

2011

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Recommended Citation

Patrick Parkinson, Judy Cashmore, and Judi Single, "Mothers Wishing to Relocate with Children: Actual and Perceived Reasons" (2011) 27:1 Can J Fam L 11.

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MOTHERS WISHING TO RELOCATE WITH CHILDREN: ACTUAL AND PERCEIVED REASONS

Patrick Parkinson,^{*} Judy Cashmore,^{**} and Judi
Single^{***}

***Abstract:** Thirty-eight mothers in Australia who wanted to move with their children were interviewed about their reasons for wanting to relocate. Forty men, all of whom opposed the mother's move, were also interviewed about what they perceived the mother's reasons were. There were nine former couples in the study. Most women had more than one reason for wanting to relocate, and there were quite often disparate reasons. Women's reasons mainly focused on relationships with family or potential new partners. Conversely, men were more likely to perceive the real reasons as being related to financial issues, jobs, and lifestyle. The article explores the possible explanations for these gender differences, including poor communication between the parents, strategic explanations of reasons in the context of litigation, and differences between what women say and what men hear. In the light of this evidence, the article considers the role of the court in examining the ostensible reasons for relocation.*

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This research was supported under Australian Research Council's Discovery Projects funding scheme (project numbers DP0665676 and DP09887 2). Thanks to Antoine Kazzi and Martha Dale for their invaluable research assistance.

INTRODUCTION

Relocation disputes, or ‘moving away’ disputes as they are known in some jurisdictions, arise when the primary carer of the child, or one of the carers in a shared care situation, wants to move away from the other parent – usually a substantial distance - and that move is opposed. Typically, the mother wants to move some considerable distance from the father, making it much more difficult for the father to spend time with the children. In a small proportion of cases, it is the primary caregiver father who wants to move away from the mother. In countries such as Canada, the United States and Australia, even domestic relocation cases can involve moves of vast distances, since a move from one side of the country to the other is equivalent to crossing several countries in Europe.

The Relocation Dilemma

Relocation disputes between parents are some of the most difficult issues for family courts to resolve¹ and are an increasing burden on already overstretched court dockets.² There are significant issues involved concerning gender equity,³ given that it is almost always mothers who want to

¹ D Duggan, “Rock-paper-scissors: Playing the Odds with the Law of Child Relocation” (2007) 45 Fam Ct Rev 193; Tim Carmody, “Child Relocation: an Intractable International Family Law Problem” (2007) 45 Fam Ct Rev 214. On the value choices involved in decision-making, see Mark Henaghan, “Relocation Cases – The Rhetoric and the Reality of a Child’s Best Interests - A View from the Bottom of the World” (2011) 23 Child and Family LQ 226.

² For evidence of the increase over time in the number of decided ‘mobility’ cases in Canada, see Elizabeth Jollimore & Ramona Sladic, “Mobility – Are We There Yet?” (2008) 27 Can Fam LQ 341.

³ For commentary from a Canadian perspective, see e.g. Susan Boyd, “Child Custody, Relocation, and the Post-Divorce Family Unit: *Gordon v Goertz* at the Supreme Court of Canada” (1997) 9 CJWL

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move,⁴ and there can be quite marked inconsistencies between trial judges, depending on their personal values and their interpretation of the relevant appellate guidance.⁵ These disputes tend to be hard fought, difficult to settle,⁶ and based upon dichotomised choices. Either the children will be allowed to go with the primary caregiver mother, or they will not. In practice, there are more options than this: in particular, the option of the father moving to the same new location as the mother,⁷ the mother's new partner moving to be with her in the same locality as the children's father,⁸ or the court transferring primary care to the father.

447. In Australia, see Kirby J in *AMS v AIF* (1999), 199 CLR 160 at 206; Gaudron J in *U v U* (2002), 211 CLR 238 at 248. See also Juliet Behrens, "A Feminist Perspective on B and B (The Family Court and Mobility)" (1997) 2 *Sister in Law* 65; Lisa Young, "Resolving Relocation Disputes: The Interventionist Approach in Australia" (2011) 23 *Child and Family LQ* 203.

