

Relocation Following Parental Separation: The Welfare and Best Interests of Children

Research Report

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Abstract

Relocation disputes are widely regarded as one of the most controversial and difficult issues in family law internationally. 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. This research was the first conducted in New Zealand on relocation, and amongst the first world-wide to explore family members' perspectives on this issue.

One hundred New Zealand families where a parent had relocated (or sought to relocate) with the children, and that move would have a significant impact on contact arrangements with the other parent, were recruited 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 follow-up interviews undertaken with the parents 12-18 months later. Some standardised measures were also administered with the parents to assess their child's social and emotional development and to collect demographic and inter-parental relationship data. Just over half (51%) of the families had their relocation disputes determined by the Family Court or the High Court on appeal.

This research report describes the methodology employed in undertaking the study and reports on the diversity and complexity of the twelve relocation sequences that emerged in our parent data. The key findings from our interviews with the 44 children are also presented. Consideration is given to the statutory framework governing relocation disputes in New Zealand and our analysis of adjudication trends in New Zealand's caselaw over the past twenty years. Particular attention is given to 116 cases (100 from the Family Court and 16 from the High Court) decided since the Care of Children Act 2004 took effect on 1 July 2005. Since then successful applications to relocate within New Zealand have steadily increased from a low of 20% in 2005, up to 48% in 2006, down to 42% in 2007 and 2008, and up to 60% in 2009. Applications to relocate overseas have generally been more successful, from 38% in 2005 to a high of 70% in 2008. Overall, 55% of applications to relocate overseas were successful, and 40% of applications for relocation within New Zealand were successful.

The research report also explores population mobility in intact and separated families, and considers definitions of relocation in the context of parental separation. As well, the empirical research evidence from the USA, Australia and England on post-separation relocation disputes is reviewed. An overview of key aspects of the law governing relocation in several jurisdictions, including Australia, England/Wales, Canada and the USA, is provided. In most Western jurisdictions the Court's paramount consideration is the child's welfare or best interests. While some adopt a more neutral, all-factor, approach, others have a presumption either in favour of, or against, relocation. The approach taken to determining the child's best interests also varies depending on whether the Courts consider that children are more likely to attain their potential when they are in the care of a happy, well-functioning primary parent who has been allowed to relocate or benefit from security and stability in their existing location where they can easily maintain relationships with both of their parents.

We strongly agree with our Australian colleagues about the need for ‘reality testing’ the proposed arrangements for the children and parents when an application to relocate is made to the Family Court. In many cases the relocation decision is relatively clear – even though the hurt to the disappointed parent should not be underestimated. Where there is little involvement of one parent in a child’s life or there has been violence, high conflict or substance abuse it is generally easier to allow the proposed relocation. Cases where arrangements can be made that are not too stressful or financially onerous for the child to maintain relationships with both parents should also be more likely to lead to relocation being allowed. The most difficult cases should be those where both parents have been closely involved in the children’s lives and one of the parents, usually the mother, wants to move for genuine reasons which she believes will make her life more fulfilled and thereby enhance her ability to care for the children. However, we also have evidence in our study that some relocations have been denied so as to allow a previously relatively uninvolved parent to maintain or build a relationship with their child, or a child’s care has been reversed from their relocating primary carer to the other parent in the face of serious obstacles to its success. Our research shows that such arrangements have a close to 50% chance of breaking down. This, together with the fluidity of family relationships and geographical moves that we have uncovered prior to and following the relocation decision, raises serious questions about the predictability and consistency of the signals currently given in New Zealand to those judges, lawyers and parents entwined in relocation disputes. The role of the family law system in enhancing or aggravating family relationships (both inter-parental and parent-child) in post-separation relocation contexts is therefore fertile ground for critical debate and further enquiry.

Please note: The family interviews were completed in December 2009, so the findings and conclusions included in this research report are preliminary. Our study remains a ‘work in progress’ as coding and data analysis of the parent interviews is still underway.

Chapter One

Introduction

The modern world is characterised by an increasingly mobile population as family members transfer or relocate nationally and/or internationally to pursue new career or lifestyle opportunities. In intact families the two parents, and perhaps the children, will reach the decision together as to whether or not their lives will be enhanced in their (proposed) new locality (Goldwater, 1998). How positive this decision might be for the children most affected by it is rarely scrutinised by a third party, yet the 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.

Relocation disputes do not therefore usually arise when a family is intact. It is when the parents are already living apart that a proposed relocation by one of them has particular poignancy for the children involved and the Courts might be called upon to examine the interests at stake and determine the outcome. 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. Where, however, the proposed relocation by the resident parent involves moving such a distance from the non-resident parent that 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 and is unwilling to consent to changes in the contact arrangements (for example, extended school holiday visits). 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, where the ex-partners are unable to reach agreement then an application to the Court for permission for one of them to move with the child(ren) is regarded as the responsible course of action. These applications often attract strong opposition from the parent who will be left behind.

Relocation disputes are widely regarded as one of the most controversial and difficult issues in family law internationally (Carmody, 2007; Chamberland, 2009; Duggan, 2007; Elrod, 2006; Family Law Council, 2006a, 2006b; George, 2009; Roebuck, 2003; Stahl, 2006a; Tapp & Taylor, 2008; Watts, 2002). Relocation cases have been described as presenting "some of the knottiest and most disturbing problems that our Courts are called upon to resolve" (*Tropea v. Tropea*, 665 N.E.2d 145 at 148, 1996). The Hon. Diana Bryant has stated that:

Relocation cases are the hardest cases that the court does, unquestionably. If you read the judgments, in almost every judgment at first instance and by the Full Court you will see the comment that these cases are heart-wrenching, they are difficult and they do not allow for an easy answer. Internationally, they pose exactly the same problems as they pose in Australia. I have heard them described as cases which pose a dilemma rather than a problem; a problem can be solved: a dilemma is insoluble. (Chief Justice of the Family Court of

Australia – appearing before the House of Representatives Standing Committee on Legal and Constitutional Affairs Report on the exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, August 2005, p. 22)

Duggan (2007) echoes this sentiment:

The law of child relocation in America is a mess. It is not much better anywhere else. It has been dressed up in shibboleths and word formulations that make it look like we, as family court judges, know what we are doing – we don't. The law pretends that we can determine with some high degree of predictive accuracy whether a move by a child with one parent away from the other parent will be in a child's best interest – we can't. The truth is this: there is no evidence that our decisions in these types of cases result in an outcome that is any better for the child than if the parents did rock-paper-scissors. (p. 193)

Relocation disputes arise when, following parental separation or divorce, a primary caregiver wants to move with the children a significant distance away from their present locality, thereby disrupting the children's contact with their non-resident parent. They involve two competing claims set within the context of determining the child's welfare and best interests – the primary caregiver's desire to relocate nationally or internationally with the children versus the non-resident (or shared care) parent's desire to maintain contact with the child in their present locality.

The key difficulty is determining how a balance can be struck between the aspirations of the parent who wants to relocate with the children and those of the non-resident parent who wants the children to remain in their current surroundings (Van Schalkwyk, 2005). Such applications are extremely hard to settle by compromise (Worwood, 2005a). Most jurisdictions prioritise the child's welfare in determining whose interests should take precedence, but these are inevitably intertwined with children's affective bonds and the quality of their relationships with each of their parents. In deciding whether or not relocation with a primary parent will be in the child's best interests, the courts have to "carefully evaluate, weigh, and balance a myriad of competing factors" (Strous, 2007, p. 231).

Unfortunately there is surprisingly little empirical research evidence about relocation disputes and the impact they have on family members to assist the Courts with this task (Braver, Ellman & Fabricius, 2003). Stahl (2006b) believes that "the key to finding the answers in this area of child custody is research. More is needed" (p. 173). Behrens (2003) concurs:

There is a vital need for research that contributes to knowledge about the results and the effects of court decisions that restrict, or enable, relocation. Decisions on these matters are based on a range of assumptions or guesses about what will happen as a result of a particular decision, and yet there is no empirical evidence which explores the aftermath and helps to make these assessments. It is difficult to have a great deal of faith in a process that involves making such important decisions for children and their parents yet is so unpredictable and has no follow up mechanisms to assess the results and impacts of the decisions. (Behrens, 2003, p. 589)

It is in this context that our research team has recently completed a three-year (2007-2009) study with 100 New Zealand families where one parent sought to relocate. Parents and children (aged over seven years) have been interviewed to ascertain their views on the decision-making processes governing relocation, as well as the living arrangements and patterns of contact subsequently developing. Our research findings will provide important information about families experiences in the aftermath of a relocation decision which either allows the children to move with their resident parent or requires them to remain living in close proximity to their non-resident or shared care parent. It will help lawyers and the Family Court to ascertain which issues ought to be examined most carefully in determining what is likely to be in the welfare and best interests of children affected by their parents' relocation dispute. Given that high levels of post-separation conflict constitute a significant public health issue through their detrimental impact on children's development and well-being (Harold & Murch, 2005; Kelly, 2001; Lamb, Sternberg & Thompson, 1999; Schepard, 1998), this makes knowledge about the resolution of disputes concerning relocation all the more essential.

Chapter Two of this research report begins by exploring population mobility in intact and separated families, and then considers definitions of relocation in the context of parental separation. This is followed, in Chapter Three, with an overview of the empirical research evidence from the USA, Australia and England on post-separation relocation disputes. In Chapter Four we set out key aspects of the law governing relocation in several jurisdictions, including Australia, England/Wales, Canada, and the USA. We then turn, in Chapter Five, to the statutory framework governing relocation disputes in New Zealand and our analysis of adjudication trends in New Zealand's caselaw over the past twenty years. Our research project with 100 New Zealand families is then outlined in Chapter Six, beginning with the methodology we employed in undertaking our study. We also report on the diversity and complexity of our parent data, and outline the key findings to emerge from our interviews with the 44 children in our study. The research report concludes in Chapter Seven with a short discussion addressing the implications of our findings for the New Zealand family law context. It should be noted that these conclusions are preliminary as our study remains a 'work in progress' with coding and data analysis of the parent interviews still underway.

Chapter Two

What is Relocation?

Introduction

There is a small amount of social science research literature exploring population mobility in both intact and separated families. Most of this psychological and sociological research has focused on the impact of relocation on family members in the more general context of residential change, rather than in the particular context of post-separation geographic mobility. The research findings are widely variable depending on the methodological approach utilised.

Geographic Mobility in Intact and Separated Families

Geographic mobility patterns in intact and separated families more generally provide a useful context within which to consider contemporary understandings of post-separation relocation disputes. Rossi (1980) defines a 'move' as:

... a shift in address ... involving a shift in location through space that can vary from a few feet in the case of a shift from one apartment or room to another within a structure to thousands of miles to another country or from one end of the country to the other. (p. 18)

'Residential mobility' generally refers to moves of short distances (usually *within* a locality, while 'migration' is the term used to denote longer distance moves *between* distinctly different localities (although not necessarily overseas) for employment or other significant transitions (Smyth, Temple, Behrens, Kaspiew & Richardson, 2008). Traditionally there was a strong association between an individual's life cycle and his or her housing mobility. Employment, marriage and childrearing were closely linked with housing moves (Winter & Stone, 1999). However, in recent decades as divorce rates, de facto and same sex relationships, ex-nuptial births and women's participation in the paid labour force have all climbed, household and family structures have become increasingly more diverse and complex. This has resulted in individuals' household and housing 'careers' becoming more disconnected and less predictable (Feijten & van Ham, 2007; Winter & Stone, 1999).

There is a considerable body of research evidence on the effects of relationship breakdown on housing careers (especially in relation to the quality, type and tenure of post-separation housing) (Feijten & van Ham, 2007). Separation/divorce generally constrains the family's financial resources and typically leads to a downward housing trajectory:

... moves from large to smaller and lower-quality dwellings, moves from owner-occupation into rented housing, and from single-family dwellings into multi-family dwellings. ... The downward move may impair the wellbeing of the individuals involved and the impact on people's lives may be long lasting. (Feijten & van Ham, 2007, p. 625)

Smyth et al. (2008) note that “in the context of separation, moves may [therefore] reflect financial necessity rather than individual aspirations” (p. 19). Rossi (1955, 1980) usefully distinguished between ‘voluntary’ moves and ‘involuntary’ ones where the decision to move was forced upon the family or was a consequence of a decision made by the household or one of its members. Sell (1983) developed a three-fold classification:

- Preference-dominated mobility – voluntary moves;
- Forced mobility – displacement due to natural disasters or private/public action;
- Imposed mobility – where decisions are made by other household members or occur because of them, for example, job transfers, death of a spouse.

The conceptual frameworks developed by Rossi and Sell highlight the involuntary or imposed nature of the mobility associated with separation and divorce. While voluntary or preference-dominated moves usually involve upward moves on the housing ladder, it is evident that involuntary ones often necessitate downward steps, at least in the short-term (Smyth et al., 2008). Separation obviously results in at least one partner having to move out of the family home. Funding two households reduces the family’s financial resources and can force movement from more expensive to cheaper housing areas. One or more ‘adjustment’ moves may then be necessary for the family members to eventually return to the quality of housing they were previously accustomed to, or to at least acquire a stable or better standard of accommodation (Feijten & van Ham, 2007; Flowerdew & Al-Hamad, 2004).

The moves triggered by separation/divorce have been found to differ in three significant ways to moves resulting from other types of life events (Feijten & van Ham, 2007):

- These moves are ‘urgent’ – the decision to separate by one or both partners usually requires one of them to move out fairly quickly;
- They are often constrained by limited financial resources – legal costs, child support, the loss of economies of scale, and usually a sharp reduction in household income; and
- They can be ‘spatially restricted’ - due to the existence of children which necessitates the ex-partners’ living in relatively close proximity so the children can continue their relationship with each parent.

The detail of ex-partners’ ‘spatial careers’ within this broader picture of intact and separated family moves is, however, relatively unexplored. We currently know very little about the frequency, distance and direction of separated couples’ geographic mobility (Smyth et al., 2008). However, Feijten and van Ham (2007) have drawn on longitudinal survey data to show that separation does indeed lead to “distinctive spatial behaviour” (p. 645) - separated people move considerably more than those who are single or partnered long-term, but they are less likely than single or couple households to move long distances, particularly when they are separated parents. Distinguishing the mobility patterns of households where there has been relationship breakdown from those where it has not occurred is therefore thought to be very important.

In the Australian context Smyth et al. (2008) utilised data from several large-scale surveys and found support for Feijten and van Ham's (2007) conclusions. They initially examined general patterns of geographic mobility in the Australian population by analysing information provided by 12,100 respondents to a 2006 survey by the Australian Bureau of Statistics:

Three clear findings emerged. First, compared to married persons, separated and divorced persons had a higher likelihood of moving in the previous five years. (Never married individuals were the most likely of all groups to have moved in the past five years, but this is likely to reflect a youth effect). Second, divorced and separated persons were more likely to report multiple moves. Third, while the direction of moves is remarkably similar across all the marital status groups examined, separated persons were more likely than other marital status types to move within the same town and less likely to move overseas. ... In addition, the presence of a dependent child in the household reduced the likelihood of moving by about 32%. By contrast, the presence of a non-resident child, either supported by child support or not supported by child support, increased the likelihood of a move by 20% and 57% respectively. (Smyth et al., 2008, p. 27)

Children thus appear to act as *anchors* in their parents' movement decisions. Parents with a dependent child (typically mothers) were less likely to move out of their town when they did move, compared to those without dependent children. In contrast, parents who had dependent children living outside their household (typically fathers) were more likely to move than those with no children (Smyth et al., 2008).

So, while separated and divorced people are more likely to move and to move more frequently than married people in a five year period, they are less likely to move longer distances than married couples. (Smyth et al., 2008, p. 29)

Smyth et al. (2008) next examined the post-separation mobility of parents. They drew on data from several waves of two research projects conducted by the Australian Institute of Family Studies involving 1,251 (HILDA Survey, 2001) and 974 (CFC Study, 2003, 2005, 2006) separated/divorced parents with at least one child under the age of 18 years. The vast majority (84%) of separated parents lived in the same state/territory as their children's other parent, 12% lived interstate, and 4% lived overseas. However:

... on average five to six years after separation, a substantial proportion (18-20%) of separated parents reported that they lived 500 kilometres or more from their child's other parent. ... Many parents, it seems, drift apart geographically over time. Indeed, on the basis of mothers' reports, *time since separation* was found to be the strongest predictor of separated mothers and fathers living long distances from each other. By contrast, fathers' reports seemed to suggest that the *quality of the co-parental relationship* is the better predictor of geographical distance than time since separation – perhaps because the co-parental relationship can mediate parent-child relationships and vice versa. Selection effects related to the independent samples of men and women might partly explain this apparent difference. ... The closer the proximity between former partners' households, the more frequently the non-resident parent is likely to see the child and to pay child support. ... A minority of separated parents in the

general population report that they have had disagreements about relocation - but when such disputes arise, parents report that they are hard to resolve. (Smyth et al., 2008, pp. 41-42, emphasis added)

Smyth et al. (2008) conclude that their findings suggest that:

... moving is a common experience across the life course in Australia, and that children generally act as anchors in the context of post-separation mobility. We think that this is an important point to make because we believe that relocation disputes should be viewed as a particular subset of mobility more broadly, albeit giving rise to some particularly difficult issues. (p. 42)

The Impact of Intact Family Mobility on Children and Young People

A small number of (mainly American) studies have explored the impact of geographic mobility on children and young people living in intact families.¹ The more robust studies take into account the importance of socio-economic factors, the distribution of moves in the sample including the frequency of shifts, and the time duration between moves. However, the findings vary widely and need to be interpreted with caution.

Several studies have found that low to moderate rates of childhood relocation within intact families can be a **positive experience** for children and young people. Relocations do not necessarily lead to detrimental outcomes for children and may actually enhance their resiliency in some circumstances (particularly where positive maternal functioning and positive family relationships are evident). These studies involved shifts of 174 adolescents from English-speaking countries to Japan (Nathanson & Marcenko, 1995), and moves brought about by government employee (Edwards & Steinglass, 2001) or military transfers (Finkel, Kelley & Ashby, 2003; Weber & Weber, 2005) of American families. The social impact of relocations out of high poverty areas has also been found to be beneficial for children (Pettit, 2004). Dong, Anda, Feletti, Dube, Brown and Giles (2005) investigated the relationship between childhood experiences of relocation and poor adult health outcomes. They found no significant correlation for those adults in the study with low and moderate levels of childhood relocation (i.e. up to seven moves). However, high childhood residential mobility (i.e. eight plus relocations) was associated with a significant increased risk of smoking, alcoholism, depression and attempted suicide. The researchers believed this relationship was accounted for by adverse childhood experiences, so high childhood residential mobility may be an indicator for risk of hidden adverse experiences, rather than an indicator of negative outcomes caused by relocation.

In contrast, other studies have concluded that relocation may be associated with **harmful outcomes** for children and young people. This small body of research has found significant negative associations between frequent residential mobility or high numbers of residential moves and children's psychological and social functioning and well-being. A meta-analysis of 22 relocation studies concluded that high rates of

¹ Empirical research also exists on the patterns of contact between non-resident parents and their children – for example, in the UK (Hunt & Roberts, 2004) and Australia (Smyth, 2004).

residential change were associated with increased behavioural problems during childhood and adolescence (Jelleyman & Spencer, 2008). Adam and Chase-Lansdale (2002) found that 267 adolescent African American girls from high poverty urban neighbourhoods who had experienced multiple residential moves suffered negative outcomes on a range of psychological and social adjustment variables. Significantly worse adolescent adjustment problems in the domains of education, delinquency and sexual activity were predicted by more residential moves, as well as poorer quality relationships with female primary caregivers and less kin support. Haynie and South (2005) used two waves of US National Longitudinal Study of Adolescent Health data to investigate the relationship between residential mobility and adolescent behaviour. They found that adolescents who had recently relocated exhibited more violent behaviours than those who had not recently moved. The role of peer group associations and friendships emerged as important in contributing to the violent behaviour. Young people who experience relocation may be at risk of forming new social ties with peers who engage in risky or anti-social behaviours. Haynie, South and Bose (2006) examined adolescents' reports of suicide behaviour and found that girls, but not boys, were 60% more likely to report attempting suicide within one year of moving than non-movers.

Historical Background to Relocation Law

Modern-day relocation disputes need to be considered in the context of the shift from the traditional primary caretaker model to a continuing shared parental responsibility model (Parkinson, 2006a, 2006b; Strous, 2007). Traditionally, only one parent (usually the mother) had custody of the children following separation or divorce and with this she often acquired the 'right' to determine the child's residence (Goldwater, 1998). A certain deference to the custodial parent's opinion was considered appropriate since it was this parent who bore the brunt of the child-rearing responsibilities and was therefore best-equipped to know and to provide that considered best for the child. If that included a shift to a new locality then that was usually within the custodial parent's sphere of authority. As a consequence, children usually went with the custodial parent wherever he or she chose to live. The common law principle dating back to the nineteenth century supported the view that the choice of location was an aspect of the custodial role (*Hunt v. Hunt* (1884) 28 Ch. D. 606). However, the old common law position became less sustainable as jurisdictions around the western world began encouraging greater involvement by the non-residential parent, and a growth in shared parenting after separation and divorce. The current emphasis on the indissolubility of parenthood, such that even though the marriage or adult relationship has ended, both ex-partners' roles as parents of their children continues (Parkinson, 2006a) means that how these relationships with their children are retained and fostered has become of enormous significance to parents, the Family Courts and the legal profession. Working out what is best for children in these cases can be very difficult because the decision often depends upon making predictions about the outcomes of quite different alternative scenarios. The old common law position does explain, however, why there has been so little empirical research in the past on relocation. It has only emerged in recent years as a major social policy issue.

When a separated parent wants to relocate with the children either within the same country or abroad this has severe implications for the non-resident parent whose contact arrangements become restricted commensurate with the distance of the relocation. What may have been regular weekly contact will typically decline to less frequent periods of direct contact. This is associated with additional cost and possibly the rigours and inconvenience of long-distance travel. There are essentially four scenarios which need to be considered:

1. the child relocates with resident parent;
2. the child relocates with the resident parent and the contact parent also moves;
3. the child does not move and there is a change of resident parent;
4. the child does not move and the resident parent also stays. (Watts, 2002, pp. 67-68)

Defining Relocation

The current law in New Zealand does not provide a definition of relocation. Moving is a guardianship decision requiring the consent of both guardians, or the Court, as it involves “changes to the child’s place of residence (including, without limitation, changes of that kind arising from travel by the child) that may affect the child’s relationship with his or her parents and guardians” (section 16(2)(b), Care of Children Act 2004). A legal definition has therefore been unnecessary since relocation disputes are broadly categorised as parenting or guardianship cases.

Relocation occurs when people move for the purposes of establishing a new or semi-permanent residence (Australian Bureau of Statistics, 2007). However, other jurisdictions adopt a different approach to defining a relocation (Family Law Council, 2006a, 2006b). In the USA some States “use *distance* as a trigger for the operation of their law on relocation” (Family Law Council, 2006b, para 2.27). This is usually determined in terms of hours of travel (Braver, Ellman & Fabricius, 2003) or miles / kilometres between the original and new localities. In Louisiana, for example, their statute only applies when the relocation involves an ‘out of state’ move or is more than 150 miles (241 km) from the previous residence. The Australian Family Law Council (2006b) is critical of the use of a set distance to define relocation as this fails to take account of the impact of the distance having regard to the circumstances of the parties or the place involved (such as access to a vehicle, ability to afford petrol or passenger tickets, availability of public transport). Relocations of a similar distance, but to differing locations (for example, provincial town versus main city) can therefore have markedly different consequences for the ease of travel and contact between the children and their left-behind parent.

The American Academy of Matrimonial Lawyers Model Relocation Act (upon which the Louisiana statute is based) defines relocation as “a change in the principal residence of a child for a period of [60] days or more, but does not include a temporary absence from the principal residence” (Article 101(5)). This definition recognises that the difficulties that relocation can create are not confined to moves over particular distances. Rather, a move of even a relatively short distance (for example, across heavily urbanised cities) might significantly affect a contact / visitation schedule, impede access to the child or involve a change of school.

These considerations have therefore shifted the focus away from defined distances to the *effect of the relocation* on the non-resident parent's contact with their child. The Australian Family Law Council initially suggested the following wording to define a relocation:

A move which will result in changes to the child's living arrangements that would make it significantly more difficult for the child to spend time with a parent. (2006a, para 2.11)

The Council subsequently recommended that the following definition of relocation should be added to the Australian Family Law Act if legislative provisions relating to relocation were enacted so it would be clear when they would be triggered:

A change of where a child lives in such a way as to substantially affect the child's ability to live with or spend time with a parent or other person who is significant to the child's care, welfare and development. (Family Law Council, 2006b, Recommendation 4, p. 73)

These latter definitions are perceived as taking into account the impact of the proposed move (not just the distance), as well as prioritising the issue from the child's perspective.

A further consideration in defining relocation is its *international dimension* since a move to another country will accentuate the issues and make it significantly more difficult for the child to have regular, direct contact with the left-behind parent (Dyer, 1996). This changed geographical context means that telephone contact, correspondence and 'virtual visitation' methods (email, webcams, Skype, Facebook and such like) will take on much greater importance.

Why Relocation Cases are Thought to be Increasing

Population mobility, in general, is influenced by many trends including long-term political and economic instability; globalization of corporate entities and private industries; and inter-city or inter-country transfers for career advancement, military, academic or romantic purposes. International travel and communication have become easier and cheaper, international job opportunities have increased and, as a consequence, international relationships are more easily formed. In the context of parental separation, mobility rates are affected by increases in the prevalence of divorce or relationship breakdown; repartnering patterns; and contemporary views about the nature of post-separation parenting.

The concept of freedom of movement has also developed over the past 20 years (Worwood, 2005). Free mobility across borders is becoming an important shared value in some regions of the world. For example, a key issue as the European Union continues its integration process and the mobility of people within its boundaries accelerates, is the relocation of custodial parents and their children from one country to another within the union (Dyer, 1996). Elrod (2006) notes the fundamental right of American citizens (recognised by the US Supreme Court) to travel freely between the US States. Similar issues apply in the South Pacific with respect to mobility between

New Zealand and Australia, although protocols are in place regarding child protection issues and child support payments.

Attention to relocation disputes has increased in recent years due to the impact of population mobility on family life (Bailey & Giroux, 1998; Elrod, 2006). Duggan (2007) states that in his experience:

Virtually no mother seeks to relocate for reasons that are directly child centred. ... Mothers seek to relocate primarily for four main reasons after a divorce or separation: (1) to marry a man who lives in another city, (2) to seek a fresh start with new employment or a return to school, (3) to return to the location where her family lives, and (4) to get away from her ex-husband or father of her children. (p. 198)

Duggan's emphasis on the formation of new relationships / re-partnering, employment or study opportunities, family support, and the desire to put considerable geographic distance between themselves and their ex-partner are elaborated on and supplemented by a variety of other (often inter-related) reasons for relocation in the published literature (Beevers, 2005; Dyer, 1996; Van Schalkwyk, 2005). These include:

- returning to a homeland or country of origin when a cross-border relationship breaks down;
- access to family and peer/friendship support systems providing psychological or physical help or financial assistance / strong family ties / loving and caring parents and siblings;
- lack of appropriate accommodation;
- lifestyle affordability e.g. being able to purchase or rent affordable housing;
- health issues and/or availability of medical or hospital facilities;
- career prospects e.g. higher paid employment;
- education prospects for the children;
- complete breakdown of communication since divorce and the harmful effect of this upon the children;
- desire to take revenge on the other parent for difficulties in the relationship;
- conflict reduction / continuing antagonism and lack of consideration;
- safety / escape from family violence or child abuse;
- being the owner of fixed property and the holder of interests in a trust abroad;
- social security issues;
- uncertain state of the country's economy and future of the country in general / better long-term financial or lifestyle prospects elsewhere;
- impact of increasing rates of AIDS, crime and violence in a country (for example, South Africa) / concern for safety of children in the country.

Beevers (2005) notes that more recent relocation cases are demonstrating a wide variation in the pre-relocation family situation as well as the reasons why parents wish to relocate especially in the medium-term (i.e. for several years rather than permanently). Some custodial parents are seeking to relocate with the child on a very long temporary basis of two-to-three years (often for employment or study purposes). Such temporary reduced contact is thought to be less detrimental to the child compared to permanent reduced contact, but while a relocation may be considered

‘temporary’ to the relocating parent, its timeframe may seem more like a life-time to the child (Beevers, 2005).

Key Issues Arising

The most nettlesome relocation cases involve the low to mildly conflicted parents who are both fully involved in their children’s lives and are competent caretakers. The law of relocation has no answer for these parents. (Duggan, 2007, p. 198)

Several key issues arise in relocation disputes as the family law system endeavours to protect parents’ mobility rights, promote meaningful contact between children and their non-resident parents, and uphold child’s welfare and best interests. These core issues include: when should a custodial parent move away with the children? What, if any, constraints should be placed on such a move? Should a different approach be adopted in shared care arrangements or, conversely, when the non-resident parent has been relatively uninvolved in the child’s life? What should happen when it is the non-resident parent who proposes to move away from the children? Should Court involvement be triggered by any move that could impact on contact with the other parent or only those over a certain distance? Is there an interface between relocation and child abduction or parental alienation? Is the distance of the proposed move likely to have an adverse impact on the existing care and contact arrangements? Will a move destabilise children yet again in their adjustment to their parents’ separation? Is there an inextricable link between the well-being of the residential parent and the welfare of the child? Whose interests should take precedence – the resident parent, non-resident parent, or the child? If the child is allowed to move, then how will that affect his or her relationship with the non-resident parent? Will the non-resident parent relocate as well? How will the child adjust to the new location with all the changes that this entails? If the Court declines to permit the move, will the parent decide to move anyway without the child? If neither parent nor child move, will the parent adjust to the Court’s decision and make the best of her situation? If she continues to be unhappy about being unable to move to her preferred location, how will this affect the children?

Gender

Relocation is considered by many to be a gendered issue since most (but not all) relocation cases involve mothers wanting to move and fathers opposing this. The potential for impact on a mother’s freedom of movement is significant and Court-imposed restrictions on a mother’s ability to relocate adds to the social and economic disadvantages which accompany her being the child’s primary carer (Behrens, 2003; Easteal, Behrens & Young, 2000).

Chamberland (2009) confronts the issue that a custodial parent will often have to face in a relocation case: what will they do should their application to relocate with the children be denied? Will they still go ahead with their plans and move to another location, without the children, or, on the contrary, will they abandon their plans and stay where they are? The Alberta Court of Appeal expressed concern about the ‘double bind’ faced by the custodial parent confronted with questions regarding what he or she would do should the application for relocation be denied:

The Alberta Court of Appeal expressed concern about the ‘double bind’ faced by custodial parents who acknowledge (as the mother did in this case) that they would abandon their relocation plans if the children were unable to accompany them. If a custodial mother, in response to an inquiry, states that she is unwilling to remain behind with the children, her answer raises the prospect of her being regarded as selfish in placing her own interests ahead of the best interests of the children. If, on the other hand, she is willing to forgo the relocation, her willingness to stay behind ‘for the sake of the children’ renders the status quo an attractive option for the presiding judge to favour because it avoids the difficult decision that the application otherwise presents. (Payne & Payne, 2008, pp. 488-489)

Relocation by non-resident parents

Legal disputes do not normally arise when the non-resident parent is the one who decides to move away from his or her children. This is because no parent can, in practice, be compelled to remain in contact with a child, even though there is some evidence of adverse outcomes when either the resident or non-resident parent relocates, creating distance between the child and the non-resident parent (Braver, Ellman & Fabricius, 2003). If contact is for the child’s welfare does (or should) a contact order place a legal obligation on the non-resident parent such that he should be required to obtain permission to relocate? Should parents be required to maintain a relationship with their child in accordance with the terms of a parenting order? Should repeatedly failing to exercise responsibilities imposed by the order be a reasonable excuse for the other party to go ahead and relocate?

Fields (2007) notes that, in the UK context, government reports concerning enforcement of Court orders for contact by non-resident parents focus exclusively on the bad conduct of parents with residence i.e. obdurate mothers who interfere with contact:

There is no suggestion in these reports that remedies should be available to compel non-resident parents to exercise contact, or to compensate their abandoned children and the resident parents for emotional and financial losses caused by the non-resident parent’s failure to maintain contact. ... No mention is made of the equal responsibility for non-resident parents to remain in proximity to their children to exercise the court-ordered contact, shared residence or joint custody which they demanded in prior court proceedings or settlement negotiations. Yet relocation by non-resident parents creates the same distance barriers to contact created when resident parents relocate. (Fields, 2007, p. 4)

Impact of relocation on others

Relocation impacts not just the parents and children affected by the proposed or actual move, but also has significant implications for ongoing family relationships with grandparents, extended family members, cousins, the new partner of either parent and any half- or step-siblings. As well, children’s friends are a factor to be taken into account in relocation decisions as children are embedded in a social network.

International child abduction and relocation

The Hague Convention on the Civil Aspects of International Child Abduction exists specifically for situations of wrongful removal and wrongful retention of children

contrary to law, and ensures the return of such children to the country of origin. More recently, a link between international child abduction and relocation has been increasingly recognized (Boshier, 2007; Bryant, 2007; Freeman, 2009a, 2009b; Grayson, 1994; International Social Science Australian Branch, 2007; Wills, 2006). It is possible that, if the relocation process is too restrictive, parents wishing to relocate may be encouraged to take the law into their own hands and simply leave the country without the required consents. Conversely, if the process is too liberal, potential left-behind parents may feel that they have nothing to lose by abducting the child before the Court has a chance to make the relocation decision.

Two contrasting positions

Relocation disputes following parental separation, by virtue of their vexed nature, have been subject to prolific commentary in the social science and socio-legal literature about their impact on children, parents and other family members. Two conflicting schools of thought have emerged in the psychological and legal literature – one arguing that a child’s welfare is best preserved by protecting the relationship with the primary caregiver (Bruch, 2006; Wallerstein & Tanke, 1996); and the other claiming that a child’s welfare requires frequent, regular interactions with both parents (Kelly, 2009; Kelly & Lamb, 2003).

1. The custodial parent’s right to choose where to live: In 1995 Judith Wallerstein wrote an *amica curiae* brief² - later published as Wallerstein and Tanke (1996) - that was influential in California and a number of other US State Courts’ decisions to permit relocation moves. Influenced by Wallerstein’s opinion that children’s development and adjustment are primarily related to a close stable relationship with their primary carer, the California Supreme Court in *In Re Marriage of Burgess* (1996) 13 Cal 4th 25 ruled that custodial parents did not have to prove that their proposed moves were ‘necessary.’ The Californian Court rather placed a burden of proof on non-moving parents who opposed a move to prove that the child would be harmed by the move.

Wallerstein believes that since custodial parents are the central influence affecting children’s adjustment, what is good for the custodian will generally be good for the child. She bases this argument on the ‘primary psychological parent’ doctrine of Goldstein, Freud and Solnit (1973). Influenced by attachment theory, Goldstein et al. argued that children need continuity and one stable attachment figure. Their perspective has been taken to mean that the custodial parent’s right to regulate the life of the child should include the right to choose to live abroad (cited in Strous, 2007, p. 227). The crucial factor for children’s post-separation wellbeing is therefore the availability of a well-functioning custodial parent, and the child’s welfare is thought to be best preserved by protecting the relationship with the primary carer. Wallerstein and Tanke (1996) argue that when the child is in the primary custody of one parent then that parent should be able to relocate except in unusual circumstances. They do concede that the matter is more complex where two parents genuinely share the care and raising of the child.

Wallerstein’s emphasis on the primary attachment figure and her consequent support for custodial parents who wish to relocate have been attacked by many leading

² A legal document filed by a person regarded as able to educate the court about aspects of a case.

theorists in the field of custody evaluation (e.g. Fabricius, 2003; Gardner, 1998; Kelly & Lamb, 2003; Warshak, 2003). Kelly and Lamb state that:

In effect, the best interests of the child standard was replaced by the best interests of the custodial parent standard, on the assumption that what is good for custodial parents would be good for their children. (Kelly & Lamb, 2003, p. 197, cited by Strous, 2007, p. 228)

Warshak (2003) also criticises Wallerstein and Tanke (1996) that their presumption in favour of the custodial parent's relocation with the children is based on only ten studies. Similarly, Fabricius (2003) maintains that Wallerstein based her opinion on findings from a few studies that are not representative, that are outdated, and that do not reflect today's youth.

2. Continuing shared parental responsibility / sustained and meaningful contact with the non-resident parent: The other school of thought argues that children need continuing, frequent and regular contact with two parents to overcome the risks associated with parental separation or divorce (Kelly, 2009; Kelly & Lamb, 2000; Warshak, 2003). Ideally, both parents should remain closely involved in the child's life (unless there are specific indicators against this) and the child should experience as little disruption as possible. The traditional custody/access model should therefore be rejected and endeavours made to facilitate both parents' remaining involved in decision making about their children after separation.

Warshak's (2000) analysis of more than 75 studies generally supports a policy of encouraging both parents to remain in close proximity to their children. He contends that this is consistent with a substantial literature documenting both the long-term benefits to children of maintaining high-quality relationships with both parents and the harm associated with disrupted relationships (Warshak, 2003). Warshak and colleagues wrote in their amicus brief in the California case of *In Re Marriage of Lamusga* (2002) (Supreme Court decision *LaMusga* 32 Cal 4th 1072 (2004)) that it is natural for a child to have attachments to both parents and it is best for their welfare that both attachments are maintained. Maintenance of attachments requires that the non-resident parent plays an active role in the child's everyday life, which is not likely to happen if the child relocates. Waldron (2005), and Kelly and Lamb (2003), note that the effect of relocation changes with the age of the child. Older children develop more social bonds (so the effect on these of any proposed relocation must be considered) and the level of parental attachment shifts as they grow older.

However, Carol Bruch (2006), who supports Wallerstein's position, casts doubt on the writing of Kelly and Lamb:

They argue that efforts to protect a child's primary relationship are misguided and harm children. But ... the picture they paint in this field is based more on wishful thinking than sound scholarship. (Bruch, 2006, p. 302)

In the next chapter we review the empirical research evidence on relocation in the context of parental separation. This small body of research is diverse in nature, but has rather mixed findings.

