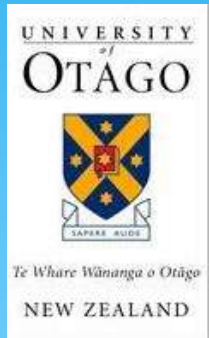


Post-separation Parental Disputes: Relocation & International Child Abduction



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When Does a Relocation Dispute Arise?

- * **Following parental separation / divorce**
- * One parent **seeks to move away** with child(ren) → diverse range of motivations: return home; family support, fresh start, employment, study, new partner, escape from violence etc
- * Within NZ or internationally
 - **Other parent objects** to proposed relocation
 - Significant impact on **contact** with child

Care of Children Act 2004



- * Domestic + International relocations
- * **No rules or presumptions**

Unilateral Move

- * **NZ:** court can order back
- * **Overseas:** wrongful removal
→ 1980 Hague Convention applies

Exercise of Guardianship

- * *Important matters affecting the child*
- * **Changes to child's place of residence** that may affect child's relationship with parents/guardians
- * Guardian must **act jointly** (by **consulting** with aim of **securing agreement**) with other guardian(s)

Two Family Court Pathways to Resolve the Parental Dispute

Parents unable to agree on child's place of residence

1. Disputes between Guardians

2. Application for a Parenting Order

→ may be made subject to any **terms or conditions** the court considers appropriate: e.g., child can move

Child's Welfare & Best Interests



The **welfare and best interests** of a child in his or her **particular circumstances** must be **the first and paramount consideration**

Child's Views

(a) a child **must** be given **reasonable opportunities** to **express views on matters affecting them**

(b) **any views the child expresses** (either directly or through a representative) **must** be taken into account

- * Appointment of **Lawyer for the Child**
- * **Judicial meeting** with child

Relocation as a Risk Context for Children

- * **Risk 1:** Children already exposed to their **parents' separation**
- * **Risk 2:** **Changes in family structure & moves** heighten risk
- * **Risk 3:** Children adversely affected by **conflict between parents that is frequent, intense and poorly resolved**
 - Especially detrimental when the **conflict is about the child**, as it is in a **relocation dispute**

1. Happy Mother, Happy Child

- * Child's development / adjustment primarily related to **close stable relationship with primary parent**
- * Effect of refusal of the application on **mother's future psychological & emotional stability** → England & Wales
 - **Allow relocation** (except in unusual circumstances)
 - to protect child's relationship with a happy, well-functioning primary parent

2. High Quality Relationships Between Child & Both Parents

- * Long-term benefits for child
 - * Harm associated with **disrupted relationships**
 - **Refuse relocation**
 - unless compelling reasons militating against this
- FV; child abuse; neglectful, erratic parenting; mental health / substance abuse

Factors For the Proposed Relocation

- * Strong network of **extended family support**
- * Children's **clear views** of new location and wanting to go
- * Clear plan of **how relationship with left-behind parent will be continued**
- * A **partner** who is supportive of children's relationship with left-behind parent
- * **Economic advancement** – job, study
- * **Escaping** violence, drug abuse/mental illness



Factors Against the Proposed Relocation

- * Lack of credibility
- * Negative / hostile attitude to other parent
- * Children well settled in status quo
- * Strong relationship with other parent
- * Young children
- * Burden of travel
- * I will go anyway!



The Parties' Outcomes

- * **Successful Applicants:** application allowed → **child moves**
- * **Unsuccessful Opposers:** feel devastated, marginalised → *an expendable accessory*; limited contact, virtual visitation
- * **Successful Opposers:** Relocation declined → **child stays**
likelihood parent-child relationship will thrive
- * **Unsuccessful Applicants:** forced to live somewhere they no longer want to be → biding their time → no similar restraint on contact parent's movement

International Child Abduction



1980 Hague Convention on the Civil Aspects of International Child Abduction

- * International treaty: **101 Contracting States**
- * Child under 16 **wrongfully removed to, or retained in,** another Contracting State by a **taking parent** in breach of other parent's rights of custody
- * **Left-behind parent** can apply for **child to be returned to their country of habitual residence**
- * **Courts in that country** → then address care/contact issues

Why Hague Convention Drafted in 1970s

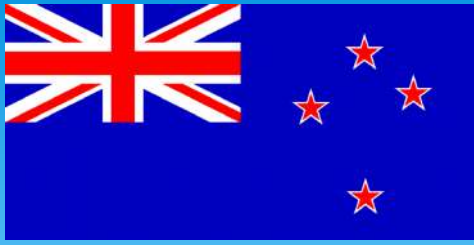
- * Concern at increasing abductions by **non-resident parents**
- * **Left behind parent** had to **find the child** → apply for custody in a **foreign country**
- * **Courts, laws & values** of the 2 countries pitted against each another
- * **Abductions to Non-Hague countries** → significance of the abduction destination!

