



Moving With children

- ▶ Your rights as a parent

Can I make a permanent move with my children?

In ordinary circumstances, when deciding whether to relocate, your decision may not be impacted. However, it will be impacted if you have children, and if you have an intention to move them away from their other parent, or guardian. This begs the question **"Am I free to move with my children?"**

"Relocation", according to the case of AJL v BSO [2010] NZFLR 476 is defined as "a shift of the child's residence which affects the child's' relationship with his or her parents, both practically and emotionally".



Wanaka | Arrowtown | Dunedin | Christchurch



New Zealand
0800 277 529

International
+64 3 443 0900



reception@aspiringlaw.co.nz



www.aspiringlaw.co.nz

Where there is agreement:

If you and your ex-partner can come to an agreement about the proposed relocation, then the move can go ahead in accordance with the terms of your agreement.

What if you disagree?

If you or your-ex partner can't reach an agreement about the proposed move, then mediation is something to consider to help you both reach agreement.

Mediation

This is a process where both parents voluntarily participate and meet with an independent mediator. The mediator will facilitate an informal and confidential discussion in the hope of reaching an agreement.

This process requires consent from both parents to occur and the cost is based on your income.

Family Court

If no agreement can be reached at mediation and one parent is still wanting to relocate, that parent must file a Relocation Application with the Family Court to ask for the Courts permission for the relocation to take place. If the relocating parent moves without consent from the other parent, and without the Court's permission, they may be later ordered by the Court to return, or at least, to return the children.

When the court is assessing whether to grant a relocation application it will consider the following factors:

- ▶ That both parents need to have a continuing relationship with their children;
- ▶ That care arrangements should continue in accordance with the status quo;
- ▶ That relationships with wider family is to be preserved and strengthened;

- ▶ That a child's safety, identity and culture is to be protected;
- ▶ Each parent's capacity to facilitate parent-child contact;
- ▶ The extent and focus that each parent has in conflict (ie: how focused parents are on arguing with each other, compared to how focused they are on trying to reach agreement);
- ▶ The practical consequences of the relocation (ie: will this interfere with the children's current contact time with each parent and how long will they have to travel to see each parent);
- ▶ The implications of the children's social and sporting commitments; and,
- ▶ The children's views and wishes (children are not decision makers and their views are not determinative, however, they should be heard).

In considering these factors, whether you are applying for, or opposing, a relocation request, it's a good idea to consider these factors carefully. However, most importantly, parents should be considering whether the proposed relocation is, or isn't, in the best interests of the children.

The Best Interests of the Children

The first thing to consider is the child's safety. However, other things to consider include:

- ▶ Parents being primarily responsible for the welfare, development and upbringing of their children;
- ▶ Parents engaging in ongoing and co-operative consultations;
- ▶ Continuity in a child's development and upbringing;
- ▶ A continuing relationship with both parents and wider family;
- ▶ Preserving and strengthening a child's identity, culture, language and religious denomination.

Finally, consider what compromise each parent could live with. Hopefully, an agreement can be reached regarding relocation, by considering these factors, without the need to attend court.

Inter-parental conflict

The biggest inhibitor for children is not that their parents separate, but that they are exposed to inter-parental conflict. The traditional examples of inter-parental conflict include parents yelling at, and arguing with, each other in front of the children. However, there are many other, more subtle, examples of conflict, including:

- ▶ Telling your child they can't wear certain clothes when they go to the other parents house because the other parent isn't responsible enough;
- ▶ Telling the child to ask the other parent to pay for something or making comment that the other parent never pays for anything;
- ▶ Asking the child intrusive questions about the other parent's new partner;
- ▶ Saying nasty comments about the other parent, or the other parents family, within hearing of the child.

It's really important to try and reduce conflict between parents, so children are not exposed to conflict. This may involve less interaction and contact between the parents, or it could mean parents changing the way they communicate.

Narrowing communication topics between parents, to being only child-focused or using text messages or apps instead of phone calls, are all ways to try and reduce conflict between parents.

It is inevitable that disagreements will occur, but it is how these disagreements are discussed and resolved that are integral to a child's welfare.