Chapter Three

Empirical Research on Relocation following Parental Separation

Very little empirical research has been conducted on relocation issues following parental separation. A small number of studies in the United Kingdom and the USA explore the impact of residential mobility on child and adolescent adjustment and well-being. To date, the most widely cited empirical study was undertaken by Braver, Ellman and Fabricius (2003) in the USA. However, this was limited in nature (by virtue of its college student sample) and subject to considerable criticism following its publication (Bruch, 2006; Kelly & Ramsey, 2007; Pasahow, 2005).

Until recently, parents and children's perspectives have been completely absent from the published literature, yet they provide a unique opportunity to ascertain the impact of relocation disputes on those most directly affected. Findings are just now beginning to emerge from two Australian studies and another smaller-scale project conducted in England.

United States of America

Bowermaster (1998)

Bowermaster (1998) analysed the dynamics of relocation disputes in the context of a history of domestic violence and found that domestic violence has been a substantial feature of American relocation disputes. This may be linked to the greater likelihood of litigation in high conflict couples and the controlling tendencies of abusive men seeking to restrict their ex-partner's movements.

Norford and Medway (2002)

Norford and Medway (2002) examined the relationship between 408 American high school students' history of residential mobility (including changing schools) and their social adjustment. They identified three categories of participants: 152 non-movers; 161 adolescents who had experienced a moderate number of residential moves (i.e. an average of 3.85 moves); and 95 frequent movers who had experienced an average of 7.16 moves. In addition, 67 mothers of adolescents from the frequent relocation group were interviewed. Students who had moved in response to parental divorce participated significantly less in extracurricular activities as the number of relocations they experienced increased. Relocation following parental separation was not, however, found to be directly related to emotional and social adjustment problems in the long-term. Rather, maternal attitudes to relocation were important in frequent movers' psychological adjustment. A significant relationship was found between mothers' negative attitudes to relocation and depression for young people with frequent relocation experiences. Most of those students who had moved frequently indicated they would have preferred to have moved less often, but only 26% of them reported that the frequency of their moves had had a negative impact on their lives. A

third of the mothers whose children had experienced frequent moves felt that this had a negative impact on their child. The students reported that the worst aspect of relocation was leaving friends and making new friends.

Braver, Ellman and Fabricius (2003)

Braver, Ellman and Fabricius (2003) used the survey responses of 602 undergraduate university psychology students whose parents had divorced, 170 of whom had moved with one parent more than an hour's drive away from what used to be the family home, to retrospectively examine the effects of post-separation relocation. The researchers compared students on a range of 14 financial, psychological, social and wellbeing measures and concluded that, compared with students whose parents did not move more than one hour away, students from families in which either a mother or father relocated, with or without the child, were worse off. Those students whose parents both remained in the same geographic vicinity had more positive outcomes than those who had a parent relocate with or without the children. There was:

... a preponderance of negative effects associated with parental moves by a mother or father. ... As compared with divorced families in which neither parent moved, students from families in which one parent moved received less financial support from their parents, worried more about that support, felt more hostility in their interpersonal relations, suffered more distress related to their parents' divorce, perceived their parents less favourably as sources of emotional support and as role models, believed the quality of their parents' relations with each other to be worse, and rated themselves less favourably on their general physical health, their general life satisfaction, and their personal and emotional adjustment. (Braver et al., 2003, p. 214)

While Braver et al. (2003) noted that their data were not conclusive because they were correlational, not causal, it was a convenience sample, and there was no way of knowing whether the children who moved would have been better off if they had stayed, they concluded:

There is no empirical basis on which to justify a legal presumption that a move by a custodial parent to a destination she or he plausibly believes will improve their life will necessarily confer benefits on the children they take with them. (Braver et al., 2003, p. 215)

Fabricius and Braver (2006)

In a follow-up study to Braver et al. (2003), Fabricius and Braver (2006) published a second study that was partially aimed at addressing criticism of the first study by re-examining the data to assess whether exposure to conflict and domestic violence might account for some of the effects indicated by the first analysis. The 602 college psychology students in the original study had been asked to indicate the level of domestic violence they had witnessed after their parents' divorce. Half of them had also estimated the frequency of parental physical violence and the frequency and severity of conflict at points of time before and after parental separation as part of another concurrent study.

The students reports revealed that parental conflict and violence was, on average, more frequent and severe in those situations where mothers had relocated more than a one hour drive away from the family home, compared with paternal relocation and neither parent relocating. In responding to their critics, Fabricius and Braver (2006) reiterated their conclusion from the original 2003 study and concluded that relocation presented additional risks that were not accounted for by exposure to the conflict or violence reported in their sample. Either parent moving away from the children was a risk factor independent of high conflict and domestic violence. They therefore stood by their recommendation to discourage legal presumptions that might favour relocation.

Gilman, Kawachi, Fitzmaurice and Buka (2003)

This retrospective study was undertaken with 1089 adults (born between 1959 and 1966) who had experienced three or more childhood residential moves by seven years of age. Those adults with a childhood history of lower socio-economic background, family disruption and residential instability were found to be at significant risk of clinical depression prior to 14 years of age.

Australia

Two empirical studies have been undertaken in Australia to obtain the experiences of family members involved in relocation disputes - a small-scale, retrospective, qualitative study of 33 parents by Associate Professor Juliet Behrens, Associate Professor Bruce Smyth and Dr Rae Kaspiew; and a larger, prospective, longitudinal study of 80 parents and 19 children by Professor Patrick Parkinson, Associate Professor Judy Cashmore, the Hon Richard Chisholm and Judi Single, from the University of Sydney Faculty of Law.³

Behrens, Smyth and Kaspiew

The Australian Research Council funded Behrens, Smyth and Kaspiew (2008a, 2008b, 2009a, 2009b) to undertake a 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 (i.e. where the Court order had been made between 18 months and five years previously). The research team also planned to interview the children of these parents, but after only being able to recruit three children had to abandon this aspect of their study.

The study aimed to specifically examine how parents (and children) perceived the impact on themselves and other family members of the decision; what had happened for the family members in the aftermath of the decision (for example, how had patterns of contact evolved in the period after the decision?); and what reflections on the process did parents have, and what advice would they have for other parents? Parents were recruited through the Courts (400 letters), with letters sent to solicitors

³ Our research team has been collaborating with this Sydney team to undertake a parallel project in New Zealand.

when they were returned address unknown (55 letters). Participants then opted in to the study.

The study also included an analysis of all 200 FCA contested relocation decisions between 2002 and 2004 (i.e. the population from which the interview sample was drawn). While this judgment analysis was useful as a benchmark study in itself, it also provided a check to enable the research team to assess how typical their interview cases were.

FCA Judgment Data

Ninety percent (n=160) of the people who wanted to move were female, while only 5% (n=15) were male. In 2% (n=4) of the cases both parents wanted to relocate to separate locations. In 57% of the 200 cases the relocation was allowed, and in 43% the relocation was denied. Sixty-one percent of the cases involved a proposed move of 1000 km or more, or overseas. Prior Court proceedings had occurred in 71% of cases and half of these had gone to a Court determined outcome. There were allegations of violence in nearly 70% of the cases. The primary reason for relocating was to be closer to family (33%), to be with a new partner (30%), or to escape violence (8%). There was no clear view expressed by the children in 50% of the cases, but 20% wanted to move, 16% did not, and 11% were split. The contact patterns in place at the time of the Court decision included: no contact or no overnights (30%), weekend and holiday contact (48%), more frequent contact (11%), and shared care (11%). Residence was contested in 63% of the cases.

The applicant was more likely to be allowed to relocate with the children if it was the mother who wanted to move. She was less likely to be allowed to move if there were three or more years between the separation and the judgment, or if she said she would go anyway (43%). The mother was slightly more likely to be allowed to go if the youngest child was 6 years or older (57%, compared with 54% for a younger child). She was more likely to be allowed to relocate if the father did not have new partner, and was much more likely to be allowed to go if her extended family was in the new location (61%), or she was going 1000 km or more, or overseas (64%). There were no significant differences between cases where there was high conflict and those where there was not, with the exception of cases that were clearly abusive or involved child abduction (63% allowed to go). Where both parties made allegations of violence or abuse, the relocater was allowed to shift in 49% of these cases, and where it was the mother only alleging abuse (54%), father only alleging abuse (63%), or neither alleging abuse (59%). When reasons for relocating were taken into account, relocation was most likely if it was to escape violence (64%), but less likely if it was to be with a new partner (54%). Relocation was more likely if neither parent had a poor financial status (61%). Where there was no contact or overnight stays, 60% of relocations were allowed, weekend and holiday contact (61%), more frequent contact (53%), or shared care (39%). If the children expressed clear views that they wanted to go, 68% of the relocations were allowed. If residence was not contested, 74% were allowed to go. If there were problems with the mother's credibility, only 20% were allowed to relocate.

Interview Data

Behrens et al. (2009a) classified their 38 participants (27 fathers and 11 mothers) into four groups:

- OS: seven successful opposers (mostly fathers, one mother)
- OU: twenty unsuccessful opposers (mostly fathers, one mother)
- AS: six successful applicants (all mothers)
- AU: five unsuccessful applicants (mostly mothers, two fathers and one subsequent AS)

Twice as many parents had an order allowing relocation than not allowing relocation, and most of the participants were fathers. Thus, the dominant accounts ascertained from the indepth interviews were those of men who had unsuccessfully opposed a relocation. The researchers caution that their data is based on only one side of the story (no ex-couple data), and is not objectively verified through access to Court files or cross-checking of their judgments. Care is therefore needed in interpretation as the study has yet to be peer reviewed.

Most of the parents were in highly conflicted or abusive relationships prior to the relocation proposal. In these cases the relocation was really part of a longer story about conflict, enmeshment and poor relationships. Ten of the 38 cases involved very short, unhappy relationships where the parents' separated during pregnancy or shortly after the birth of a single child. For a significant minority of the parents the relocation proposal was one of a vast number of issues over which there had been conflict with their children's other parent, and over which there had been Court proceedings. The patterns of conflict tended to mark the relationships both pre- and post- the Court decision. In the small minority of cases where the dispute was largely over the proposed relocation, the parents were more likely to report smoother patterns after the relocation decision including less conflict, improved relationships, and no subsequent moves. These cases also involved long distance parenting where the relocation had been allowed.

These participant dynamics were not atypical when compared with the judgment data which revealed that over 80% of the cases in the quantitative sample of 200 Court decisions involved either highly conflictual or abusive relationships; high levels of previous Court proceedings, including those which had gone to final hearing; 45% of cases involved a single, young child; and there had been prior moves or mental health / substance abuse issues in nearly half the cases.

Relocation and parent-parent relationships: For the significant majority (26/38) of the parents interviewed, relationships between them and their children's other parent had not improved at all since the Court's decision - even up to six years after that decision was made. There were two main categories of cases where relationships did improve, although even these remained troubled: where there were apparently extraordinary efforts by one parent; or those time healed cases which were almost all lower conflict ones in the first place.

Behrens et al. (2009a) identified two patterns of long-distance parenting:

- '*separate homes, separate lives*' pattern – where children travelled to the distant parent and that parent knew little of the child's life in the new location.
- '*parental engagement in both locations*' pattern - a more flexible approach based on active engagement by the parent in children's lives in both parents' locations. In two cases fathers had arranged to rent a room in the new location

to enable them to see their children in an appropriate environment. In other examples, parents travelled extraordinary distances to see children at school events (e.g. one mother living away from her children regularly travelled five hours one way and five hours back in one day for these). Parents also reported going over school photos with their children to get to know the names of their friends, or texting their children every day.

Which pattern developed seemed to partly reflect the child-centredness of the parent living away from the child. But resource considerations, the age of the children and flexibility on the part of the parent with whom the child was living were also important. Many fathers talked of the expense and difficulties of travelling to the other location.

Reasons for relocating (or not): Those applying to relocate all gave multiple, complex and multi-layered accounts of their reasons for the decision, with psychological factors often being more significant than material ones. The need to re-find oneself was a strong theme for those wanting to relocate. Opposers of the proposed relocation tended to see things through a less complex lens, and often gave primacy to their bread-winning responsibilities. An important factor for a significant minority of the opposers in considering whether or not to relocate themselves was a concern that the relocater would move again. There appeared to be no understanding that this would not usually be possible under a Court order.

Allegations of violence: A significant majority of the 38 cases involved allegations of violence and/or abusive behaviour, yet the divergence between the ways the mothers and the fathers described their experiences was stark, revealing strongly gendered discourses about this issue. Men's accounts tended to speak of violence in terms of engagement with the legal system, for example over State protection orders obtained on weak grounds, allegations made falsely or blown out of proportion and claims about violence being used in a tactical way. It was rare that any behaviour that led to such engagements was discussed in any depth. The mothers, however, struggled to label violent behaviours in ways recognisable to the law. Their experiences of violence were a motivating issue (though not a deciding factor) in relation to their proposed relocation. Some women's accounts demonstrated the impact that the dynamics of control have and the way this can be played out in legal proceedings. Women's experiences of the response of the family law system were varied, with some experiencing recognition and validation, others feeling their concerns had been marginalised, and others being advised not to raise a history of family violence.

Relocation and parent-child relationships: Relocation was rarely the end of a parent-child relationship, but could be seen as a significant point of transition which parents managed differently depending on their own parenting styles, their relationships, their personal resources and the support available to them. The small number of parents in the sample who did lose contact with their children after a relocation had significant violence, mental health, and/or substance abuse issues.

Conclusions

Behrens et al. (2009a) concluded that the parents contesting relocation in their study fell into three broad groups, although they acknowledged that these need to be tested more systematically:

- *rough roads* - the largest group where the relocation dispute was part of a larger story about enmeshment, conflict and/or abuse. It is marked by a series of conflicts, often involving prior Court action, prior moves, and very poor or abusive inter-parental relationships. For most of these cases the 'rough roads' continued after the relocation, although there was a small sub-group for whom parental relationships improved, although these remained troubled.
- *smoother paths* - a smaller number of cases where there was less conflict prior to a dispute about relocation. Relationships generally continued on this smoother pathway after the Court order, and were marked by continuing child-centred parenting, including long-distance parenting in both old and new locations.
- *separate pathways* – the smallest group where contact virtually ended after relocation. This group was marked by quite extreme factors (drug use, controlling violence, mental illness) that preceded the decision and continued beyond it.

The research team emphasised the need to be careful about the assumptions used when designing relocation law, for example, that a relocation dispute is just about relocation, as only a minority of their cases could be characterised like this. The relocation cases that were decided in Court, and for which the law was most directly used, often involved families with multiple problems where the relocation dispute was one of many sources of conflict. These high conflict/abusive relationships probably require a different approach from those that are not. Similarly, those situations where the child is conceived in a short-term relationship may need a different approach from cases where a child has lived with and established a strong relationship with both parents. It thus appears important to understand the *pre-Court* situation in order to make sense of what happens afterwards.

Australian law has struggled with relocation decision-making since the early 1990s. The field is highly contested, particularly along gender lines, and there is a lack of research to inform its development. Decisions to restrict a person's freedom of movement or to put significant physical distance between a parent and a child are not ones to be taken lightly. Judges in Australia report that making decisions about relocation disputes is very difficult and they would like more information about the aftermath of their decisions. Currently a high proportion of reported cases in children's matters in the Family Court involve relocation, yet the law is getting less clear and reform (at least to a broader law on post-separation parenting) appears likely.

Parkinson, Cashmore, Chisholm and Single

Parkinson, Cashmore, Chisholm and Single are currently conducting a prospective, longitudinal, qualitative and quantitative study of relocation disputes (Parkinson,

2008a, 2009; Parkinson & Cashmore, 2008, 2009; Parkinson, Cashmore, & Single, in press). This has been funded by the Australian Research Council since 2006. Participants were recruited through family lawyers who were asked to send a brochure to any clients who had sought advice concerning a relocation dispute, and where the dispute had been resolved in the previous six months. If a client wished to participate they contacted the research team directly.

Interviews have been conducted with 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 were seeking to relocate with their children. One mother was a non-resident parent who opposed the father's proposed relocation. There are nine former couples in the sample. Nineteen children have also been interviewed from nine of the 71 families. These family members 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 then 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.

Preliminary findings have only been reported to date as Parkinson and Cashmore (2009) emphasise the project is "a work in progress" (p. 3) since the interviewing and analysis is still continuing.

Reasons for the relocation: Most mothers had more than one reason for wanting to relocate. These included a desire to return home / to access extended family support, moving to be with a new partner, making a fresh start in a new place, having a better lifestyle or financial prospects (especially housing affordability), or escaping violence and control (although this was a much less frequent reason given by only three participants).

Destinations and distances: Ten cases involved proposed moves overseas to the UK, USA, New Zealand and Israel. The majority of domestic relocation cases were interstate moves within Australia with an average of 1628 kms. The intrastate moves ranged in distance from 125-1600 kms, with an average of 365 kms.

Outcomes: The applicant was allowed to move with the children in about 65% of the resolved cases. The move was more likely to be allowed by consent than by judicial determination. Thirty-six (53%) of the 68 cases (three cases were still to reach an outcome) were resolved by judicial determination. In 21 (58%) of these 36 cases the applicant was allowed to move with the children. However, there were regional variations and it was much more likely that the relocation would be allowed from Melbourne and Perth than Sydney.

The prospects of settlement: Generally only 6% of Australian family law disputes in which litigation is commenced are resolved by judicial determination. It is therefore significant that 59% of the relocation cases were resolved by judicial determination. Many cases that did settle were resolved very late in the litigation process or after the trial had commenced. Parkinson and Cashmore (2009) further examined a sample of 22 cases in which settlement had been reached. In 15 of these cases, the father acquiesced in the mother's relocation. In another case, the mother acquiesced in the

father's relocation (with the children). In five cases, the mother settled on the basis that she would not relocate, and in another case, she agreed to leave the child with the father while she relocated herself.

The main reason for settling was the fact that one parent gave up – the case was simply too difficult or too expensive, or the parent became concerned about the impact of the dispute on the child. A few parents – mainly fathers - settled not because they thought the proposed move would be in the best interests of the child, but because they thought that bringing the conflict to an end was in the best interests of the child.

The very low settlement rate in relocation cases has a number of explanations which probably operate together. The first is that there is little middle ground between the two parents' positions on which to base a compromise. The choices are typically seen as binary: either the primary carer will move or she will not, either the non-resident carer will move to be in the same location as the primary carer or he will not. There is some room for negotiation and agreement, for example, over who will bear the travel costs if the relocation occurs. However, that presupposes acceptance of the parent's move. Webcam, telephone and email are also options for communication, but the non-resident parents did not regard these as adequate substitutes for the experience of family life with their children through regular physical contact, involving overnight stays.

A second reason for the low settlement rate may be the extent of judicial discretion and lack of appellate guidance. People cannot 'bargain in the shadow of the law' if the law casts no shadow. The lack of appellate guidance has been a significant problem in Australia since changes to the law, placing a greater emphasis on shared parenting, came into effect in July 2006. Few relocation appeals have succeeded and while there has been some guidance on the process of reasoning in relocation cases, there has been none on the factors that ought to be most significant in determining whether or not relocation should be allowed. This unwillingness to lay down guidelines may well be making it much harder to resolve these already difficult cases.

Legal Costs: Legal costs were reported as a major source of financial stress and sometimes financial ruin. Parties spent an average of A\$62,500 each on their relocation dispute, with a median cost of A\$40,000 per participant. Naturally, there was a difference between cases resolved by judicial determination and those resolved by agreement (which included cases which settled in the course of a trial). Twelve respondents reported legal costs of \$100,000 or more.

A confounding factor in estimating legal costs was that for a minority of participants, the issue of relocation arose around the same time as, or soon after, the separation. At this time, one might expect that lawyers would be advising on other issues to do with the separation, as well as the parenting issues. To test the possibility that disputes concerning property division might have added significantly to the overall legal costs, 50 cases in which the relocation issue clearly arose as a discrete dispute, at least one year after the separation, were compared with the costs of the group for whom the relocation issue arose within 12 months of separation. No statistically significant difference was found between the two groups. This suggests that even in the cases where the relocation dispute arose in the immediate aftermath of parental separation,

or within a reasonably short time thereafter, it was the relocation dispute itself that was the main driver of legal costs. It should be noted that the high legal costs in the sample reflected the fact that most participants were recruited through private lawyers, and only a few had legal aid funding, or represented themselves for some of the proceedings.

Aftermath of the dispute – changing situations: Six fathers followed the mother to her new location. In two cases, the women decided to go anyway, leaving the child or children in the care of the father.

Abandoning the relocation: The fact that the Court allowed a relocation was no guarantee that it would actually occur. Two women who were allowed to relocate decided in the end not to go through with it – even after a full trial. In one, the mother wanted to move from Melbourne to Perth, following a man with whom she had formed a new relationship. She was permitted to do so. The distance was 3,500 kms. Her daughter was then three years old. The Court ordered that the child have ten visits with the father per year, each of seven days' duration. Three weeks after the hearing, she decided that the move would not be in the best interest of her child. She was concerned about the burden of travel for her and her daughter to comply with the Court orders and also on how the father and his family felt about the move. Her relationship with her new partner ended because she would not move. The relocation case has also led to a serious deterioration in her relationship with the child's father, who is angry with her for trying to take his daughter away from him.

Another woman was allowed to go to Queensland from South Australia, but had to wait for twelve months until her child was a little older. She formed a relationship with a local man and, although he was willing to give up his job and move with her to Queensland, leaving his children behind, she decided that it was best to stay where she was.

Two other mothers returned to live where they were before. One returned from the United States (her home country) within about a year of leaving. The other returned having been given permission to relocate 1600 kms away. Within two months of the move, the mother returned to the area where the family used to live. In neither case did the move have the benefits that the mothers expected. The grass is not always greener on the other side of the relocation fence!

Contact problems: A number of non-resident fathers reported problems with the arrangements within a few months of the relocation. In one case, for example, twin boys, aged 7, were permitted to relocate with their mother from Victoria to Queensland. Court orders were for extended holiday contact and twice weekly phone calls. The mother moved again after she had moved to Queensland and did not inform the father of her new address or telephone number. The twins came for their contact visits for about one week of most school holidays. About three days before the children arrived, the father would receive a phone call from the airline with the flight number and time. When the father returned the children to the airport after their contact, he was not informed if they had arrived safely. The father had already spent \$65,000 on legal fees at the time of his interview, and could no longer afford to bring the matter back to Court.

In a few situations, contact appears to have been completely lost due to estrangement - this was particularly the case in overseas relocations. One mother reported that over a long period of time, the father had alienated the children from her. She acquiesced in letting him take the children back to the USA, his home country. She went over there on a visit a few months later, but the children would not see her. In another case, a man reported that his former partner took the children to the USA and then rang to say she was not coming back. He saw the children once about eight months after they moved, but now they will not speak to him at all and do not want to see him.

Other left-behind fathers reported that they were not kept informed of the child's address, phone number or transportation arrangements for contact visits. They also said that Court ordered telephone calls and webcam 'visits' were discontinued a few months after the relocation.

Travel costs: There was no clear pattern of distribution between the parents. Of those where the relocation took place and contact was occurring, 17 parents shared the costs approximately equally, four relocating parents met all the costs and five met most of them. Three non-relocating parents paid all the travel costs, and five paid most of them.

The cost of travel can impact upon the viability of the Court-ordered contact arrangements if the relocation goes ahead. Overseas relocations involve particularly significant issues of cost and difficulty in terms of the travel, given the vast distances between Australia and most other countries. In one case, a father consented to his British born former partner returning to live in the UK with two children aged 12 and 8 on the basis of Court orders that he would see his children three times a year in Australia and once per year in the UK. The mother was to bear the cost of travel to Australia. Her plan was to fly with the children from the UK to Australia, where the father would meet them at the airport. The mother would return straight away to the UK. She would then fly back to Australia to collect the children and return again immediately to the UK. Thus, for every trip of the children to Australia, there would be four return airfares. This occurred the first time the children were due to visit Australia, but prior to the next occasion, the mother sent the father an email to say that she was not bringing the children as she could not afford it. At the time of his first interview, he was exploring his legal options for trying to enforce contact.

Travel costs within Australia also emerged as a major issue. In one case, for example, the mother estimated it cost her A\$15,000 per year. Another mother estimated A\$1100 per month, or over A\$13,000 per year. Where the travel was between capital cities on the east coast of Australia, there could be relatively inexpensive airfares available. However, these cheap flights were not usually at hours suitable for younger children. Flights to regional centres were often considerably more expensive.

Furthermore, the costs were not only in the children's airfares. The mother of a young child might have to travel to the other parent's home and then return to her own home because of her work commitments, and then at the end of the visit, fly back again to collect the child. The alternative of staying in the other parent's town for the duration of the visit could also impose financial stress if there was no free accommodation, or if it would not be possible to hold down a regular full-time job because of the frequency and extent of the visits required by the Court orders.

Non-resident parents also noted the expenses they faced when they travelled for weekend visits to their child(ren) in their new location – airfares, motel accommodation, rental cars and food. One father estimated his travel costs at A\$10,000-A\$15,000 per year. The Court orders provided that the parents should share the cost of travel for the children to fly from Queensland to Tasmania each school holidays. The father was also to have one week a term in Queensland. He described the difficulties of moving up to Queensland for a week:

I stay in a self-contained room. I look to pay, you get a good room between a \$100 and \$120 dollars a night. The whole exercise, with airfares, costs me \$2000 to \$3,000 a shot. That's with a rental car, because I don't have a car up there, that's for the hotel room, and you go shopping and because you don't have all your bits and pieces you tend to buy, like you've got to buy things to clean the sink with and all that sort of stuff. So you're always buying things each time and there's nowhere for me to store stuff so each time you go up, you're buying new stuff.

Another father described the cost of a weekend visit as follows:

And just to give you an idea, ...one of them ...cost me, I think it was just under \$800 and that's not counting food. And they were cheap fares. Cheap fares, hire a car, it had to be a reasonable size car to get the two car seats in the back. The Judge said wherever we stay - this is the Court order that the judge said this - that we had to have a full kitchen. I had to be able to cook and wash and everything there now. So that's what it cost me for that weekend just to see the kids.

Regular travel over long distances may be very difficult for parents on average incomes to afford, particularly after the great expense of a Court case. It must be questioned whether such high costs of contact can be sustained over a long period.

Burden of travel: Some children, including very young children, were required by the terms of Court orders to travel very extensively. One primary school child, for example, was flying between Brisbane and Sydney every other weekend, as well as in school holidays. Many children flew unaccompanied by a parent between cities. In one case, a relocation was permitted for a 2-year-old child who moved from the Gold Coast to rural Victoria, a distance of about 1,700 kms. Every 13 days she travelled to visit her father in Queensland for an eight-night block. The mother typically travelled to the Gold Coast to give the child to the father, travelled back, and later returned to collect the child. Another 2-year-old child relocated with his mother from Tasmania to rural Victoria. Six times a year this little boy travelled for 3.5 hours from his home in Victoria to Melbourne airport, where his father met him and took him to Tasmania for a ten-night block.

Some children resisted the travel that was required by the Court orders and this was one reason why the contact arrangements that are ordered by the Court break down. The cost of transportation for the parent of accompanying their child on a flight to their ex-partner's location, returning home (without the child), and then going back to collect the child sometimes became prohibitive and resulted in less frequent contact

visits being made. Two important issues arose with these shared parenting arrangements over vast distances involving very young children. The first was the stress on the child of such frequent dislocation from his or her normal home and routine, for long periods. The other concern was the effect on young children of such long separations from their primary carer in the cases where the primary carer delivers the child to the other parent and then returns home before coming back to collect the child again. Seven or eight day absences from a primary caregiver represent a very long time in the life of such young children. Sharing the parenting across the continent may appear to solve the problem of reconciling a parent's freedom of movement with the need to involve both parents in the child's life, but this is perhaps at great cost to the child's well-being.

Levels of conflict: Interviewees reported very high levels of conflict with the other parent. Hostility from the mother was mentioned by many fathers even where the Court had allowed her to relocate. The most likely explanation for this was that the litigation process itself had seriously damaged the parents' relationship, causing ongoing anger and resentment. The burden of onerous contact arrangements may also be a factor.

Conclusion

Parkinson and Cashmore (2009) conclude that relocation disputes exact a huge financial toll on parents, and it may be surmised that they also exact a huge toll on children in indirect ways. These cases are very difficult to settle, and occupy judicial resources disproportionately. If cases do settle, this tends to be because one parent gives up rather than because they reach a reasonable compromise in their dispute. The costs and burden of travel may well cause a great deal of financial difficulty for parents, or lead to a diminution of the level of contact intended because the costs are unsustainable. In many cases, it seems, Australian Judges have tried to resolve the relocation problem by ordering extensive contact involving frequent travel in a way that is neither developmentally appropriate nor affordable. That creates as many problems as it solves.

The findings demonstrate the importance of reality testing proposed arrangements for children if the relocation goes ahead and the non-resident parent cannot or will not move to the new location. Will the proposed contact really be sustainable financially over a significant period? Will the children be able to cope with the travel involved? Will the proposed contact actually be happening two or three years down the track? The fact that a Judge orders contact does not mean that it will occur, or that it will do so with the frequency anticipated. If Court orders permitting relocation are being made on the assumption that the contact which is deemed to be in the best interests of the child will in fact take place, then that assumption ought to be seriously questioned.

It follows that in any given case where a Judge is minded to allow the relocation, he or she needs to ask whether the relocation would still be in the best interests of the children even if the contact proposed by the relocating parent does not eventuate at all, or is only a fraction of the time that the proposed orders contemplate? Judges need also to consider, and seek evidence about, whether the children will cope with the proposed travel. Relocation disputes do create intractable problems, but there are ways forward. Practitioners need to reality test with clients both the decision to move and the costs of opposing the other parent's move. Legal costs can be reduced – and

settlements encouraged - by clearer signalling of likely outcomes in different kinds of cases based firmly on evidence about the best interests of children rather than untested assumptions. Judges will be assisted by better evidence about the likely impact of the move on the relationship with the parent left behind.

Other Australian Research

Parental Conflict over Relocation

Smyth et al. (2008) used data from the third wave of the Caring for Children after Parental Separation Project (undertaken by the Australian Institute of Family Studies) to ascertain the extent to which parents reported disagreements about relocation in the post-separation context. Participants were read a statement about various issues that could contribute to disagreements about parent-child contact:

- Money – including child support;
- The wishes of one or more of your children;
- Concerns about the ability of either of you to care for the children;
- Issues relating to a new partner (asked only if the respondent or their former spouse had repartnered);
- You or [target partner] moved or wanted to move.

The most common type of disagreement reported by separated parents was about money (67% of resident mothers; 57% of non-resident fathers). In contrast, disagreements over one of the parents moving was the least common dispute (20% of resident mothers; 33% of non-resident fathers). Yet, respondents rated these relocation disagreements as the most difficult to manage. Smyth et al. (2008) conclude that “disagreements about relocation appear to be a pincer-type issue. That is, while they might only apply to a minority, they are extremely hard issues to resolve – perhaps because there’s (literally) little room to move” (p. 40).

Attitudes to Parental Relocation

Significant gender differences were found in an Australian study examining separated mothers’ and fathers’ attitudes to parental relocation (Smyth et al. 2008). In the Caring for Children after Parental Separation Project, respondents were asked: ‘If a resident parent⁴ wants to move interstate with the children, should they be allowed to do this – (a) regardless of other circumstances? (b) only in certain circumstances? or (c) not in any circumstances?’

Most respondents – with the exception of fathers exercising shared care – tended to say that a resident mother should be allowed to move interstate only in certain circumstances. This category represents a kind of middle ground ‘it-depends-on-the-circumstances ...’ response. ... [T]hree of the four groups of fathers – shared care fathers, non-resident fathers, and fathers with split residence of children – were the most likely of all the groups to believe that a resident mother should not be allowed to move interstate under any circumstances (51%, 37% and 39% respectively) (in contrast to 18% of resident fathers who held this view). This represents an extreme position which would

⁴ The authors note that attitudes to non-resident parents’ freedom to relocate after separation have not yet been explored in Australia.

presumably argue for a blanket prohibition on (not even just a rebuttable presumption against) relocation. This ... highlights the dangers of relying on attitudinal research in policy formation. It is noteworthy that none of the shared care mothers or fathers believed that a resident mother should be allowed to move interstate regardless of the circumstances. Any significant moves by either party, of course, are likely to threaten the viability of shared care arrangements, and both mothers and fathers in these situations seem to recognise that mobility may need to be restricted where shared care is occurring. (Smyth et al., 2008, p. 41)

United Kingdom

Verropoulou, Joshi and Wiggins (2002)

Verropoulou et al. (2002) drew on a sample of 1,472 children whose mothers had been infants in the 1958 UK Cohort National Child Development Study. Relocation in response to family change, including parental separation and step-family formation, was not found to have a negative impact on children's wellbeing.

Freeman (2009)

Concerned at the increasing number of relocation cases with which reunite is dealing, and the high levels of distress they create for family members, Professor Marilyn Freeman undertook a one-year research project from June 2008 to June 2009, funded by the Ministry of Justice. The research report (Freeman, 2009a) was launched at a reception in London on 7 July 2009 (and has been published on the reunite website - www.reunite.org).

Thirty-six parents were interviewed by telephone using a semi-structured interview format by the principal researcher (Freeman, 2009a, 2009b). Both parties were interviewed in two cases, meaning the sample involved 34 separate relocation cases over a ten year period from 1999-2009. Interviewees were obtained via the reunite database; a 'post-box' system whereby lawyers passed on reunite's request for assistance to clients who might be interested in participating in the study; a consultation exercise with organisations with a significant interest in relocation issues; and contacts made directly by the reunite Research Unit.

The sample comprised;

- 25 fathers – only two of whom were the parent seeking to relocate (one such application was granted and one was refused).
- 11 mothers – all of whom were seeking to relocate (seven of their applications were granted and four were refused).

Freeman (2009b) notes that it is not surprising that there is a much higher incidence of father than mother participants in her sample as fathers are more usually the left-behind – and therefore more disappointed – parent in English relocation cases and likely to be willing to participate in research on this topic.

The findings from this study include:

Jurisdictions, reasons for application, and outcomes to the application: The sample included three interviews concerning domestic intra-United Kingdom relocations which were all permitted, although one appeal was still pending. The remaining 33 interviews concerned international relocations, four of which involved incoming relocations to England and Wales; and 28 parents in 26 cases involving outgoing relocations from the UK; and one case that was outgoing from another jurisdiction. Of the 27 outgoing cases, relocation was permitted in 16 cases (59.2%). The largest number of outgoing cases (7 cases, 25.9% of the 27 outgoing cases considered) involved relocations to the USA. Other destinations included Germany (three cases, 11.11%), Sweden, Spain, The Netherlands, and New Zealand (two cases each, 7.40% each), and one case each to India, Tanzania, Brazil, South Africa, Singapore, Japan, Australia, Malaysia and Hong Kong. The four incoming cases were from Switzerland, France and Italy (two cases).

Thus, 22 (64.70%) of the 34 cases resulted in relocation being permitted. Of the remaining 12 cases, one (from Italy to England), and eight from the UK were not granted and the parent seeking relocation remained in the UK jurisdiction, one was not granted but the parent seeking relocation (the mother) went anyway in contravention of the Court order and remains in the other jurisdiction. In one case leave to remove was granted retrospectively to a mother who had failed to honour an agreement to return to the UK. The final case concerned a mother who left before the relocation hearing took place and the children remain as wards of the English Court.

Although multiple reasons for their proposed relocation were cited by some participants, the overwhelming majority of relocating parents (24) were wanting to return home. The remainder were either re-partnering (5) or wanted to relocate for work or lifestyle purposes (7).

Maintaining Contact: A recurring theme was that children are regularly ‘lost’ to left behind parents through the relocation decisions made by the United Kingdom Courts. Many parents complained that there were constant problems in exercising the contact that had been ordered by the Court granting permission to relocate, including that relating to indirect contact. The difficulties in financing international contact, when it does occur, mean that for many left-behind parents, relocation is the end of any meaningful direct relationship with their children. It is simply prohibitively and unrealistically expensive to maintain.

The Distress Argument, levels of contact and shared residence: Many parents spoke of the over-emphasis by the Courts on what is often called ‘the distress argument’ i.e. that the mother’s distress at not being allowed to relocate will impact so negatively on the well-being of the child that permission is given to the mother to move. These parental concerns focus on the undermining of the child’s need for contact with both parents, and the potential subjugation of the child’s interests to those of the mother. It is interesting to note that it is not only left-behind fathers who have raised the over-emphasis of the distress argument; it was also an issue of concern for some mothers. One relocating mother was especially emphatic about this point, believing that the emphasis is wrongly stated. She said that her own experience had taught her that it is a happy child that makes a happy mother, and not the more commonly expressed happy mother that makes a happy child. She regretted being

allowed to relocate and to remove her child so far from his father. She felt there was a definite bias in favour of women in the Courts of this jurisdiction and that men would not receive the same treatment if they wished to relocate abroad in order to marry someone from another jurisdiction and to take the children of the marriage with them. She believed that this was because of the unspoken assumption that mothers are the better primary carers for their children, and that fathers are able to move on with their lives without their children. This can be seen in those cases where both parents share residence of their children, but where the mother wishes to relocate and she is allowed to do so.

Representing the Child: Although it is possible for CAFCASS to be appointed as guardians ad litem in relocation cases, the usual situation is for CAFCASS to be appointed in relocation cases under section 7 of the Children Act 1989 to undertake a report for the Court which will include recommendations on whether the relocation should take place. However, in some cases, for example where the children are very young, the proposals are clear and the parties are well represented, CAFCASS may not be appointed. It is therefore extremely important that a child's situation is well understood, and that his or her views are properly represented by the Children and Family Reporter in the CAFCASS report. Although some CAFCASS officers are extremely experienced in this field, and provide an excellent service, many have no such experience. This variation, and the consequent non-specialist status of many CAFCASS officers in relocation issues, caused great anxiety amongst the research participants. The anecdotal evidence from the practitioner respondents was that very often CAFCASS officers did not appear to understand the law or procedure in relocation cases. Their reports did not focus sufficiently on welfare and the impact of relocation on the child, and paid too much or exclusive attention to the wishes of the primary carer applicant, wrongly believing that this is what they are required to do, sometimes treating the case as if it does not involve a relocation at all.