⁴ In a study of all decided cases in the Family Court of Australia between 2002 and 2004, 88% of the cases involved mothers wanting to relocate. Juliet Behrens, Bruce Smyth & Rae Kaspiew, "Outcomes in Relocation Decisions: Some New Data" (2010) 24 *Austl J Fam L* 97.

⁵ In Australia, see Patrick Parkinson, "Freedom of Movement in an Era of Shared Parenting: the Differences in Judicial Approaches to Relocation" (2008) 36 *Federal Law Review* 145. In Canada, see Rollie Thompson, "Relocation and Relitigation: After *Gordon v Goertz*" (1999) 16 *Can Fam LQ* 461; Rollie Thompson, "Ten Years after *Gordon*: No Law, Nowhere" (2007) 35 *RFL* (6th) 307; but see Nick Bala and Joanna Harris, "Parental Relocation: Applying the Best Interests of the Child Test in Ontario" (2005) 22 *Can J Fam L* 127 at 169.

⁶ Patrick Parkinson, Judy Cashmore & Judi Single, "The Need for Reality Testing in Relocation Cases" (2010) 44 *Fam LQ* 1.

⁷ Merle Weiner, "Inertia and Inequality: Reconceptualizing Disputes Over Parental Relocation" (2007) 40 *UC Davis L Rev* 1747.

⁸ In Australia, see e.g. *Spain and Spain*, [2007] *FamCA* 883.

The problem of relocation does not always arise as a discrete issue without other factors being significant to the decision in the case. Cases which involve relocation may also involve issues about parenting capacity, substance abuse, mental illness, indigenous heritage and a variety of other factors that may influence the outcome. The court must examine all aspects of the children's circumstances, and all of the options available to resolve the dispute.

In some cases, the father opposing the relocation may be so inadequate as a parent, or present such risks to the safety and wellbeing of the child, that there is no reasonable basis for the court to refuse the relocation.⁹

In other cases, however, the relocation case may be finely balanced. In such cases, the father may have a close relationship with the children and have good reasons for finding it difficult to move to the same location as the mother. For example, the father may not be able to move because of an established business or because a move would involve a relocation dispute for a new partner with children. Within such a context, relocation cases involving preschool children are particularly difficult. Young children need frequent contact to promote a healthy attachment with a non-resident parent.¹⁰ Where there is enough money for the parents between them to manage regular travel in order to facilitate access, the problems created by a long-distance relocation may be diminished, but when the parents are impecunious, and struggle to meet basic needs in the aftermath of separation, a move by the primary caregiver to a distant location may mean the end of face to face

⁹ See generally, Patrick Parkinson, "The Realities of Relocation: Messages from Judicial Decisions" (2008) 22 *Austl J Fam L* 35 at 37-38.

¹⁰ Joan Kelly & Michael Lamb, "Developmental Issues in Relocation Cases Involving Young Children: When, Whether and How?" (2003) 17 *Journal of Family Psychology* 193.

contact with the non-resident parent.¹¹

The Significance of Reasons for Relocation

When a relocation case is finely balanced, courts may focus on the mother's reasons for wanting to move as a way of determining whether or not the status quo would be a reasonable option. Nonetheless, the final courts of appeal in both Australia and Canada have discouraged placing too great a focus on the reasons why the applicant parent wants to move. In *AMS v. AIF*, the High Court of Australia held that the mother does not have to demonstrate compelling reasons for a move.¹² Similarly, in *Gordon v. Goertz*, the majority of the Supreme Court of Canada said that the custodial parent's reason for moving should be considered "only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child."¹³ However, Professor Rollie Thompson has described this as "the most baffling and impractical part" of the *Gordon v. Goertz* decision and says that in practice, "everyone ignores this direction: appeal courts, trial courts and counsel".¹⁴ That has been borne out in a study

¹¹ In Canada, see e.g. *O'Donnell v Chambers*, [2000] NBJ No 202 (QB (Fam Div)), where a custodial mother on social assistance was denied permission to relocate from New Brunswick to Alberta because of the impact on the 11-year-old son's contact with his father, who was on disability benefits.

¹² *AMS v AIF*, (1999), 199 CLR 160 [*AMS v AIF*] (relocation within Australia). The Full Court of the Family Court subsequently indicated that the reasons for relocation remain relevant, but must be weighed with the other matters in so far as they relate to the child's best interests: *A v A*, (2000), 26 Fam LR 382.

