

Commentary from:

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## RELOCATION FOLLOWING PARENTAL SEPARATION

Each year many families relocate to live in new places, but disputes will not usually arise over this when the family is intact because the two parents, and perhaps the children, will reach the decision about shifting together. Nevertheless the move will mean these children are likely to experience the loss of familiar surroundings and close friendships, need to change (pre)schools and start afresh with many aspects of their lives. It is when the parents are already living apart that a proposed relocation by one of them might mean the Courts are called upon to examine the interests at stake and determine the outcome. Relocation in this context has particular poignancy for the children involved because, if their parent's application to relocate is approved by the Court, this might marginalise the role of their other parent in their life.

It is not, of course, uncommon for separated parents to have to move in the aftermath of their relationship breakdown as they re-establish themselves in separate households and negotiate their children's care and contact arrangements. However, when the proposed relocation by the resident parent involves moving such a distance from the non-resident parent that contact visits become problematic, then the potential for a major dispute exists. This is particularly so when there has been a pattern of frequent contact and the non-resident parent refuses to acquiesce in the move. While these cases can be very difficult to resolve by agreement, some separated parents are able to negotiate the relocation without seeking recourse to the legal system. However, when the ex-partners are unable to reach agreement, then an application to the Court for permission for the resident parent to move with the children is regarded as the responsible course of action. These applications often attract strong opposition from the parent who will be left behind.

### FAMILY MEMBERS' PERSPECTIVES ON POST-SEPARATION RELOCATION DISPUTES

There is a large body of research on family mobility, but little has previously been known about the impact of relocation in the family justice context (Taylor & Freeman, in press). However, this is changing as qualitative studies have recently been conducted on family members' experiences of relocation disputes in Australia and New Zealand. These are providing unique perspectives and insights on the impact of relocation disputes from those most directly affected – the parents and the children.

#### i) Australia – Behrens, Smyth and Kaspiew

The Australian Research Council funded this small-scale, retrospective, qualitative study involving in-depth interviews with 38 separated parents (27 fathers and 11 mothers) concerning their experiences of contested relocation proceedings in the Family Court of Australia (FCA), the Federal Magistrates Court or the Family Court of Western Australia between 2002 and mid-2005; that is, before the 2006 Australian family law reforms took effect and where the Court order had been made between 18 months and five years previously (Behrens, Smyth & Kaspiew 2009, 2010). Parents were recruited through the Courts, and twice as many had an order allowing relocation than not allowing relocation. Most of the participants were fathers. Thus, the dominant accounts ascertained were those of men who had unsuccessfully opposed a relocation. The study also included an analysis of all 200 FCA relocation decisions between 2002 and 2004 (i.e. the population from which the interview sample was drawn) and this enabled an assessment to be made of how typical their interview cases were.

## ii) Australia – Parkinson, Cashmore and Single

This prospective, longitudinal, qualitative and quantitative study of relocation disputes was also funded by the Australian Research Council (Parkinson, Cashmore & Single 2010). The sample comprised 80 parents from 71 families: 40 fathers who all opposed their ex-partner's proposed move, 39 mothers, and one grandmother. All but one of the mothers was seeking to relocate with their children. One mother was a non-resident parent who opposed the father's proposed relocation. There were nine former couples in the sample. Nineteen children were also interviewed from nine of the 71 families. The participants were recruited through family lawyers and have mostly been interviewed within a few months of their relocation dispute being resolved by consent or judicial determination following the 2006 Australian family law reforms. The first round of interviews began in July 2006. The families were re-interviewed 18-24 months later and, due to an extension to the project, are now being followed for up to five years after resolution of their relocation dispute.

## iii) New Zealand – Taylor, Gollop and Henaghan

The New Zealand Law Foundation funded a socio-legal research team from the University of Otago to undertake a three-year study on relocation following parental separation from 2007 to 2009 (Taylor, Gollop & Henaghan 2010a, 2010b). One hundred New Zealand families where a parent had relocated (or sought to relocate) with the children, with that move having a significant impact on contact arrangements with the other parent, were recruited through family lawyers and media publicity to take part in the study. The sample comprised 114 parents (73 mothers and 41 fathers; in 14 families both parents took part), and 44 children (aged 7-18 years) from 30 of the 100 families.

The first round of in-depth, semi-structured parent and child interviews was conducted in 2007 and 2008, with the parent follow-up interviews undertaken 12-18 months later. It was the mothers who most often wished to move with 61 (84%) of the mothers desiring to relocate, compared to only two of the fathers. Thirty-one fathers (76%) had opposed their ex-partner's proposed relocation – 11 successfully, 19 unsuccessfully, with one case still to be determined by the Family Court. More mothers successfully relocated (39) than those who were prevented from moving or who, after parental discussion, had agreed not to move (19). Just over half (51%) of the families had their relocation disputes judicially determined.

## CONCLUSION

Relocation disputes are widely regarded as one of the most controversial and difficult issues in family law internationally (Taylor & Freeman, in press). The Chief Justice of the Family Court of Australia says 'these cases are heart-wrenching, they are difficult and they do not allow for an easy answer' (Bryant 2005, p. 22). They have also been described as 'the "San Andreas Fault" of family law' (Parkinson, Cashmore & Single 2010, p. 1). Research exploring parents' and children's perspectives on these disputes is therefore essential to help provide an empirical evidence base on which families and courts can reach decisions that advance the welfare and best interests of the child. The Australian and New Zealand studies are contributing significantly to family law decision-making processes in this field.

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