Legal Representation and presumption in favour of the residential parent: Many interviewees expressed disappointment about the legal advice and representation that they received. The general tenor of advice, to both mothers and fathers, was that mothers will inevitably be granted leave to remove from the jurisdiction, and that fathers should not bother to defend such applications as it is better to try to make good contact arrangements. Many parents accepted that there was no point in trying to do what they perceived to be in the best interests of their child because it would just cost time, money and emotion, and be to no avail. This negative perception of the relocating parent's case by legal advisers, and others, meant that many cases were settled on the basis of the general position, rather than the situation of the individual child in the particular case. Legal practitioners said that, in their experience, although, Thorpe LJ in *Payne v Payne* stated that there should be no presumption that a parent with a residence order would be permitted to relocate, in reality, if that parent's case was well argued and the criteria well thought through, then that parent would most probably be allowed to relocate.

Monitoring relocation, and research into the outcomes and effects of relocation: Parents complained that there was no monitoring system in place after the relocation in their cases and felt that it was both necessary and helpful that some form of compulsory follow-up after removal should exist in order to know what happens after

a child has relocated. It is only in this way that information about the practical aspects of Court orders could be ascertained.

Links between international child abduction and relocation, and reasons for relocation: The arguments concerning the impact of restrictive or liberal jurisdictions on the link between relocation and abduction were found to be overly simplistic. Abductions occur for a variety of reasons and, although a restrictive relocation regime might discourage parents from applying to relocate in the belief that, as in a liberal regime, it would inevitably be granted, it does not follow that it would necessarily increase the incidence of abduction. Much will depend on the reasons that parents wish to relocate. The legal and social environments will, to some extent, influence the thinking of those who wish to relocate, and the alternatives that they may consider. Much of this area is connected with expectation. If it is expected that, unless the circumstances are exceptional, you will not be allowed to relocate before the child reaches a certain age, then it is equally arguable that people's attitude towards relocation will be moderated by that expectation. Work and lifestyle choices may be modified if the opportunities to relocate do not easily exist at that time for those people. Re-partnering may prove a more difficult problem but, in the light of a different expectation, the solutions may be more flexible than currently envisaged. What would remain would be those relocation applications which were not routine. Although great sympathy exists for women who wish to go home and be supported by friends and family, together with a legal and social system which is familiar to them, the consequences of relocation cannot be excluded from the decision being taken. One relocating mother stated that parents must be prepared to stay in the same country while their child is growing up and that this issue needs publicising.

Mediation in relocation cases: There is no current requirement in England and Wales to mediate in a relocation case. International child abduction cases involve many of the same issues as relocation cases, with one parent wanting to live in another jurisdiction with the child(ren) and the other parent not wishing for this to happen. Mediation is not an answer for everyone, and will not provide solutions in all cases, as it requires openness and a willingness to move away from polarised positions by examining the parties' issues and interests, and the options involved. Not everyone is able or willing to do that. However, it is possible that, with skilled and experienced specialist practitioners, mediation might well provide an environment in which these issues can be successfully addressed in relocation cases, in a realistic and productive manner, as is now being achieved in cases of international child abduction.

Systemic problems: Generally, it was felt that children are not well served by the current relocation system and that insufficient attention has been paid, to date, to the effects of relocation on the child. A more child-centric approach was urged by the majority of the interviewees, and the practitioner commentators. This would be based on a thorough enquiry of the motives of both parties, scientific evidence on the effects of relocation and the impact of maternal (primary carer's) distress on the child, together with the routine appointment of a guardian to safeguard a child's interests and determine the evidence required in the circumstances of the particular case.

Effects of relocation decisions: Many left-behind parents spoke of the devastation that the relocation had brought to their lives. One father described relocation (where he had lost contact with his child) as akin to bereavement, but without the comfort of

a resting place. Another father said that he woke up every morning wishing that he had not done so. A further general observation was that fathers were made to feel like expendable, unnecessary accessories in their child's life.

Conclusions

Freeman (2009b) concluded that the legal provisions governing international contact, though helpful, could not guarantee that contact would actually take place. This has meant that relationships between the relocated child and the left-behind parent and wider family have been severely affected. While the refusal of relocation applications has a potentially disproportionate impact on women because of the traditional primary carer role that most women play in their children's lives, it may be that the corollary of the privilege of primary caring is the requirement for willing self-sacrifice:

[O]f course I accept that the refusal of this application is likely to be a huge disappointment to the mother and any inroad in her sense of well-being and fulfilment is likely to have an adverse effect on D. But parenting is enormously demanding and often requires considerable self-sacrifice. I have no doubt at all that the mother has both intellectually and emotionally anticipated the prospect of refusal. I have no doubt at all that she will make the necessary adjustment and sacrifice, and that her alternative plans, although for her a poor second best, will ensure for D consistent and continuing primary care. (MH v GP [1995] 2 FLR 106 LJT at p. 111 per Thorpe LJ)

Freeman (2009b) believes this insightful comment may need to be revisited in relocation cases. She also recommended that the vagueness of the current welfare test, and the lack of transparency regarding parental interests in the welfare evaluation, be addressed by amendments to the welfare checklist applicable in relocation cases. As well, it was suggested that a guardian should be routinely appointed in relocation cases, rather than in the rare cases in which one is currently appointed. This was considered especially important in cases involving very young children. Parents also reported their desire to be made aware of alternatives and consequences involved in relocation disputes, which might include a combination of mediation, education programmes and practitioner information sessions.

This English study found that there are often seriously negative effects of relocation on the left-behind parent and family (Freeman, 2009b). Although great sympathy might be felt for their position, the primary concern in family jurisdictions that are based on the best interests principle, is with the children involved in these cases. Knowing whether the policies regarding relocation are, in fact, working in the best interests of the children is important. Research needs to be urgently undertaken in England, specifically investigating the outcomes of relocation and the effects of relocation on children. Without this scientific evidence, the Courts are working almost entirely in the dark in an area of potentially dramatic impact on a child's life. We do not know whether, in general, relocation works well for children who adapt quickly and suffer no significant emotional loss, or whether, alternatively, relocation impacts negatively and substantially on a child's life and development and, if so, in which ways. This information is vital in order that policy in this area may be informed through a sound research basis so that a truly child-centric approach to this extremely difficult familial issue can be achieved.

Chapter Four

The International Legal Context

This chapter considers the various approaches to relocation law internationally. Several significant international human rights instruments contain Articles relevant to relocation following parental separation (Dyer, 1996). These include State Party obligations concerning rights to freedom of movement, equality, equal protection and non-discrimination, as well as recognising, assisting and protecting the family unit, and prioritising the best interests of the child, under the following Conventions and constitutional instruments:

- International Convention on Civil and Political Rights (ICCPR);
- International Convention Economic, Social and Cultural Rights (ICESCR);
- United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979);
- United Nations Convention on the Rights of the Child (UNCRC, 1989) - While the UNCRC does not utilise the terms ‘access’, ‘contact’ or ‘visitation’ it does state that the best interests of the child are a primary consideration (Article 3), and recognises the right of a child “to know and be cared for by his or her parents” (Article 7(1)), and the right of a child “who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests” (Article 9(3)).
- European Convention Human Rights (ECHR) - Beevers (2005) notes, however, that greater consideration of the rights of non-custodial parents under Article 8 of the ECHR has not made any difference whatsoever to the approach taken by the English Court of Appeal in relocation cases.
- Luxembourg Convention (1980);
- Canadian Charter of Rights and Freedoms;
- Constitution of the United States of America;
- New Zealand Bill of Rights Act 1990.

The chapter summarises the law and adjudication trends relating to relocation in Australia, England/Wales, Canada and the USA, along with briefer reference to other jurisdictions in South Africa, Europe and Scandinavia. As part of its review of current law in various jurisdictions, the Family Law Council (2006a, 2006b) usefully grouped countries according to three general approaches to relocation which they ascertained internationally, and Messitte (2009) has completed a similar exercise in respect of American States:

- those states and countries **in favour of relocation** (for example, Indiana, Oklahoma, England/Wales, France, Spain);
- those states and countries adopting a more **neutral approach** where decisions are made on a case-by-case basis with the emphasis on the best interests of the child in each case (for example, New York, Canada, Germany);
- those states and countries **against relocation** (for example, Alabama, Louisiana, Sweden). Interestingly, the Australian Family Law Council (2006b) considered that “New Zealand may also fall into this category, if predictions about the impact of its new Care of Children Act 2004 are accurate” (p. 52). However, experience with the application of the Act to relocation cases since July 2005 indicates that New Zealand, in fact, fits more appropriately within the neutral approach category (see Chapter Five of this research report).

Australia

The *Family Law Act 1975* was amended by the *Family Law Reform Act 1995*, and more recently by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. Part VII relates to children. Kaspiew (2008) provides a useful overview of the law relating to relocation as a result of the 1995 and 2006 amendments.

A number of parliamentary inquiries into aspects of Australian family law have been conducted over the years. While none of these focused specifically on relocation, the issue was nevertheless raised in them. The *Every Picture Tells a Story* report (House of Representatives Standing Committee on Family and Community affairs, 2003), which was a precursor to the 2006 amendments, specifically rejected calls by the fathers’ rights lobby for a presumption in law that children spend equal time with their mother and father following parental separation. Such a rule would have radically altered how relocation decisions are determined by the Courts. The Standing Committee did not recommend a legal presumption against relocation that would have placed a burden on a relocating parent. They concluded that, on the question of relocation, “truly shared parental responsibility will inevitably mean that relocation of one parent, whether the primary carer or the other parent, should be less of an option” (para 2.46). The (rebuttable) presumption of equal shared responsibility heralded by the amendments, which took effect in July 2006, instead refers to the allocation of parental responsibility and not to the amount of time a child spends with each parent.

In February 2006 the Family Law Council (2006a) released a discussion paper on relocation as a means of consulting widely on such issues as how the best interests of the child principle operates in relation to other legitimate interests in a relocation case. Forty-three submissions were received and the Council took these into account in preparing their May 2006 report on relocation for the Attorney General. The Family Law Council (2006b) recommended against the insertion of a presumption in the Family Law Act to deal with relocation cases (Recommendation 3, p. 64) as it preferred a case by case approach to ensure the best interests of the child remain paramount. The Council instead recommended that a specific relocation provision be incorporated into the Family Law Act “to assist users of the Act to better understand the factors the court will consider and will be of particular assistance to unrepresented litigants” (p. 4). Recommendation 4 (p. 73) states that:

(A). Where there is a dispute concerning a change of where a child lives in such a way as to substantially affect the child's ability to live with or spend time with a parent or other person who is significant to the child's care, welfare and development, the court must:

(1) Consider the different proposals and details of where and with whom a child should live, including:

(a) What alternatives there are to the proposed relocation;

(b) Whether it is reasonable and practicable for the person opposing the application to move closer to the child if the relocation were to be permitted;

(c) Whether the person who is opposing the relocation is willing and able to assume primary caring responsibility for the child if the person proposing to relocate chooses to do so without taking the child;

(2) Consider which parenting orders are in the child's best interests having regard to the objects contained in section 60B and all relevant factors listed in section 60CC, and:

(a) Whether given the age and developmental level of the child, the child's relocation would interfere with the child's ability to form strong attachments with both parents;

(b) If a party were to relocate:

(i) What arrangements, consistent with the need to protect the child from physical or psychological harm, can be made to ensure that the child maintains as meaningful a relationship with both parents and people who are significant to the child's care, welfare and development as is possible in the circumstances;

(ii) How the increased costs involved for the child to spend time with or communicate with a parent or people who are significant to the child's care, welfare and development should be allocated;

(iii) The effect on the child of the emotional and mental state of either party if their proposals are not accepted.

(B). The court may also consider the reasons the parent wishes to move away and any other relevant considerations.

This recommendation has not, to date, been taken up in any further amendments to the Family Law Act (Henaghan, 2009a). There has, however, been a flurry of debate about how to apply the best interests principle to parenting cases, and in particular relocation cases, since the amendments to the Family Law Act took effect in July 2006 (Chisholm, 2007; Parkinson, 2007, 2008b, 2008c). Concern centres on whether the effect of the reform will be to make relocation more difficult, especially where there is an involved non-resident parent who has a close relationship with the children. Has the greater emphasis brought about by the 2006 reforms on the importance of involving both parents in the lives of their children now made it more difficult to justify a relocation than before the amendments took effect? The two-tier

approach to determining the child's best interests⁵ has meant that "the benefit to the child of having a meaningful relationship with both of the child's parents" (section

⁵ Section 60CC Family Law Act 1975 in determining best interests directs that the Court must consider:

(2) The primary considerations:

- (a) benefit to the child of having a meaningful relationship with both parents; and
- (b) need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

(3) Additional considerations are:

- (a) views expressed by the child and any factors (such as child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
- (b) the nature of the relationship of the child with:
 - (i) each of the child's parents; and
 - (ii) other persons (including any grandparent or other relative of the child), with whom she or he has been living;
- (c) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent;
- (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - i. either of his or her parents; or
 - (ii) any other child, or other person...with whom he or she has been living;
- (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- (f) the capacity of:
 - ii. each of the child's parents; and
 - (ii) any other person (including any grandparent or other relative of the child);to provide for the needs of the child, including emotional and intellectual needs;
- (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- (h) the right of an Aboriginal or Torres Strait Islander child to enjoy their culture (including the right to enjoy the culture with other people of that culture) and likely impact of parenting order on that right;
- (i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- (j) any family violence involving the child or a member of the child's family;
- (k) any family violence order that applies to the child or a member of the child's family, if the order is final or was contested
- (l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- (m) any other fact or circumstance that the court thinks is relevant.

(4) ...the court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent and, in particular, the extent to which each of the child's parents:

- (a) has taken, or failed to take, the opportunity:
 - (i) to participate in making decisions about major long-term issues in relation to the child; and
 - (ii) to spend time with the child;
 - (iii) to communicate with the child; and

60CC) has become one of the two ‘primary considerations’, while other factors (such as the child’s views) are listed as ‘additional considerations’. Parkinson (2008c) argues that the legislative changes, particularly the factors the Court ‘must’ consider, may well lead to different outcomes after 1 July 2006 to those that occurred previously in similar fact situations:

The best interests of the child ... are not at large. [They rely] upon a reasoned assessment of the primary and additional considerations in s60CC taking into account the objects and principles of part VII of the Family Law Act. (Parkinson, 2008c, p. 147)

Parkinson places emphasis on the consideration to be given to the involvement of both parents and the need to consider equal time or substantial and significant time where the parents will share equal parental responsibility. However, other commentators disagree with this analysis (Bryant, 2009; Chisholm, 2007; Henaghan, 2009a):

A ‘most important’ consideration is not the same as a rule. Important means that it must seriously be considered in each case but does not mean it overrides other considerations. Otherwise there would be no point in listing the other considerations. The judge must still put the child’s best interests as paramount. All the considerations are for one purpose – to benefit the child. ... The fact the benefit to the child of a meaningful relationship with both parents has become a ‘primary’ or ‘most important’ consideration” does not mean it cannot be outweighed by other benefits to the child which would give an overall best interests approach to the child. Otherwise the ‘paramount’ consideration of the child’s best interests would be subservient to one of the “most important” considerations of the benefit of a meaningful relationship with both parents. (Henaghan, 2009a, p. 8)

In Australia, like New Zealand, relocation law applies to proposed moves within and between states, as well as internationally.⁶ The child’s best interests are the paramount consideration and there is neither a presumption for nor against relocation in statute or in the case law. The parent who wishes to move does not bear any onus of proving that the relocation is reasonable (*AMS v. AIF* (1999) 199 CLR 160 (relocation within Australia); *U v. U* (2002) 191 ALR 289; (2002) FLC 93-112; (2002) HCA 36 (relocation overseas)). While section 92 of the Constitution provides a right of freedom of movement it has been held that “whatever weight should be accorded to

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- (b) has facilitated, or failed to facilitate, the other parent:
 - (i) participate in making decisions about major long-term issues in relation to the child; and
 - (ii) to spend time with the child; and
 - (iii) to communicate with the child; and
 - (c) has fulfilled, or failed to fulfil, the parent’s obligation to maintain the child.
- (4A) If the child’s parents have separated, the court must, in applying subsection (4), have regard, in particular, to events that have happened, and circumstances that have existed, since the separation occurred.

⁶ See Chapter 4 of the report on relocation by the Family Law Council (2006b) for an excellent overview of the law relating to relocation in Australia.

the right of freedom of mobility of a parent, it must defer to the expressed paramount consideration, the welfare of the child, if that were to be adversely affected by a movement of a parent” (*U v U* (2002) 191 ALR 289 at 308 by a majority (Kirby J dissenting)). The presumption that both parents have parental responsibility means that they must consult and agree on the proposed relocation, or obtain a parenting order permitting the move.

Australian Adjudication Trends

Several commentaries on specific leading or high-profile Australian cases on relocation have been published. Some of these precede the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, for example, *U v. U* (Behrens, 2003); while others have explored the impact of the 2006 amendments on Australian caselaw, for example, Henaghan (2009a). Four studies have also been undertaken to ascertain similarities and differences in judicial decision-making trends on relocation cases within Australia (Easteal, Behrens & Young, 2000; Easteal & Harkins, 2008; Martin, 2006 (cited by Family Law Council, 2006b); Parkinson, 2008b).

Patricia Easteal, Juliet Behrens and Lisa Young (2000) – Canberra and Perth Registries

Easteal, Behrens and Young (2000) undertook an empirical analysis of 46 relocation decisions made over an 18 month period (July 1997 to December 1998) in the Canberra (26 cases) and Perth (20 cases) registries of the Family Court of Australia [following the High Court decision in *B v B* (1997) 21 Fam LR 676; (1997) FLC 92-755, but preceding their decision in *AMS v AIF* (1999) CLR 160]. Variables analysed included:

- *Socio-demographic factors* – e.g. gender, ethnicity, occupation, number and ages of children, alcohol/drug abuse;
- *Children’s wishes*;
- *Aspects of the relevant relationships* – e.g. amount of contact with the child; payment of child support; repartnering; violence;
- *Reasons for the move* e.g. higher paid employment; extended family; repartnering; conflict reduction; safety;
- *Process/application factors* e.g. already relocated pre-process; type of application; decision by Court or settled by mediation; previous litigation; legal representation;
- *Case outcome*; and
- *Quantitative analyses* to identify possible impact of these variables on the outcomes.

Thirty-eight of the 46 cases proceeded to judgment (18 in Canberra⁷ and all 20 in Perth). Women were the proposed movers in 36 of the cases, 25 (69%) of whom were permitted to relocate. The male mover in Western Australia was allowed to relocate, while the male mover in Canberra was not. Easteal et al. (2000) considered whether the distance of the proposed move impacted on the outcome of the case, but concluded that it did not – 67% of those going a long distance or overseas were

⁷ Eight of the Canberra cases were resolved by consent.

allowed to relocate, compared to 75% of those wanting to move a short distance. Differences were found in the outcomes between the Canberra and Perth registries – with decisions in Perth being more likely to result in a favourable outcome for the person proposing the move.

Carolyn Martin (2006) - Family Court of Western Australia

A survey was conducted by Carolyn Martin of all the relocation cases in the Family Court of Western Australia between 2000-2005 (Family Law Council, 2006b, paras 2.19-2.21, pp. 13-14). Of these 70 cases, 51 (72.9%) resident parents were allowed to relocate; 16 (22.9%) resident parents had their applications to relocate refused; and two of the decisions were overturned on appeal. In three (4.3%) of the 70 cases a change of residence for the child was ordered, and in a few cases the residence parent was allowed to relocate at a set time in the future. In one case the proposed relocation was permitted only once certain conditions were met. One family had two relocation cases. The Family Law Council (2006b) concluded that “relocation is a regularly litigated issue” in the Family Court of Western Australia, “with an average of 12 relocation matters per year since 2000” (para 2.21, p. 14).

Patrick Parkinson (2008b)

Patrick Parkinson (2008b) examined 58 reported Australian relocation cases from July 2006 to April 2008. He found differences between the Australian states and territories, with Sydney judges being the toughest on relocation applications. Parkinson also found that the introduction of the amendments created by the *Family Law (Shared Parental Responsibility) Act 2006* had lowered the ‘success rate’ as relocations were allowed in only 53% of the cases. This rate was significantly lower than that prior to July 2006. The strike rate for international cases was lower - 4 out of 9. This finding contrasts with the views of Kirby J in the Australian High Court case of *AMS v AIF* (1999) 199 CLR 160 where he thought that relocation within Australia would be more likely than relocation out of the country because it would be easier to keep both parents involved in the child’s life.

Patricia Easteal and Kate Harkins (2008)

Patricia Easteal and Kate Harkins examined 50 relocation cases heard in the Family Court and Federal Magistrates Court in Australia from 2003 to 2008. Their findings were similar to those noted by Parkinson (2008a) as 60% of the applicants wanting to relocate were allowed to move. Prior to the 2006 reforms, 75% of proposed relocations were permitted. The shift against relocation due to the weight now placed by many Australian judges on the importance of a child’s meaningful relationship with both parents was therefore confirmed by Easteal and Harkins.

Canada

Until the late 1980s, the law of parental relocation was fairly clear in Canada and a custodial parent was free to move with the children, unless there was some agreement or Court order to the contrary (*Wright v. Wright* (1973), 1 O.R. (2d) 338 (Ont. C.A.)). While this approach had the merit of being very simple, it nevertheless placed a substantial burden of proof upon the non-custodial parent who opposed the move. In

the 1990's the law adopted a more flexible approach as the Canadian Courts rejected the proposition that the custodial parent had a presumptive right to move with the child and instead opted for the application of a 'best interests of the child' test with no burden of proof allocated to one parent or the other (*Carter v. Brooks* (1990), 2 O.R. (3d) 321 (Ont. C.A.)).⁸ Each parent was regarded as bearing 'an evidential burden' in establishing what were the best interests of the child (Chamberland, 2009).

However, the law on relocation briefly changed again in 1995. In *MacGyver v. Richards* (1995), 22 O.R. (3d) 481 (Ont. C.A.), the Court of Appeal for Ontario re-established a presumptive deference approach by ruling that a custodial parent should be allowed to move with the child when 'acting responsibly', the burden of proof resting with the non-custodial parent to show that the move would impair the child's best interest (Chamberland, 2009). The well-being of the child was thought to be fundamentally interrelated with the well-being of the custodial parent, and so this parent was considered to be the best person to make decisions affecting the child and the new family (*Kaiser v. Kaiser*, 23 P.3d 278 at 284-85 (Okla. 2001)).

In 1996, the Supreme Court of Canada changed the law of parental relocation yet again and adopted the approach that is still applicable today (*Gordon v. Goertz* [1996] 2 S.C.R. 27 (2 May 1996)). In this case the parties resided in Saskatoon, in the Province of Saskatchewan, until their separation. The mother petitioned for divorce and was granted permanent custody of their young child, while the father received generous access. The father subsequently learned that his ex-wife intended to move to Australia to study orthodontics, and he applied for custody of the child, or alternatively, for an order restraining the mother from moving the child from Saskatoon. The trial judge found that the mother was the proper person to have custody and allowed her to relocate to Australia with the child, while granting the father liberal and generous access on one month's notice to be exercised in Australia only. The Court of Appeal of Saskatchewan upheld the order. The issue before the Supreme Court of Canada was whether the trial judge and the Court of Appeal had erred in permitting the child to move to Australia with her custodial parent. The mother had already moved to Australia with her daughter when the case came before the Supreme Court of Canada, so the Court was faced with a *fait accompli* and thus forced to conduct a *post facto* analysis. Madame Justice McLachlin, for the majority in this 7-2 decision, explicitly rejected the arguments of the mother and LEAF that Courts should accord deference to the decision-making ability of the custodial parent. Instead, a highly indeterminate and individual case approach to the best interests of the child principle was reasserted (as argued by the father and the child's lawyer). Madame Justice L'Heureux-Dube, for the minority, took a different approach, similar to that argued by the mother.

The Supreme Court decision rejected any legal presumption in favour of the custodial parent (para 48); instead, it concluded that "the views of the custodial parent ... are entitled to great respect and the most serious consideration" (para 48). Rather than relying on burdens of proof, Courts were directed to undertake "a fresh inquiry" in the case (para 47); each case turning on its own unique circumstances. The Court provided a list of factors (or guidelines) that should be considered, including the

⁸ In this case, the mother of a 6-year-old child was denied a move from Ontario to British Columbia, where the mother's new husband wanted to pursue a business opportunity.

existing custody arrangement and relationship between the child and the custodial parent, the existing access arrangement and the relationship between the child and the access parent, the desirability of re-examining contact between the child and both parents, the views of the child, the disruption to the child of a change in custody, the disruption to the child consequent on removal from family, schools and the community he or she has come to know (para 49).

The Supreme Court also stated that the custodial parent's reason for moving must not be assessed by the Court except in the exceptional case where it is relevant to that parent's ability to meet the needs of the child (paras 48-49). This is because:

... the views of the custodial parent, who lives with the child and is charged with making decisions in its interest on a day-to-day basis, are entitled to great respect and the most serious consideration ... barring an improper motive reflecting adversely on the custodial parent's parenting ability. ... In the end, the ultimate question for judges to consider is: what is the best interests of the child in all the circumstances, old as well as new? (para 50)

Thus judges determining a relocation issue have to follow a 'best interests of the child' approach that requires an individualized assessment of each case, without any presumption in favour of either parent or any onus on either them (Chamberland, 2009; Goldwater, 1998). This approach continues to be the law governing parental relocation issues in Canada, whether the matter comes under the Federal *Divorce Act* (as in *Gordon v. Goertz*) or under provincial legislation. It applies to an initial custody application involving a question of mobility, as well as to an application to vary a final custody order (as in *Gordon v. Goertz*), and also to the relocation of children of common law partnerships (*Droit de la famille – 071207*, 2007 QCCA 710, 200-09-005792-061, 18 May 2007, Rochette, Rayle, Bich, JJ.A). Chamberland (2009) notes that "in the almost 15 years since the *Gordon v. Goetz* decision, the Supreme Court of Canada has denied leave to appeal in all relocation cases that have come before it" (p. 6).

The *Gordon v. Goertz* approach is seen as having "the advantage of allowing a focus on the welfare of the individual child before the Court, and is neutral in relation to the 'rights' of fathers as opposed to mothers and the claims of gendered advocacy groups" (Bala & Harris, 2006, p. 4). However, the Supreme Court ruling has been criticised for making parental relocation issues unclear in Canada, leading to unpredictable and uncertain outcomes in individual cases:

The sad reality of relocation cases is that while the test to be applied is intended to promote the best interests of the children involved, judges are forced to choose between a small number of alternatives, each of which will result in the child being less well off in some significant respect. If the custodial parent is permitted to move with the child, this will inevitably strain, and sometimes effectively sever, the child's relationship with the access parent. If, on the other hand, the custodial parent is to move without the child, should his or her request for the court's approval be denied, the change in the child's living arrangements will be emotionally disruptive to the child, and the relationship with the parent who moves away will suffer. (Chamberland, 2009, p. 8)

Boyd (2000) argues that the Supreme Court's approach presents considerable difficulties for parents (mostly mothers) who assume primary responsibility for caregiving before and after parental separation. It will have a disproportionate effect on women's ability to determine their lives and reflects the trend in Canada to artificially reconstruct a 'post-divorce family unit' (Boyd, 1997). This approach can potentially run contrary to the best interests of children, whose well-being, Boyd argues, is usually intimately connected to the well-being of the custodial parent. Permission to move will be granted to some mothers, but not others, and relocation decisions by Courts may differ according to the wealth of the parents – poor parents may be more restricted in their mobility (Boyd, 1997).

Rollie Thompson baldly states that the Canadian law of relocation is a “mess” (2007, p. 307), and amounts to a “ruleless world” (2004, p. 404) in which the prediction of judicial outcomes is problematic and thus settlements are more difficult to achieve:

That's where we're left in Canada – a world of mobility without presumptions, without burdens, with a 'fresh inquiry' into custody with each proposed move, with litigation and relitigation, and with the lack of consistency or predictability that comes with a pure "best interests" test. ... One of the most unfortunate effects of *Gordon v. Goertz* has been its demolition of any law at all in this field, to the point that trial and appeal judges are unprepared to develop any working principles or generalizations of any kind. Facts are stated and conclusions reached, with the most modest explanation possible within the limits of *Gordon*. In Canada, there is little 'law' of relocation left. We're not movin' on, we're just stuck in the same old place. (Thompson, 2004, p. 410)

Canadian scholars continue to put forward suggestions for the reform of the law governing parental relocation (Bailey & Giroux, 1998; Bala & Harris, 2006). However, Chamberland (2009) considers it unlikely that in the foreseeable future Canada will move away from the 'best interests of the child' approach.

Canadian Adjudication Trends

Thompson (2004) has analysed the Canadian case trends since the 1996 *Gordon v Goertz* decision and found that relocation was allowed in about 60% of cases from 1996-2004. A small but noticeable decline started around 2000. From 2001-2004 relocation was approved in 50% of cases. Mothers were the custody/relocating parent in about 80% of all cases. If the child's care is shared (with each parent having the child at least 40% of the time) there appeared to be a presumption against relocation, with 70% of such applications refused. Relocation was only permitted in shared care situations in unusual cases. Thompson (2004) also noted that the relocation was unlikely to be allowed if one parent moved without notice to the other parent or without planning for the child's welfare. Canadian Courts regarded such moves as showing a lack of commitment to other parent's role in the child's life. Expert assessments only occurred in 20-25% of the cases. Thompson (2004) considered this is because time is of essence in relocation disputes and because of the hot debate about contact and the importance of its quantity, frequency and quality to a child's relationship with their contact parent. He found that generally the lower Courts had ignored the statement in *Gordon v Goertz* that the reasons for the proposed move are irrelevant. Thompson concludes that what matters is not the category of reason for the

move, but rather the demonstration of necessity or benefit of the move. The age of the child seems to matter. Over 12 years of age, the child's preference tended to drive the result. Six to eleven year old children were permitted to move more often than those under six years. Thompson (2004) suggests this difference could result from younger children being involved in more recent separations and often interim moves; shared parenting being more common with younger children; older children being more capable of adjusting to longer periods of block contact; older children having experienced greater time since their parents' separation, with more drift to maternal care and reduced contact. Finally, Thompson (2004) found that since 1996 there had been a steady upward increase in the number of cases where, after refusing the relocation, the Court changed the child's primary care / custody: "This seems an inevitable, if ominous, trend flowing from a reconsideration of custody each time a parent proposes to move, the approach mandated in *Gordon*" (Thompson, 2004, p. 406).

Bala and Harris (2006) reviewed the decisions in the province of Ontario since *Gordon v. Goertz* and identified several factors that are frequently important in Canadian relocation cases. These included:

1. *the comparative importance of the child's relationship with each of the two parents* - The mere fact that the parent who wants to move is characterised as the 'primary caregiver' does not mean that the Court will automatically allow the move. However, if the child has only 'limited involvement with the access parent', the Court is much more likely to allow the child to move. Conversely, if both parents have close relationships with the child and are in a true shared parenting situation, the Court will be more reluctant to permit a move to occur. To this extent, the legal form of a custody order makes no difference in relocation cases (whether the custodial parent has sole custody or principal residence or primary care under a joint legal custody order), but real shared custody makes a difference (*Young v. Young*, (2003) 34 R.F.L. (5th) 214 (Ont. C.A.); *Hanna v. Hanna*, 2002 BCCA 702 [2002] B.C.J. No. 2980).
2. *the relationship of the child with the new partners of their parents* - Judges are especially concerned about the child's relationship with the new partner of the parent who plans to move, as the child is likely to be spending considerable time with that person if the relocation is approved. If the new partner has not spent much time with the child or if there are concerns about his or her character, the Court is less likely to allow the move. Conversely, where the child has a good relationship with the new partner, this is likely to be a factor in allowing the move.
3. *the reason for the move* - Despite McLachlin J.'s general statement in *Gordon v. Goertz* not to consider the custodial parent's reason to move – but for the exceptional case where it is relevant to that parent's ability to meet the needs of the child⁹ – judges in both trial and appellate Courts do consider the reasons for the move, as these will often have an impact on the welfare of the child. When there are strong economic reasons for a move, this will be a good reason to allow the relocation. When the social and psychological well-being of the

⁹ A position which Thompson (2004, p. 406) characterizes as being "odd and impractical."

custodial parent and the child is dependent upon the move, this will also be a good reason to allow the relocation. Conversely, when the custodial parent has significant ties to the community where she and the children reside, and she does not have strong social or economic reasons for moving, the Court is likely not to be sympathetic to relocation. What really seems to matter is not the category of the reasons for the move, but the demonstration of necessity or benefit to the move.

4. *the conduct of the parents* - The bad conduct of the custodial parent usually results in the Courts not permitting the relocation with the child. The bad conduct can take different forms: taking the child to a new location without informing the other parent and often, without planning; dishonesty towards the other parent (and sometimes towards the child); being misleading or dishonest with the Courts about future plans or circumstances, and so forth. The stated reason for refusing to allow the move in case of bad conduct is not a desire to punish the badly behaved parent, but rather a concern that a custodial parent who engages in this type of conduct demonstrates a lack of commitment to the welfare of the child, and would be unreliable in carrying out commitments to support a relationship between the child and the distant parent after a move. Conversely, if the Court is satisfied that the parent who wants to relocate is cooperative and likely to support the relationship of the child with the other parent after the move, the Court is more likely to allow the relocation.
5. *the age of the child* - Bala and Harris (2006) found that judges seem to be more willing to allow relocation of children of pre-school age (under 6 years of age) than for children of school age (6-11 years of age), as young children are less likely to have significant ties to their schools and communities. As children become older, their wishes become much more important. Cases involving older children who express clear and consistent views about relocation are not frequently litigated, as parents will likely settle the case based on their children's views. The expressed wishes of children are not always determinative of relocation decisions, especially when there is expert evidence to indicate that a child's preference may not accord with his or her best interests, or where there are multiple siblings who may express different views about the proposed relocation.
6. *domestic violence and high conflict separations* - Canadian Courts seem reticent to acknowledge that domestic violence and high levels of conflict are important factors in relocation decisions, even in situations where the move is allowed (Bala & Harris, 2006). However, Courts will be more willing to acknowledge spousal abuse as a factor if children witness it or directly suffer its effect. Courts will be concerned with the seriousness of the allegations of spousal abuse during the marriage, whether they are proven in Court, and whether the violence has continued after the separation. If the Court concludes that the person making the allegations, invariably the woman, has significantly exaggerated her concerns about spousal or child abuse and concludes that there are no serious safety concerns, it is likely to dismiss a request to relocate that is primarily based on this ground.

7. *residence restrictions* - Custody agreements and orders often contain residence restrictions (that is, restrictions upon the removal of the child from a defined geographic area). It has been decided that such a residence restriction did not place any greater onus upon the custodial parent who wants to relocate with the child; it is not even a factor deserving special or added weight, but just "a factor, along with all the other facts and circumstances" (*Ligate v. Richardson* (1997), 34 O.R. (3d) 423 (Ont. C.A.)).

England / Wales

George (2008) traces the history of international relocation law in England since 1970. Currently, English relocation law is mainly governed by the welfare principle in section 1(1) of the *Children Act 1989* – “When the court determines any question with respect to the upbringing of a child, the child’s welfare shall be the court’s paramount consideration.” This principle is, in certain circumstances, supplemented by the welfare checklist (section 1(3)) which includes such considerations as the effect on the child of any change in his or her circumstances, the child’s wishes and feelings considered in light of their age and maturity, the child’s physical, emotional and educational needs, and each parent’s capacity to meet those needs.

Relocation disputes can reach the English Courts in two ways:

First, any case can be brought as an application for an order under s 8 of the Children Act. Section 8 includes powers to determine with whom the child is to live (residence orders), to order contact with other people (contact orders), and to mandate or prohibit particular actions in relation to the child (specific issues orders and prohibited steps orders). Relocation sometimes arises in relation to residence orders, but is more often brought about as a prohibited steps or specific issue application. In any application made under s 8, the court has to make use of the welfare checklist. The other route to the court is via s 13 of the Children Act 1989, by virtue of which children who are the subject of a residence order cannot be removed from the country for more than one calendar month without written consent from all those with parental responsibility or the leave of the court. When the court is considering an application for leave to remove the child under s 13, it is advised to, but technically need not, make use of the welfare checklist. (George, 2009, pp. 109-110)

There is a significant difference between the English and South Pacific approaches to relocation. In Australia and New Zealand the law applies regardless of whether the proposed destination is a domestic or international one.¹⁰ However, in England the legal approach depends on whether the proposed move is outside the United Kingdom or not. The English Courts have generally only placed restrictions on a primary carer’s place of residence within the UK in exceptional circumstances, but take a far keener interest when the relocation is to an international destination beyond the UK.

¹⁰ George (2009) has written an insightful article comparing the New Zealand approach to relocation with that in England.

While the first reported case to fit the relocation pattern was *Hunt v Hunt* (1884) 28 Ch D 606, CA (Eng), the origins of modern English caselaw emerged in *Poel v Poel* [1970] 1 WLR 1469, CA (Eng):

Once ... custody is working well, this court should not lightly interfere with such reasonable way of life as is selected by that parent to whom custody has been rightly given. Any such interference may ... produce considerable strains which would not only be unfair to the parent whose way of life is interfered with but also to any new marriage of that parent. In that way it might well in due course reflect on the welfare of the child. (per Sachs LJ, p. 1473)

Sachs LJ felt that such decisions of the primary carer were ones “which the parent who has not been given custody may well have to bear” (p. 1473). *Poel v Poel* was decided nearly 20 years before the Children Act 1989, but has remained very influential on current Court practice (Beevers, 2005). In 2001 the English Court of Appeal reconfirmed the approach taken in *Poel* when deciding the now-leading relocation case of *Payne v Payne* [2001] 1 FLR 1052, CA (Eng). Mrs Payne was a New Zealander who wished to return home with her four year old child, but the English father opposed the move. Thorpe LJ stated that relocation cases have been consistently decided upon the application of the following two propositions:

- (a) the welfare of the child is the paramount consideration; and
- (b) refusing the primary carer’s reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children. Therefore her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children. (para 26)

Both Dame Elizabeth Butler-Sloss P and Thorpe LJ¹¹ summarised, in *Payne v Payne*, how relocation disputes should be approached. Butler-Sloss P prefaced her summary by saying that she was not excluding other factors that would arise in each case, but that the following should be taken into account (see paras 85-86):

- (a) The welfare of the child is always paramount.
- (b) There is no presumption created by s 13(1)(b) in favour of the applicant parent.
- (c) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.
- (d) Consequently the proposals have to be scrutinised with care and the court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end.
- (e) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.
- (f) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important.
- (g) The opportunity for continuing contact between the child and the parent left behind may be very significant.