¹³ *Gordon v Goertz*, [1996] 2 SCR 27 at para 49, 134 DLR (4th) 321, McLachlin J [*Gordon*]. In this case, the mother was allowed to move from Saskatchewan to Australia with her 6-year-old daughter.

¹⁴ Rollie Thompson, "Heading for the Light: International Relocation from Canada" (2011) 30 Can Fam LQ 1.

of 108 reported relocation decisions in British Columbia,¹⁵ as well as in numerous other studies of reported cases in Canada.¹⁶

The requirement for reasons for the proposed relocation is much clearer in some states in the US, with the onus on the relocating parent to provide legitimate or good-faith reasons even before the best interests of the child will be considered. A representative list of what constitutes a legitimate or good-faith reason for relocation was outlined in the American Law Institute's *Principles of the Law of Family Dissolution*¹⁷ and quoted with approval by the Supreme Court of Rhode Island in *Dupre v. Dupre*.¹⁸

... [T]o be close to significant family or other sources of support, to address significant health problems, to protect the safety of the child or other household member from a significant risk of harm, to pursue a significant employment or educational opportunity, to be with one's spouse or domestic partner who lives in, or is pursuing a significant employment or educational opportunity in, the new location, and to significantly improve the family's quality of life.

¹⁵ Eiad El Fateh, "A Presumption for the Best?" (2009) 25 Can J Fam L 73.

¹⁶ For a review of these studies, see Susan Boyd, "Relocation, Indeterminacy, and Burden of Proof: Lessons from Canada" (2011) 23 Child and Family LQ 155. See also Thompson, *supra* note 14.

¹⁷ American Law Institute, *Principles Of The Law Of Family Dissolution: Analysis And Recommendations* (2002), s 2.17(4)(a)(ii).

¹⁸ 857 A 2d 242 (Sup Ct RI 2004).

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Reasons for the move are also routinely considered in Australia. Behrens and Smyth, in an analysis of Family Court judgments, observed:

“In the judgments we examined there was inevitably evidence brought about the reasons for the proposed relocation (which were fairly easy to discern from the judgment), and the link between those reasons and children's best interests was explored by judges.”¹⁹

This article examines the reasons for relocation given by 38 women in a longitudinal study of the outcome of relocation disputes in Australia,²⁰ together with the perceptions of 37 men, who were all non-resident parents at the time that the relocation case first arose,²¹ as to why their former partners wanted to move. The findings provide insight into the issues behind relocation cases, and reveal some gender differences in perceptions about the reasons primary caregivers have for wanting to move. An understanding of these gender differences can assist in evaluating the role that reported reasons for relocation should have in determining relocation disputes.

Relocation in Australian Law

There are many similarities between the applicable law on

¹⁹ Juliet Behrens & Bruce Smyth, “Australian Family Law Court Decisions about Relocation: Parents' Experiences and Some Implications for Law and Policy” (2010) 38 *Federal Law Review* 1 at 13.

²⁰ The research program was designed to explore how parents and children deal with the aftermath of relocation disputes over the long-term, using both qualitative and quantitative methodologies.

²¹ Two of the fathers became the primary caregiver as a result of the outcome of the relocation dispute. Two more became primary caregivers as a result of subsequent developments.

relocation in Australia and Canada. In parenting disputes, courts are guided by the principle that the best interests of the child are the paramount consideration. There are no specific statutory provisions on relocation, although some have been recommended.²² Relocation cases are just a subset of the general cohort of parenting disputes in the courts. There are no presumptions either in favour of, or against, relocation, and in determining a relocation case, the court must consider whether the non-resident parent could relocate as well.

There is no clear definition of what a relocation case is. Relocation disputes may arise concerning moves within a state, between states, and internationally. In practice, it is very unusual to see a primary caregiver prevented from moving with the children a distance involving less than an hour and half's travel by road away from the other parent.²³ However, it is the impact of the proposed move on the contact with the non-resident that matters most.

METHOD

In this study, there were 80 parents, 40 women, and 40 men. Thirty-nine female participants (including one grandmother who was the primary carer²⁴) wanted to move with the

²² Family Law Council, *Relocation* (Canberra: Commonwealth of Australia, 2006).

