



## THE FAMILY LAW VACATION

By Ken Nathens\*

Out-of-country vacations for children whose parents reside separately and apart is more than just a task for a travel agent. It is necessary for the traveling parent to obtain the signed authorization of the non-traveling parent in order to obtain a Canadian passport for a child. Furthermore, the notarized written consent of the non-traveling parent to the child's travel is considered essential as a result of tighter security at borders and customs, and due to greater concern by government officials about international child abduction.

Recently, I have noticed an increase in contentious files relating to out-of-country vacations for children whose parents reside separately and apart. A typical scenario is when one parent wishes to remove a child from Canada for a vacation of 1-3 weeks, while the other parent will not provide his or her consent for the child's travel due to concerns with the proposed travel plans. Often, the concerns of the non-traveling parent are as follows:

- The child will not be returned back to Canada by the travelling parent.
- The intended location of the vacation is politically unstable or potentially unsafe, and thus the travelling parent may be exposing the child to danger.
- The travelling parent is not willing or able to properly supervise the child while on vacation, thus possibly exposing the children to a risk of harm.

If the issues cannot be worked out collectively by the parents, the Court must resolve this. Questions that the Court considers in determining whether or not to permit the travel are as follows:

### **1. Is there a Court Order or Separation Agreement that already deals with the issue of travel?**

Courts will generally enforce provisions of a prior Court Order or Separation Agreement that permits travel. However, this can be excepted when a parent is able to convince the Court that there has been a material change in circumstances that justifies the variation of the travel provisions in the best interests of the child. For instance, in the case of *Becktold v. Hall* 2004 CarswellOnt4774, the Ontario Court of Justice permitted a father to take his child to Walt Disney World, despite the mother's concerns where the prior written consent of the parents provided that the father would have two weeks consecutive vacation time with the child.

### **2. Does the parent who proposes to travel with the child/children have a substantial connection to Canada?**

Courts are more willing to permit the travel if the travelling parent has a long history of residing in Canada, has employment or a business in Canada, and has family connections in Canada. The more substantial a parent's connection is with Canada, the less likely they will flee Canada with a child to reside in another country.

### **3. Is the country where the proposed travel to take place a member of the Hague Convention?**

The Hague Convention on the Civil Aspects of International Child Abduction is a multilateral treaty developed by the Hague Conference on Private International Law. It provides a legal method, from one member nation to another with the assistance of central authorities for each member country working together, for the return of a child abducted by a parent. The member nations of the Hague Convention are listed at: [http://travel.state.gov/family/abduction/hague\\_issues/hague\\_issues\\_1487.html](http://travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html).

However, it is important to keep in mind that there is no guarantee of success in having a child returned under the provisions of the Hague Convention, nor a method to ensure that a contracting country to the Hague Convention enforces the terms of the Convention as intended. Therefore, if there is a real concern about the potential for an abduction of a child from Canada by a parent, the most cautious route for a Court would be to prevent the travel.

### **4. Is there a potential danger to travel with the child/children?**

Courts will consider the political and social climate of the country of intended travel. If evidence is brought to the attention of the Court that the country is going through political or social upheaval, travel may be prevented if there is a possible risk of harm to a child. For instance, in the case of *Chammout v. Chammout* 2005 CarswellAlta 266, the Alberta Court of Queen's Bench held that a potential trip to Lebanon exposed children to risk of harm that outweighed the benefit of the children connecting with their Lebanese relatives. In reaching this conclusion, the Court took judicial notice of a travel advisory issued by the Canadian Government. Such travel advisories are located at: [http://www.voyage.gc.ca/countries\\_pays/profiles-menu-profils-eng.asp](http://www.voyage.gc.ca/countries_pays/profiles-menu-profils-eng.asp)

Travel may be permitted even to a potentially risky country if the travelling parent is able to prove that his or her travel plans stay away from political or social "hot zones," and there is a legitimate reason for travel.

### **5. What are the reasons for travel?**

Courts will consider the reason for the proposed travel. Is it to visit relatives and friends in a different country? Is it for a beach holiday? Is it for a family emergency? Courts are more willing to authorize travel if the reason for travel is legitimate and in the best interests of a child, such as to visit with extended family members, or for a relaxing beach holiday at a family oriented resort.

Courts generally favour travel for children. It is viewed as a unique learning experience for children, and presents the opportunity for children to spend time with friends and relatives abroad whom they would otherwise have limited contacted with. Courts acknowledge that there is some risk to travel, and are careful to consider the risks vs. rewards of potential travel for a child.

Should the travel be allowed by the Court, in order to alleviate the fears and concerns of the non-traveling parent, to the extent possible, the Court will order the travelling parent to provide a complete itinerary for travel, including: flight arrival and departure times, contact phone numbers and addresses of stay. The Court will also require the traveling parent to facilitate frequent -- if not daily -- communication between the child and the non-traveling parent during the holiday.

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