¹¹ See Worwood (2005a, p. 622) for a flowchart of the relocation guidelines suggested by Thorpe LJ in *Payne v Payne* (2001).

All the above observations have been made on the premise that the question of residence is not a live issue. If, however, there is a real dispute as to which parent should be granted a residence order, and the decision as to which parent is the more suitable is finely balanced, the future plans of each parent for the child are clearly relevant.

In his summary, Thorpe LJ said (see paras 40-41):

To guard against the risk of too perfunctory an investigation resulting from too ready an assumption that the mother's proposals are necessarily compatible with the child's welfare I would suggest the following discipline as a prelude to conclusion:

- (a) Pose the question: is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? Then ask is the mother's application realistic, by which I mean founded on practical proposals both well researched and investigated? If the application fails either of these tests refusal will inevitably follow.
- (b) If however the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland?
- (c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal? [Where the mother cares for the child or proposes to care for the child within a new family, the impact of refusal on the new family and on the stepfather or prospective stepfather must also be carefully calculated¹²].
- (d) The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist insofar as appropriate.

In suggesting such a discipline I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well-being of the primary carer. In any evaluation of the welfare of the child as the paramount consideration great weight must be given to this factor.¹³

George (2009) concludes that rather than there being some difference between the two judges:

...the core principles being enunciated by the court were consistent: there is no presumption favouring relocation but a resident parent's reasonable proposals for moving carry great weight, and the effect of refusing those proposals on the

¹² This addition was made by Thorpe LJ in *Re B (Removal from Jurisdiction)*; *Re S (Removal from Jurisdiction)* [2003] 2 FLR 1043, CA (Eng) at para 11 – see George (2009).

¹³ George (2009) notes that in later cases Thorpe LJ has said that this final paragraph would have been better expressed as part of para 40(c), rather than separately in para 41: *Re B (Leave to Remove: Impact of Refusal)* [2005] 2 FLR 239, CA (Eng) at para 14.

parent, her partner if she has one, and the child is very important. If the other parent's opposition to the move is based on the child's welfare, then the impact on the child of the loss of that relationship may also be important. (pp. 118-119)

The Court's rationale for refusing to interfere with the reasonable decision of the primary carer is that the welfare of a child is considered to usually be best served by being brought up in a happy and secure family atmosphere by the parent with primary ongoing responsibility for the child (Beevers, 2005; Family Law Council, 2006b). The custodial family should therefore be allowed to make decisions in a way that would best provide this, as long as these are reasonable and properly thought through. So, in general, the English Courts have always been prepared to allow the mother to relocate with the child where she had remarried or was planning to remarry, the new partner proposed they live in another country for work reasons, or because that is where he came from. Leave has, however, been refused in cases concerning a single parent mother who wished to relocate for reasons of her own (Beevers, 2005).

There has been concern for a number of years that too much weight is given to the applicant parent's wishes in relocation cases in England / Wales (Worwood, 2005a, 2005b). Critics of the *Payne* approach argue that the rights of the custodial parent are being protected under the guise of upholding the paramountcy of the welfare of the child principle (Beevers, 2005).¹⁴ There is particular anxiety that the reasonable proposal of the mother seeking to relocate is taking precedence over the right of the child to have continued contact with his or her father. It is presumed that for the child to have a custodial parent whose happiness and emotional security is maximised "but vastly reduced contact with the non-custodial parent is more in accordance with the best interests of the child than to have a disappointed custodial parent but continued contact with the non-custodial parent" (Beevers, 2005, p. 5).

The issue of continuing contact between children and their non-custodial parent has been the focus of considerable socio-legal policy attention in the UK. However, this has been set within the context of encouraging the maintenance of contact as a presumed social good following parental separation and divorce, rather than the relocation context per se (Advisory Board on Family Law: Children Act Subcommittee, 1999, 2002; Fields, 2007; Hunt & Roberts, 2004). The English Court of Appeal has nevertheless held firm to the principles enunciated in *Poel / Payne* for nearly forty years, despite England and Wales having moved to a continuing shared parental responsibility model (Bailey & Giroux, 1998; Strous, 2007), non-resident parents feeling marginalised by relocation outcomes (Beevers, 2005) and the gradual growth in shared care arrangements (George, 2009). Greater consideration of the rights of non-custodial parents under Article 8 of the ECHR has not made any difference whatsoever to the approach taken by the Court of Appeal in relocation cases (Beevers, 2005). Worwood (2005a) asks:

Should factors such as where the child has lived for most of their life and their education be given greater weight in the balancing exercise and, moreover, should the first question to be considered by the English Courts be 'what would be the

¹⁴ Instead of protecting the interests of the parent under the guise of the child's welfare, Eekelaar (2002) suggests a more transparent and child-centred approach - see Beevers (2005, p. 6).

impact on the child of a removal from their current environment?’ rather than ‘is the mother’s application genuine or realistic?’ (p. 627)

United States of America

Legislative and judicial approaches to relocation vary from state to state since federalism is especially significant in the context of American relocation law:

[The] Federal system is comprised of 50 different sovereign states and a strong Federal Government. The US Constitution, glossed by case law and statutory enactments, determines what authority is delegated to the Federal Government and what authority remains with the states. Generally speaking, the Federal Government ... acts in the international and interstate spheres. In contrast, each State is primarily responsible for matters that occur within its borders. (Messitte, 2009, pp. 1-2)

Traditionally American Courts, including the Supreme Court, have said that domestic relations law – of which of custody and visitation are quintessentially a part – is a matter of state competence (*Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992)). However, federal considerations, including constitutional rights, may come into play (Elrod, 2006; Messitte, 2009). The Supreme Court has recognised, for example, that Americans have a constitutional right to travel, certainly from State to State if not elsewhere (*Jones v. Helms*, 452 U.S. 412 (1981); see also, *Jaramillo v. Jaramillo*, 823 P.2d 299 (N.M. 1991). A custodial parent who wishes to relocate therefore enjoys the right to travel, and implicitly to move, which may entail the right to also take the child. On the other hand, the left-behind parent, who effectively loses access to a child who has moved too far away for this to realistically occur, may be denied the fundamental right of parenting:

In a situation in which both parents seek custody, each parent proceeds in possession, so to speak, of a constitutionally-protected fundamental parental right. Neither parent has a superior claim to the exercise of this right to provide ‘care, custody, and control’ of the children Effectively, then, each fit parent’s constitutional right neutralizes the other parent’s constitutional right, leaving, generally, the best interests of the child as the sole standard to apply to these types of custody decisions. (*McDermott v. Dougherty*, 869 A.2d 751, 770 (Maryland Court of Appeals, 2005)).

At least 37 States have statutes on the subject of child relocation (Messitte, 2009).¹⁵ These range from very brief references (for example, Massachusetts with its single section with two sentences) to other more sophisticated provisions (for example, Alabama’s law has 20 sections containing 17 factors). The rest of the States have developed standards for relocation through case law established by their highest Courts. Different approaches are therefore adopted to relocation law across the country (Elrod, 2006; Family Law Council, 2006b; Messitte, 2009; Strous, 2007; Worwood, 2005a). As Elrod (2006) notes: “Uniformity is woefully lacking. ...

¹⁵ See the Appendix in Elrod (2006, pp. 57-61) which lists key aspects of the law on relocation in each US State.

[C]onfusion and controversy remain over what are, and what should be, the legal standards to apply when a parent seeks to move away with a minor child” (pp. 30-31).

When relocation occurs within the same State where the parents reside, responsibility for custody and visitation are matters that invariably remain within the exclusive jurisdiction of the individual State. The more problematic issue is when the proposed move is an interstate one – which state’s law will determine the propriety of the move? Prior to the introduction of the *Uniform Child Custody Jurisdiction and Enforcement Act*, now adopted by 45 States, the fear of losing jurisdiction meant many Courts denied relocation applications unless the non-custodial parent consented to the move or there were extraordinary circumstances. However, this is no longer an issue in most relocation cases as the enactment of the Uniform Act and the *Parental Kidnapping Prevention Act* brought the concept of continuing exclusive jurisdiction into play. Jurisdiction now remains in the decree State as long as one parent remains in the State and there is a basis for jurisdiction under that State’s law (Elrod, 2006).

Messitte (2009) has identified the following child relocation issues as the principal ones that have concerned American Legislatures and Courts in recent years:

Notice: Since 1990 some States have required the custodial parent to give some form of prior written notice of a proposed move to the non-custodial parent. By 2008, 19 of the 37 states with relocation statutes required this, although their “statutes vary on when notice must be given, who is entitled to notice, the effect of notice and the penalties for noncompliance” (Elrod, 2006, p. 34). The notice requirements generally include: the proposed residence address and new telephone number of the relocating parent; the intended date of the move; a brief statement about the reasons for the intended move; a proposal for a revised schedule of visitation by the non-relocating parent with the child; and a warning that within some time period (for example, between 30 to 90 days), the non-relocating parent who wishes to challenge the move must file an objection with the Court, with the further indication that, should no objection be filed, the relocation may take place; and a suggestion that the proper Court should be solicited to hear the matter on an expedited basis.

If the non-moving parent does not object within a certain time period after receiving the notice, then the statute may allow the relocation without a return to the Court (Elrod, 2006).

The burden of proof / presumptions: Which parent, if any, should bear the burden of proving that relocation of the child should or should not be allowed? The States have adopted contrasting positions on this issue, depending on whether a presumption either in favour of, or against, relocation applies:

In the past, some Courts took the position that because removal of a custodial parent would deny the non-custodial parent access to the child, the relocation should be denied, in effect acknowledging a **presumption against removal**. At least one state, Alabama, still has a presumption against relocation. Beginning in the mid-90’s, however, the trend was toward a **presumption in favor of the move by the custodial parent**, based in many instances upon recognition of the constitutional right of the custodial parent to travel and move and/or upon the importance of *res judicata* insofar as past Court decisions regarding custody are

concerned, both acknowledging the inherent right of the custodial parent to make decisions on behalf of the child, including where the child should live. Approximately four states, e.g. Oklahoma, have a presumption in favor of relocation and, what essentially comes to the same thing, five more, including California, place the burden of proving the impropriety of the relocation on the party opposing relocation. Among those states which do not establish presumptions, eight, e.g. Florida, provide for a **split burden of proof**: Here, the party seeking the move must first show a good faith reason for the move; the burden then shifts to the non-custodial parent to demonstrate why the move is not in the child's best interest. Ten States, including Illinois, place the burden of proof on the party seeking relocation. Finally, six States, including New York, either by statute or case law, track the recommendation of the Uniform Law Commission and entertain **no presumptions**, providing for an equal burden of proof. (Messitte, 2009, pp. 13-14, emphasis added)

The relevant factors for consideration by the Courts: Some State Legislatures and Courts have formulated lists of specific factors for Courts to consider (or not) in making their judgment in custody cases, with some also having lists specific to relocation. Most statutory lists assign no weight to the importance of the factors. Lists have also been formulated by the American Academy of Matrimonial Lawyers (AAML) and the Uniform Law Commission (ULC). These tend to identify considerations that have informed the decisions of various American Courts over the years, although another list, compiled by Duggan (2007) lists 36 relocation factors (not all of equal weight) that he gleaned from leading American cases and statutory provisions.

While numerous factors have been identified in the various lists, Elrod (2006) says that trial judges appear to focus on three major factors:

The reasons for and against the move; whether the move will enhance the child's quality of life; and the availability of [a] realistic substitute visitation schedule to maintain a relationship with the non-moving parent. Several states have noted that when analysing a situation in which one parent seeks to relocate with the minor children, the paramount need for continuity and stability in custody arrangements, and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker, weigh heavily in favor of maintaining ongoing custody arrangements. On the other hand the attachment between the child and the non-relocating parent also will be an important consideration. (Elrod, 2006, p. 43).

Other issues arising in the American context include the insertion, by the Courts, of **geographical restrictions** in either the initial or a subsequently modified custody order (Elrod, 2006). These can be utilised even if a move is not being contemplated at the time and provide for an automatic change of custody to the non-moving parent if the restriction is violated. However, some Courts have found self-executing geographical restriction provisions to be unenforceable since they "amount to improper speculation concerning the possibility of future changed circumstances" (Elrod, 2006, p. 34), and may be contrary to the child's best interests.

Elrod (2006) concludes that:

Among the complex issues that need to be faced are the constitutional rights of both parents and children and whether the same standards used to modify existing custodial and residency arrangements should be applied in relocation cases. Courts and legislatures have experimented with burdens of proof, presumptions for and against relocation, and have developed lists of factors. The American Law Institute has developed principles which include a relocation provision and the American Academy of Matrimonial Lawyers has developed standards for relocation. ... [T]he current movement appears to be away from presumptions and towards applying a best-interests-of-the-child analysis using a variety of factors in relocation cases. (Elrod, 2006, p. 31)

Model Relocation of Children Acts

Several efforts have been made in the USA to standardise the domestic approach to relocation across the 50 States. These include the development of principles and the drafting of Model Relocation of Children Acts.

The American Law Institute (ALI) developed the Principles of the Law of Family Dissolution (2.17, 2002) which included a relocation provision.

In 1997, the American Academy of Matrimonial Lawyers (AAML) proposed a *Model Relocation Act* that contained an extensive list of factors to determine contested relocation cases.¹⁶ This was not intended to be a Uniform Act and instead offered three alternative options concerning the burden of proof in relocation cases so that States could adopt the one which best maintained their own jurisdictional policies:

Alternative A: The relocating person has the burden of proof that the proposed relocation is made in good faith and in the best interests of the child.

Alternative B: The non-relocating person has the burden of proof that the objection to the proposed relocation is made in good faith and that relocation is not in the best interests of the child.

Alternative C: The relocating person has the burden of proof that the proposed relocation is made in good faith. If that burden of proof is met, the burden shifts to the non-relocating person to show that the proposed relocation is not in the best interests of the child.

Louisiana passed legislation in response to this AAML initiative by adopting Alternative A (Family Law Council, 2006b, p. 56). Elrod (2006, p. 41) states that this is “among the most child-focused” approach, as many other statutory or Court-enumerated lists in use in the USA emphasise parent considerations (for example, distance, cost and difficulty of visitation). The AAML Model Act was not, however, taken up by other States.

¹⁶ See The American Academy of Matrimonial Lawyers, Proposed Model Relocation Act, 9 March 9 1997, at §405, available at <http://www.aaml.org/go/library/publications/model-relocation-act/>. This initiative is also discussed further in Elrod (2006), Messitte (2009) and by the Australian Family Law Council (2006b). See also Journal of the American Academy of Matrimonial Lawyers, 15, 1, (1998).

More recently, in 2008, the National Conference of Commissioners on Uniform State Laws drafted a *Relocation of Children Act*. This provided a list of factors the Court should consider in determining the best interests of the child: (a) the quality and relationship and frequency of contact between the child and each parent, (b) the likelihood of improving the quality of life for the child; (c) the views of the child (depending on the child's age and maturity); and (d) the feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the child.

This effort has now been abandoned as no agreement could be achieved and each State continues to apply its own law:

... given that the various interest groups are contentious and the states have adopted varying approaches on how to deal with the issue of relocation of children, the members of the Scope and Program Committee and Executive Committees were concerned that any act drafted by the ULC on this subject, no matter how much an advancement of the law, would not be enacted in a significant number of states. (Letter from the President of the Uniform Law Commission to the Chairperson of the Drafting Committee, 10 February 2009, cited by Messitte, 2009, p. 7)

The differing approaches to the burden of proof and the application of presumptions in relocation cases across the US States are but one example of the difficulty in arriving at universal agreement. The standard proposed in the now archived draft of the ULC Relocation of Children Act would establish no presumption either in favour of or against relocation of the child. Both parents would bear the burden of proving whether or not relocation is in the best interests of the child. But in actual practice the States have taken contrasting positions on the question, demonstrating no doubt why the Uniform Law's proposal of a neutral burden met its demise (Messitte, 2009).

The experts have simply been unable to devise a set of universally acceptable principles to apply to these cases. That said, however, among the several States there are still a few basic approaches to common issues that can be addressed, none of which is self-evidently better than another, and all of which, taken together, point up the essential problem areas pertaining to child relocation in any interjurisdictional setting (Henaghan, 2009b).

South Africa

The fundamental issue is whether the proposed relocation is in the best interests of the child (Strous, 2007; Van Schalkwyk, 2005). The Courts can take a variety of different factors into consideration, including:

- The atmosphere within the family and the overall well-being of the child;
- The relationship between the non-custodial parent and the children;
- Whether the custodial parent is competent and caring;
- Male guidance and discipline (considered important for a young boy);

- The children's wishes – a persuasive, but seldom determinative, factor;
- The inadvisability of separating siblings i.e. it is not advisable to relocate some siblings and to deny relocation for the other siblings;
- The effect on younger children – a variation of a custody order will have a more lasting effect on younger, rather than older, children who will become independent sooner;
- The interest of one child versus the interests of other children – the interests of one child may be seriously prejudiced if a removal is allowed in comparison to the slight advantage the other children may receive. Thus, prejudice to the one child may be a weightier consideration than the slight benefits to the other children;
- The prospective advantages or disadvantages for the child – e.g. the child's future employment;
- The standard of living – while it is important to live in a decent home, the maintenance of a standard of living equal to what the children were used to in South Africa is not that an important a factor. The happiness of children in their formative years depends on other things in life;
- The child's adaptation to a new school, new culture, new friends, new environment, new climate (weather conditions) – while these can be disruptive, children, especially young children, do adapt;
- Serious personality conflicts between the parents;
- Freedom of religion;
- The constitutional and political situation abroad;
- The quality of life abroad versus the quality of life in South Africa.

In deciding whether or not relocation will be in the child's best interests, this myriad of competing factors are carefully evaluated, weighed, and balanced. The reasonableness of the custodial parent's decision to relocate, their reasons for doing so, the practical and other considerations on which the proposal is based, and the extent to which the real advantages and disadvantages to the child of the proposed move have been properly thought through are all aspects that are carefully scrutinised by the Courts in determining the best interests of the child. Where the factors are considered equal, the interests of the custodial parent have usually been favoured and the relocation allowed, particularly where the relationship between the non-custodial parent and the children will be respected and fostered (Van Schalkwyk, 2005). There has been a recent trend to place more weight on the interests of the non-custodial parent, and to give more attention to the child's wishes.

Other Jurisdictions

A uniform approach to relocation is not discernible amongst the civil law countries (Family Law Council, 2006b; Worwood, 2005a):

- **France** - 'pro-relocation' - a separated or divorced parent who wishes to relocate requires leave of the Court. The enquiry is welfare-based and similar to the welfare factors taken into consideration in England. Shared residence orders are common in France and the role of each parent is accorded equal importance. However, like England, the trend is for a primary carer to be granted leave to relocate.

- **Spain** - ‘pro-relocation’ - Spanish Courts also act on best interests considerations and the wishes of children aged 12 years and over are highly influential. A reasonable proposal by a mother to relocate is usually allowed provided there is provision for generous contact between the child and father.
- **Germany** - ‘neutral’ – there is no presumption in favour of, or against, relocation. The best interests of the child are the first and paramount consideration. The outcome will depend on whether or not the German Courts consider the proposed relocation will have a net benefit for the child.
- **Sweden** - ‘anti-relocation’ – Swedish judges emphasise the maintenance of a stable living environment for the child and existing levels of contact with the non-resident parent. Permission to relocate is therefore likely to be refused.

Summary of International Jurisprudence Regarding Relocation

The international jurisprudence regarding relocation / parental mobility cases indicates the problematic nature of this area of family law. In most Western jurisdictions the Court’s paramount consideration is the child’s welfare or best interests. While some adopt a more neutral, all-factor, approach, others have a presumption either in favour of, or against, relocation. The approach taken to determining the child’s best interests also varies depending on whether the Courts consider that children are more likely to attain their potential when they are in the care of a happy, well-functioning primary parent or benefit from security and stability in their existing environment where they can easily maintain relationships with both of their parents:

... in England, considerable more weight appears to be given to the impact on the mother of a refusal of a relocation request than in some other countries where this factor is weighed alongside other factors, including the inevitable reduction in contact with the father. ... In countries which apply a more all-factor approach, greater importance seems to be attached to the father’s role in the child’s life. (Worwood, 2005a, p. 627)

The search for a universal code to standardise the approach to relocation law domestically or internationally has been beset with difficulties. The proposal by the Family law Council (2006b) to insert a relocation provision in the Australian Family Law Act has not been adopted. Neither was agreement possible within the USA to the proposed Relocation of Children’s Act drafted by the National Conference of the Commission on Uniform State Laws. Both of these attempts at a codified approach to relocation have some helpful insights that are consistent with good practice, but inevitably each is based on certain value judgments (Henaghan, 2009b, p. 8). Neither code, as drafted, has been able to provide a rule-based solution that will apply to all relocation cases.

The debate over the advantages and feasibility of achieving greater uniformity between family law systems (Duncan, 2009), and more specific efforts to establish greater international consistency in the resolution of relocation disputes, are nevertheless continuing. Lord Justice Thorpe, and his Office on International Family Justice for England and Wales, hosted **The International Family Justice Judicial**

Conference for Common Law and Commonwealth Jurisdictions 2009, at Cumberland Lodge, Windsor, from 4-8 August 2009. Forty-two judges and several academics (including Dr Nicola Taylor) participated from the following jurisdictions: Australia, Bangladesh, Canada, Cyprus, England & Wales, Ghana, Hong Kong, India, Indonesia, Irish Republic, Israel, Kenya, Malaysia, Malta, New Zealand, Nigeria, Pakistan, Scotland, Singapore, South Africa, USA, Trinidad & Tobago, Eastern Caribbean States. One of the Conclusions and Resolutions from the Cumberland Lodge Conference related to relocation:

8. *The search for common principles to be applied in the judicial resolution of relocation disputes in the best interests of the children concerned be pursued both nationally and internationally. Participating jurisdictions shall use their best efforts to ensure such disputes are resolved in a timely fashion. More research and longitudinal studies should be carried out into the impact of relocation decisions on the children and parents concerned, whether relocation is permitted or not (including comparative studies as to the impact of the non-custodial parent's decision to relocate).*

The **5th World Congress on Family Law and Children's Rights**, held in Halifax, Nova Scotia, Canada, from 23-26 August 2009, passed Resolution 22 to also encourage appropriate authorities to undertake longitudinal research into:

- the effects of shared parenting arrangements on children; and
- the effects of relocation on children.

On 23-25 March 2010 the Hague Conference on Private International Law and the International Center for Missing and Exploited Children, with the support of the US Department of State, hosted **The International Judicial Conference on Cross-Border Family Relocation** in Washington DC, USA. Increased international mobility of individuals and families has brought with it an increase in the number of relocation decisions requiring legal intervention. The objectives for this conference were to develop a better understanding of the dynamics of relocation and the factors which are relevant in judicial decision making, to explore the possibility of developing a more consistent judicial approach towards relocation cases, and to examine the potential for closer international judicial co-operation in such cases. Dr Nicola Taylor presented a paper (with Professor Marilyn Freeman) on the international research evidence concerning the impact of relocation on family members. The Washington Declaration on International Family Relocation records the agreements the judicial delegates reached.

The **International Child Abduction, Forced Marriage and Relocation Conference** is being held at London Metropolitan University, England, from 30 June to 2 July 2010. The findings from the four qualitative research studies undertaken on family members' perspectives on relocation disputes in Australia, England and New Zealand will be presented at this conference. Further efforts will also be made to seek agreement on the approach to be adopted for international relocations.

Chapter Five

Current Law in New Zealand

The Statutory Framework Governing Relocation Disputes

While relocation cases were uncommon in New Zealand during the 1970s, those that were decided followed the approach of the English Court of Appeal in *Poel v Poel* (for example, *Williamson v Williamson*, High Court, Invercargill, M42/77, 1 December 1974, per Somers J.). The two countries gradually diverged when “the New Zealand courts departed from the English approach ... on the basis that it proceeded on a flawed interpretation of the child’s welfare” (George, 2009, p. 107).

The starting point in New Zealand now is the Care of Children Act 2004, which repealed the Guardianship Act 1968, and governs disputes between parents and others over children. The term ‘relocation cases’ signifies disputes where the proposed move is either within the same province, or inter-provincial (between provinces within the South or North Island, or between the two Islands), as well as those proposed shifts to international destinations. A similar approach is adopted in Australia (Behrens et al., 2008a). Thus the South Pacific approach contrasts with the situation in England where permission is required only for international relocations or where a Court has made a prohibited steps order. Moves within the United Kingdom are usually regarded as the prerogative of the parent who is primarily caring for the child.

New Zealand guardians must agree on a change of the child’s residence that may affect the child’s relationship with their parents or guardians - section 16(2)(b) Care of Children Act 2004. If parental guardians cannot agree, permission for the proposed relocation must be obtained from the Family Court by an application under section 47(1)(a) of the Care of Children Act 2004 for a parenting order with a condition that the child may move, or by an application under section 44 of the Act for the Court to resolve a dispute between guardians. The former procedure is appropriate where the parent wishing to move is the established caregiver of the child either by agreement or by order of the Court. Where day-to-day care is not settled the application should be under s 44 of the Act - *R v S* [2004] NZFLR 207 (HC). As noted above, this regime is applicable regardless of whether the proposed relocation is to either a national or an international destination.

The focus of the Care of Children Act is on children’s care and not on parental rights. The purpose of the Act, set out in section 3(1)(a) and (b), is solely about children:

- To promote children’s welfare and best interests;
- To facilitate children’s development by helping to ensure that appropriate arrangements are in place for their guardianship and care;
- To recognise certain rights of children.

All legislation in New Zealand according to the Interpretation Act 1999 is to be interpreted according to its text and in the light of its purpose. The purpose section is regrettably often overlooked in the heat of relocation battles.

To deliver the purpose of the Act, Parliament has legislated that the welfare and best interests of the child must be the first and paramount consideration. The only difference in wording from the 1968 Guardianship Act is that the words “best interests” are added to “welfare.” It has been argued that welfare and best interests mean the same thing. For instance, in *Director General of Social Welfare v L* 1989] 2 NZLR 315, Richardson P felt that the word “welfare” was a broad expression and the term “and interests” found in section 11(b) of the Adoption Act 1955 were merely added words of emphasis.

However, in *Director General of Social Welfare v L*, in the context of section 11(b) of the Adoption Act 1955, Bisson J said that there was a distinction between welfare and interests. Welfare is defined as including the normal duty and care owed by a parent to a child to nurture the child to a state where the child is independent of the parent. Welfare includes the provision of shelter, clothing and food together with love and affection and it demands close and attentive physical and emotional involvement with the child. Bisson J here relied on Jeffries J’s definition of welfare in *E v M*, High Court, Wellington, M361/79, 13 September 1979.

Bisson J gave an example of the “interests” of the child as the consequences for the child of the termination of the parent/child relationship. He pointed out that there can be potential conflict between the welfare and best interests of a child. For example, a child may be in a situation where her welfare is being attended to by a foster parent, yet the long term interests of the child – to have a relationship with a natural parent – may mean that her immediate welfare may have to be sacrificed for the child’s long term best interests. In a relocation case the child’s immediate needs may be met by a relocating parent, but the long term interests of a relationship with the other parent may be put at risk.

The Concise Oxford Dictionary defines welfare as the “health, happiness and fortunes of a person.” Interest is defined as the “advantage or benefit of someone.” Therefore the child’s health, happiness and fortunes must be priorities along with any other advantages or benefits the situation can give to the child. This means that lawyers need to carry out a more wide-ranging consultation with their clients than under the Guardianship Act 1968. Immediate needs and more long-term benefits and advantages for the child should be discussed. For example, if a relationship with a child is put at risk it limits the future insurance for the child if anything happens to the primary carer and the other parent is no longer closely connected.

The words “first and paramount” are not the same as “sole” consideration. However, they have been interpreted to mean that they trump all other considerations. Lord MacDermott’s statement in The House of Lords in *J v C* [1970] AC 668 at 770 states that “first and paramount”:

... must mean more than that the child’s welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of

parents, risks, choices and other circumstances are taken into account and weighted, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules on or determines the course to be followed.

With the stronger child focus in the Care of Children Act 2004 it is crucial that the child's welfare and best interests really are first and paramount. Issues of sympathy for a parent, or trying to please both parents, or trying to appease a parent or punish a parent should not be allowed to dilute the paramountcy principle. The focus of negotiation is on the child's welfare and interests and how parents (or others) can meet those interests.

The principles in sections 4, 5 and 6 can be divided up into those that "must be" considered or taken into account, the "in particular" and the "shoulds" (see Henaghan, 2005, for a discussion on the implications of this wording). When the Care of Children Act 2004 came into force, the Principal Family Court Judge (Boshier, 2005) considered that section 5(b) of the Care of Children Act - which says "in particular the child should have continuing relationships with both of his or her parents" - indicated parents should not relocate if to do so would have a detrimental impact on the relationship with the other parent. Priestley J pointed out in *Brown v Argyll* that portions of Judge Boshier's paper were being used in submissions to support the proposition that the Care of Children Act 2004 made it more difficult to succeed in relocation cases – in essence a presumption against relocation.

The continuing relationship with both parents consideration along, with the other considerations, must be taken account of but it cannot be raised to the level of an overriding consideration. The fact the words "in particular" are used and that it "must be taken into account" mean that the continuing relationship with both parents consideration must be considered in each case, but does not mean it overrides other considerations - otherwise there would be no point in listing the other considerations. The Judge must still put the child's best interests as paramount. All the considerations are for one purpose – to benefit the child. The fact a continuing relationship with both parents has been given "in particular" status does not mean it cannot be outweighed by other benefits to the child, such as safety from psychological violence (section 5(e)) which would give an overall best interests approach to the child. Otherwise the "paramount" consideration of the child's best interests would be subservient to one of the considerations of the benefits of a continuing relationship with both parents. As Priestley J said in *Brown v Argyll* [2006] NZFLR 705 "centre stage is the section 4(2) requirement that the welfare and best interests assessment must focus on the particular circumstances of a child. This is as true for relocation cases as it is for all other disputes involving children."¹⁷ Judges need to show how each consideration relates to the particular child and give reasons as to what weight it should be given in relation to the child and the other considerations.

¹⁷ At para 63 Pankhurst J in *ACCS v AVBM* (Parenting Order) [2006] NZFLR 986, HC at [52] [53] said the new Act does not herald a change of approach.

New Zealand Court of Appeal

The two New Zealand Court of Appeal cases on relocation decided before the Care of Children Act 2004 both emphasise that the welfare of the child is the paramount consideration.

In *Stadnickzenko* [1995] NZFLR 493, CA (NZ) the Court said the preferable approach is to “weigh and balance” factors that are relevant to the particular circumstances of the case at hand “without any rigid preconceived notions as to what weight each factor should have” (at 500). The same emphasis was put in *D v S* [2002] NZFLR 116, CA (NZ) by the Court of Appeal where the emphasis was on all aspects of welfare to be taken into account, “there is no room for a priori assumptions.” The Court acknowledged in *Stadnickzenko* different judges could come to different results on the same facts. This is what happened in both *Stadnickzenko* and *D v S* where High Court Judges “weighed and balanced” differently than the Family Court Judges in both cases on essentially the same facts. This makes it difficult for lawyers to predict outcomes that are determined not so much by the rule of law, but by how the Judges see the parties and the interests of the child and the different weight they give to particular considerations. The Court of Appeal in *D v S* acknowledged that “differing assessments” are available and that in the end each Judge will bring his or her own “perspectives and experiences” (at para 57). The words of Frankfurter J are cited by the Court of Appeal in *D v S* that “... reason cannot control the subconscious influence of feelings of which it is unaware” (at para 57 from *Public Utilities Commission of the District of Columbia v Pottak* (1952) 343, US, 451, 466).

The Court of Appeal in *Stadnickzenko* and *D v S* listed factors to be weighed and balanced when determining what is best for the particular child:

- the child’s well-being may lie primarily with the primary caregiver and the well-being of that family unit bears on the best interests of the child. This has become known as the well-being of the parent affects the well-being of the child factor (*Stadnickzenko*);
- The child’s well-being may depend on the nature of the relationship with both parents – the closer the relationship and the “more dependent the child is on it for his or her emotional well-being and development the more likely an injury resulting from the proposed move will be” (*Stadnickzenko*);
- The reason for the move and distance of the move (*Stadnickzenko*);
- The child’s views. (*Stadnickzenko* and *D v S* at para 31);
- Both parents are guardians and share in the upbringing of the child that necessarily involves a right to be consulted on decisions of importance (*D v S* at para 28). The Care of Children Act (section 16(2)(b)) lists changes to the child’s place of residence as an important guardianship decision that requires consultation. This means that a parenting order giving day to day care does not mean a right to unilaterally change residence;
- The child’s welfare is not the only consideration – freedom of movement is an important value in a mobile community but the child’s welfare determines the course to be followed (quoting *J v C*, House of Lords). Whilst freedom of movement is recognised it cannot trump the child’s welfare that is legally paramount (*D v S* at para 30). As Kirby J put it in *AMS v AIF* (1999) 199 CLR

- 110 – “parents enjoy as much freedom as is compatible with their obligations with regard to the child” (at para 224);
- The welfare principle is consistent with the United Nations Convention on the Rights of the Child (*D v S* at para 31);
 - All aspects of welfare must be taken into account – physical, mental, emotional as well as development of the child’s behaviour consistent with what society expects. It is a predictive assessment. It is a decision about the future (*D v S* at para 32);
 - There must be no gender bias in deciding cases (*D v S* at para 33; see also section 4(4) of the Care of Children Act 2004). Note that there is a strong gender divide between women who are most likely to be the relocators and men who are most likely to be the status quo parent;
 - Decisions about relocation may be affected by the longevity of existing arrangements – “in some cases the duration of the existing arrangements and the greater degree of change proposed may require greater weight to be accorded the status quo” (*D v S* at para 35). Whilst this is not an a priori assumption, it is very close to one;
 - Decisions of Courts outside New Zealand are likely to be of limited assistance because of different social landscapes. “Two relevant factors of the New Zealand scene [...] are the growth and degree of involvement of both parents in family care and a clear move in Family Court orders to ... shared care” (*D v S* at para 36). Again this is close to an a priori assumption to keep both parents closely involved with the child;
 - Relocation cases are difficult but it is not appropriate to give specific guidelines about them (*D v S* at para 37).

The High Court has warned against a “tick the box” checklist approach (Priestley J in *Brown v Argyll*; Hansen J in *S v L* [2008] NZFLR 232 at para 28), but there is general agreement in the High Court that the considerations in sections 4, 5 and 6 of the Care of Children Act 2004 need to be applied to the case with particular emphasis on the considerations which are relevant to the particular child. Lawyers need to prepare their case around the considerations in the Care of Children Act 2004 in order to determine where the best interests of the particular child are likely to lie. Priestley J in *MBS v EAC* [2005] NZFLR 1 emphasised that a relocation application will be “immeasurably strengthened if there is detailed evidence relating to the environment factors and psychological factors.”

In summary each case will depend on its own facts, with Judges required to look to the future and assess which proposal put to the Court is best for the particular child. The judge will consider the matters in sections 4, 5 and 6 of the Care of Children Act as well as the additional factors suggested in *Stadnickzenko* and *D v S* - such as how a parent’s well-being relates to the child’s well-being and the effect on the child of spending less time with a parent. It is crucial that all evidence is gathered for one purpose only; to show the future impact on the welfare of the child. By its very nature such evidence is inevitably speculative and to a degree guess work.

New Zealand High Court

In a recent appeal to the High Court, *Carpenter v Armstrong* High Court, Tauranga, CIV 2009, 470.511, 31 July 2009, Heath J allowed the appeal and helpfully set out the

information necessary to make a better predictive assessment into the future which the law requires in such cases:

- a) Identify the developmental milestones for each child over the next five years. That is not an easy task but would involve predicting the levels of character, values, learning and personality the children could be expected to reach.
- b) Identify each child's needs to meet those milestones. Children need good role models, good schools, good friends, a safe environment, nurturing and love.
- c) Which parent is most likely to meet those needs without considering relocation? This will depend on each parent's ability to understand those needs and have the capacity to meet them.
- d) How will the different living proposals meet those needs? The choice was between the Bay of Plenty and the English Midlands. Heath J said more information would be required for the English Midlands so proper comparisons could be made.
- e) The views of the child, as far as feasible, on the issues. One child was young and unable to express views verbally. A psychologist was asked to assess the views indirectly from behavioural responses.
- f) What adverse effects is each child likely to suffer if the parent with day-to-day care of the children in one country does not actively foster a continuing and good quality relationship between the children and the other parent?

Adjudication Trends in New Zealand Relocation Caselaw

Professor Mark Henaghan (2003, 2008a, 2008b, 2009b; Henaghan, Klippell & Matheson, 2000) has been tracking relocation decisions in the New Zealand Family Court, High Court and Court of Appeal since 1988 (when such disputes were decided under the Guardianship Act 1968) through to current decisions under the Care of Children Act 2004. Patterns of decisions, while useful in indicating judicial trends, do need to be considered with caution as they do not reveal the nuances of each case. They are generally used to indicate whether particular judges or registries tend to be either pro- or anti- relocation. They may well do that, but it should be remembered that a particular Judge, for example, may have struck a number of cases where relocation was merited because of the child's close relationship with the moving parent and because there was a more tenuous and conflicting relationship with the other parent. The statistical trends also do not account for the many cases settled out of Court, or those where one party gave up contesting, or walked out of the children's lives and took no further interest in where they lived. Percentages also do not tell the whole story because some cases should never have gone to Court where the non-relocating parent has been abusive and disinterested in the child.

Prior to the Care of Children Act 2004

In the New Zealand context, of the cases decided between 1988 and 1998, there was a 62% success rate for the relocating parent (26 allowed to move and 16 not allowed) (Henaghan, Klippell & Matheson, 2000). This was a period when the New Zealand

Courts applied an approach closer to that formulated by Thorpe LJ in *Payne v Payne* [2001] 2 FLR 1052 CA – this gave greater weight, when considering the paramount consideration of the child’s welfare, to the emotional and psychological well-being of the primary carer (see the section on England / Wales in Chapter Four for a discussion of this case, including the principles articulated by Thorpe LJ as underlying English relocation law). This ‘success rate’ dropped to 48% for cases in 1999 and 2000 (16 parents allowed to move and 17 not allowed).