²³ In *D & SV*, Nicholson CJ, Kay and Monteith JJ, in the Full Court of the Family Court, wrote: "Where the move is over a relatively short distance... we would caution against the making of orders that restrict the resident parent's freedom of movement. The inquiry should be directed more at alternative contact or shared residence arrangements." (2003) FLC ¶93-137 at 78,282. See also *F & F* [2007] FMCAfam 831.

²⁴ The grandmother lived in a different state than her daughter and grandchildren. The mother was in prison and so the grandmother applied to take over the care of the grandchildren, which involved

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children, and one non-resident mother opposed the father's move. The 40 men all opposed the mother's move. There were nine former couples and, in total, 71 different cases.²⁵

We recruited the cohort of parents for the study by contacting solicitors who work in family law and asked them to identify clients who had sought advice regarding a relocation dispute in the last six months. We asked these family lawyers to send a brochure to any suitable clients and if the clients wished to participate they could contact the researchers directly. Our intention was to capture all cases where a parent had sought legal advice concerning the dispute even if it was settled without litigation. The researchers have gained considerable cooperation from the family law profession around Australia. Cases in the cohort have come from all over the country, but mainly from the more populous Eastern states.

There were an equal number of interviewees who were successful and unsuccessful, in their court cases. Most parents were interviewed within a few months of the resolution of the relocation dispute, whether the move was allowed or not. These interviews occurred between mid-2006 and mid-2008, but most were completed by the end of 2007. In two-thirds of the cases (47/71), the applicant was allowed to move with the children either by judicial decision or by consent. A move was more likely to be allowed by consent than by judicial decision. Nearly 60% of the cases required a judge to determine the matter.²⁶

The majority of both women and men interviewed

moving them. The father of one of the children opposed the relocation in relation to that child and sought primary care-giving responsibilities.

²⁵ None of the participants had been in same-sex relationships.

²⁶ For further analysis, see Parkinson, Cashmore & Single, *supra* note 6.

reported more than one reason for the primary caregiver's desire to relocate. In some cases there were three or more reasons.²⁷ Two researchers independently ranked the reasons given in order of importance. In only two out of the 38 interviews with mothers did the researchers disagree on the ranking of primary and secondary reasons. These two cases were resolved by agreement between them, following discussion. A similar process was undertaken in relation to the reasons given by fathers for the mother wanting to relocate.

RESULTS

Mothers' Reasons for Relocation

Thirty-eight mothers²⁸ wanted to move. Fifteen women wanted to relocate within the same state, another 18 wanted to relocate to another state, and five women wanted to relocate internationally. The one non-resident mother who was opposing the relocation of her ex-husband and their children explained that she eventually acquiesced to his demand of relocating back to the United States with their three teenage children. She did not move back herself.

Table 1 shows the number of mothers giving their primary, secondary, and tertiary reasons for wanting to move,

²⁷ This is consistent with the findings of Behrens & Smyth, *supra* note 19, in their interviews with applicants for relocation in a retrospective study of judicially determined relocation cases. See also Patricia Eastal & Kate Harkins, "Are We There Yet? An Analysis of Relocation Judgments in Light of Changes to the Family Law Act" (2008) 22 Austl J Fam L 259 at 275.

²⁸ In this analysis, the case of the grandmother who wanted to take her grandchildren home to where she lived, and the non-resident mother whose children went to the United States, have been excluded because they are atypical.

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based on the inter-rater coding. Seventy-nine reasons in total were given by the 38 women.²⁹

<i>Reason</i>	<i>Primary</i>	<i>Secondary</i>	<i>Tertiary</i>	<i>Total</i>
Closer to family and/or friends	5	10	3	18
Returning home	10	2	0	12
Lifestyle, incl. financial reasons	6	6	2	14
New partner	7	2	0	9
Getting away	4	3	2	9
Escaping violence	2	2	0	4
Work/new job	0	3	1	4
Education for children	2	0	1	3
Other	2	1	3	6
Total (<i>n</i> = 38 mothers)	38	29	12	79

²⁹ In one case, a mother gave five reasons. The fourth and fifth reasons are recorded as “other” under the third reason in this table.

