges when reasonable evidence has been presented to them which would support the claim that a child abduction may have occurred. Discretion for a conviction is in the hands of the Honourable Court, not the police. The first step of course is that the police must lay charges to get a person into the court.

I would be very curious to know why my wife would not be charged by Niagara Regional Police with parental kidnapping when she has provided no evidence to police of abuse, yet when another man from our region, a Mr. Eric Bouchard of Smithville, Ontario was charged for the same crime by officers from your force. From what I understand, Mr. Bouchard told authorities that he was protecting his child from the mother who had an extensive history of children abuse and mental illness, including recent suicide attempts. He was arrested, thrown in jail for keeping his child safe in the Niagara Area. In my situation, my wife flees with my children to Quebec and nothing happens to her. I am beginning to wonder if there is some kind of double standard at work within the Niagara Regional Police. Could the gender of the abductor have anything to do with the fact that the Niagara Regional Police are willing to criminally charge and jail Mr. Eric Bouchard yet not even consider charging my wife for the same crime when I had likely even more evidence as to the intent of the abductor than in the Eric Bouchard case?

In the materials I provided the officers at the Grimsby police station, I included ample information to show that the abduction of my children had been premeditated and orchestrated with precision with the help of others who aided and abetted the mother to carry out this unlawful abduction. I believe the mother's lawyer may have advised the mother on how to break the Law using the Ontario Government's own Crown Attorney's Manual as a blueprint on how to circumvent the Law and to circumvent the principles of Fundamental Justice. I believe that the carefully planned steps that the mother took when she abducted the children could not have been known by her alone without the advice of someone having knowledge of the Crown Attorney's Policy Manual and the Criminal Code of Canada. In my opinion, I believe that my wife's lawyer, James D. Almas, of the law firm of Heelis, Williams, Little and Almas, was the one primarily responsible for crafting this plan to help the mother violate the Law and to show the mother how to deceive authorities and to keep herself from being charged by police. I believe that as an officer of the Court he is an accomplice to the obstruction of Justice and a witness to a criminal offence.

A legal professional has passed me on some case law from the Supreme Court of Canada which would also seem to support my arguments that the mother has broken the Law and that Niagara Regional Police should lay criminal charges against the mother under the Criminal Code of Canada in this matter. The Supreme Court of Canada Case which was drawn to my attention was the following:

Indexed as: R. v. Dawson

File No.:24883. 1996: June 12; 1996: November 21.

Present: L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin,

lacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR NOVA SCOTIA

An analysis of the above Supreme Court of Canada case reveals the following:

The Supreme Court of Canada has determined that removal of a child shall be considered a **criminal matter** when it can be shown that the person who abducted the child, did **so with the intent to deprive the other parent of the child**. This is supported by the following excerpts:

Although there is a concern that a parent who inadvertently and only technically breaches the other parent's custody rights may face imprisonment, it should be emphasized that the mens rea of the offence is not simply the intention to take the child, but the intention to take the child from the possession of one who is entitled to that possession. Because the latter kind of intent is serious, prosecution of trifling offences under s. 283 is not to be expected.

Per Sopinka and McLachlin JJ. (dissenting): Section 283(1) of the Code targets the act of taking a child where there is no custody order in place. Certain conditions, however, must be fulfilled before the act of taking becomes criminal: the person taking must have lawful custody and the taking must be with the "intent to deprive" the other parent "of the possession of" the child. The section thus contemplates the situation where people share custody or "possession" of the child. Possession is used in the legal sense of right of

possession. It is not necessary that the deprived parent have physical possession of the child at the time of the taking. What is required, at a minimum, is that the deprived parent has a right to possession of the child.

24. In repealing s. 250(2) and adding what is now s. 283, Parliament clearly intended to expand the reach of the child abduction provisions so as to protect children from unilateral removal, even in the absence of a custody order, and even by a person who could, in some sense, claim a right to possession of the child. The interpretation favoured by the appellant would unacceptably undermine this purpose.

At the time my wife abducted the children, I had the right to possession of my children and the evidence I provided to police clearly shows that my wife had the intent to deprive the children from me and that she had clearly planned to use deception to break the Law.

In regards to some of the criteria when enforcing this law, it is clear that the Supreme Court of Canada contends that the authority given to the Attorney General (and the police) in any Province should not be used in a way which would breach the intent of Parliament or the interference with the principals of fundamental Justice which in this case is to deprive any parent of their right to access to their child by another parent.

83. The respondent concedes that the interpretation it advocates might result in prosecuting as criminals people whose conduct falls far short of what society would regard as criminal. However, the respondent also submits that this situation is remedied by the requirement of the Criminal Code that the Attorney General authorize prosecutions under this section. This reasoning amounts to attributing to Parliament the intention to place people guilty of civil default in violation of the criminal law of this land; then remedying the overkill by conferring on the executive branch the discretion whether or not to proceed with prosecution. I cannot hazard what was in the mind of the Parliamentarians when they passed the requirement of the Attorney General's consent to prosecution. Perhaps it was nothing more than a desire to prevent frivolous private prosecutions in an area of the law where emotions often run high. I can, however, assert that the intention that the respondent would have us attribute to Parliament is unworthy of this country's history and Constitution. The suggestion of legislating broad criminal laws and then attempting to cure the overbreadth by the conferral of prosecutorial discretion is not to be countenanced. The citizen has a right to know what conduct will result in the stigma of criminal conviction and punishment. That knowledge should be spelled out by Parliament, not left to the whim of the Attorney General and his or her staff. To live under the cloud of prosecutorial restraint is in itself punishment. Moreover, the need for executive permission to prosecute offers little comfort to the person whose conduct may, in the minds of others, be unfairly stigmatized as criminal.