Henaghan (2003) later undertook another analysis of 31 cases decided between 2001 and 2003 to determine whether the success rate for relocating parents was continuing to drop and to establish the factors given weight when the matter was decided in Court. He considered that these “contested cases provide an important litmus test for future settlement of cases” (p. 194). Twenty-five of the judgments were from the Family Court and six from the High Court. The relocation was refused in 19 cases (62%, all from the Family Court) and allowed in 12 (38%) - six cases of which were decided by the High Court, including three which overturned a Family Court decision preventing a relocation and three upholding Family Court decisions allowing the relocation. Henaghan (2003) noted that this continuing decline in the success rate for relocating parents (from 62% in the pre-1998 figures to 38% in 2001-2003) represented “a very large drop” for these defended cases (p. 194).

A number of patterns emerged from Henaghan’s (2003) analysis of the statistical outcome of weighing and balancing the relevant factors by the New Zealand Courts. These included:

The pre-emptive strike: The tactic of relocating before the matter is decided in Court did not automatically lead to success. Five (42%) of the 12 parents where the relocation was allowed had already relocated. Only one of these cases was ultimately decided in the Court of the place of relocation; the rest were decided in the Court where the child had lived prior to the relocation. Of the 19 cases where the relocation was refused, seven parents had already moved with the child(ren) but were not successful in maintaining that shift. This was primarily because the parent who had moved had not settled in the new locality and had reneged on a previous agreement to jointly share the children. In two of these cases, custody was transferred to the non-moving parent (the father in both cases).

The weighty factors in successful relocation applications: The most common factors were:

- the establishment of a better quality of life for the children due to an improved environment;
- a well-established status quo in the new environment (dominant factor in three cases);
- a new partner with better work opportunities (dominant factor in three cases);
- escape from conflict (dominant factor in two cases);
- wider family support in the new locality (dominant factor in two cases);
- a homesick primary carer (dominant factor in one case).

The weighty factors in the refusals to allow the relocation:

- the key factor in a Court refusing a relocation application was the relationship between the child and the non-moving parent. Eight of the cases refused a

relocation because it was regarded as being in the child's best interests to have a relationship with both parents;

- the uncertainty of the new environment. The emphasis was on how the move may not work out and how it may unsettle the children (dominant factor in five cases);
- The children's preference to stay and not move (dominant factor in three cases);
- The positive attitude of the non-moving parent towards the other parent, especially concerning contact with the other parent (dominant factor in two cases).

The gender of the relocating parents: In the 12 successful relocation cases, ten (83%) of the relocating parents were mothers and two (17%) were fathers. In the 19 cases where the relocation was refused by the Court, 18 (95%) of the parents were mothers who wanted to move and one (5%) was a father who wanted to move.

The distance of the move: This was not crucial to the outcome. Five (42%) of the 12 relocations allowed by the Court involved overseas destinations – three to Australia and two to Europe. The other seven relocations were all within New Zealand. In the refused cases, two involved applications to move to Europe, two to the USA and the other 15 (79%) were within NZ.

Whether or not some judges are more likely to allow a relocation than others: Henaghan (2003) found that the only consistent pattern in the 31 cases he analysed from 2001-2003 was that the six cases involving High Court Judges all allowed relocations (three overturned Family Court decisions refusing the relocation and three upheld Family Court decisions allowing the relocation). There was no pattern of note amongst the Family Court bench – “given the legal weighing and balancing test it is not surprising that judges can say yes in one case and no in another” (p. 196). Henaghan thought it likely that the added weight given by the Court of Appeal in *D v S* to the growth and degree of involvement of both parents in family care was likely to be important in a continuing trend towards refusal of relocation applications in New Zealand. The Court of Appeal's acknowledgement of the importance of the status quo was also thought to mean that the party wanting to relocate would need to show why the current certainty of environment (provided it was working well) should be replaced by the promise of a better life elsewhere.

Are national and international relocation treated differently in New Zealand?

An analysis conducted by Stephen van Bohemen (2007) of 65 relocation decisions made by the New Zealand Courts between 1 January 2005 and 31 August 2007 found a difference in outcome between the ‘success rates’ for international and national relocation cases. Thirty-one of these decisions related to international relocation applications, of which 75% were successful. The other 34 applications involved national relocations within New Zealand and 33% of them were successful. This contrasts with Australian trends where Parkinson (2008a) found it is now harder to justify an international relocation than one within Australia.

Following the Inception of the Care of Children Act 2004

Interim Analyses

The case trends reported by Henaghan when relocation decisions were being made under the Guardianship Act 1968 revealed a decline in the number of applicants being allowed to relocate from the high of 62% of applicants pre-1998, to 48% from 1999 – 2000, and then 38% from 2001-2003. Interest was therefore strong in what impact the Care of Children Act 2004 might have on relocation success rates.

A small sample of cases from 2005-2007, immediately following the Act's introduction on 1 July 2005, found the relocation success rate had dropped again to 35% during a period when there was a strong emphasis on shared parenting (Henaghan, 2008a, 2008b).¹⁸ A range of common factors emerged in this analysis of the New Zealand cases. Where a Court allowed the relocation there tended to be a finding that the relationship with the other parent was not as strong and/or would not be affected by the relocation and there was conflict between the parents. In some cases there was a well-established status quo in the new environment as the relocation had already happened and the children were well settled there. The relocating parent generally had strong evidence of their need to relocate - they were usually the primary carer, there was evidence of risk to their emotional state if they were not allowed to leave, and there was a good reason for them to relocate. These reasons included a new career, to be closer to extended family members, a new partner with better work opportunities (with this latter factor becoming even stronger if there was a pregnancy or child with the new partner). Other weighty factors in successful relocation applications included an escape from violence and conflict, and the establishment of a better quality of life for the children due to an improved environment.

The main reasons for declining the relocation were the importance of the child's relationship with the non-moving parent and the need to preserve continuity in the child's life. Where relocations were declined, it was usually the mother who was applying to relocate and the Courts generally found that the mother's mental state was not such that she needed to move. Other factors included the uncertainty of the proposed new environment, the likelihood that the move may not work out, how it might unsettle the children, the children's preference not to move, and the positive attitude of the non-moving parent towards the child's other parent.

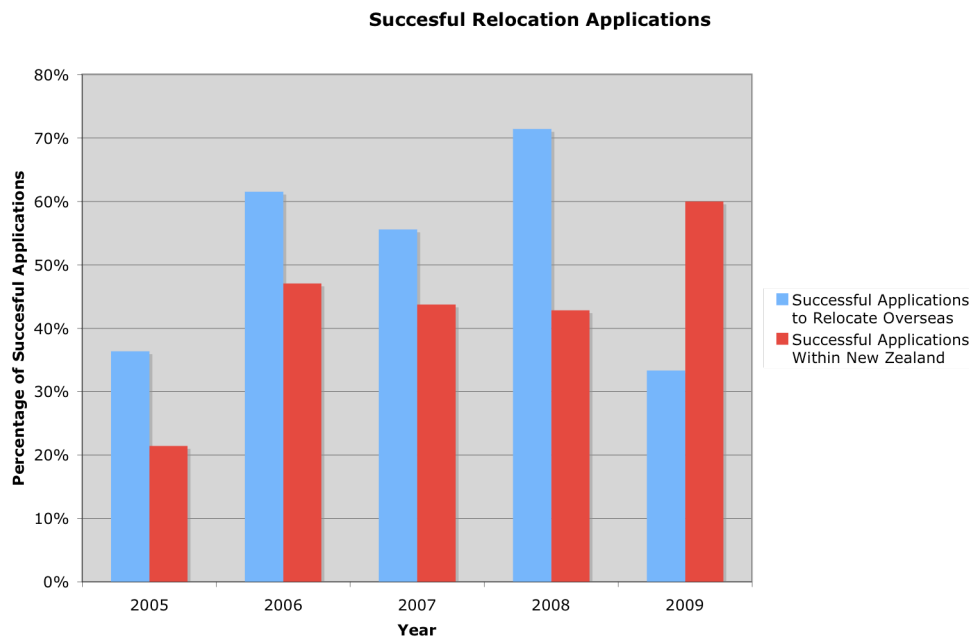
The most troubling cases were those where the mother was the primary caregiver and the child did not have a strong relationship with the father, but due to the mother's negative attitude to the father the Court was concerned that the child might lose all contact with the father. For example, in *S v L*, High Court Auckland, 17 December 2007, the High Court upheld the Family Court decision not to allow the mother to relocate to Australia. The mother went anyway and left the child with the father. Six months later the child was returned to the mother.

New Zealand Adjudication Trends since 2005

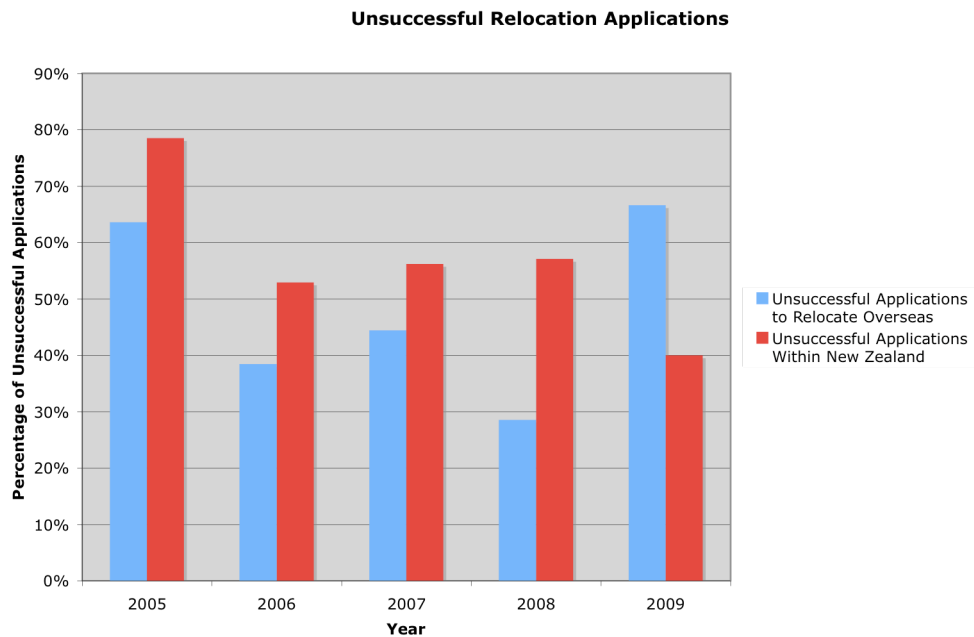
A key part of our Law Foundation funded research project on relocation involved a more thorough analysis of a much larger sample of 116 decisions since the Care of

¹⁸ See also Brown (2006) who analysed eleven relocation decisions since the passing of the Care of Children Act 2004.

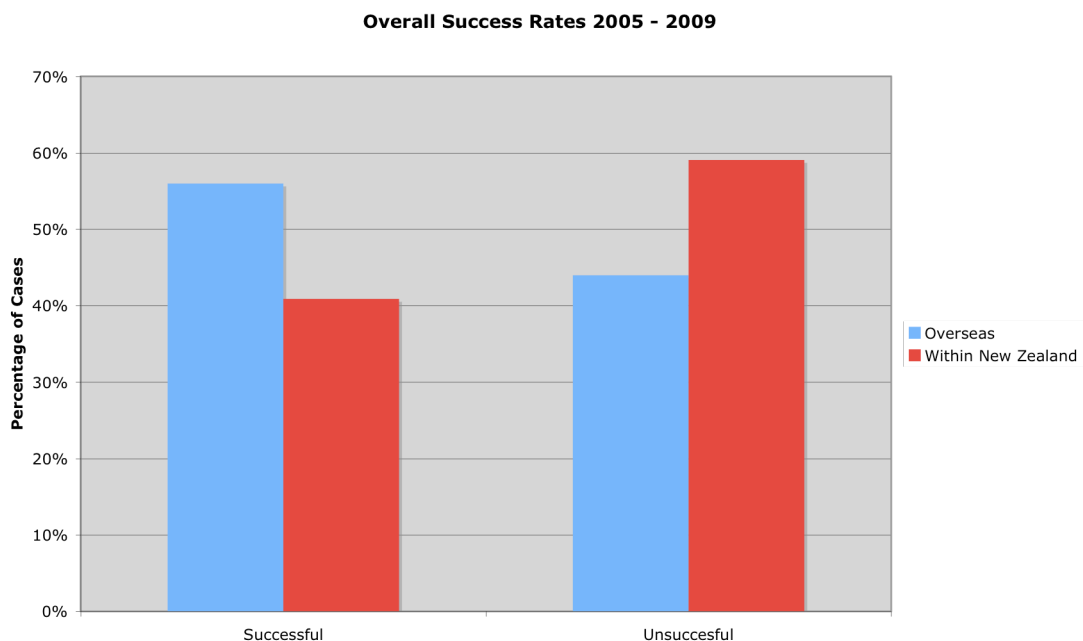
Children Act 2004 took effect in July 2005 (Henaghan, 2009b). These judgments are primarily from the Family Court, but also include 16 High Court decisions.



Successful applications to relocate **within New Zealand** since the introduction of the Care of Children Act have steadily increased from a low of 20% in 2005, up to 48% in 2006, down to 42% in 2007 and 2008, and up to 60% in 2009. Applications to relocate **overseas** have generally been more successful, from 38% in 2005 to a high of 70% in 2008. The increase in the success rate allowing applicants (or appellants) to relocate may be explained by the fact that those who apply to Court to relocate prepare their cases very well. While the Principal Family Court Judge (Boshier, 2005) postulated in his extra-curial article that relocation may be more difficult with the new Care of Children Act (because of the emphasis on the child's relationship with both parents), the High Court has since reinforced that there is no particular emphasis in the 2004 statute about how relocation cases are to be decided. This may mean that the Family Court is now looking at each case with no a priori assumptions for or against relocation.



These figures mirror the successful applications:



Overall, 55% of applications to relocate overseas were successful, whereas 40% of applications for relocation within New Zealand were successful. Intuitively one would think this would be the other way around. A reason why overseas relocations may be more successful is that due to the significant nature of the move the case may be better prepared and there may be more sympathy, particularly for a parent who wants to return home after a relationship break-up.

Predominant Factors in Relocation Cases

Lang J said in *M v M* High Court, Auckland, CIV 2009-404-1513, 9 July 2009, that a relocation case, like all parenting disputes about children, is “about which living arrangements will best meet the interests and welfare of the children.” It is, as Wild J said in *S v O* [2006] NZFLR 1 at 109, a “predictive assessment.” Whilst there are no prior assumptions in the end, after the weighing and balancing exercise, Courts have to come down one way or the other. They may do it on a quantitative basis, such as there are more factors for than against the relocation, or they may do it on a qualitative basis with a particular factor being the one that tips the balance a certain way. Either approach is fine as long as the Judge has considered and given reasons why other factors carry less weight in the particular case.

Our case analysis has focused on those factors that tend to be predominant when a relocation is allowed and those which are predominant when it is not. It is always safer for a lawyer to hang the case on more than one factor and produce the best possible evidence. It is important that the client is consistent, sincere and child focused with respect to what they are planning. The way a Judge perceives each party and their motivations is crucial in this discretionary area of the law where ultimately the Judge has to trust which parent will provide the best environment for the child into the future. Can the parent be trusted to take care of the child and to do what they said they would do in terms of how they will relate to the child and encourage the child’s relationship with the other parent into the future?

At the level of common law reasoning where the personalities are taken out of the equation and the focus is on generic generalities, many of the cases are indistinguishable from each other and therefore the outcomes should be the same. The difference in outcome is solely the way particular parties are seen by the Court.

For example, in *S v O* [2006] NZLFR 1 the mother, who was Irish, wanted to return to Ireland with the children where she would have the emotional and financial support of her family. The father was in a relationship with a former au pair of the family. Both the Family Court (Judge Callinicos) and the High Court (Wild J) Judges held that the mother’s emotional well-being was crucial to the well-being of the children. The mother was the primary care giver. The mother said she felt isolated, helpless and trapped in New Zealand: “it could be a life sentence.” This created more conflict with the father and a greater alignment of the children with the mother. It was accepted that the mother would work “hard and strenuously” to maintain the children’s relationship with their father.

In *LH v PH* [2007] High Court Auckland, CIV 2006-404-5799, 21 March 2007, an Austrian mother wanted to return home to Austria with the children where she had extended family. Her husband had formed a relationship with another woman. The mother said she was alone and unsupported in New Zealand and, like the mother in *S v O*, that she would be happier if she was allowed to return to her family in Austria. Both the Family Court and the High Court (Winkelman J) found that the mother could function well in either New Zealand or Austria and therefore the loss of the relationship with the father won the day.

The only difference between the two cases was less evidence in the latter case of a poor emotional prognosis if the mother remained in New Zealand and not the same degree of evidence of increasing conflict between the parents. The Family Court Judge had noted resentment as a possible element in the mother wanting to return to Austria and that she had a eurocentric view of the world which meant her attitude to contact with the father was not accepted as genuine. Winkelmann J commented that there is no expectation or requirement that Judges in relocation cases undertake an analysis of factual similarities and differences between cases (at 39). Each case, according to Winkelmann J, depends on “different dynamics between the mother and father, different circumstances and different children” (at 38). Personal assessment of the parties and the personal preferences of Judges rule in this area, not the rule of law. The emphasis on perception of the facts makes it crucial that lawyers prepare their client thoroughly, including the factual basis for their claim.

The Relocating Parent’s Case

Because there are no prior assumptions in New Zealand there is no presumption in favour of or against the relocating parent. The English Court of Appeal, led by Thorpe LJ in *Payne v Payne* [2001] 2 FLR 1052, CA, has led the charge in tipping the weighing and balancing in favour of the relocating (primary) parent and their emotional and psychological well-being (see Chapter Four). Thorpe LJ did acknowledge that the “effect upon the child of the denial of contact with the other parent and in some cases his family, is very important” (at 40-41). New Zealand Courts are, however, required to consider all the factors, including the **well-being of the relocating parent as it affects the child**. Once they have done that they then, as occurred in *S v O* with the Irish mother, come down on the well-being of the relocating parent and the dependence of the child on it as the crucial and decisive factor.

Gaudron J in the Australian High Court case of *AMS v AIF* (1999) 199 CLR 160 saw the issue as whether the relocating mother (to Darwin) should have day-to-day care no matter where she lives, or whether she should have it only if she lived in Perth. This puts the case in terms of who is really the best person to care for the child, which is a crucial issue in any parenting dispute. If the relocating parent clearly is the better parent to have care, and the relationship with the other parent can be maintained with quality blocks of time, then relocation is in the best interests of the child.

Priestley J in *MBS v EAC* [2005] NZFLR 1 said “A relocation application of course ... will be immeasurably strengthened if there is detailed evidence relating to environmental factors and psychological factors. The fact that the health and well-being of a primary care giver will be enhanced if relocation occurs is a potent factor which should not lightly be ignored” (at 39). If there is evidence of abuse, whether physical or psychological, that will enhance the relocation case. The recent Court of Appeal case of *Surrey v Surrey* 7 August 2009, [2008] NZCA 565 in the context of the Domestic Violence Act, emphasised that the Court is to assess the risk of domestic violence on the basis of past conduct informed by the subjective views of the victim. Reliance on past conduct was held to be an appropriate guide to future conduct, particularly when the perpetrator lacked insight into his behaviour. Those who have had to live with violence are likely to know the risks better than anyone else. There is

no definition given of ‘primary care giver.’ It assumes more than 50% of the care. It is an important starting point for a relocating parent.

It was accepted in *S v O* (at para 77) that a relocating parent’s well-being is relevant to the child’s welfare because a parent’s well-being enhances their parenting ability. It also gives justification to the reasonableness of why they want to move.

In *B v B* (Relocation) [2008] NZFLR 1083 the Family Court Judge had found that the mother was “just managing at present” and that there was a “significant risk potentially that [her] ability to cope alone will start diminishing rapidly” once the child started school. Because this was the crucial deciding factor in the case Duffy J held that independent psychological evidence was essential and that this was compounded by the fact that the Judge gave no reasons why such evidence was required. A further complication was that there was no evidence before the Court to show the respondent’s unhappiness was impacting negatively on the child but the “reverse is the case” (at para 51). Duffy J goes on to say that health professionals are usually reluctant to make predicative assessments of the mental health of parents. “Apart from anything else, the circumstances that will prevail in the future and their impact on psychological well-being cannot be known.” If that is the case further psychological evidence would not be of any help. The Family Court Judge had found that the child’s relationship with the father would be difficult to re-establish if the child went to England. This was seen to be a *predictable* factor, whereas the mother’s well-being was seen as *unpredictable*.

Duffy J concluded (at para 12) that “relocation will only be in the child’s best interests if his mother is so harmed by having to remain in New Zealand that her emotional and psychological health will deteriorate to a point where it will impact detrimentally on the child.” Given it was conceded earlier that such a prediction is not easy to find from experts, this makes it risky to pin a case solely on the well-being of the relocating parent. It puts the relocating parent, as George (2009) points out, in a ‘no win’ situation, “unless they will be so devastated by refusal of leave that their psychological health will be impaired if they cannot relocate. But a parent who was that psychologically troubled might risk losing control of their children altogether if the other parent were capable of having day to day care” (pp. 125-126).

The majority of the Family Court of Australia in *Taylor v Barker* [2007] FAM CA 1246 accepted that the trial Judge could “imagine” and “infer” from the evidence that the mother would not be happy if she were not able to move with the child and her new partner, who has a child, to Queensland. The minority Judge, Faulks DCJ, was not prepared to “elevate an inference” to the conclusive factor – “an expert opinion based on observation and fact rather than conjecture may establish the veracity of such an inference” (at para 128).

Easteal and Harkins (2008) found that Australian Family Court Judges are giving less weight to the mover’s happiness as a consideration because they are following the minority view of Faulks DCJ and requiring expert evidence. One Australian Judge said that “if parental happiness is a relevant consideration it must surely be that the happiness of both parents is relevant” (*Glover v Taylor* FMCA Fam 926 DC 200711760 at [39]).

A relocating primary caregiver's well-being needs to be combined with a **good reason to relocate** such as retraining, a new job, leaving an abusive partner, a strong network of friends and family, a good attitude towards the father and a clear commitment to ongoing contact between him and the child - provided there are no safety issues where non-contact or limited contact would be appropriate. The child's safety is a mandatory principle in section 5(e) of the Care of Children Act 2004 and children are entitled to protection from all forms of violence including psychological violence. A clear plan for the schooling and upbringing of the children and a plan of how to integrate the children into the new environment is necessary. Children who are old enough to understand need to have been consulted on the move.

The **avoidance of conflict between parents** as a justification for relocation can be a double-edged sword if there is a good relationship between the children and the other parent. Is it better that children have less conflict in their lives but potentially lose their relationship with the other parent? That will depend very much on what is most important for the particular child. Some children can cope with conflict if their relationship with both parents is kept intact.

In the recent case of *K v B*, High Court Auckland, 23 April 2009, CIV 2008-404-000583, two girls, F aged 6 and K aged 4.5, had quite different upbringings. The parents were Muslim. F, from 1-2.5 years of age, spent all her time in the care of her father and stepmother in New Zealand and barely any time with her mother until she was two years old. K spent her entire life in the care of her mother and her mother's family in Australia and never saw her father or sister. Both children and parents were in New Zealand and the mother wanted to take the children to Australia. The Family Court held the children were attached to both parents. Mr B was not able to travel to Australia. The mother was found to be in danger of alienating the younger child, K, against the father. The mother, who had moved a number of times, was seen as lacking stability for the children and this would be exacerbated if she went to Australia. The relocation was refused by the Family Court.

Courtney J found that the relocation issue was a major cause of the conflict between the parents and that the quality of the girls' relationship with the father would be adversely affected by a move to Australia. Courtney J accepted (at para 53) that if the children moved to Australia with the mother their relationship with the father would suffer, the risks of alienation would be higher and there would be a sense of loss, especially for F. Courtney J decided that the unacceptable risk of damage to the children from the conflict was the decisive factor and the mother was given permission to take the children to Australia. There was no evidence in the case that there was physical or psychological abuse by the father. The conflict was not explained. What was the nature of it? What were the causes? What impact did it have on the children? The decision has the potential to totally alienate the children from their father. This could be very damaging to F who had a close relationship with her father. There was no clear weighing of how important the relationship with the father was for the children and why it was less important than lessening the conflict. The children could have been placed in the father's care, or more work could have been done on lessening the conflict in New Zealand so the children could benefit from both parents. The children may have preferred the conflict to the alternative of a significantly reduced relationship with the father.

By comparison, in *Carpenter v Armstrong*, High Court Tauranga, 31 July 2009, CIV 2009-470-511, the parents detested one another and constantly fought. The mother's application to relocate to England with two boys, aged 7 and 3, was successful in the Family Court on the basis that she needed to escape the conflict and have the benefit of the emotional and financial support of her extended family in England. The father said he had to stay in New Zealand to support his mother. Heath J held that the present conflict did not assist in determining which of the two parents could best undertake day-to-day care in the future because the mother said she would go to England anyway, even without her children. The case had been fought on what was best for each parent. Therefore the Family Court had to choose the least detrimental outcome for the children and that was against the spirit of the Act – a “damage control” function (para 12).

Heath J allowed the appeal and asked for a refocus on the children's best interests. This focused on which of the two options, living with the father in New Zealand or living with the mother in England, was best for the future well-being of the two boys. One boy was more attached to the father and one more attached to the mother. Generally it is seen as against the interests of children to separate them from each other, but each case must be looked at on its specific merits. In the end the case will be decided on which parent the Court trusts best to bring up these children. Both parents had a very poor attitude to each other. The parent who can readjust their attitude to consider the children's relationship with the other parent will strengthen their case.

The Non-Relocating Parent's Case

The overwhelming fact to emerge from the case analysis in respect of the non-relocating parent is that there needs to be **evidence that the child needs a continuing relationship with that parent for their future well-being**. Concerns about damage to that relationship, diminishing that relationship, estrangement of that parent, and injury to that relationship, are predominant in the cases where relocation is declined whether it is a relocation within New Zealand or internationally. Evidence of the “psychological needs” of the child for a close relationship with the non-relocating parent is powerful. For example, in *R v P*, Family Court, Dunedin, FAM 2005-012-000233, 23 February 2006, Judge Emma Smith declined a mother's wish to relocate to Australia with young children (aged 4, 5 and 3). The mother had good reasons for her proposed relocation, such as employment and financial opportunities. She was also the primary caregiver of the children. Psychological evidence before the Court said the children had an unfulfilled psychological need for more time with the father and this was crucial to the decision to decline the relocation. When children are young and there is a good and growing relationship with the father, Judges are reluctant to allow relocation too far away because the growing relationship may be stopped in its tracks and may never recover.

This can be difficult for young mothers who are desperate to start a new life. In *S v L*, [2008] NZFLR 237, the child was six years old and had been born as a result of a brief relationship with the father. Initially the father had not shown interest, but in recent times was beginning to develop a relationship with the child. The mother had a new fiancée and desperately wanted to relocate to Australia where her father lived. The mother, who was clearly the primary caregiver, had a negative attitude towards

the father because of the relationship. Both the Family Court and the High Court feared that if the mother did go to Australia this attitude might mean that the relationship with the father would wain because the mother would not encourage it once she was out of the country. The mother in this case moved to Australia without the child. Within six months the father decided it was better if the child lived with the mother.

The other factors which generally support non-relocation are the **continuity principle** and the fact the **status quo is working well**: the child is doing well in the current environment. Lack of a male figure in a child's life, the uncertainty of the new location, no good reasons for relocating by the relocating parent are also all factors in favour of the non-relocating parent's case. The attitude of the relocating parent and the children's desire to remain in their present community are also consistent themes where relocation is declined. Such relocating parents are not trusted to continue to foster the relationship between the children and the non-relocating parent.

Are there Relocating and Non-Relocating Judges?

The majority of Judges have a reasonably even split between allowing or not allowing relocation. Judge Ullrich has the highest percentage 'decline' rate in contested relocation cases that go to Court, followed by Judge Ryan. Judge Annis Somerville has the highest percentage 'allow' relocation rate in contested cases that go to Court, followed by Judges Mather, Walker and Burns. Such percentage rates do not necessarily signal a bias in one direction or the other. Judges have to take into account all the factors and come down one way or the other.

Inside the Judicial Mind

Judges can tend to anchor and frame their decisions. This means they start from a preferred fixed point and then look at risks and benefits around that anchor. Fiona McKenzie's (2009) study of relocation included responses from seven Family Court judges to their approach under the Care of Children Act 2004. It shows that some Judges start from a clearly preferred position as they see the legislation, while others are more neutral in their approach:

I now start from the position of sharing day-to-day care, but with no assumption that it should be equal. However, if a parent is available for equal care and wants that, I look for reasons why not. I move to physical contact and then non-physical contact depending on how difficult that is to put in place.

By seeking a sharing of the day-to-day care wherever possible, looking to other means to provide relationships where a sharing of day-to-day care is not possible.

Starting point child to have a relationship with both parents however that can happen but no presumptions - it should be 50/50.

I have a very close focus on the child's relationship with each parent and how this may be affected by different care options.

The issue of a child's right to have a relationship with both parents is one of the factors to be taken into account in any relocation case. In one case it might get greater prominence or weight than in another. I do not think it forms a factor to be given any greater weight than any other factor. The Court of Appeal has made it very clear that no prior assumption should be brought to a case and each case needs to be assessed on its own merits.

I don't start from a position (consciously). I look at the history, the individuals, the relationships, the skills and compare the effects of possible outcomes and attempt to match a form of orders that makes sense of those matrices.

Keeping the Experts on Track

The best person to keep experts appointed under section 33 of the Care of Children Act 2004 on track is the lawyer for the child. Winkelmann J in *LH v PH*, High Court Auckland, 21 March 2007, CIV. 2006-404-5799, used the process from the High Court decision of *K v K*, (2004) 23 FRAZ 534 to emphasise that the code in section 4 of the High Court Rules 1985 should be complied with by experts to ensure impartiality and independence. This is crucial in relocation cases when so much is at stake. The code requires that:

- a) an expert has an overriding duty to assist the Court impartially on relevant matters within the experts area of expertise;
- b) an expert is not an advocate for any party;
- c) an expert must state his or her qualifications in a report;
- d) if an expert witness believes that his or her evidence might be incomplete or inaccurate without some qualification, that qualification must be stated;
- e) the facts, matters and assumptions on which opinions are expressed must be stated explicitly;
- f) the reasons for opinions given must be stated explicitly;
- g) any literature or other material used or relied upon to support opinions must be referred to by the expert; and
- h) the expert must not give opinion evidence outside the witness' area of expertise.

Is it Worth Appealing a Relocation Case?

There have been 16 appeals to the High Court under the Care of Children Act 2004 in relocation cases.¹⁹ Generally relocation cases are appealed from a parenting order

¹⁹ * = successful appeals. **B v B* [2008] NZFLR 1083; *S v O* [2006] NZFLR 1; **K v B* 23/4/09 (2009) 27 FRNZ 417; *D v T* 13/6/08 [2008] NZFLR 761; **S v L* [2008] NZFLR 237; *V v F* 1/12/06 CIV-2006-485-1573; *H v H* 7/7/09 CIV-2009-485-341; **E v B* 14/11/08 [2009] NZFLR 126; *H v H* 21/3/07 [2007] NZFLR 737; **A v H* 27/10/06 CIV-2006-419-1210; *B v S* 9/6/06 [2007] NZFLR 263; *Brown v*

where there is a general right of appeal under s.43 of the Care of Children Act 2004. In some cases the original application is under sections 44 and 45 (the disputes between guardians provisions). A child's place of residence is a guardianship matter. Resolution of guardianship decisions requires leave of the High Court to appeal. Heath J in *A v H*, High Court Hamilton 27 October 2006, CIV 2006-419-1210, said that because relocation is critical to any subsequent parenting order "leave to appeal will almost inevitably be granted." Panckhurst J in *ACCS v ALMB*, High Court Christchurch, 5 May 2006, CIV 2005-409-002492, said guardianship disputes over relocation are of such fundamental consequence that it would be unthinkable if they were not susceptible to appeal. Six of the appeals have been successful. There has been some discussion in the High Court cases since *Austin Nichols & Co Inc v Stitching Lodestar*, [2008] 2 NZFLR 141 SC, as to whether an appeal in a relocation case is a general right of appeal or an appeal from a discretion. In the end the High Court Judges followed Blanchard J's statement in *D v S*, [2003] NZFLR 81 CA, that they are fully entitled to substantiate their views on questions of fact including what is in the best interests of the child. The Judges can take account of the fact that the Family Court Judge heard and saw all the witnesses, but are still free to substitute their own views on questions of fact and evaluation. There is no automatic deference to the fact the Family Court is a specialist Court.

But when should appeal Judges substitute their own views? When a Family Court Judge does not consider a relevant consideration important to the particular child then that is a time for intervention. It is also appropriate where the trial Judge does not give reasons as to why particular considerations are relevant or not. The whole point of a consideration is that its relevance, or not, must be explained and justified in terms of the other considerations.

A further basis on which High Court Judges intervene is where they do not agree with the reasons for the weight to be given to a consideration. Here, the Family Court Judge has taken into account the relevant considerations and given reasons for how they have been weighed and balanced, but the High Court would weigh and balance them differently. The Court of Appeal in *D v S* accepted that "differing assessments" are available and that in the end each Judge will bring his or her own "perspectives and experiences" (at para 57).

What about Contact if the Relocating Parent Moves?

Contact can be more difficult following relocation and may sometimes completely break down. There are reciprocal legal arrangements with Australia that make it a little easier to enforce Trans-Tasman contact. However, there are no such arrangements with other countries. This puts the non-relocating parent at the behest of the relocating parent if contact breaks down. They would have to commence proceedings in an overseas Court, which is costly and without guarantees.

In *Hunter v Morrew*, [2005] EWCA CIV 976, Simon Jefferson took a New Zealand High Court declaration to the Court of Appeal in the United Kingdom about rights of access. The English Court of Appeal held that as the declaration was not supported

Argyll 9/5/06 [2006] NZFLR 705; *M v M* 9/7/09 CIV-2009-404-1513; *ACCS v AVMB* 5/5/06 [2006] NZFLR 986; *T v J* 10/11/05 CIV-2005-485-559; *Carpenter v Armstrong* High Court, Tauranga, CIV 2009, 470.511, 31 July 2009.

by legislation in the Care of Children Act 2004 they did not have to abide by the declaration of the New Zealand High Court.

Chapter Six

New Zealand Families' Experiences of Relocation

A significant part of our three-year research project funded by the New Zealand Law Foundation for the period January 2007 to December 2009, was to conduct interviews with New Zealand families about their experiences of relocation. This research was approved by the University of Otago Human Ethics Committee in November 2006 and had the support of the Principal Family Court Judge and the Family Law Section of the New Zealand Law Society.

Purpose and Rationale

The purpose of this research was to explore families' experiences of a post-separation relocation dispute. While relocation is one of the most controversial and difficult issues in family law, there has been very little empirical research in this field, and at the time this project was designed, none which sought the views of parents and children.

The **objectives** of the research were:

- To examine parents' and children's experiences of the outcomes of relocation disputes after an application to relocate has been allowed or refused (by a parent or the Family Court), and to then follow-up these families 12-18 months later;
- To explore the factors associated with the successful adaptation of children who are relocated away from their non-resident parent, and to identify any problems they encounter;
- To determine the short-term and medium-term patterns of contact which develop when children relocate away from their non-resident parent;
- To explore the effects of a decision not to approve a relocation on the relationship between the parents, and the relationship each of them has with their child(ren);
- To examine (in the fully litigated cases) the accuracy of predictions made by the Family Court about the likely consequences for parents and children of approving or refusing the proposed relocation.

Methodology

Recruitment

Families where a parent has relocated (or sought to relocate) with the children and that move would have a significant impact on contact arrangements with the other parent were recruited to take part in the study. All New Zealand family lawyers were informed about the study in 2007 and invited to draw it to the attention of current/former clients who consulted them about a relocation issue. Lawyers provided their clients with a letter and brochure that we supplied about the research, and

interested clients either gave their consent for their contact details to be passed onto us or contacted us directly via email or on our national toll-free telephone number. Nicola Taylor and Megan Gollop then followed up all these contacts by telephone and gained their written consent to participate in the study via mail. The possibility of the person's ex-partner and children also taking part in the research was raised with each parent participant when they initially spoke with us. If appropriate, and the participant was agreeable, we then wrote to the ex-partner inviting them to participate and, where relevant, sought their consent to interview the children.

Recent New Zealand Court judgments involving relocation decisions were also reviewed to identify potential cases for inclusion in the study. Letters were written to the family lawyers involved in each case asking them to pass on information about our research to the party they represented.

We had initially hoped to recruit families within six months of their relocation case being resolved, but the numbers coming forward were not sufficient to achieve this. We therefore used articles and advertisements in community newspapers and on websites to recruit more families to attain the desired sample size. This had the advantage of broadening our sample to incorporate both litigated disputes and those resolved by parental agreement (either with or without lawyer, counselling or mediation interventions) and to include families whose relocation issues had been resolved over a range of years.

A small number of participants were recruited via word of mouth, and approached us wishing to participate after hearing about the study through friends or family.

Sample

One hundred families participated 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.

Parent sample

The majority of the sample identified as European/Pākehā (82%), with 7% identifying as Māori, and 5% describing themselves as both Māori and Pākehā. Two percent identified as Pacific and 1% as both Pacific and Pākehā. One percent of the sample was Asian and 2% identified as 'Other.' (One parent did not answer the ethnicity question). Twenty-two (19%) of the parents were not born in New Zealand and had immigrated to New Zealand as adults, from countries such as Australia, Ireland, England, the United States, the Netherlands, South Africa, Bangladesh, Columbia and Italy. Table One shows that three-quarters of the parents were aged between 36-50 years, and Table Two presents the adults participants' annual income.