Support From Family and Friends and Returning Home

As Table 1 shows, returning home and moving closer to family and friends were together by far the most significant reasons for wanting to move. Almost two-thirds of the women (24/38) gave a desire to return home and/or to move to an area where they had support from family or friends as at least one reason for relocating.³⁰

Many women saw going home as a way to gain more support. A mother who relocated said “the whole point of being here is that I’m near to my sister ... and we give each other support.” Another said, when asked about why she wanted to relocate:

My family is in H ... It’s where I call home ... all those community support services take the place ... or can be taken place by extended family. I wouldn’t need those Community Support Services if I had access to extended family. I wouldn’t need family day care. I wouldn’t need vacation care. I wouldn’t need to see Family Support Services for somebody for a shoulder to cry on because my life is falling apart. I wouldn’t need home help – not that I’m allowed to get it – to help clean up, because family would do it.

Another mother said:

Because I did want to go home ... I really kind of felt that I wanted to go home, because I had no support here. I was miserable, and that made the kids miserable and I thought, ‘What am I

³⁰ These reasons were found together as reasons in six cases.

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doing here?’ Everybody I talked to said, ‘Go home. Go home.’ So I started the legal process.

Lifestyle and Financial Reasons

Six women stated that their primary reason for relocating was for lifestyle choices and another eight gave this as a secondary or tertiary reason.

Sometimes mothers wanted to move not because the current location was unaffordable but because they would be better off elsewhere. One mother said:

I looked at my options for financial support. The whole lifestyle in a way, but a lifestyle for the girls and I and what I could afford to do financially ... and I just went, ‘Well, really, the option is to move.’

Another mother said:

So to move up to Queensland to where my sister and my friends are, I can basically buy a house outright. And here I’m sort of stuck with the mortgage and on a pension. I wanted to stay home as long as I could with Amanda³¹ because of my age but it is too expensive here so I have to get some sort of work, whereas up there I could’ve stayed home with her until she went to school.

Some mothers said that they could not afford to live in cities such as Sydney, Melbourne, or Canberra.

³¹ Pseudonyms are used throughout.

Financial reasons were in some cases given amidst a range of other reasons, of which the financial reason was not the most prominent. For example, one mother said:

It wasn't that I was just going up there for my boyfriend, it was everything else. Better job for me, better schooling for them, better hobbies and out of school activities for them.

Lifestyle choices included such things as warmer weather. Queensland appeared to be a particularly popular destination. Thirteen out of 38 interstate moves (reported by mothers or fathers) were from other states to Queensland. The judgment of the court in one of these cases summarises clearly the choices the mother was making:

The mother has made a lifestyle choice to relocate from Tasmania to Queensland and says she will do so irrespective of the court's decision or the children's wishes. She wants to realize a long-held dream of living in the tropics with her current de facto partner and carve out a new career for herself there.

In the interview, the mother, who was living at the time in a much colder climate, also spoke of the proposed relocation as being about wanting to live in Queensland, but made no mention of work or career as a consideration.

New Partners

Seven women stated that the primary reason for the relocation was to join a new partner and another two stated this was a secondary reason. In only three cases was a new relationship the only reason given for wanting to move. In the other four cases where the new partner was the primary reason, it was

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combined with another factor, such as returning home, moving closer to family, or making a fresh start somewhere else.

One woman met her new partner on the internet. Another met her new partner in her home city and he wanted to transfer because of an employment opportunity. Others met their prospective partners through friends of friends or when one of them was on holiday in the other's location. Typically, at the time the relocation dispute was in court, these relationships were relatively new and untested; however, in one case, the mother was already pregnant with a child fathered by her new partner. In none of the cases was it straightforward for the new partner to move to be with the mother. In certain cases he had an established business in his existing location or children of his own from a prior relationship to whom he wanted to remain in reasonably close proximity.

Getting Away

Nine women in total said 'getting away' was a reason for moving. Three of these women had experienced violence in the course of the relationship, although they did not nominate escaping from violence as a reason for moving. For example, one woman said that she wanted to get away so she "won't be looking over [her] shoulder all the time." In addition, another woman who listed 'getting away' as a motivation referred to a pattern of verbal abuse.