It is also clear from section 285 that the defense was intended to be used in a court of law during weighing of the information by the court and not be used by the police as an excuse to allow the police to skirt their responsibility to enforce the Criminal Code of Canada.

At this time I can see no logical reason why the Niagara Regional Police should not proceed with the laying of criminal charges in this matter seeing as the mother has clearly violated the Law as written in the Criminal Code of Canada and clearly in her correspondence indicated that it was her intent to "hide" the children from their father. My children and I want our day in court, not to be told by some police officer that they will not even lay charges because of the personal interpretation of the Law by uniformed officers.

I am therefore making this request to you, as the Chief of Police, to please order your officers to do their jobs and to take immediate action in this matter and to lay charges against the mother so that she will have to answer to a proper court of Law. She has her right to her day in court and right now, I am only asking the Police to do their job so that myself and my children will be given our day in court. The mother and her lawyer, Mr. James Almas, should have dealt with this matter in a proper and lawful manner using proper civil procedures from the very beginning. There were clearly other legal options available to the mother before she chose to abduct the children, to keep them away from me and then to extort my signature on papers to give her custody of the children.

The Supreme Court of Canada has also made it clear that parents having care and control of a child have a fudiciary responsibility to act in the child's best interest. It is clear that the mother has not fulfilled her fudiciary duties as a parent under the Law. I am more than willing to fulfill these fudiciary responsibilities until such time as matters are properly and legally brought before the honourable Court. Attached, please find a letter from a health care professional, Richard Porter who is familiar with our family's circumstances. He has indicated that I am a good father to the children and more involved in the children's lives than is the mother.

Failure of the Niagara Regional Police to enforce Section 283 of the Criminal Code in a manner intended by Parliament could potentially have great significance for many other parents in this region as this policy of interpreting the Criminal Code of Canada would amount to the police condoning child abduction. It would soon become common knowledge that all a parent has to do in the Niagara Region is to call police and yell "wolf" to get to break the law with impunity. Lawyers in this region will have a hay day helping parents cook up allegations while their clients abscond with the children. What a mess this would create!

The failure of the police to uphold the principals of Fundamental Justice and to uphold the intent of our county's Laws as passed by our duly elected Parliament, could have far-reaching implications and open up a floodgate of parental abductions right across this country. I am sure that if my wife's lawyer is successful in helping my wife abduct our children, other mothers in this region will be flocking to his law firm in expectation that he will do the same to help them take their children out of the father's life and to destroy the family. In other words, one call to police with allegations of abuse will be all it takes to remove children from the life of another parent. I don't think that very many citizens in Niagara would agree that this position would be fair or just.

Whether custody and access to the children is being dealt with in a family court or not is a totally separate issue from the issue of whether the mother had abducted my children with an intent to deprive another parent of access to the children as outlined in the Criminal Code of Canada. Civil and criminal matters are two separate items and must be dealt with by authorities based on the merits and evidence of the individual matters.

My children need to be returned to their home and back to school where they belong and the mother must be made accountable under the law for her unlawful actions. No parent in this province should be allowed to get away with the kind of selfish, self serving criminal act that has been committed by the mother of my children. What this mother has done is a clear example where a

parent is flouting the law with the help of her lawyer and then being protected by those who are supposed to be working in the name of Justice and equality for all citizens. The Niagara Regional Police Force must act within its mandate and enforce the Rule of Law in Canada or else be in contempt of the Parliament of Canada and the citizens of Canada.

Yours truly



## Attachments:

Letter from Richard Porter M.D., CGPP indicating that I am a good father and caregiver to my children.

Audio MP3 File (84 Kb) "*Everyone knows where I am except you*" where my wife tells me that the Niagara Regional Police, the Children's Aid and the Lawyer knows where the kids are except the father

Audio MP3 File (47 Kb) "*That's basically it*" where my wife says that I will not see my children unless I "basically" sign the court papers giving her custody of the children.

Audio MP3 File (44 Kb) "*If you sign papers signed you can see the kids by Sunday*" where my wife tells me that I can see my children but only if I sign the papers first giving her custody

Audio MP3 File (39 Kb) "Cole can't go back to school until you sign custody agreement" where my wife tells me that my son will only be taken back to school if I sign the custody papers giving her custody.

Audio MP3 File (102 Kb) "*All you have to do is to sign the papers*" where my wife tells me that I can see the children only if I sign the custody papers giving her custody.

Audio MP3 File (39 Kb) "No school for Cole (Son) until you sign the custody agreement" where my wife tells me that my son Cole will only be allowed to return to school when I have signed the custody papers giving her custody.

Audio MP3 File (28 Kb) "The children will be in school when I know you wont take them from school" where my wife tells me that she will only take my kids to school when she knows I won't take them (by signing the custody agreement".

Audio MP3 File (66Kb) "*Until you sign they can't go to school*" where my wife tells me that she will only take my kids to school when I sign the custody agreement giving her sole custody of the children..

cc: Principal, St. Joseph Catholic School
Various solicitors in the Province of Ontario
Various member of the Press