Table One: Age of Parents

Age Range	Frequency	Percentage
26-30 years	2	1.8
31-35 years	16	14.0
36-40 years	31	27.2
41-45 years	33	28.9
46-50 years	21	18.4
51-55 years	6	5.3
56-60 years	4	3.5
61+ years	1	0.0
Total	114	100

Table Two: Parents' Approximate Annual Income

Annual Income	Frequency	Percentage
\$0-9,999	3	2.6
\$10,000-19,999	11	9.6
\$20,000-29,999	14	12.3
\$30,000-39,999	15	13.2
\$40,000-59,999	32	28.1
\$60,000-79,999	15	13.2
\$80,000-99,999	9	7.9
\$100,000	9	7.9
Don't know	2	1.8
Didn't answer	4	3.5
Total	114	100

Table Three: Current Parent Type

Care arrangement	Mother	Father	Total
Resident parent	50	9	59 (52%)
Contact parent	8	24	32 (28%)
Split care parent	8	2	10 (9%)
Shared care parent	4	4	8 (7%)
Independent contact	1	2	3 (3%)
Independent resident	2	0	2 (2%)
Total	73	41	114

Table Three indicates that at the time of the initial interview over half (52%) of the participants were resident parents (50 mothers, 9 fathers); and just over a quarter (28%) were the contact parent (8 mothers, 24 fathers). Ten parents (9%; 8 mothers, 2 fathers) had a split care arrangement whereby one parent had the day-to-day care of one or more children and the other parent had the day-to-day care of the other children in the family. Seven per cent of the parents interviewed shared the care of their children with their ex-partner (4 mothers, 4 fathers). Five of the participants (3 mothers, 2 fathers) had children who were living independently at the time of the interview, but they had previously been the contact parent (3%) or the resident parent (2%).

Table Four: Parent ‘Relocator’ Type

	Mothers	Fathers	Total
Successful applicant*	39	1	40 (35%)
Unsuccessful applicant*	19	1	20 (18%)
Successful opposer	2	11	13 (11%)
Unsuccessful opposer	3	19	22 (19%)
Non-opposer	1	5	6 (5%)
Applicant (case still unresolved)	3	0	3 (2%)
Opposer (case still unresolved)	0	1	1 (0.9%)
Other	6	3	9 (8%)
Total	73	41	114

*The use of the word ‘applicant’ here refers to a parent who expressed a desire to relocate regardless of whether they were an applicant to the Family Court or an appeal Court.

The position the parents took in terms of the relocation issue (i.e. whether the parent was the one who wished to relocate or the one who opposed their ex-partner relocating) is shown in Table Four. Included in these figures are six cases where a Family Court decision was appealed, in which case the final outcome was coded. The majority (35%) of the participants were those who had successfully sought to relocate, while just under a fifth (18%) of the parents had wished to move but had not (either because their application had been declined, there was a non-removal order in place, or they decided to stay after discussion with their former partner). While about a tenth (11%) of the parents who participated were those who had successfully opposed their former partner relocating with their children, almost a fifth were unsuccessful in opposing such a move. The ‘non-opposers’ group of parents (1 mother, 5 fathers) did not object or legally challenge the other parent relocating with the children, and only

comprised 5% of the participants. The ‘other’ category included: parents in families where it was the non-resident parent who had relocated; both parents moved at the time of the separation; the move occurred prior to the separation; or it was the contact parent who lived in a different location to the children who was successfully applying for their care, thus resulting in the children (not the parent) relocating. Only nine (8%) of the 114 parents fell into this ‘other’ category.

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 at the time of the interview. There were more mothers who successfully relocated (39) than those who were prevented from moving or who, after parental discussion, had agreed not to move (19).

For the majority (62%) of the families that participated the proposed or actual relocation was a domestic one, with distances ranging from 55km to 1450 km. Over a third (38%) of the families had an issue involving an international relocation; 25 from New Zealand to another country, and 13 to New Zealand from abroad. The proposed or actual relocation destinations are presented in Table Five.

Table Five: Proposed or Actual Relocation Destinations

Location	From NZ to:	To NZ from:	Total
Australia	11	5	16
England	3	3	6
Ireland	3	0	3
Germany	1	1	2
Canada	0	1	1
Scotland	1	0	1
Netherlands	1	0	1
Canada	0	1	1
USA	1	1	2
South Africa	1	0	1
Sri Lanka	1	0	1
Oman	1	0	1
Dubai	0	1	1
Columbia	1	0	1
Total	25	13	38

Table Six: Parent ‘Mover’ Type

	Mothers	Fathers	Total
Moved	46	4	50 (44%)
Moved but ordered back	1	0	1 (0.9%)
Moved but returned	4	0	4 (3.5%)
Followed children	0	3	3 (3%)
Moved elsewhere	1	6	7 (6%)
Stayed	16	28	44 (38.5%)
Stayed then later moved	2	0	2 (2%)
Yet to be determined	3	0	3 (3%)
Total	73	41	114

Table Six shows that the sample was quite mobile with over half (59%, n=67) of the parents geographically relocating, and 44 parents (38.5%) not moving at all and remaining where they lived prior to the relocation issue arising (2% remained initially but then moved later). While many parents had moved (either with or without their children), four parents (3.5%, all mothers) had eventually returned to their original location (where the father resided) either voluntarily or, in one case, the mother was ordered back by the Court. Some contact parents whose children had moved away with their resident parent either followed their children to the new location (3%, all fathers) or subsequently moved elsewhere themselves (6%, 1 mother, 6 fathers).

Child and Young Person Sample

Forty-four children from 30 families were interviewed about their experiences, ranging in age from 7.6 to 18.1 years (mean age = 12.1 years). There were 23 girls and 21 boys.

The parents of the majority (77%) of the children and young people described their ethnicity as European/Pākehā; seven (16%) children were identified as Māori/Pākehā; one (2%) as Māori, and two (5%) were described as Asian.

Data Collection

Data was collected in two phases.

Time One - Initial Interviews

At Time One during 2007 and 2008 the first round of in-depth, semi-structured interviews was conducted with the parents and their children aged 7 years or more. Parents also completed a Demographic Questionnaire at the end of the interview.

The adult interviews were predominantly conducted in the participant's home, but some were undertaken in university offices, cafes, a friend's or ex-partner's home, a motel, a mall and an airport. Nine interviews were conducted over the telephone. The majority of the adults (52) were interviewed by Nicola Taylor, with Megan Gollop interviewing 34 parents, and both researchers jointly interviewing 28 parents. The adult interviews ranged in duration from around 40 minutes to three hours.

Most of the children were seen at one of their parents' homes - twenty-eight (64%) of the children and young people were interviewed at their resident parent's home; six (14%) at their contact parent's home; five (11%) children who had a shared care arrangement were interviewed at one of their homes, with the remaining five (11%) of the children and young people coming into our University research centre for the interview.

The majority of the children and young people (35) were interviewed by Megan Gollop, with Nicola Taylor interviewing eight children, and one young person being interviewed by both interviewers jointly. Most often the children and young people spoke with the interviewer by themselves; sixteen children from six families chose to be interviewed with their siblings, and six spoke to the interviewer with one of their parents present. The children's interviews were around 20-30 minutes in duration.

The **interviews with parents** covered the following topics:

- Separation – details about when the separation occurred and what contact/residence arrangements were made for the children, how these were decided and whether these arrangements changed prior to the relocation issue;
- Relocation issue – when it arose, who wished to move and why, what was proposed, whether legal advice was sought;
- Process for resolving the issue – how the issue was resolved (e.g. Family Court counselling, mediation, defended hearing, by agreement); which professionals were involved;
- Outcome – what the decision was and what contact/residence arrangements were made – how these work for parents/children;
- Satisfaction – with the Family Court process, with legal professionals (e.g. lawyers, counsellors etc);
- Current situation – current contact/residence arrangements – cost of travel, distance children/parents travel, convenience;
- Relationship issues – parental relationship, parent-child relationship, importance of extended family;
- Impact of the relocation and/or relocation dispute – on parents, children, family relationships;

- What had helped/hindered family adjustment to the relocation (or to the relocation dispute);
- What advice the participant would give to others in a similar situation.

The **interviews with the children** covered their:

- Family and living arrangements;
- Knowledge and understanding about their parents' separation;
- Current and past contact and residence arrangements and how they feel about these;
- Knowledge of and involvement in the relocation decision;
- Experience and understanding of any professionals involved;
- Experiences of moving if applicable.

Time Two - Follow-up Interviews

The follow-up interviews were conducted with the parents around 12-18 months after their initial interview. This enabled the impact of the relocation decision and any changes in family relationships and contact arrangements to be tracked over time. The interview focused on any changes in contact since the initial interview, any further legal or Court involvement, and the parent's reflection on the impact of the relocation issue on family members and family relationships.

Some standardised measures were also administered. Parents completed a questionnaire that focused on the nature of the parental relationship (conflict, contact, communication, co-parenting). Parents also filled out the 'Strengths and Difficulties Questionnaire' which assesses a child's social and emotional development, for each of their children aged 4-17 who had been affected by the relocation issue.

Of the 114 parents from 100 families who were initially interviewed 102 (89%) were re-interviewed 0.9-1.9 years after their first interview (mean delay=1.3 years). In 91 of the 100 families that took part we followed up and interviewed at least one parent. Twelve participants were not re-interviewed because their contact details had changed (five parents) or they did not respond to our repeated invitations to talk with us again (seven parents). Of these seven, we nevertheless had limited email or phone contact with four parents, enabling us to ascertain whether there had been any change in their place/country of residence.

Most of the follow-up interviews were conducted face-to-face, predominantly in the participants' homes, with eight being completed via a written emailed 'interview', 18 being conducted over the telephone, and one via Skype.

Preliminary Findings: Parent Data

The Complexity and Diversity of the Relocation Issue

The retrospective element of our study allows a more longitudinal view of patterns of mobility within post-separation families and reveals the complex and diverse nature of relocation issues in the New Zealand context. Within our sample it was not possible to simply categorise families as those where the proposed relocation had either been allowed or declined, and whether the proposed move had occurred or not. Many different relocation sequences emerged which expanded beyond the more standardised patterns of successful or unsuccessful applicants and opposers found in the Australian studies. Not all of our families actually disputed and/or legally challenged a proposed relocation, there were multiple relocations within some families (either proposed or actual, some opposed and some not), and in several families both parents relocated. Within our sample it is therefore evident that a relocation 'dispute' is not a discrete, one-time-only event, but is instead illustrative of an ongoing process of family post-separation transition(s). Many families in this study described non-opposed relocations before the disputed move, and as will be shown, the families' situations did not remain static after the relocation in issue was resolved.

For data analysis purposes we have coded 'the relocation' as the move (proposed or actual) that each participant primarily focused on during their initial interview. In many instances this was straightforward as the dispute had clearly been over one application to relocate; in other cases where there were multiple (proposed) moves we have had to determine which move actually counts as 'the relocation.' With this in mind, the 100 families fell into 12 different groups that describe the sequence of their relocation issue, thereby allowing insight into not only the antecedents and precursors of the relocation, but also the outcome and any subsequent transitions.

Families have been initially divided depending on whether or not the resident parent had moved. In over two-thirds (73%) of the families the resident parent has moved. Within the remaining 27 families, there are four families where, at the time of their initial interview, the relocation dispute had yet to be determined by the Family Court. In the remaining 23 families the resident parent had not proceeded with the proposed move because it was opposed by the other parent, or it was the contact parent who had moved or wanted their children to move to be with them in a different location.

Table Seven outlines the number of families in each of the 12 categories of relocation sequences and illustrates the complexity and diversity involved:

Table Seven: Relocation Sequences²⁰

Resident (or shared care) parent moved (n=73)	
1. Family Court (or the High Court on appeal) allowed the relocation and the parent relocated <i>with the child/ren</i>	23
2. Resolved by parental agreement or was not opposed by the other parent and the parent relocated <i>with the child/ren</i> (in 2 cases the move occurred prior to the separation)	20
3. Unilateral move by the resident parent, that was opposed but the Family Court allowed the parent to remain in the new location <i>with the children</i>	10
4. Unilateral move by the resident parent, which was <i>not</i> opposed or legally challenged and the parent remained in the new location <i>with the children</i>	7
5. Unilateral move by the resident parent, who was ordered back, and returned <i>with the children</i>	1
6. Unilateral move by the resident parent, ordered back or subsequent relocation application denied, the <i>children returned, the resident parent did not</i>	5
7. Family Court declined a relocation application or a Non-removal order was granted, and the parent moved <i>without the children</i>	7
Resident (or shared care) parent did not move (n=23)	
8. Family Court or the High Court (on appeal) declined the relocation, the parent remained <i>with the children</i>	10
9. Resolved by agreement with the other parent and the parent remained <i>with the child/ren</i>	6
10. The contact parent who lived elsewhere successfully applied to have the care of the children and the <i>children moved</i>	3
11. The contact parent who lived elsewhere unsuccessfully requested to have the care of the children and the <i>children did not move</i>	1
12. The contact parent moved	3

Approximately three times more relocations proceeded than did not in our study. Just over half (51%) of the families had their relocation disputes determined by the Family Court, or the High Court on appeal, with five families having involvement with an

²⁰ N=96 since in 4 of the 100 families the outcome is still to be determined by the Family Court.

overseas Court, and a further 6% of the families having their relocation attempt stopped through the granting of a non-removal order by the Family Court. Approximately one-third (34%) of the families reached agreement by consent after consulting their lawyer or undergoing Family Court conciliation (counselling/mediation) or without any legal involvement at all.

Table Seven is also noteworthy for the variety illustrated *within* each of the 12 categories, particularly in relation to what happened *after* the relocation issue was resolved. For example, amongst those families where the relocation proceeded and one parent moved with the children there were instances where:

- The other parent subsequently also moved to be in the same location as their children.
- The other parent subsequently moved elsewhere.
- The resident parent moved again to another location with the children.
- The move was only temporary due to work or study opportunities.
- The intact family had relocated without the father prior to the separation and the mother and children subsequently remained in the new location, but the father did not also relocate and remained in the original location.
- The relocating parent eventually returned with the children to live back in the original location.
- The care of the children was split between both parents, resulting in some siblings relocating and others not.
- Children were involved in international child abductions or were unilaterally relocated without the consent or prior knowledge of the other parent (and in some cases the children themselves).
- After a unilateral move the parent was ordered back and either returned with the children, or the children returned but the parent did not.
- Both parents moved to new locations at the time of the separation.

This list shows that it was not always the resident parent and the children who moved, but rather there were a variety of permutations of transitions, with situations when the entire family (both parents and children) moved, the mother or father moved (with or without the children), or it was the children (some or all) who moved while the parents did not.

There were several instances where a resident or shared care mother moved *without her children* after the Family Court declined her application to relocate, granted a non-removal order, or ordered her back following a unilateral move. In these 12 families this meant that the care of the children was reversed, with the father becoming the resident parent. In several troubling cases the father had undertaken only a limited parenting role prior to this change of day-to-day care, had sometimes not sought, wanted or expected the full-time responsibility for his children, and was living with a new partner and step-children. The children were therefore removed from their mother's primary care (when she opted to proceed with her relocation) and placed with their father (sometimes in a new locality) in a relatively unfamiliar blended family. It was not surprising that five of these situations broke down within a two-year period and the children were eventually returned to their mother's care. The distress and trauma described by the parents and children involved has been the most anguishing aspect of our research to date.

Other family situations depicting the fluid nature of post-relocation care and contact arrangements were those where the Family Court had declined to allow the relocation, but the original opposer to it had subsequently relented and allowed his ex-partner to relocate with the child(ren) without any further legal intervention.

Amongst those families in our sample where a relocation application had been declined, or the relocation did not proceed, one-third had parents who had another attempt at relocating which was sometimes successful and sometimes not. Six cases involved appellants (three mothers and three fathers) appealing the Family Court decision to allow or decline the relocation. These cases were characterised by either an international element, multiple relocations or changes of care arrangements within the family.

Other Issues Raised

As well as the complexity and diversity of relocation disputes discussed in the previous section, we would now like to briefly raise several other themes arising in our family interviews on which we believe professional debate is warranted:

- The role of non-removal orders in contributing to a rapid deterioration in inter-parental relationships and the instigation of litigation over the proposed relocation.
- The impact of being required to live in a defined locality following an unsuccessful relocation application. Mothers generally described this as an infringement of their civil rights even though they could understand why their child's relationship with the other parent was being prioritised at this time. Most mothers anticipated 'biding their time' and making a further application to relocate when their child was older (and therefore more likely to have greater weight accorded to their views by the Court) and was facing a school transition anyway (e.g., moving from intermediate to secondary school).
- The impact that the (proposed) relocation had brought to the lives of left-behind parents and their extended family. Many fathers spoke of the uncertainty and distress they experienced when they first became aware their ex-partner planned to move away with the children. This feeling of devastation was further magnified if her application to the Family Court to relocate was successful and the father-child contact arrangements had to then significantly change due to the geographical distance between homes. Fathers sometimes felt like expendable accessories in their children's lives and spoke movingly of the changed (usually more distant / less involved) nature of their relationships with their relocated children. They were also very concerned about the way the relocation could severely affect the children's relationship with their paternal extended family members.
- How children were handed-over when day-to-day care had been awarded to their non-moving parent after the primary carer's relocation application had been declined. Some parents described distressing emotional scenes at a school or a lawyer's office when the hand-over occurred immediately following the Court decision; while others talked about the pain involved when the judge ordered several months to elapse before the relocation could

finally occur.

- Where lawyers and the Family Court had been involved in a relocation dispute, many parents expressed strong dissatisfaction about the delays they faced and the expenses (especially legal fees) they incurred. Some parents experienced serious financial impediments (including mortgagee sales) as a result of their litigation. Most parents found the Court process highly stressful and disliked having their lives kept on hold for so long while a decision was reached. They also reported dissatisfaction with the detrimental impact the adversarial nature of the proceedings had on their relationship with their ex-partner.
- Some children were enduring lengthy car, bus, ferry or unaccompanied plane trips to remain in contact with their non-resident parent. The cost of contact (petrol, fares) sometimes led to changes over time as parents found themselves unable to afford the trips and either reduced their frequency or altered the mode of travel.
- Generally children and non-resident parents preferred regular face-to-face visits or telephone contact rather than email contact. Parents, however, found email and texting a useful and less intrusive means of keeping in touch with their ex-partner. We found little use of webcams, Skype and MSN – although where these were successfully used the parents mostly reported great satisfaction with them. Some, however, found such contact to be superficial in nature. Yet other parents reported that technology can be just another ‘weapon’ to frustrate an ex-partner and children (e.g., through a refusal to purchase/connect the equipment, or through such close surveillance of its use that the children felt they had little privacy to communicate freely with their other parent). Texting could be a welcome means of older (usually teenage) children and non-resident parents keeping in touch – the child’s mobile phone enabled contact to be more independent since it no longer needed to be mediated by the resident parent. However, some other resident parents refused to allow their child to utilise the mobile phone given to them by their other parent or insisted that the non-resident parent ring/text them first before contacting the child.
- Parental attitude was critical to the success or otherwise of post-separation/post-relocation care and contact arrangements. While relocation disputes have clearly been emotionally distressing for the parents (and some children) we have interviewed, we have been heartened by the positive examples many have given us about the strategies they used to manage the sometimes significant geographical distance between them. Each parent’s willingness to recognise and encourage their child’s relationship with the other parent was a powerful influence on the degree of co-operation which existed following the relocation dispute and its impact on the child. Where parents could be creative in promoting and maintaining direct (face-to-face visits) and indirect means of contact (e.g., reading story books to their children over the phone; marking a calendar with the child so they knew when the next visit/phone call would be; allowing children the flexibility to contact their non-resident parent whenever they wished) then relocation could be a more positive experience. When inter-parental relations are marked by ongoing bitterness, hostility and conflict then it may be immaterial whether the child is in the same locality as both parents, or has relocated elsewhere with one, as such detrimental influences can impact

on them wherever they live. The role of the family law system in enhancing or aggravating family relationships (both inter-parental and parent-child) in post-separation relocation situations is therefore fertile ground for further enquiry.

Future Publications from the Parent Data

The data collected from the initial and follow-up interviews is continuing to be coded and analysed and will form the basis of several forthcoming journal publications and conference presentations on the following topics:

- Resident parents' motivations for wanting to relocate and the reasons such proposals are opposed by non-resident parents.
- The financial implications of relocation disputes – legal costs, child support issue, cost of travel and contact, employment factors, and housing and lifestyle affordability.
- The impact and consequences of relocation for family members.
- Parents' experiences of, and satisfaction with, the Family Law system – parties' lawyers, lawyer for the child, specialist report writers, Judges, and the Family Court dispute resolution processes and appeals to higher Courts.
- A comparison of Court judgments (where available) with the relevant parent interview data to ascertain the consistency of the two accounts and the effectiveness and continued applicability of the Court orders in the families' lives.
- Family relationships – What role does the inter-parental relationship play in relocation disputes and how does the dispute resolution process affect this?
- Drawing on both parent and child data, an examination of how the relocation issue has impacted on the children's lives, relationships, adjustment and well-being.
- An analysis of the leading Court decisions in Australia, England / Wales, New Zealand and the USA to explore similarities and differences in the judicial reasoning and how this has influenced relocation decisions in the New Zealand Courts.

Findings: Children and Young People's Perspectives

Forty-four children from 30 families were interviewed about their experiences. Three quarters (33) of the children and young people had experienced a residential move as a result of a relocation 'issue'; while the remaining 11 (25%) had not. For seven of the 33 children who had moved, the move was not permanent – with two children (from one family) having a planned temporary move of less than a year; three children from (one family) returning after several years abroad; and two children (from one family) moving but returning after the Family Court ordered the children's return following their mother's unilateral move. For one child, the Family Court had refused the mother's relocation application and the mother moved but the child did not; however, she later moved to be with her mother. In another family, the child had experienced multiple moves and changes of care – she had relocated overseas with her mother, returned to be with her father in New Zealand, and at the time of the interview was back living with her mother in Australia. Several children had had multiple relocations (some which did not impact on their contact with their other parent) and seven children (from 4 families) had had multiple international relocations – either moving to or from New Zealand more than once.

For those children and young people who had moved, seven had memories of an international move (another one had experienced a move from Australia to New Zealand as a baby but had no recollection of the move or of living in Australia).

At the time of the interview, forty (92%) of the children and young people had a parent who lived in a different city or town to themselves, with four (9%) living in the same location as both of their parents.

The geographical distance between the children and young people and their contact parent at the time we spoke with them was:

- *International* – 10 children (from seven families) had parents living in Australia, the United States, England, Dubai, and East Timor (although the latter was a temporary military relocation with the parents usually living 200 kms apart).
- *Inter-island* – 13 children (from nine families) lived in a different island of New Zealand to their contact parent.
- *Inter-region* – 6 children (from four families) resided in the same island of New Zealand but in a different region to their contact parent. Southland-Canterbury (564 km); Southland-Tasman (1021 km); Wairapa-Wellington (100 km); Manawatu-Wellington (94 km).
- *Intra-region* – 10 children (from six families) had parents who resided in the same region (distances between the parents ranged from 26–168 km).
- *Same town/city* – 4 children (from three families) lived in the same city as both of their parents (although in some instances the distances and travel times between the parents' homes were a similar length to the distance between some parents who lived in different towns in the same region. For instance, distances/travel times when both parents lived in Auckland were similar (and in some cases greater) to those for parents living in different towns/cities in the same region).

(One 15-year-old had not had any contact with his father since he was a baby and his father's whereabouts was unknown).

Five children and young people (from three families) were also separated from their siblings who due to split-care arrangements lived with the other parent in a different location. In addition, there were several children who had half-siblings who also lived in different locations.

The interviews with the children and young people were transcribed and summarised and common themes and related issues were collated. The themes emerging from these interviews are outlined below and focus on: children's understanding of the (proposed) relocation; their initial reaction to hearing about the relocation; their adjustment to the relocation; positive experiences; negative aspects; changing schools; what helps children adjust; contact; travel; relationships with parents; the parental relationship; consultation and amount of say the children had; their experience and understanding of legal processes/professionals; and advice they would give children and parents facing a relocation issue.

Understanding about the Relocation

Generally, the children and young people²¹ demonstrated an understanding of why the relocation occurred and their parent's motivation for wishing to move. These reasons usually matched the parent's actual motivation for the move, and some children showed an understanding of the emotional needs of their parents.

Wanting a fresh start

[Mum wanted to move] *just to get away from everything and make a fresh start.* (Louise, aged 13)

I think [Mum] just wanted to like go somewhere new. ... I think she wanted a change as well. I mean she'd been in [city] for a long time and wanted a bit of a change. (Chloe, aged 11)

I think Mum wanted to get away from it all. ... I just remember it being hard and Mum was stressed all the time. ... I think Mum needed to get back into life and so she came here and got a good job and life was fine for her. (Rob, aged 17)

Getting away from the other parent

I want Mum to live [in same town as Dad]. It would be easier, but she doesn't want to be around Dad that much. (Bella, aged 12)

[Mum] was scared of Dad. She was being real scared. (Charlie, aged 8)

²¹ The children's names and any identifying details have been changed to preserve their, and their family's, anonymity.

Family support

I don't think things were too good for Mum living here. ... Her family is [in town] so it's easier for her. She didn't have anything here apart from Dad and when Dad left she had nothing. (Jacob, aged 16)

My aunty was down in [town] so that's basically why she wanted to go down near her family. (Sally, aged 9)

I think it was just because probably Mum was struggling a bit and so she probably needed her parents' support, with me. (Laura, aged 14)

[Mum] misses her family. (Lucy, aged 8)

Mum found it quite hard being away from family. ... We moved close to my grandparents cos they could help out a lot. (Rob, aged 17)

To be with a new partner

We moved here because my Mum got another boyfriend. ... It was because she met the guy and he lived here and so we came here. (Isabella, aged 9)

Well, that's where [Mum's partner] lived. (Marcus, aged 10)

Employment opportunities

She said there was something about a job going up here. (Chloe, aged 11)

My Mum had a chance to work in [city]. And I was so happy cos she had been working so hard and she used to apply for some jobs and she'd been rejected, and she used to cry and I used to feel so bad. I used to cry with my Mum so I was really happy. (Nina, aged 13)

A few children reported **not really understanding** the relocation at the time. Brianna (aged 11) moved when she was about five. At the time she did not understand why and thought it was her fault:

Well, I found out when I was about nine, I started understanding it but at that age, no, not really ... Oh, well I kind of thought, 'Oh, no. What have I done?' but then after I got older I was like, 'Oh, it wasn't me after all.' ... Mum kept on telling me but when I turned about nine and a half probably, about then I started realising, yeah, it wasn't me, cos Mum kept on telling me and telling me and then I just started realising it. ... It was just a little kid thing probably. I just thought, 'Oh, what I have I done? I must have done something wrong.' (Brianna, aged 11)

Scott also did not really understand the move at the time:

Well, [Mum] didn't really sort of tell us. ... I think she expected us to know. Cos I didn't know that we were going to go to [town] until like a few weeks before,

and I just thought that we were going to like move away to a different like house. ... I wasn't actually really sure if I was ever going to see [Dad] again. Cos I wasn't told anything, and I still didn't understand. I knew that they were like over, but I didn't really understand why, cos I knew that like [Dad] was a bit of a bum, and like didn't treat us right and stuff, but I didn't really understand why she wanted to leave. (Scott, aged 13)

As well as generally understanding why their resident parent wished to relocate, the children **could also see their other parent's perspective**, particularly how hard it was for the left behind parent. For instance Brett (aged 13) knew and understood that their father "wasn't happy" about them moving away but believed the Judge made the right decision allowing them to relocate, which he thought was fair.

I don't know if Dad would have thought it was too fair. I suppose Mum might have thought it was fair getting what she wanted, but I don't know. Sort of like you can't be with both of them anymore, now that they've broken up so it has to go one way or the other and at the end of the day we came over on Mum's side. I don't know if it was fair for both sides but it was understandable what the judge was trying to do, was keep us with Mum, and she was sort of like the main parent. ... like the whole Mummy thing, looking after your children. That stereotype mother figure. (Jacob, aged 16)

I think that [Dad] might just prefer me to be a bit closer cos [city's] way down there and we're all up here. (Libby, aged 9)

I remember getting up at like two o'clock in the morning to leave for the plane. It was the first time I saw my Dad cry. ... I was just like, 'Whoa, he's crying'. ... He wasn't very happy. (Bridget, aged 13)

Dad doesn't want us to move. (Connor, aged 11)

I think it was a bit harsh on [Dad]. (Ashleigh, aged 10)

Dad doesn't want us to go. ... So we stay here and he can see us. (Charlotte, aged 10)

I don't really think he liked it that much, but he's probably happy that I still come and see him though. (Sean, aged 11)

Dad came home [after Court decision]. He wasn't happy when he got home. ... Sitting on the couch hugging and listening to him talk to us telling us and he was like crying. (Chloe, aged 11)

I remember him walking in in his suit. He was quite sad. (Aaron, aged 15)

Like when I was driving [away], I was like, right now Daddy must be crying. ... But then I got used to it. (Marcus, aged 10)

Initial Reaction to Hearing about the Relocation

There were mixed responses from the children about their own reaction to the news that they were relocating. Some reported feeling ‘excited’, or ‘happy’, others were ‘sad’ or ‘nervous’, and some reported mixed emotions.

Many reported a **positive reaction**:

It was an adventure. ... I was definitely excited. (Will, aged 17)

I was just excited. Just the move, cos we had lived in this same house for years. (Brett, aged 13)

It was fine. It was an adventure. (Jed, aged 12)

I thought it was pretty cool cos we’d be able to have a farm and I actually thought [town] was a lot further away than it is. It just seems down the road to me cos I’m just so used to the travel. And I was pretty excited cos I like animals and stuff and I’ve always wanted to live on a farm and yeah, I’ve kind of gotten what I wanted. (Sophie, aged 11)

Caleb (aged 8) thought it was “awesome” when the Judge “told us we were allowed to move. We were all happy.”

Others had **mixed emotions**:

I was kind of excited ... but also a bit sad just to leave everything here. ... It was going to be cool but it wasn’t that great leaving everything. (Jacob, aged 16)

I was okay with it because [town] was one of my favourite places and I get to see some of my friends down there. But I liked staying up here. I like to be in [city] or nearby, but when I found out [Mum] was moving to [town] near my auntie I thought it would be fine. (Sally, aged 9)

I thought, ‘Yeh! Changes’ but then I was like, ‘Hey, but what about all my family?’. But then once I thought through my head since I never see them anyway it wouldn’t be much of a change. (Paige, aged 10)

I was happy, but I was sad. I was sad that I was leaving my friends and stuff but happy that I was moving away from [city]. (Simon, aged 11)

I half want to go and I half want to stay. Cos I want to stay at my school. I love my school. (Luke, aged 8)

Others reported a **negative reaction** to the news they were moving, but said they were happier about it by the time of the actual move. For instance, Libby was upset and sad when she first found out:

I was really upset. ... Mum said, ‘Well, we’re moving to [city]’ and I just burst into tears. I thought, ‘Oh no! I’m going to miss all my friends and stuff. I want

to stay here.' And she calmed me down and stuff ... I got really upset. I cried cos I said, 'Oh, I'm going to miss all my friends' ... I was really sad. (Libby, aged 9)

However, by the time they had actually moved:

I was quite excited actually, cos I had school the next week. I was a bit worried, a bit nervous but I was quite excited. (Libby, aged 9)

Laura related a similar experience:

Oh, when Mum told me I burst out crying. I remember that. ... Cos I had all my friends, but when I was going I think I'd got a bit used to it so it was fine. (Laura, aged 14)

Leah had experienced several relocations. When she found out about the last one:

I was like, 'Oh no, not another move.' I was a bit nervous. But I'm getting used to the whole moving thing now. ... And then I found out that we weren't taking our dog and I was a bit sad. (Leah, aged 11)

While some children were **familiar with the location** that they were moving to, particularly if they were moving to be with extended family, other children **knew very little about the place** to which they were relocating.

I didn't even know where [city] was. (Caleb, aged 8)

I actually thought [city] people spoke a different language. (Melissa, aged 14)

I was kind of excited cos I hadn't been there before. (Jacob, aged 16)

I'd never heard of it. I was like 'Whoa, it's going to be cold'. (Victoria, aged 13)

I knew absolutely nothing about it [NZ] whatsoever. (Sarah, aged 17)

We had no idea that [town] was a part of New Zealand. For a while, I thought I was going, like overseas! I didn't know it was part of New Zealand. ... I had no idea. And I kept on telling my friends, 'I'm going to live in [town]', ... and then I was telling them that I was going overseas, and ah, no, I wasn't actually. I was going to [town]. But I seriously thought I was going overseas. (Anna, aged 11)

Children's Adjustment to the Relocation

One of the most common themes that emerged from the interviews with the children and young people was an acceptance of and satisfaction with their current situations. However, it should be noted that the parents of children who had had a particularly difficult and/or traumatic experience did not tend to give consent for us to interview them. Their experiences (as related by their parents) will be reported on in due course.

Only two of the children and young people reported a predominantly negative experience. The Family Court refused to allow Nina (aged 13) to relocate with her mother and she was placed in her father's care despite a strong desire to move with her mother. Nina was very unhappy living with her father and felt unwanted and that she was "a burden on people" and described her experience as "being through hell":

Everything had changed. The life that I was used to had just changed. ... When I started to live with him everything changed, and he started to not care anymore. ... He had two others [children] and [other daughter] went far ahead of me, even the family friends. I was pushed out of that little circle. ... I felt unwanted a lot of the time. I didn't feel loved in that house. (Nina, aged 13)

Nina found the experience very traumatic and this continued to have a significant impact on her even after she was finally allowed to live with her mother:

I kind of shut myself off and my father, every chance he got he would criticise me and my mother. ... I used to shut myself away in my room and and I used to cry. ... I don't like being with my father's family ... so I used to shut myself off. I remember I ate dinner in my room, when I came back from school. I had lunch in my room. I had breakfast in my room. I just lived in my room and I wrapped this cocoon around myself ... and wouldn't let anyone near me. So when I moved [to be with mother] I knew my Mum was her normal self, I felt so uncomfortable with that, cos she'd give me a hug but I just couldn't hug her back. ... I felt uncomfortable with all that love that I was being given, I just couldn't take it. (Nina, aged 13)

Hamish (aged 14) was struggling with his recent move. He stated that:

It like stuffs you up big time. It sucks so much. ... and like it hurts your family so bad. (Hamish, aged 14)

The majority of the children, however, seemed relatively happy and liked where they lived. While some children acknowledged that things had been difficult for them, they reported growing accustomed to their new lives and being relatively satisfied with their current situations. Much of the advice that the children said they would give other children and young people facing a similar situation focused on the idea of 'getting used to it' or 'things turning out okay':

I'd probably say you just get used to it. It might be hard in the beginning but you'll get used to it. You'll be able to see your parents hopefully. (Laura, aged 14)

I'd only like say to them not to worry too much cos things will turn out better than you thought. I thought it would be really horrible and I'd miss Mum, but I don't really miss her that much anymore. (Bella, aged 12)

Some of the children did report **difficulties at the time** of the relocation but could see **in hindsight that things had worked out** fine for them. Many of the children could also see **both positives and negatives** in relation to their relocation:

It's pretty hard moving away. ... It would have made it easier if Mum didn't have to move so far away, but then again that's one of the things I liked so much about it. It was kind of sad leaving, but it was a pretty good experience in the end for us. ... Highs and lows, ups and downs, but I think the positives would almost outweigh the negatives. (Jacob, aged 16)

Like Jacob, Andrew could see **good and bad things about relocating**:

It was a bit different at first but once we got used to it and settled in it was awesome. ... It was cool. It was good fun. ... Everything you'd built up is gone. But it wasn't bad. ... There were goods and bads you know. (Andrew, aged 15)

It was probably better for me but it's sad. (Sean, aged 11)

Back then I was just like I don't want to go. But now, it was good because now Mum has more friends and I have more friends and [my sisters] have got more friends. (Chloe, aged 11)

I was quite upset. I felt really betrayed. Not sure how I felt really. I was quite angry but now I look at it, it's kind of for the better that my Dad moved because we never got along. Like before he left he kind of always got really angry at me. ... So life is definitely a lot more happier and pleasant. So it's kind of worked out for the better, in this situation anyway. ... It was pretty rough for the first year or two, but yeah, it worked out alright. Like we're fine now. (Kara, aged 17)

I like didn't want to leave' cos I'd grown up around there. I wanted to carry on with that. ... When we left [city] we kind of were sort of a bit upset about leaving and stuff, so I was kind of like blaming [Mum] kind of. But now it's kind of fine. ... There is like good points and bad points. (Louise, aged 13)

As illustrated above, the children and young people could generally identify both beneficial and detrimental aspects about relocating and/or living in a different location to one of their parents. Since the children were generally happy about the moves they had experienced there were relatively more positive than negative issues reported.

Positives Experiences of Relocating

Jenny (aged 16) had had a very smooth adjustment to living in a different country:

It was good. They were all really nice friendly people over there and they made it really easy to get settled in and going to a new school wasn't too bad. Everything went quite nicely for me. (Jenny, aged 16)

For her the good things about relocating included:

Just meeting the people, sort of going to a new school, getting along with everyone really well and playing new sports and just having a real good time I think. We just ... settled in really fast and everything went really nicely. ... I don't know if I would change anything actually because it was pretty awesome everything that we did, and getting to go around the world. It was really cool. (Jenny, aged 16)

Will (aged 17) also had a good experience:

When we got here I was pretty much welcomed cos [town] was a small community and it was a good place to move to. I kind of liked it there. ... I definitely thought the moves would benefit mother and me and [brother] and they did. And I didn't really talk about it much. I just moved here and settled into the new school and that was it. ... It wasn't too hard on me at all. (Will, aged 17)

Paige described the tension between her and her Dad prior to moving – “sometimes we'd like collide and all the tension ... we'd all go silent. It just felt really weird.” For her the move some distance away was good because:

It felt like a new start and like when you're really, really thirsty and you have a glass of water. (Paige, aged 10)

One factor that the children emphasised was **the importance of family**. Many of the positive aspects about relocating related to moving to a location where lots of extended family members lived:

I loved it there. Cos we've got heaps of family and ... we had heaps of cousins. It was great fun. (Ross, aged 15)

When we moved down there it was kind of like a big impact cos we never see our family very much and we were living with them all of a sudden. It was a good thing. It was really cool. (Paige, aged 10)

[The good thing about moving was] *we got to see our uncle for the first time in our lives. (Jed, aged 12)*

[The good thing about moving would be] *we don't really get to see the rest of them [family] up in [city]. Only once or twice or three times a year we get to go up there and see them ... our aunties and uncles and cousins. (Connor, aged 11)*

It's all Mum's side of the family are up there. We've got heaps of cousins. (Charlotte, aged 10)

[The good things are] *I can go and see my aunties and cousins.* (Abby, aged 7)

Several children mentioned liking the **contrast between the different locations** their parents lived in. This meant they got to **enjoy two different lifestyles** and to also **have experiences they might not otherwise have had**:

It was real cos good I was travelling across the world. One time we stopped off in Los Angeles for two weeks and did the whole Disneyland thing which was awesome. And you can go the other way through Singapore and you get to see all the different countries. (Fraser, aged 16)

I went to Euro Disney and Lego Land. When I go to England, I go there every year. Usually once a year we go to France with my grandparents cos they have a holiday house over there. (Daniel, aged 7)

I'd never seen real snow before that wasn't like a skiing centre. [We had] the biggest snow since 1942. ... tobogganing, skiing ... I skated on the pond. (Jasmine, aged 10)

I do like [city]. ... The first time I felt snow was in [city]. Kind of cool. ... I thought snow was like all white tufts that fell out of the air, and when I saw it I was like, 'What?!'. (Juliet, aged 11)

Every Christmas I go with my Dad. I get a[n] early Christmas with my Mum. I get one Christmas really early before Christmas. ... [Santa] comes to my Dad's house and my Mum's. (Abby, aged 7)

For other children, the good things about relocating that they identified were about being able to experience two **different lifestyles** in each parent's location.