Focus of 1980 Hague Convention

Not an enquiry into the merits of the case

Focus is on the **forum/jurisdiction** → not the child's welfare, unless 1 of the **very limited Convention exceptions** applies
unlike most other post-separation parenting disputes

Summary nature of the proceedings → speedy return of child



New Zealand

- * **1991:** NZ acceded to the 1980 Hague Convention
- * **Care of Children Act 2004**
- * **Good example** of '*international law*' becoming part of **domestic law** & enforced by the courts
- * **NZ Central Authority** → MOJ Wellington
- * Deals with **applications for return** of children taken to, or from, Contracting States

NZ Abduction Statistics

- * Around **100 - 120 cases** pa:
- * **70% of NZ cases involve Australia**
- * 35% of Australian cases involve NZ
- * **2015 Average global return rate: 45% → NZ: 83%**

Preventive Steps



- **Surrender of child's passport**
- **Order Preventing Removal of Child from NZ**
- **Border Alert:** lists child's passport no. in NZ Customs database

NZ Central Authority Must Take All Appropriate Measures

- * Discover where the child is
- * Ensure child's safety
- * Secure voluntary return of child or an amicable resolution
- * Facilitate the making of an application by the left-behind applicant



Two of the Exceptions to Return

- * **A grave risk** that the child's return:
Would expose the child to **physical or psychological harm**
or otherwise place the child in **an intolerable situation**
- * **The child objects to being returned** and has attained
an age and degree of maturity at which it is
appropriate to **give weight to their views**

Simpson v Hamilton

Germany / NZ



Family Background

All German Nationals

- * **Father:** Mr Simpson **Mother:** Ms Hamilton **Separated 2009**
- * **Anna** born 2007 → **abducted by mother** → NZ **Jan 2015** in defiance of 2014 German court order giving father sole custody
- * In **hiding for 2 yrs** before father discovers Anna's location **2017**
- * Application filed on father's behalf seeking Anna's return to Germany
- * **FC Tauranga 2017:** declined to order Anna's return → she can stay in NZ

Father's Appeals

- * **High Court 2018:** Father's appeal dismissed → CA
- * **Court of Appeal 2019:** Mother raises **3 exceptions to return**
 1. More than 1 yr after removal → Anna **now settled** in NZ
 2. **Grave risk** Anna's return would expose her to physical or psychological harm or place her in an intolerable position
 3. Anna (now 12) **objects to being returned**

Mother's Actions



- * Tells Anna she would **have to return to Germany alone**
- * **Falsely stated** she had sole custody when entering NZ → **strategy of concealment & deceit** → at risk of deportation

Father's Uplift of Anna

- * 4 weeks after **2017** Family Court judgment delivered
- * Unannounced **forcible uplift of Anna at school** → Auckland
- * **Mother** granted Interim Parenting Order + warrant to uplift Anna by Police
- * **Anna:** PTSD, scared of father, strongly opposed to returning to Germany → *traumatised, realistically estranged, now a highly vulnerable child*

Court of Appeal 2019

Dismisses Father's Appeal

- * Satisfied **a return order should have been made by FC 2017** → never any question of 'grave risk' → Anna was not settled → Anna's views important, but her objection was vitiated by the undue influence of her mother
- * **Cannot overlook what has happened in 2 yrs since** → delay in rectifying FC error → father's decision to take matters into his own hands → Anna's consequent present fragile state & vulnerability
- * *What would be achieved now if we were to make an order for her return? And at what cost?*

A very sad case for which there is no ready resolution

- * Opportunity for **prompt return to Germany has long passed**
- * Anna needs to **remain with her mother** for time being
- * **Father** can seek orders for **contact**

- * **Anna now lived more than 1/3 of her life in NZ** → probably more settled than she has ever been → weekly therapeutic counselling