It's probably good so we just get here a bit and ... it's cool, like different. In [town] it's fun. Sometimes it's like good that we're here. ... But it's cool having the beach and we can go round all the reserve and play games and there's so much room. And in [town] it's different because I can go to the mall and stuff with mates and just hang out. (James, aged 12)

You get to experience two different lives kind of. And you meet new people. (Kylie, aged 14)

I kind of get a city life and a country life. Bit of both. (Helen, aged 11)

Other children **liked the place they relocated to** in contrast to the place they had left:

It was summer and it was awesome weather ... I ate like three ice blocks a day. It was awesome. ... Yeah, a small town. ... It's different, like no traffic like in [city]. It was just nice. Like not hectic. Like up in [city] it was always busy. (Paul, aged 15)

You can do more stuff [in city where mother lives]. You can do heaps of stuff. In [town where father lives] it's quite small and you can't do that much. (Charlie, aged 8)

Probably the best place I've lived so far. (Sean, aged 11)

For some children the difference between where they had lived and where they now lived was very marked:

Most of the people actually like were more friendly than in [city]. And like I was used to a multicultural society and it was just a different culture. (Madison, aged 13)

In [country] ... it was just [a] completely different educational system and how society worked and stuff, it was just hard. I think Mum knew that me and [brother] were struggling ... it wasn't working. ... I like NZ a lot, as it compared to [country]. ... I love it here. ... I don't think I could manage in [country]. I kind of feel insecure there because it's just so much different to NZ. This has been definitely a good home compared to [country]. (Tony, aged 17)

Negative Aspects of Relocating

As noted earlier, the children did not report many things that they did not like about relocating. However, a couple of children **disliked the place** they moved to:

Rachel (aged 14) “hated it” when she found out she was moving from a city to a small rural town, although she thought the town was “alright” but “a lot different from [city]”:

Just the people, oh not really the people, but just sort of the town and the way things are run, and like the schools and stuff. It's like totally different. ... I hate school. It's horrible. (Rachel, aged 14)

Simon, who had experienced several relocations, said the things he did not like about moving were “not seeing Dad as much and not seeing friends” but what he found problematic was not liking the place he moved to. He thought “it was really good moving” to the one location, but found another location difficult because of the violence and bullying he experienced there:

I don't think anything would make it easier except for not moving to [town]. That might have done something cos it's really weird there. (Simon, aged 11)

The children and young people were asked what they found hard about moving and their responses generally related to having to **leave family and friends behind and the distances between them**:

Just leaving Dad I think and friends. Just leaving everything behind, everything you'd sort of known. [Saying goodbye to] all the family, pretty tough. (Jacob, aged 16)

I hate the distances. (Bella, aged 12)

Just making new friends and stuff and settling into school. It was pretty good though. (Andrew, aged 15)

Bad points probably were ... pretty much most of my family from my Mum's side lived in [the town she left]. (Louise, aged 13)

It's so far away. You can't really go see them [family] and like talk and stuff. It's such a big trip. (James, aged 12)

There was one hard thing, and that was the twelve hour drive. We're pretty cruisy. There wasn't too much hard stuff. (Paige, aged 10)

Going back to one parent. Just not having a second parent. Like normally if one parent says no to something, you go to the other one and they'd say yes. There's like no second chance. (Olivia, aged 15)

We can't ask Dad and Dad can't change Mum's point of view cos she'll just go to him, 'You can't say that, you're not here. You have no right to say.' (Claire, aged 17)

I was a bit sad because I was going to leave my Dad and lots of my friends down there. ... I had my grandparents, my Dad, my cousins and my aunties there. (Sean, aged 11)

Leaving friends behind was hard for some children or a reason for not wanting to move:

I make friends, and sometimes best friends, but I never really make BF [best friends] for life. But I had this one girl, we'd known each other since we were like three and we absolutely adored each other and then we moved away. But we're still in contact. (Paige, aged 10)

My friends in [town] were probably the best friends I've ever had, and it was hard moving away from them. (Will, aged 17)

I'd miss my friends though. (Jason, aged 8)

[The hard thing about moving] *It's probably just sad with all my friends. Probably about it really, just missing my friends.* (Sean, aged 11)

I wanted to stay in [city] cos that's where all my friends are. They did [ask me what I wanted] and I wanted to stay down here cos that's where my friends are. (Leo, aged 11)

I'd still miss my friends cos I have heaps down here. (Connor, aged 11)

[The hard thing about moving] *Leaving your friends behind.* (Ashleigh, aged 10)

I was kinda like sad, cos my best friend was there, and I don't get to see her until the holidays. (Chloe, aged 11)

However, **making new friends** was regarded as a positive feature about moving. Sean thought that things would have been a lot different for him had he not moved:

A lot different because I wouldn't have met all my friends and we wouldn't have got our puppy. [Are you happy you left?] Yeah, probably, cos I've got lots of friends and my dog. (Sean, aged 11)

I like living in [city] cos of my friends. I can play with them. (Abby, aged 7)

Changing Schools

A key consequence of moving for many of the children and young people was starting at a new school. Some found this hard, or daunting at the beginning, but most came to enjoy their new school.

The **first day** at a new school could be particularly hard:

*Cos it was like really f***ing horrible on the first day. (Alex, aged 14)*

I remember going to the new school ... We were standing there and looking over the class going, 'Okay, I don't know anyone'. (Aaron, aged 15)

And then going to a new school ... you always dread the first day of school but no, it wasn't too bad. (Jacob, aged 16)

Three children had **not liked moving schools or disliked their new school**:

It was really hard for me moving schools. I didn't actually know what was going on. Didn't know much people. Here, I know lots of people and it's like a totally different world. (Sally, aged 9)

It's like totally different. ... I hate school. It's horrible... Like in my old school it was so easy going. Like down here, it's so uptight. (Rachael, aged 14)

Well, it was pretty rough there, cos it was ... I felt good at first but then about a year later I got bullied lots, so yeah, there I learnt to put up with people who are just really mean. Cos like everyone there was like that, except for some people. (Simon, aged 11)

Making friends was a key part of settling into a new school:

When I went to school ... it was alright cos on the first day I made a few friends, and then that just carried on, and I got known better and I got to know people better and stuff. And I did well at that school. ... I liked that school better than the other one. (Louise, aged 13)

Just settling into a new school again [was hard]. We got moved around quite a lot as kids. I think [brother] had it a bit harder but I settled in again quite easily but, yeah, the first few weeks were a bit [hard] ... I was a lot younger so it didn't really bother me that much cos it's not hard to make friends at that age. You just kind of play with someone. ... I made friends pretty quickly actually. I got into all extra-curricular activities and stuff and just started making friends again ... so it was quite easy actually. (Will, aged 17)

I've already made probably, I don't know, I've made about ten friends, and I'm pretty happy at my new school. (Sean, aged 11)

What Helps Children Adjust to Relocating

The children and young people were asked what had helped them adjust to either the move or to living in a different place to one of their parents, or what had made the process easier for them. Not surprisingly, **making new friends** was seen by many children as something that helped them adjust to the move:

On the first day in my school I got put with this girl and we became best friends. (Ashleigh, aged 10)

When I started I met some friends, and they're still my friends now. (Aaron, aged 15)

Getting involved in sports and extra-curricular activities was seen as one way of making new friends:

We went and joined the local tennis club. ... But just coming back to school, I think what made it easy to settle in was being quite good at sport. So everyone was sort of like, 'Whoa. Where did you come from?' and made heaps of friends from there. I think the first week I was there they had their swimming sports and so I was like, 'oh yeah, I'll give that a go.' I was quite fast. Rated myself just quietly. But I ended up beating the next person by a lap so it was 'Wow, we'd better watch out for this guy!'. That definitely helped. (Logan, aged 17)

Like Logan, Will (aged 17) thought that getting involved in sports and extra-curricular activities did help him to settle in and make friends after he moved:

[Did getting involved in activities help?] Definitely, absolutely. That's where I found my first friends in sports and stuff. (Will, aged 17)

Louise's advice to children who are moving was to:

Probably like when you start your new school and stuff probably make as many friends as you can and get involved in sports groups and stuff. And to make like ... sort of example ... like just be able to make people think that you're a good person. (Louise, aged 13)

Moving to a place where **extended family** lived was seen as an important factor as well:

It was definitely good I think knowing that we did have family here that would help us if we got into trouble. (Will, aged 17)

Having family there was good too, like cousins our age made it easy to make friends. ... If we didn't have family, it would be a lot harder. It would be pretty rough. (Jenny, aged 16)

Ross (aged 15) thought it would be “quite hard” moving somewhere where they did not know anybody and found that:

It helped that there were so many people in [town] that we knew, like all the family. (Ross, aged 15)

Several children commented on the **age when children relocated**. They regarded moving as easier when children were younger as it was easier for them to make friends then, whereas for teenagers it was considered more difficult:

We were pretty young when we moved so I think that made it a lot easier. So I'd say that there's quite a bit to do with the age and stuff. [If I moved now] I'd say it would be a different game. If we were going somewhere new again it would just be weird. Cos everybody's, they're all settled in there and stuff. (Andrew, aged 15)

I was a lot younger so it didn't really bother me that much cos it's not hard to make friends at that age. You just kind of play with someone. (Will, aged 17)

Like if you're young, it's okay to move. If you're really young, like quite young, they're not going to remember it. But it's really hard, especially for teenage people, like to be completely moved. ... It's easier to move away when you're younger than when you're older. ... Young kids is okay because they can make more new friends. (Claire, aged 17)

Taking personal **belongings and pets** with you was also thought to help children settle in to their new surroundings. Several of the children spoke of travelling quite extensive distances with their pet in the car when they relocated:

It was pretty good taking [all our] stuff. (Jacob, aged 16)

Bring your most special belongings, might help you. We got [cat] in [the South Island] ... so when we moved to [the North Island] it was a lot easier with him and we got [a dog] as well. (Ruby, aged 11)

The **support of parents and siblings** was another factor that helped some children. Johanna found her mother very supportive:

Mum was really good about it and she helped us through it. ... She just supported us. Even though it must have been like killing her inside, she was just there for us and she never let down her barriers. She always stayed strong and she always encouraged us. (Johanna, aged 12)

Noah thought it helped that even though he lived in a different country to his Dad he could count on his support:

I think it's just, you know, he's still there. He can still help me if I need help for anything. It's just knowing that he is there to support me if I do ever need it. (Noah aged 17)

Jacob (aged 16) found it helpful having his sister and brother with him:

It was pretty good ... like being with my brother and sister. So it was like someone to talk to about [place they had left]. (Jacob, aged 16)

As well as making new friends, what Amy found helpful was her Mum's advice:

Like say your Mum's talking to you, and she just says, 'Ah, you'll be fine. You'll find new friends. It'll be okay. It'll be fun – different change. Change is good.' ... Like Mum and Dad saying, 'You'll be okay because it's not like your Dad had died. It's not like Mum's died.' You're still going to see them regularly so it's nothing. It's not really. It's just somewhere else; new friends, more people to know. (Amy, aged 11)

Amy's mother had also obtained counselling for her:

I found that it was really like helping, like after school I went to a counsellor person and I used to go there and make like family trees, and it was way fun. (Amy, aged 11)

Louise thought that what would have made the process of her parents' separation and the relocation easier was for "parents like dealing with stress management. They were a bit stressed and they sort of snapped quite a bit."

Given that so many of the children found it difficult to leave their friends behind when they relocated it was of interest to learn what helped them to subsequently maintain these relationships. The children and young people reported considerable variety in how they **maintained friendships** after their move. Some children had lost touch with their old friends while others, particularly those who regularly returned to their original location for contact with their left-behind parent, still kept in touch with their old friends. So 'contact' visits sometimes included contact with not only the contact parent and extended family, but also with friends:

I used to have some really good friends ... I still see like some of my friends, just like every now and then, like I'll ring them up and say, 'What are you doing for the holidays?' I do still see some of them ... And my best friend, we don't really keep in touch while we're not like going to [city]. But as soon as I'm in [city], it's like every single day, we're with each other. And then all my other friends are just like, 'Ah, why can't you be with me?' And like, we have such a tight schedule when we're out there, because we'll be at our friend's house, and then we'll come home, and like one time I was at my Grandad's house for a couple of days, and then next thing when I came home, I was packing again, to go to one

of my friend's house to stay the night. And then the next day, my friend had rung up, and I had to go to her house, and then the next day my other friend would ring up. (Jade, aged 11)

When Aaron goes to visit his Dad he also goes and stays with a close friend:

Week on with my friend and then week on with my friend and Dad. (Aaron, aged 15)

What helped these children maintain their friendships included:

Just going back regularly ... some of my friends have been friends since kindy. We ring each other, we text each other. (Jade, aged 11)

We keep in touch by phone. (Ashleigh, aged 10)

Contact

Maintaining their relationships with their contact parent was also important for the children and young people. Generally, they were positive about the face-to-face contact they had with the parent they did not live with:

They [visits] were quite fun cos he kind of wanted to spoil us. (Louise, aged 13)

[Overseas country's] pretty cool when we go over there. (Rob, aged 17)

I find it better seeing him than calling him. (Sean, aged 11)

I can go to the malls and I can watch movies at the movie theatre. ... We went for a picnic last Father's Day and we went for a swim and I bought me and him some ice-cream. (Abby, aged 7)

We do lots of stuff. Just go to the movies. (Marcus, aged 10)

Go on the dirt bike, play Playstation, watch TV. (Jason, aged 8)

Having to travel to another location to see their contact parent meant that for some children their time with that parent had a **holiday feel**, particularly when contact occurred during holiday time.

It's actually quite nice just being there and cruising instead of when I get up there staying for a week or something and it's not the holidays and [step-brother] is going to school and Dad goes to work. (Sally, aged 9)

Some children experienced visits to the place where their contact parent lived, but also liked it when their **contact parent came to visit them in their own surroundings**, and two children spoke of how they loved surprise visits from their father:

I liked going down but I still liked [Dad] coming up because that meant I knew more friends and it was easier to get around because sometimes when I would fly down Dad didn't have a car ... it was all awkward for me because I was so used to being with Mum or sometimes we didn't have any car. (Sally, aged 9)

I had this netball sports thing on, and we had to go to the [stadium] so he came down and watched me. And I got in the championship. (Kyla, aged 9)

It was pretty cool. ... [Dad got to meet] most of my friends. (Sean, aged 11)

But [Dad] used to come down so that was real cool. Big surprise cos Mum never told us. ... and then Dad turned up outside the door so it was really cool. I went and stayed in a motel with him so it was really like different. It was really good. I did lots of stuff with him so that was real fun. (James, aged 12)

Andrea wished her father lived closer so that he could have come to where she lived so that:

... if there was plays that I'm performing in I kind of want him to see them, but he's up in [city]. I'd want them to be closer ... He would be able to come down for plays every now and then. (Andrea, aged 14)

The children reported a **variety of ways to keep in touch** with their contact parent between contact visits. These included phone calls, emails, texting, Skype, MSN, and letters:

Yeah, we talk on the phone quite a few times. Sometimes I'll say phone me, but I've already phoned anyway. And we email, we kind of casually email each other and mostly talk on the phone. (Libby, aged 9)

I like to talk to him on the phone. I mostly watch TV when he rings. Sometimes I talk for a long [time]. ... He tells me what days he's going to ring me. He asks about how my school's been and he says what he's doing. (Abby, aged 7)

He rings us up every once in a while. (Ashleigh, aged 10).

Like when our Dad's [overseas] ... we just get in touch by texting, cos we got phones that we text him on. And we just keep in touch with him. (Ashleigh, aged 10)

Every once in a while I like sending letters because when I sent my Nana a letter I sometimes send him one as well. (Chloe, aged 11)

We used to get a phone call every week and we'd use Skype sometimes. (Claire, aged 17)

Phone or email contact could be **sporadic, difficult or inconsistent** for some of the children:

He's not very good at phoning me. It's usually me phoning him. And that's about once a week or every two weeks. It's not exactly set. It's just whenever. (Laura, aged 14)

Just ring him and stuff. We didn't really keep in touch that much cos it was sort of hard cos we were so young. (James, aged 12)

I was a bit gutted cos we didn't have a phone so I couldn't keep in contact with him, and the only communication we had was a cell phone. (Nicole, aged 13)

Yeah, maybe if he really wants to contact me maybe he should like contact me and like stay to that thing instead of just distancing away. Cos sometimes we try to call him and see if he wants to talk or something, but usually he's at work. (Paige, aged 10)

We can email, but he probably wouldn't reply to it for another few days. (Aaron, aged 15)

We made an arrangement a while back that every second Saturday we'd ring him and every Saturday that we didn't ring him that he'd ring us. He hasn't kept up that arrangement. (Liam, aged 13)

It's not the same as talking to him in person. (Olivia, aged 15)

When Nina (aged 13) was living with her father he listened in on her phone calls to her mother and he did not like her ringing her mother:

He never encouraged it. Whenever I said, 'I'm ringing Mum' he'd give me the cold shoulder. I could hear breathing during those conversations. ... He said, 'I'm your father and I have a right to listen to your conversations'. (Nina, aged 13)

At the time of the interview Nina was back living with her mother and phone contact with her father was sporadic and superficial:

My conversations with him now are so brief. 'Hello Dad, how are you?'. 'School work going well?'. 'Yes, what are you doing?'. 'Homework.' 'Okay, bye.' That was the ritual, the telephone conversation. ... I used to phone him sometimes but I just can't be bothered now. I don't want to. I don't think he wants me to phone cos he doesn't phone me very much as well. (Nina, aged 13)

Stephanie's father was in the Navy and was often away for months at a time at sea. She could contact him by mobile phone or by ringing the ship:

I can text him on Mummy's phone, so at least I can talk to him sometimes, but sometimes I'm a bit sad because I can't actually talk to him and hear his voice. We don't have a computer, but at my grandparents' we do but they don't have a camera, but my Dad's friend's laptop does, but I can't talk to him because I don't have one. (Stephanie, aged 9)

Stephanie may not have been able to use Skype effectively due to the lack of a camera, but she found email a good way to keep in touch with her father and grandparents (who lived overseas), even when her Dad was not at sea:

But I've got an email address and we email each other. Every time I go on the computer I check them and when I get something I reply to him and ask him how is work going and how is he and stuff? ... I can actually talk to them, even though I can't actually hear their voice, cos sometimes they might be overseas. (Stephanie, aged 9)

Only a few children besides Stephanie mentioned using **Skype** or **MSN**. This was particularly true of children whose fathers lived overseas:

Mum's computer has a special camera and we go on Skype usually. ... Maybe about two times in three weeks. If the Skype thing is a bit damaged or if one of our computers isn't working, we just call. It's just as good. (Daniel, aged 10)

I talk on Gmail a lot. Gmail's a Google mail. You can talk on-line. ... It depends, like if he's at work. He does some work, like on the computer at home at night. (Olivia, aged 15)

MSN, we write a note and press enter and then it appears up on the screen. ... sometimes he'll be texting us on the computer. He'll say, 'I'll ring you up in an hour.' [MSN is good] cos you get to talk to him a lot and on Skype you can't talk to him, like instead of speaking to him you have to write it down or you can see him. You can see the screen. You can speak to him instead of write. [But the webcam is] not connected. (Maddie, aged 10)

Noah's father lived overseas and as well as visits every few years, he kept in touch with his father by phone and via Skype: "He still rings us every weekend and we talk to him on the computer." He thought that if he did not have access to such technology:

I would be able to cope with just the yearly visits ... or bi visits or whatever it's called ... but I think [younger brother] quite likes being in close contact with him. I don't know how well he would cope. (Noah, aged 17)

Some children **did not have access to such technology** to keep in touch with their other parent or this technology **was unreliable or problematic**:

Mum she said she would get the internet. [Mum's boyfriend's] has a computer but I don't want to ask him for it. (Bernadette, aged 14)

My [mobile phone] died. ... Water leaked out into the backpack and it's dead. (Jed, aged 12)

I used to text him until my cell phone broke. (Brett, aged 13)

We're trying to get him to get broadband for [Skype] to be free. (Max, aged 11)

[Skype] was a bit slow. Sometimes it didn't work. ... It was quite bad. One night it blanked out. (Aaron, aged 15)

We'd use Skype sometimes, but it was a bad connection cos we had dial up. (Brendan, aged 17)

We have used Skype before, but it didn't really work. ... the connection's like really off and we were talking to him and we'd start the conversation and stop cos he was talking at the same time. (Olivia, aged 15)

Christine spoke of the **superficial nature** of only communicating via text because her father lived so far away:

It's more light and fluffy. We don't really talk about anything, any actual problem. ... If you really talk to him, face to face it's better. (Christine, aged 17)

Use of **mobile phones and texting was expensive** when ringing or sending to an overseas number:

It costs money on our cell phones or to check our voicemails. (Olivia, aged 15)

He can text us messages but we can't text back. ... If it wasn't to an overseas country we could try texts more often. (Christine, aged 17)

Six children from three families **wanted to reduce the amount of time they spent with their contact parent** – reasons included wanting weekend time with their resident parent, and not wanting to spend their entire holidays with their contact parent. When planned contact interfered with the children and young people's lives this could be problematic:

Sometimes I have things on when he's booked me up, so I just wish that I could quickly change the day. Because I have this birthday party I'm going to and he's in [city] so he's supposed to be seeing me. He's still said that I could go. (Erin, aged 9)

Other children **wanted more contact**:

When I get back [from visiting Dad] I wish it was a bit more, but then I kind of get used to it. (Lisa, aged 14)

[I'd like] probably to see him more, or maybe for him to come down. And maybe for him to make an effort about ringing us. (Louise, aged 13)

[Would like to] see him a little bit more. (Jack, aged 8)

Five children said they would **prefer their parents to live in the same town/city or country**:

It would be better if we lived in the same country. (Kylie, aged 14)

I want Mum to live in [same town as father]. It would be easier if we lived in [town]. (Bella, aged 12)

If [Mum] moved to [town] we could spend a week at her house and then a week at Dad's house. (Gemma, aged 11)

Some children would just **like their parents to live closer to each other**:

... if there was plays that I'm performing in I kind of want him to see them and stuff, but he's up in [city]. I'd want them to be closer ... I'd be able to see him more. He would be able to come down for plays every now and then. (Andrea, aged 14)

... if I could have a wish, I would probably just wish that practically [the two towns] were all around that same place so they could be a bit closer cos sometimes the travel does get a bit annoying but as I said before you get used to it. (Emily, aged 11)

Olivia and Claire, who both had parents who lived overseas, would have liked them to live closer to New Zealand:

If you could push New Zealand, and it was like closer to Europe. I like the flight but just hate that it's so expensive. (Claire, aged 17)

If it was Australia, probably go for like a weekend or something like that. And do that quite regular. (Olivia, aged 15)

Abby's father had himself moved away after she and her mother relocated and she said she didn't "really mind" that her parents lived in different cities. However, when asked what changes she would make if she could, apart from wishing that her parents would get back together, Abby (aged 7) wanted her father to move back to his original location or somewhere nearby "because he's much farer away" from where she had relocated to, whereas beforehand he lived relatively close.

In contrast, Libby thought that if her father lived closer to her contact would be more frequent which she did not want:

I prefer to see my Mum more so if he lived closer I'd have to see him a lot more. (Libby, aged 9)

The **cost of contact** was an issue for some of the children we spoke to. In addition to the cost of mobile phones mentioned earlier, the cost of travel also limited contact for some children.

Although he would like better contact with his father Cameron (aged 13) thought that it was likely to decrease due to his father being “in real bad debt, so he’s a bit tight on money.” He spoke of how contact had been limited because “since it’s so far away it costs quite a bit of money.” At one stage he had not visited his father for two years because of “lack of contact and lack of money.”

Claire (aged 17) thought that “If it was cheaper, we’d probably go over more often, or he’d come over more often.”

Sean (aged 11) would have liked more contact with his Dad: “I’d probably like to ring him more” and also would have liked to increase his visits to his Dad from once or twice a year to about four times a year, but “that would probably cost too much.”

As mentioned earlier, contact often involved not just contact with a parent, but also with **extended family** such as grandparents, aunts, uncles and cousins:

I can see my Nana and I can see my Auntie ... I can go to my cousin’s. (Abby, aged 7)

Paula liked seeing not only her Dad but also other family members: “Seeing all the relatives is quite cool.” However, because contact only occurred in the school holidays she missed out on some family events:

Well, I’m the only one in Dad’s family who lives in the North Island, and so they have big family get-togethers and I never go and it’s just annoying. I remember like one time I was down there for a holiday and the week after I left, which was still holidays, they all had a family get-together and that was a bit annoying. (Paula, aged 14)

Conversely, moving away sometimes meant moving away from not just from a parent but also from extended family.

I was a bit sad because I was going to leave my Dad and lots of my friends down there. ... I had my Grandparents, my Dad, my cousins and my aunties there. (Sean, aged 11)

Bad points probably were like pretty much most of my family from my Mum’s side lived in [city]. And my grandparents on my Dad’s side were in [city]. (Amber, aged 13)

For Amber, moving away meant that she kept in contact with her grandparents, but not with her aunts and uncles: “It just didn’t happen.” Interestingly, she planned on moving back to where her father lived when she left home, not because she wanted to be closer to her father, but because “most of my family’s up there and I get on really well with my aunts and uncles”.

Travel

Relocation, and the resulting distance between parents' homes, meant that travel was inevitable in order for children to have contact with their left-behind parent (unless it was that parent who did the travelling). Nearly all of the children and young people had experienced a variety of modes of travel in order to see their contact parent. They had mixed responses about how they felt about this travel. None were extremely negative about it and many just accepted it:

I don't mind the travel. You get used to it after a while. (Emily, aged 11)

Those that travelled by **airplane** generally liked the experience:

I loved the planes. (Laura, aged 14)

I love long flights. (Olivia, aged 15)

It's cool. You get lollies at the end and you get food. (Abby, aged 7)

It's exciting. Airports are exciting places. (Aaron, aged 15)

I think the cool thing about when you're on airplanes, the hostesses are really nice to you. (Chloe, aged 11)

I like travelling on planes cos you get to see lots of stuff. I like how you get to start off at the plane, that's probably my funnest part. (Sean, aged 11)

Daniel (aged 7) liked travelling to the UK and was always accompanied by another family member.

Usually the planes that are 24 hours don't have a wee TV. Sometimes I'd usually buy like a wee caveman game and I just watch movies and things like that. ... Last time on my trip back over I only slept for four hours. (Daniel, aged 7)

Ashleigh (aged 10) didn't like flying although her siblings enjoyed it:

I don't like aeroplanes. I hate them. (Ashleigh, aged 10)

Marcus (aged 10) found flying "kind of boring" and "I just hate the landing cos of my ears."

Crystal (aged 11) thought planes were fun but worried about the plane crashing:

[Flying's] okay. I don't mind, but like my ears get blocked and I watch Air Crash Investigation, and it kind of gives you the freaks after a while! But I do really like it. ... I used to not like flying just cos it hurt my ears, but I'm kind of like used to it now. My ears just get blocked. They don't hurt anymore. (Crystal, aged 11)

Flying unaccompanied could be a daunting experience for some of the children, but most coped well:

It was a bit daunting at first and I was sort of worried, but it turned out quite nicely cos of course business class and they are quite friendly people and the air hostesses always looked after you. (Jacob, aged 16)

I went on the plane by myself and this lady she looked after you. But you've got to be a child and then you get to have lollies; you have heaps of them! (Charlie, aged 8)

It's quite hard travelling down there and coming all the way back just to see one person. [What's it like being on the plane?] It's fine really. I just sit there and sometimes there might be another kid there who's travelling by themselves so I talk to them and stuff. Once I stopped off – I was in [North Island city], and I was going to [South Island city] and I had to stop in [another city in transit] then get on another plane. I didn't really like it that much. I prefer it when I just have a direct flight. (Kyla, aged 9)

It was pretty scary but I think I got some of the airplane people to help me and take me to this kids' room or something. [What did you find scary about it?] Probably thinking about, 'Oh, I'll fall asleep and then they'll fly off with me.' (Sean, aged 11)

We have flown there by ourselves and that was pretty good. We managed it fine. Cos we'd moved round a lot we knew how airports worked. (Will, aged 17)

The first time it was [scary] ... not having Mum or Dad. The hostesses are really nice to you. They give you more attention. They give you extra lollies. ... I was scared. And the thought of going all by myself ... I feel for like the kids that are only children, and their parents split up, and they fly like from one end of the country, and they fly all by themselves. I don't think I could do that, like I would be so scared. ... Not having anyone with you, just the two of us, is kind of weird. (Chloe, aged 11)

I suppose I was used to it since we'd already been on so many planes prior to that. It wasn't really different. And I was a bit older than [than brother]. ... I think it's different for me cos I get to take a little bit more responsibility. (Aaron, aged 15)

I think we've done it [flown internationally] a couple of times by ourselves now. And it's not bad. Me and [brother] like it. One time we got upgraded to business class. (Claire, aged 17)

Sally (aged 9) didn't like to fly by herself because "I used to get homesick when I'm not with Dad or Mum."

For those **travelling internationally** there were long flights:

If you go via Singapore, it's an eleven hour and a seven hour flight. And then the other way it's a long time. It's a day's flying at least. (Belinda, aged 17)

The plane's probably the boringest part, going over cos it takes 24 hours. (Daniel, aged 7)

While not travelling internationally, Nina (aged 13) had had to travel on many connecting flights, rather than direct flights, which she found very tiring and as a result she was often fell sick during her contact visits.

Travel arrangements sometimes meant children had to get up early either to make international flights or to be driven some distance to school on a Monday morning after staying with their contact parent on Sunday night which was not popular. Nor was travel by **car** for contact visits:

I hate going in the car, too boring. (Gemma, aged 11)

It was quite a long way to travel and I get carsick quite a lot. (Paige, aged 10)

The car's a bit annoying but you get used to the travel. You just read the whole time. I like to read. (Emily, aged 11)

Some children **travelled long distances by car or bus**. Paul (aged 15) had had no contact with his father since he was a baby, but for a time had lived with his grandmother. Paul and his siblings travelled 114 kms to visit their mother who would come and pick them up and take them back to her place for a weekend visit:

It was stupid though because she'd pick us up on Friday and we'd like be in the car most of the afternoon. We'd go to sleep straight away as soon as we got home because it was dark. And then we spent that day ... and on Sunday it was pack our stuff and go. So it was like one day we saw Mum. (Paul, aged 15)

Once he and his siblings returned to their mother's care they relocated. When he was 13 he travelled with his 5-year-old half sister so that she could have supervised contact with her father for two hours every second weekend. This meant he and his sister had to travel 611 kms by bus every fortnight; a trip that took 12 hours each way:

We had to go up on the bus. ... I was the one that usually always went up. I used to have to take school off on Friday. ... It was so annoying. Like most kids don't mind taking school off. But taking school off that many days was... and then there was the 12 hour drive up. Twelve hour drive down with [sister] who likes to make a lot of friends and talk talk talk. ... We got to know the driver really well though.... We only had like two lunch stops, and it was okay because we'd have a packed lunch and a little bit of money to buy something. (Paul, aged 15)

He found it difficult to entertain and look after a 5-year-old for such a long time:

Actually it got annoying. 'Paul do you want to play a game?' 'Not really.' 'Please.' 'Why don't you just read?' 'No.' 'Just read your book.' 'No, can you

read it to me?’ Oh! ... She was good on the bus though. Until she decided she wanted to turn around and jump over the seat. ... She loved it! I don’t know how but she did. All these new friends. There were young people there she used to make friends. (Paul, aged 15)

This arrangement stopped when the girl’s father was imprisoned. Contact subsequently ceased and the father does not know the family’s current whereabouts.

A few children **travelled by train**, which they really enjoyed:

I do it by myself. ... Oh, pretty cool. I have my wallet and money so I can just buy Coke and chocolate on the train. ... I go up and then after the weekend or the holidays I just hop back on the train and go back down again. [Was it scary?] Sort of, sort of. I’m used to it. ... The first time I just texted my Mum and Dad every time I got to a station. I had a book or a Gameboy. Eventually I got a Nintendo DS and played that. ... It’s actually a long time. I’m not sure how long, but it’s long. (Todd, aged 11)

You kind of get used to the travel after a while and it’s quite fun to go on a train. ... I’m coming to the age when I can go on the train by myself so I’ll be going on the train by myself. I think it’s going to be pretty cool. (Nadia, aged 11)

I’m pretty independent cos I catch trains and buses by myself. (Tyler, aged 11)

Relationship with Parents

Many of the children said they missed the parent they did not live with:

When I get sad I miss him. (Sean, aged 11)

I’d like to go to [overseas country]. [It would be] hard because we’d miss Dad. (Maddie, aged 10)

[Friend’s] Dad lives so close to her, she can see him all the time. Cos Dad lives in [city] it’s kind of hard. It’s been over two months since I’ve seen Dad. (Ashleigh, aged 10)

However, there was a sense from the children that they **grew accustomed** to not seeing their contact parent so often:

Say if Mum was going overseas, I wouldn’t be that sad, because, I mean I would be really sad because I’m used to being with Mum, like for a while, like for a long time. But if Dad went, I’m kind of like used to his going because I’m not with him, and it’s just a little bit different. I mean if I lived with Dad, I’d probably get sad if when he was going. (Chloe, aged 11)

I thought it would be really horrible and I’d miss Mum, but I don’t really miss her that much anymore. (Bella, aged 12)

Sean thought that in the future he would see less of his father as he got used to not seeing him and his friends became more important:

I probably won't see him as much. I'll probably ring him. I'll probably feel I'm getting used to it ... and I'll probably get more friends and go out with them more. (Sean, aged 11)

The distance and amount of contact between children and their contact parents could **impact on how well parents knew their child**. Sally was happy with the amount of time she spent with both of her parents, which was frequent and regular, and she felt that each parent knew different things about her:

Well, I've got stuff with only Mum and sometimes stuff with only Dad, but I've got most of my stuff with both. Like sometimes Dad doesn't know much stuff about me and Mum, and like we've got some stuff that Dad doesn't know, we've got some stuff that Mum doesn't know. But we've got most of the stuff that they each know. (Sally, aged 9)

Olivia thought that because of the lack of contact with her father he didn't know her very well:

Like I'm a different person now from when I last talked to my Dad, like in person. ... Like if he lived [here], he probably would know who I am and stuff like that. But because he lives away, I talk to him by technology which is not representing myself, like in person, like the way I talk and my body language and stuff. And you can kind of tell that he doesn't really know me that well cos like birthday and Christmas presents. (Olivia, aged 15)

Bella acknowledged the importance of contact and felt it was unfair if children did not get to see their contact parent:

The good things is like here we get to see Dad. My friends always ask me like what does it feel like and I tell them. My friend's in a same but kind of different situation. Like her Dad lives up in [city] and her Mum lives here and she doesn't really ever get to see her Dad and I think it's really unfair. (Bella, aged 9)

Lucas also had a friend who did not get to see much of one of her parents and thought:

... it might have changed their relationship. But I think even if I had less time with one parent I'd still keep up the relationship. (Lucas, aged 11)

Lucas thought he had a good balance of time spent with each of his parents and therefore his relationship with his parents had not changed:

I think it's fine and it's about the same if you think about it. Cos I have four days here and then literally three days there. ... I think it's pretty fair. (Lucas, aged 11)

Some children thought the relocation had changed their relationship with their contact parent while others did not. For example, Aaron (aged 15) thought his relationship with his Dad had changed, but it was age “not the move” which was the cause.

Mandy (aged 13) lived with her Dad and reported that “we’ve got closer to my Dad and kind of closer to Mum but a bit further away in a way.” She thought that having parents living in different places “makes me really tired. I get really grumpy and short with my words sometimes.”

Some children reported **difficult, strained or distant relationships** with their contact parent. In most cases this did not appear to be due to the relocation or the geographical distance but was a feature of their relationship prior to the relocation:

My Dad’s a bit funny sometimes. ... Sometimes he questions me what’s going up here. Like I remember once we were walking somewhere together and he said ‘What did [mother’s partner] get Mum for Christmas?’ Like he was all interested ... and so I said, ‘Why?’ and he said, ‘Just wondering.’ So he’s always asking questions which I don’t want to answer. I feel bad about it. I really like [Mum]. She’s more relaxed than my Dad. (Taylor, aged 9)

Well, I kind of missed him, but I thought it was kind of like good to get away from him as well. ... He went through a, well he still is, a hatred stage with Mum. And he always seems to like take it out on me. He just calls her all these horrible names behind her back to me and stuff, and I just like hang up. I hate it. (Penny, aged 13)

Penny wanted her Dad to make “more of an effort to be a good father” by “getting involved with your kids” and “seeking help about issues.”

Tara also reported a distant relationship with her father who let her down a lot:

Then we got a bit distant ... My Dad kind of doesn’t have that much of a commitment thing going on and he forgets a lot. I felt kind of disappointed because it was like I was used to seeing my Dad quite a lot and then it’s not so much, but then I got used to that and now it’s like nothing. It felt really, really odd. (Tara, aged 10)

At the time of her interview Tara’s contact with her Dad was minimal. At the time of the relocation:

Well, there wasn’t any arrangements cos I hadn’t seen him for like a year. And he’d sort of become like really distant, and I’d give texts to him every couple of months saying ‘How are you?’ and then he’d ring and we’d get chatting and then he’d like die away again. [So it would kind of go up and down?] Roller coaster. And he contacted us about a month ago, and he was like really into it, more than he usually is, and it was like a shockwave. ... And then like maybe two weeks ago he just stopped contacting us again, so it gets really annoying after a while. ... The time spans between contact are getting long, and so maybe in the near future if he wants contact maybe I’ll have to like start the flame. (Tara, aged 10)

Tara did not think her moving away had changed her relationship with her Dad: “No, he’s still a good guy, but he’s got his priorities like that there and that one there and all mixed up.” However, she later commented that:

I kind of thought that it would have a really bad impact between me and Dad, and me and I was kind of right about my Dad, cos we kind of like drifted apart. (Tara, aged 10)

While some children described a distant kind of relationship with their contact parent, others had stronger negative feelings towards them and some were **angry with their contact parent** about the separation and their subsequent behaviour.

I don’t really want to have contact with him cos it seems like every time he calls it seems something happens. Like ... it’s like you go a step backwards. It’s so much better when we don’t have any contact with him cos we can just get on with our lives. ... There’s like too many complications like, ‘Oh, come and visit’ and all this stuff, and we don’t really want to. ... Mum’s like, ‘If you want to see him you can’, but I don’t want to see him. (Johanna, aged 12)

We just don’t want to [see Dad] and don’t particularly like him and his decisions he’s made. ... He’s never made an effort to come and see us. It’s kind of for the better that my Dad left because we never got along. Like before he left he kind of always got really angry at me. ... So life is definitely a lot more happier and pleasant. So it’s kind of worked out for the better, in this situation anyway. ... We wouldn’t want to go [on contact] and then it would cause all trouble, so it wasn’t kind of worth it. It was just best to stay put with the situation as it was. ... I don’t really want bad things in my life anymore. Like I kind of just want to stick with people who I want to stick with so I don’t mind not talking to him and if I ever see him again. ... I don’t think I was particularly close to [father]. ... Probably if he was still here the relationship between me and my father would have been different ... [but] before he left he’d done some things, so it did really change for the better. (Kara, aged 17)

I hated him. I didn’t talk to him for six months. [Brother] was a bit more placid about it. He stayed and talked to him, but I left. ... I wasn’t really interested in seeing him at all. Like for the first six months he would ring me up. He’d talk to [brother] and then he’d ask if I’d talk to him, and I said no. ... I just got over it. (Claire, aged 17)

When he first left I had quite a bit of hate for him and I was a really angry kid. Like I used to get into a lot of trouble and stuff, but now he contacts us more, we have a fine relationship and stuff. ... We were definitely closer as kids I think if I remember correctly, but it’s just kind of distant now. I still talk to him and everything, we still get along. (Seth, aged 16)

Nina (aged 13) went to live with her father when her mother relocated. She had felt unwanted and eventually was reunited with her mother. Nina now had a strained and distant relationship with her father. It didn’t bother her if she didn’t see him:

I don't think it bothers him either. I just don't think he cares. I don't feel cared for. I mean before it was so different. Before I was the star on top of the Christmas tree but now I'm just the little pot. I'm nothing and I don't really care, cos I just get on with life. ... At the start my dad was expressing such love for me but then his love died away and then it became clear to me that I wasn't much to him. ... I don't want to go wandering in the past cos it's not going to do anything. There's no point crying over spilt milk. (Nina, aged 13)

Nina clearly resented her father:

[Uncle] said you're supposed to respect our parents, but I just can't respect my father after what he's put us through. When I was living with him, I just can't ... I forgive things but some things I just cannot forgive. I know I should but I just can't. (Nina, aged 13)

A few children commented on the **diminished role their contact parent** had in their life following the relocation:

Kind of not like a parent-child relationship because he doesn't really see us much. ... He doesn't really have any control over us any more. So he's kind of a bit taken aback when he finds out the changes [in us]. ... Not like a parental relationship anymore because they're not there. Like you know how parents are there 24/7, watching, kind of control you. There's nothing like that anymore, like it's completely different. (Olivia, aged 15)

[Dad is] almost a part-time parent almost. (Jed, aged 12)

Mum can tell us not to do stuff and ground us, and tell us what we can and can't do, like wear clothes and that, and he can't. ... He hasn't got any power really. He just comes over and we go shopping and stuff. (Christine, aged 17)

A few children thought that not living in the same location as their contact parent had actually **improved their relationship**:

I think maybe it's a bit better ... because ... you know how you get grumpy with your parents. I don't usually do that, like when I get grumpy with him, he'll be like 'Ah, well we've only got this little time. Let's make the most of it.' It's stronger and you don't really do that any more. (Chloe, aged 11)

I get on with him better [since the relocation]. Because I don't see him often enough and before that he was sort of like always telling me off and stuff. (Louise, aged 13)

Sean thought that his relationship with his Dad changed due to them not living in the same place in both positive and negative ways:

I probably miss him more and enjoy staying with him. So it's probably made it more better probably. But then it's broken it away that we're not seeing each other as much, so it's like half and half. (Sean, aged 11)

Parental Relationship

Many of the children spoke of their parents' relationship. They appreciated a lack of conflict, and many reported **an amicable, friendly relationship**:

Mum and Dad get on well. ... I think it's actually quite lucky having a Mum and Dad that know each other very well and they get along. (Toby, aged 9)

They're best of friends. (Gemma, aged 11)

They're pretty good actually. They're still friends if you like and whenever they see each other they're always friendly and just have a chat. It's not awkward or anything. (Jacob, aged 16)

That's what I like about Mum and Dad, they don't fight like other parents do. ... They have their moments though. (Bella, aged 12)

Although her own parents got on well, Bella wished that "everybody's parents who split up get on well with them and have barbeques with them instead of just yelling and screaming at them."

Several children reported a more **neutral or distant relationship**:

They sort of get on. (Sean, aged 11)

They kind of keep their distance, which is the best way. (Johanna, aged 12)

They still talked to each other ... like there was no arguing or anything. (Will, aged 17)

They still don't really talk to each other. (Chloe, aged 11)

Others had noticed an **improvement** in their parents' relationship. Louise thought her parents' relationship deteriorated because of the relocation, but they were getting on better now:

Well, since they moved Dad was like real bitter with her and Mum just took it. ... Recently they've been okay with each other ... so they're kind of civil now. (Louise, aged 15)

They used to always fight. (Charlotte, aged 10)

Now they get on better than they used to. (Ashleigh, aged 10)

For some children, **conflict** between their parents was still ongoing. While Laura (aged 14) did not think living in a different city to her father had changed her relationship with either her mother or father, she thought "It might have changed how [my parents] get on. I'm not sure though." She was aware they argued over who was going to pay for the airfares: "I don't like it when they fight. ... but it's okay. I'm kind of used to it."

They still kind of fight ... I've noticed that they don't fight as much but when they do fight, it's usually quite big. (Jack, aged 11)

They don't be mean to each other, but sometimes they have little arguments. ... He sent this thing about child Court, where you take away your child from the other parent. But he didn't really want that to happen. ... He keeps on making things against her. (Jasmine, aged 9)

He was, well he still is, he's a hatred stage with Mum. And he always seems to like take it out on me. He just calls her all these horrible names behind her back to me and stuff, and I just like hang up. I hate it. (Penny, aged 13)

Abby (aged 7) could remember her parents' conflictual relationship and it made her sad:

They started fighting. ... [I felt] sad, because the Police took me. They gave me to my Dad. ... He started it and Mum rang the Police. (Abby, aged 7)

Conflict between parents could impact on contact:

We did have phone contact and emails but it really kind of disrupted the family life of everything and when he'd call he'd say something and Mum wouldn't be too happy and it's war. And then we got to the point where we didn't really want to speak to him or anything cos everything just happened. There was some contact but it kind of got too much. Like the contact wasn't worth what happened afterwards. ... We'd say the wrong thing or something we weren't supposed to say and then he'd try and kind of coach us and betray Mum sort of thing. It was during the time of the divorce settlement and you had to be really careful with what you said and what not to say. (Danielle, aged 18)

The following quote from Nina highlights the negative impact parental conflict can have on children:

I remember one time, I really wanted to be with my Mum, and I had just got back from [visiting her]. I remember coming back and I was sort of sad and I was crying and my Dad saw me crying and I was crying cos I wanted to go live with my Mum. He picks up the phone and calls her and tells her to leave me alone. And he starts yelling at her. I felt shocked. I wanted to say that she had done nothing but I couldn't. I couldn't say the words in my mouth. And he just went on and on ... and my Mum, she had no idea what was going on. ... And then he left and I finally got the voice to tell him just to go and leave me alone and I called my Mum. I said, 'Sorry, he saw I was crying' and she was so kind. And I remember when I first moved she used to talk to me a lot, she'd call me every day. My father was always against it. (Nina, aged 13)

Consultation and Amount of Say

There was quite a lot of variety in the children's reports of how much say they were given in the decision to relocate. Some children were consulted and had a **lot of input** into the decision about whether they moved or not and who they lived with:

I know that [Mum] always said that I had a choice ... and she always told me I had a choice and she didn't mind if I chose either way, but I like spending time with both my parents. ... I did have quite a lot of say cos I talked to my lawyer and I said [what I wanted] so they worked it out so [parents] had about the same time. ... I get quite a lot of say. (Emily, aged 11)

They were talking about going to [country], like live there, school there, and they asked what I thought of it, and I said I didn't want to go over there. I wanted to stay here cos I was sick of moving around. And I like school a lot and my friends. And I like growing up here more than in [country]. There's more opportunities in New Zealand than there is over there. (Christine, aged 17)

Last year I had one of my times when I came back and I was really missing him and I think it was less than three times a year then, so we made it three times a year. (Jayne, aged 14)

Kylie (aged 14) had had a lot of say in essentially her decision to return to live with her mother. The hardest thing for her was "Not seeing either one of my parents. I think that was the hardest part, making the decision."

Others reported they had **very little say** about what they wanted.

I don't think I had much of a choice. It was just like, 'We're going to [city]'. 'Okay.' Off we go. (Andrew, aged 15)

[Mum] never really spoke to me about it, but when I'm older I probably might because I'll understand it more. (Sean, aged 11)

While Nina (aged 13) had been asked who she wanted to live with she did not feel anyone listened and care was reversed to her father and step-mother against her wishes:

I can't remember most of the details of the conversation but [lawyer] said you have to choose between living with your father or with your mother, and I said I like my father and my step-mother, but I've been with my Mum so long that I want to go with her. ... I wrote a letter ... it was was, 'I like my step-mother but I don't know her too well and I want to go to [city] with my Mum.' I don't think they took heed of what I wrote. ... I made it clear to everybody, my father knew, my step-mum knew, [lawyer] knew. They all knew. All his friends knew but nothing was happening. (Nina, aged 13)

Nina repeatedly told her lawyer that she wanted to live with her mother:

I kept telling her so many times. She said, 'Okay, I'll try my best. I'll try my best. I'm doing this, I'm doing that.' But I said, 'You're not. You're not trying hard enough if it's taking you so long.' ... I pleaded with [lawyer] countless numbers of times and told her that nothing was happening. I got really annoyed and I kept ringing her. (Nina, aged 13)

But she didn't believe her lawyer understood her situation:

Every time I used to say to [lawyer] can I go and live in [city where mother lived] and she'd go, 'What's wrong with [town where father lived]?'. I'd tell her 'I don't like it here, I don't feel like I have anything here. ... I don't feel loved here. ... I feel like such an outcast'. And she'd always talk to my step-mum and my step-mum would try and make me feel welcome but she wasn't really good at doing that and it didn't help at all. ... I don't think [lawyer] understood what was going on.

Nina asked to speak directly to the Judge but was told this was not possible:

I asked her, 'Why can't I talk to the Judge?'. 'Oh, because nobody talks to the Judge.' I said, 'Why not? I'm telling you all my feelings and I'm sure that if the Judge knew how I was feeling she would have acted differently. Maybe if I talk to her she would actually understand my situation.' (Nina, aged 13)

Her lawyer said, she would talk to the Judge on her behalf and give the Judge her notes but Nina thought:

Her notes weren't working very well cos after a year ... she still wasn't doing much. (Nina, aged 13)

Nina felt as though she had no-one to talk to:

I don't want any other children to go through what I went through, cos I had no-one to talk to. I talked to [social worker] but my Dad was interfering with my conversations and I felt like I had no-one. ... I talked to [lawyer] but I didn't think she listened. ... It's like she was hearing but she wasn't actually listening. (Nina, aged 13)

Nina had found it difficult having so many professionals involved in her life:

Half the time I just wanted to get out of [lawyer's] office, so I would say whatever would come to my mind so she would let me go. ... I just wanted to escape from that. I wanted to live a normal life instead of continually going to see a lawyer and a psychiatrist and a psychologist and a social worker. ... All I wanted [was] a normal life. (Nina, aged 13)

Nina acknowledged that it while it was hard for young children to speak up but thought it was important that they did:

I just want to let the judges and the lawyers and all the people they're having to deal with, I just want them to know that they should get involved, like talk to

the child about what's really going on. ... they won't, at the start ... if they're all as young as I was they probably won't understand what was going on, they won't tell you what's really going on inside their mind. ... I believe that children need to know that they have to stand up, cos if they don't act now, it will really close off a lot of things in the future. 'Cos I was timid at the start and then I slowly came to understand to realise or comprehend what was going on around me and what could happen if I didn't do something and make sure that everyone knew what I believed was best for me. (Nina, aged 13)

Like Nina, those children who did not get a say about the relocation and/or contact they had with their other parent thought it was **important children had a voice**:

The kids should be deciding and their parent because then they know what the kid wants. (Charlie, aged 8)

I think it's quite good because mostly children they might try to say something to their parent, the parent will say completely different thing, 'Oh, no we're not going to do that.' They don't really listen. But if someone talks to the children they listen properly. (Libby, aged 9)

I think that they [children] deserve to have a voice, but I think that they should negotiate sort of thing because like when we moved I didn't get to have a say in anything except for who I wanted to live with and it was either Mum or Dad. (Louise, aged 13)

Connor (aged 11) did not feel his views had been listened to, particularly by his lawyer and thought that the best way for children to have a say was:

Maybe tell your parents and if they don't like it, tell your lawyer and if they don't listen, tell the Judge. If they don't listen ... I don't know what to do. (Connor, aged 11)

Two children thought that when they were older they would have more of a say about whether they could move. Eight-year-old Jason was “sad” that the Judge had not allowed him and his Mum to move [overseas]:

When I'm twelve I can make my own decisions. Go there or stay. It's going to be go there. (Jason, aged 8)

Like Jason, David also aged 8, thought that he would “probably” get to move overseas in the future “once I finished [primary] school”.

Some children, however, **did not want to be asked for their** views. Marcus (aged 10) didn't want people asking him about what he had wanted saying, “I just wanted to keep it a secret.”

Adam did not want to make a choice between his parents:

I decided I don't want to decide. ... I made it clear, but they didn't listen. (Adam, aged 11)

Nor did Ashleigh (aged 10) who thought it would upset her other parent:

I just said I don't care, I just want to be with one of my parents ... [if you say I want to go with Dad] that would be mean to Mum, or I wanna go to Mum, and that'd be mean to Dad. And, like, I wanted to be with both of them. (Ashleigh, aged 10)

Experience and Understanding of Legal Processes and Professionals

Children from thirty families took part in this study. Sixteen of these thirty families had some form of Family Court involvement in the relocation issue. Twenty-five (57%) of the children (from these 16 families) had had experience with or knowledge of the Family Court and/or legal professionals in relation to the relocation issue. Those children and young people who knew something about the Court varied in their understanding.

Jenny (now 16) recalled how she did not really know too much about the legal process as a 9- or 10-year-old:

It's kind of what the Judge says and that's how it goes, so that's what happened I suppose. But up until then I didn't really know what was going on. ... Yeah, I think we had like a lawyer. We had a lawyer and he came and asked us a few questions and he said he had to do, like put forward a sort of position or something to the Court. ... It was pretty much all that we knew that was going on. ... it wasn't too bad. It was kind of awkward though cos it's all sort of going pretty quickly and you're young and you don't really understand what's going on, so it was a bit of pain really. (Jenny, aged 16)

David's mother's application to relocate overseas had been denied. David stated that:

I had to stay cos my Dad won, cos my Dad had more money. (David, aged 8)

Leo (aged 11) had a very clear understanding of the Family Court and thought his parents had gone to Court to "sort out things":

They went to Court when they got separated and my Mum moved up here, that's when they started going to Court. . My Mum moved up here and then we had to decide who was living with who and I went to live with my Dad. ... I've got a lawyer. ... Her job was to help everyone decide who was living with who and stuff. (Leo, aged 11)

Most children who were asked knew it was the Judge who made the decision about the move. Connor (aged 10) thought it was "the Judge and the parents" who decided:

They put their lawyers up and they say what Mum and Dad want. (Connor, aged 10)

Fourteen children spoke about **having a lawyer** appointed to represent them. Brett spoke about how Lawyer for the Child had taken them to meet with the Judge before he decided to allow their mother's relocation:

I thought it was going to be a bit scary, but it was alright. (Brett, aged 13)

Brett knew that Lawyer for the Child wrote a report but he didn't get to see what he wrote and would have liked to have known what he reported. He had gotten to know his lawyer well and liked him. Brett thought that he had had "quite a bit" of a say about their relocation and that the Judge thought about "what the children want" in making his decision.

Charlie had had the same lawyer as Brett, but unlike Brett, he did not like him:

He was a stinker! Just because I didn't like him. Cos I just don't trust him. Just don't trust him. (Charlie, aged 8)

Charlie reported talking to another professional who he also did not like: "He spends all your money. He's a little stinker! He didn't do hardly nothing." He related how when he spoke about his Dad, this professional "used to tell Mum".

Kylie (aged 14) described her involvement with the Family Court and lawyers as "weird, it was just like a different kind of experience."

Marcus (aged 10) thought his lawyer talked to him "about boring stuff. ... The only thing she was doing was like giving our [plane] ticket when Dad sent it down." He did not want to talk to his lawyer about what he wanted.

Like Marcus, Lucy also did not like disclosing what she wanted to her lawyer because she didn't "like strangers":

Well, a lady asked me questions. I always said like, 'I don't know. I don't know. I dunno, I dunno. I'm not sure. I'm not sure'. And I kept on playing games with her (laughs). ... I just didn't want to talk to her. I wasn't sure about anything really. And I also remember my Dad and Mum sitting out on the seat outside looking very, very serious. ... I knew why she wanted to talk to me. I didn't know who she was. I just knew she was just a counsel person. ... The counsel has to make a decision with the lawyers and then I put my decision in what I want. [What were they trying to decide?] Whether I could move to [city] or whether I could stay. ... she had a sheet that she was going to give to the counsel and they all had lines on them. That I didn't know so she put a big line. And I didn't know anything. I didn't say yes or no to anything. (Lucy, aged 8)

Similarly, Connor (aged 11) found it "sad ... you have to speak to a stranger. I don't like talking about Mum and Dad breaking up to a stranger." He and his brother Brandon (aged 10) didn't feel their lawyer listened to what they were saying. When asked if their lawyer had asked them whether they wanted to move they replied:

No, not really. ... She only asked us maybe one or two times. ... I don't even think she did ask. (Connor, aged 11)

She decided for us. (Brandon, aged 10)

She didn't listen. (Connor, aged 11)

She said like the total opposite thing I wanted to do. We said we didn't want to go see our Dad and she said to the Court we do want to see our Dad. (Brandon, aged 10)

They thought this was “bad” and felt “angry” about this. Connor thought the lawyer “sort of” reported back to the Family Court what they wanted, but Brandon thought:

She didn't say to them, like the Courts, that we wanted to go. She didn't tell them. (Brandon, aged 10)

They also met with the Judge: “We just had to say hello. We didn't have to answer anything” (Connor, aged 11). The boys had been reluctant to have contact with their father and the Judge “said, ‘Why don't you want to see your Dad?’ But he just said, ‘I don't believe you.’”

These brothers thought the professionals making decisions about whether children should be allowed to move should:

Actually listen and do like what they say. (Brandon, aged 10)

Give the parents a chance to say something too. (Connor, aged 11)

Adam (aged 11) thought that his parents had gone to Court because:

Mum was going to move to [town] ... Oh, that's why she done the Court. That's why! To win me over for custody, so they'll take me down [to town]. (Adam, aged 11)

About “about four” professionals asked him what he wanted and he felt they were pressuring him to choose between his parents:

They were pretty tough questions, like what parent do you like best, what parent do you want to spend the night with? I didn't answer any of them. I said, ‘Dunno’. ... I got pretty annoyed sometimes ... I think they were just lining up who can crack the code, who can make him say ‘I want to live at that house.’ (Adam, aged 11)

Adam was clear that “I decided I don't want to decide” and knew that he had not indicated a preference for either parent and was angry it was reported that he had:

I don't know what I said but I'm sure I didn't say I don't want to stay with Dad. I didn't. ... I didn't want to choose, and [Judge] said that I wanted to live with Mum and I never said that. I never said that. ... I made it clear, but they didn't listen. (Adam, aged 11)

Nina (aged 13) had repeatedly told her lawyer she was unhappy living with her father and wanted to move to live with her mother who had relocated.

I think I was a burden on [lawyer]. I used to ask to see her a lot cos I really wanted to live with my Mum. (Nina, aged 13)

She was very unhappy with her lawyer, who she felt did not listen to her or understand her situation:

I don't feel she was doing her job. ... I don't think she understood that my future was resting on her shoulders, and I don't think she took the time to understand just what she was doing. ... How important her role is and I don't think she took it seriously. ... Maybe she took it seriously, but I don't think she worked hard enough. ... It's her job to help people. ... I told her what I wanted but she obviously wasn't doing as much as she could. ... This is [lawyer's] job. She's getting paid to do what she's doing and she wasn't taking responsibility for it, 'cos she had a lot of power over what would happen to me and then you say that with power comes great responsibility and I don't think she was being responsible enough with what she was doing. (Nina, aged 13)

Nina thought that her views weren't given as much weight because of her young age:

I don't believe they understood that a child as young as I could make decisions for her future, by my decision hasn't changed over time. (Nina, aged 13)

Nina hoped that Judges were talking to children now:

I hope so. Hope they never have to go through what I had to go through for a year. (Nina, aged 13)

Chloe (aged 11) understood her lawyer's role:

He asked lots of questions and we did lots of things. ... [His job] was to help us choose, like if we wanted to go with one person. ... Yeah, to get our point of view. And back then, I was kind of littler, and I didn't really know, so I just said, I don't care, I just want to be with one of my parents. (Chloe, aged 11)

Chloe liked her lawyer because:

It feels like he understands you, like when he's talking to you, and he asks you all the questions, like he doesn't hurry you into answering them. He's just like ... well from what I can remember, he wasn't that like, you know. So, 'Come on write it down. Do it! Hurry up!' (Chloe, aged 11)

Emily (aged 11) also had a lawyer who she liked:

She's really nice. We wouldn't just talk about the things we needed to do. We'd also just talk about daily life. (Emily, aged 11)

Advice for Children

The children and young people were asked what advice they would give another child facing a relocation issue. Generally, their responses fell into the four categories: Staying in contact with your parent(s); having a voice; a reassurance that things will work out; and just accepting the situation and “going with the flow”.

Staying in contact with your parent(s)

Just stay in contact with both parents. (Olivia, aged 15)

You can always ring Mum if you're feeling down. (Gemma, aged 11)

Keep in touch. (James, aged 12)

Well, it really depends where they are moving. If it's really far away like the North Island, and his Dad's like down South, well try and get lots of ... well, try to see him more than phone calls probably. I find it better seeing him than calling him. (Sean, aged 11)

Just try ringing them and stuff. And if you can get your Mum or Dad or whoever you're living with, get them to get airplane tickets or bus tickets or anything just to see them. Or just write letters and send photos and stuff. (Sean, aged 11)

Don't take sides. ... Stay in contact with both parents and try and give them a second chance. (Claire, aged 17)

Having a voice

Make sure they have their say. (Brett, aged 13)

Be honest. (Connor, aged 11)

I'd ask them what they want and then say for them to tell their Mum their opinion and then she might take that into consideration. (Lucy, aged 8)

Be strong. You've got to be exceptionally strong You can't be timid. You have to speak out, cos I was when I first moved in [with father], I was timid and I didn't say much to my lawyer and my lawyer would say, 'Is everything okay?'. I said, 'Yeah, everything's fine.' So, then I finally spoke up and ... no matter what happens, you have to speak your mind and if you don't feel as if your views have been put through, you have to make them put them through. ... I was going to tell children that they have to be strong and if they have a point they have to make sure that it is being put through cos if you delay it too long you don't know what could happen. And you have to realise that it is your life, and there's a lot of things that will be put at stake. ... You've got to stand for what you think is right for you. (Nina, aged 13)

Reassurance

I'd probably say to them it's actually not as bad as you think. ... I just think it's actually not that bad. ... Like it's not that hard as long as they stay close. (Chloe, aged 11)

If you're like scared that everything's going to change, it doesn't actually change. Your parents still love you. But it's not actually a big deal when you get the hang of it. It's actually just a small little thing like breaking a pencil, or breaking a pencil tip. (Adam, aged 11)

I think it's like just trust in [the place you move to]. Like you've got to know that you're still going to have contact with your parents and stuff but it's going to be hard for the first few years. But you've just got to trust [the place], make friends and just try and settle in as easy as you can. (Will, aged 17)

Maybe like keep your hopes up, don't bring yourself down cos everything's changing. Cos sometimes change can be good and sometimes it can be really bad, but you can work your way through it. (Paige, aged 10)

Just keep strong. Don't doubt your parent, like your Mum, or whoever you're still with, for a minute. And things are meant to happen for a reason. (Johanna, aged 12)

“Go with the flow”

There's not much you can do. You've just got to go with the flow. (Andrew, aged 15)

I suppose it's never really a good experience having your parents break up and all that fighting and stuff that comes with it and then breaking up and going in two different ways and not being able to see one parent or the other. But I suppose if it happens you've just got to get on with it and try to keep everything like normal and just be yourself and just do what you normally do and try just and carry on as if everything's fine. (Jacob, aged 16)

I might say, try and not make a fuss if your parents are having a bit of an argument otherwise it will be a bit stressful. (Libby, aged 9)

Don't get your hopes up [about parents getting back together] because if they would get together then they'd probably, maybe it was serious and maybe they'd get back together within a week or something. But I would probably say don't get your hopes up. (Emily, aged 11)

Advice for Parents

The children and young people were also asked what advice they would give to parents who were making decisions about relocation. Their advice was about giving children a say; maintaining contact; and avoiding conflict in front of children.

Give children a say

Let the kids do what they want. (James, aged 12)

Listen to your kids. ... They should let you do whatever you want instead of having to go through all the Courts and spend all their money on lawyers. (Connor, aged 11)

Talk to them and see if they actually want to move. (Charlotte, aged 10)

I think probably if, because some kids don't like their other parent, but if they do like their other parent ... like both their parents the same they should be able to see them at both times. Like my [step-sisters] they don't really get a say and I think all kids should get a say in when they see their parents. ... Just as long as you give your kids a say in things cos I couldn't really imagine where I'd be if I didn't have a say in any of what I've had to do. (Emily, aged 11)

Listen to the kids, not make their own decisions. They have to listen. (Adam, aged 11)

Maintain contact

Just make sure their kids can see the other one [parent]. Like make sure that everything's okay when they go to the other parent's place and all that kind of stuff. (Laura, aged 14)

Stay in contact. Keep in contact with the kids. (Chloe, aged 11)

Keep conflict away from the children

Well, what I think probably is other parents need to realise that if one's hurt just to get over it and be a friend, because it just affects the children more than ever. It's really selfish I reckon when the parents don't get on and don't talk to each other and tell what's happening cos it makes the kids like little messengers. I've got friends like that. (Bella, aged 12)

I would say tell the child that if you're having an argument and the child knows that you're having an argument you should just say, 'Don't worry, it will get sorted out.' ... Think about how the children feel and not just them. (Libby, aged 9)

Go with the flow and don't try and kill the other parent. (Lucy, aged 8)

Other

To be disciplined about what the children want and stuff, cos I remember when we were in [city] and Mum was on the Benefit and we'd always like ask for stuff and she'd say no, and we'd throw tantrums and now I understand why she said no. So I reckon just like for the children to just deal with no longer being able to have all the things that they want. ... Plan. Probably to sort out where you're

going to live and sort out how you're going to get your money. (Louise, aged 13)

Stay strong. (Ashleigh, aged 10)

Well, don't think that your kids are going to be okay and everything's going to be fine cos sometimes they're not and they just don't want to tell you. They like hide in the corner. And so like keep in touch with your kids and don't drift apart. ... My Mum just like consistently talked to me and I was like, 'Nooooo.' [You didn't want to talk about it?] No, but then I ended up talking to her and I felt really good afterwards. (Paige, aged 10)

Deal with it! It's going to be hard on them as well but they just need to once again trust [the place they move to]. (Will, aged 17)

Try not to bribe your kids and all that sort of thing like [Dad] did. Giving things Mum couldn't. (Kara, aged 17)

Summary of Children and Young People's Perspectives

The children and young people spoke articulately about their experiences of their family situation, family relationships, relocating (or not being able to move), their contact arrangements, and the legal processes and professionals they encountered. What came through very strongly in these interview was, that for the most part, the children and young people were relatively happy, well-adjusted and satisfied with how things had worked out for them and their families. This is not to say that the relocation experience was not difficult or traumatic for some, but rather there was the sense that they had adjusted and moved on. This was particularly true of those children and young people for whom the relocation issue had occurred some years previously.

The children had a good understanding of the reasons why their resident parent wished to move, but could also see and understand the perspective of the 'left-behind' parent.

Generally, the prospect of moving was regarded as positive. The children and young people spoke of being excited and happy to be moving, seeing it as an adventure, with new experiences and opportunities. However, they did acknowledge the negative aspects – moving away from friends and family, the nervousness of starting a new school and having to make new friends.

Two overarching themes that emerged from the many topics discussed by the children and young people during these interviews was the importance of family and the importance of friends. Moving to be with extended family was regarded as a positive aspect of moving, while shifting away from family and a parent and missing them was considered one of the hard things about moving. Family support was a factor in what helped children and young people adjust to a relocation.

Similarly, saying goodbye to friends was the most common difficulty the children and young people reported when moving to a new location. Being able to maintain these

friendships was valued, while making new friends was a significant factor in helping the children and young people settle in after a move.

A variety of contact and travel arrangements were described. Most children were satisfied with the contact they had with the parent they did not live with – a few would have liked more contact or for their parents to live closer together, but the distance and in some cases infrequent face-to-face contact was something the children appeared to grow accustomed too. The use of technology such as texting, email, Skype, MSN and the like was used by quite a few of the children and young people but many described problems with it; the cost, computers not being connected or not having a webcam, slow or patchy connections, and/or lack of consistent access to such technology. Face-to-face contact was generally preferred.

Some children travelled extensive distances in order to have contact – and they did not really complain about this. They found flying and train travel fun and exciting (although flying unaccompanied was initially daunting for many), while travel by car was not so popular.

In terms of how the relocation impacted on children's relationships with their contact parent, the children gave mixed accounts. Some thought it had made no difference, while others thought the relationship had become more distant and less parental. Several children had distant, difficult or strained relationships. These appeared to be due to factors independent of the relocation; such as the contact parent's behaviour or failure to maintain regular contact.

There was variety in how the children described the relationship between their parents – some thought their parents got on well, some reported neutral or distant relationships, while others were aware of ongoing conflict and did not like this.

The children and young people's experiences of the legal processes and professionals were also mixed. Some children liked their lawyers, while others did not feel their lawyer had listened to them or accurately reported their views. Those who spoke about the Family Court had a reasonably correct view of its role in the decision-making process.

Having a say and being listened to was important to the children and young people we spoke with. Those who had got to have a say and contribute to the relocation decision valued this opportunity. Those who had not or who had felt they were not listened to were unhappy about this.

To conclude, the three strongest themes which emerged from the interviews with the 44 children and young people about their experiences of relocation were:

- The importance of family and friends;
- The children's balanced views – they could understand both the advantages and disadvantages of moving and could appreciate both of their parents' perspectives on the relocation issue;
- Even though relocation could be traumatic and/or difficult the children and young people adjusted and grew used to their new situations. Many could see that although it had been hard, the move was, in hindsight, beneficial.

The children and young people who we interviewed in our study were predominantly happy, well-adjusted and satisfied with their lives – many were thankful that they had had such a good experience and knew that there were other children who were not so fortunate.

Chapter Seven

Conclusions and Future Directions

The current approach to relocation disputes in New Zealand, as in Australia, Canada, and increasingly the USA, is flexible and has the advantage of allowing for individualized determinations in each case. However, given the discretionary nature of the best interests of the child principle and the fact-driven nature of the analysis, it has “the disadvantage of tending to promote uncertainty and litigation” (Chamberland, 2009, p. 15). Elrod (2006) summarises the current position well:

Statutes and court decisions on relocation have created a true hodge-podge of presumptions, burdens, factors and lists. There remains no universal standard. Within the past four years, it does appear clear that the emerging standard [in the USA, as it has been for sometime in New Zealand] is the case-by-case best interests of the child approach. While it is hard to argue with a judge trying to do what is in a child’s best interests, as we have seen in other areas, the child’s best interests are hard to predict and the decision can be highly subjective. In addition, if the concern is for the child to maintain contact with both parents, there needs to be an avenue for a custodial parent to challenge a non-custodial parent’s relocation which may not be in the child’s best interests. The uncertainty inherent in a best interests test leads to often painful, expensive, and time-consuming litigation with inconsistent results. ... Relocation cases are hard on the parents, the children, the lawyers and the judge. While a parent may think he or she has won a relocation case, if the child suffers loss of a strong parent-child relationship or has to fly across the country during every break, the child has lost something significant. On the other hand, if the courts truly focus on the needs of the child, rather than the demands and wishes of the parents, the best interests test may be the most equitable way to decide these troublesome cases. The outcome of any given case will depend upon the existence of a statute or case precedent making it easy or difficult for a parent to relocate with a child, the type of parenting arrangement or order that currently exists, and the attitudes of the judge who will be hearing the motion as to the best interests of any given child. (Elrod, 2006, p. 48)

Efforts are underway to ensure greater consistency in the approach to relocation law internationally. Research evidence emerging from Australia, the USA and the UK is highlighting the advantages and disadvantages inherent in the way different jurisdictions determine relocation disputes in their Courts. It seems no approach is perfect - and this is no doubt why academic commentators, lawyers and judges alike regard these disputes as one of the most controversial and difficult issues in family law. What is new in very recent years, however, is the voice of Australian and English parents about their experience of relocation litigation. It is exciting to now be able to add to this emerging field with the study we have conducted in New Zealand. Our sample of 100 families is much larger and more diverse than both of the Australian studies (Behrens et al., 2008a, 2008b, 2009a, 2009b; Parkinson, 2008a, 2009; Parkinson & Cashmore, 2008, 2009; Parkinson, Cashmore & Single, in press) and the English study (Freeman, 2009a, 2009b). We were particularly pleased with our

retention rate. We managed to undertake two interviews over a 12-18 month period with a parent from 91 of these 100 families, and were able to initially interview and then maintain contact with parents from four more families over the course of the study (even though it did not prove possible to re-interview them in 2009). Our interviews with 44 New Zealand children and young people also represent the first empirical research to be conducted with those arguably most directly affected by the relocation decision made by either their parents or the Court. The Australian studies had little success in recruiting a significant sample of children, and the English study did not try. We therefore expect there to be considerable interest in what the New Zealand children had to say.

Our New Zealand research findings, more generally, echo many of those themes evident in the Australian and English studies. We, too, have serious concerns about the costs (financial and psychological) and delays reported to us by our families; and strongly agree with the need for ‘reality testing’ (Parkinson & Cashmore, 2009; Parkinson, Cashmore & Single, in press) the proposed arrangements for the children and parents when an application to relocate is made to the Family Court. Our data has also revealed a level of complexity and diversity in relocation disputes following parental separation that has not previously been reported within the published literature nor emphasised enough within the Courts. We believe it is timely to reconsider whether an appropriate balance has been struck between the tensions implicit in relocation cases. At one level the tension denotes a choice between two parental rights – one parent’s right to have a close meaningful relationship with their child and the other parent’s right to freely move with their child. Alternatively, the tension can be regarded as a choice between children’s rights: to have a relationship with both parents or to live with a parent who feels emotionally enhanced.

In many cases the decision is relatively clear – even though the hurt to the disappointed parent should not be underestimated. Where there is little involvement of one parent in a child’s life or there has been violence, high conflict or substance abuse it is generally easier to allow the proposed relocation. Cases where arrangements can be made that are not too stressful or financially onerous for the child to maintain relationships with both parents should also be more likely to lead to relocation being allowed. The most difficult cases should be those where both parents have been closely involved in the children’s lives and one of the parents, usually the mother, wants to move for genuine reasons which she believes will make her life more fulfilled and thereby enhance her ability to care for the children. However, we also have evidence in our study that some relocations have been denied so as to allow a previously relatively uninvolved parent to maintain or build a relationship with their child, or a child’s care has been reversed from their relocating primary carer to the other parent in the face of serious obstacles to its success. Our research shows that such arrangements have a close to 50% chance of breaking down. This, together with the fluidity of family relationships and geographical moves that we have uncovered prior to and following the relocation decision, raises serious questions about the predictability and consistency of the signals currently given in New Zealand to those judges, lawyers and parents entwined in relocation disputes. How the family law system can best contribute to resolving the tensions and clarifying the signals is a critical debate. The patterns of relocation decisions and the empirical outcomes we have found will help provide an informed basis for applying the best interests principle in relocation disputes. In light of this, we await the imminent relocation

decision from the New Zealand Court of Appeal²² with interest. This judgment is the first from this Court since the Care of Children Act 2004 took effect and will undoubtedly set the tone for the future. We look forward to using our analysis of the international literature and New Zealand caselaw, as well as our parent and child data, to contribute to the relocation field within New Zealand and internationally in coming years.

²² Note: The Court of Appeal issued the judgment, *Bashir v Kacem* CA585/2009, on 25 March 2010.

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