There was a range of reasons why other women wanted to get away. For one mother, creating distance from the father was a way of bringing more order to her family life:

Because I felt like no matter what I did, I was struggling with him to try and be involved with the kids, and it kind of took me saying, 'I'm moving to get away from him, partly, so that we can get on with our lives without you creating so

much chaos in it.’ And so it gave me the ability to kind of ... I don’t know how to say this. To cut him off, so to speak, and for me to be able to finally say, you know, ‘You’re their dad. Their relationship with you is their relationship. It does impact on me, but it’s separate.’

Another expressed it in terms of a desire for self-determination:

I just want to have a choice. I want to have a choice that I believe I can give Amy a better life. I want to have the choice that we can move if it’s going to be better for both of us or for her or for me, and I don’t want us to be restricted and that I just want a choice.’ That’s what it came down to. A choice.

Another mother aimed to protect her child from what she saw as adverse modelling by the father:

I don’t want James to end up the same as his father because I don’t want him turning into a person who is abusive towards women. That was one of the reasons why I left his dad, because he was starting to talk to me like his father was and he was only three and a half. So he was learning to be abusive ... I think it’s been good for both James and I to be in a nice, calm place.

Domestic Violence

Four women indicated that escaping violence was a reason why they wanted to relocate,³² and another said that she wished to

³² For further analysis of the histories of domestic violence, and incidence of family violence orders, see Patrick Parkinson, Judy Cashmore & Judi Single, “Post-Separation Conflict and the use of

relocate in order to escape the control of her ex-partner.³³

One mother described her fear of her former partner and her reason for leaving him this way:

When I was with him he used to beat the crap out of me, and one night when he was very, very drunk he was very violent. He held me down and raped me and then I left him the next day and then I found out afterwards I was pregnant. ... And he got away with that, as well, because

Family Violence Orders” (2011) 33 Sydney L Rev 1. See also Juliet Behrens, Bruce Smyth & Rae Kaspiew, “Australian Family Law Court Decisions on Relocation: Dynamics in Parents’ Relationships across Time” (2009) 23 Austl J Fam L 222 at 231 and Behrens & Smyth, *supra* note 19 at 7-8. In the study of judicially determined cases by Behrens and Smyth, there were only 11 women out of 38 participants. While the authors wrote that issues of family violence and child abuse were “concerns” in a total of 26 cases, it should not be inferred that male respondents admitted in large numbers to child abuse or family violence. Rather, men tended to speak in terms of state protection orders being obtained on weak grounds, allegations made falsely or blown out of proportion, and tactical allegations (see *supra* note 19 at 8). This is consistent with the findings in our Sydney Law Review study. They utilized a wide definition of child abuse, including emotional abuse and neglect. The definition of domestic violence used is unclear, for they noted that female participants in the study “struggled to label violent behaviours in ways recognizable to the law” (*ibid*).

³³ The relatively small number giving escaping from violence as a reason for moving is consistent with the study of 50 reported cases in Australia by Easteal and Harkins, *supra* note 27, who found only one case in their cohort where escaping violence was given as a reason. It is also consistent with the study by Behrens and Smyth who found that while issues of violence were a motivating issue for some of the nine women who applied to relocate, this was not usually a deciding factor (*supra* note 19 at 8).

basically I was too afraid to go to the police,
'cause he threatened me.

Another woman, who detailed the abuse she had suffered by her ex-partner and her worry for her daughter, said "so their advice to me, was 'go through the Family Court, and get out'. Get out of the state." Similarly, another mother said:

And I was starting to get a bit uneasy as to what he might do, because if he went and got drunk and he's going to come home, and we went to a counseling session together, and he said in this counseling session, '[t]hat's a little thin lock on that door, and I can get in whenever I want.' So I took that as a threat. I packed the car up that night and got on the boat the next night. He didn't know I was going, because I talked to DV counseling hotlines and they said, '[g]et what you can that's irreplaceable, get in the car, and get to your parents.'

Outcomes of the Relocation Dispute

Did the reasons for the relocation matter in terms of the outcome of the case? An analysis of the 38 cases in which the mother sought to relocate suggests that some reasons might have been more persuasive than others, either in leading a judge to allow the relocation or in promoting settlement. The four women who said they were escaping violence were allowed to relocate without exception, by court order or consent at court;³⁴ those who were motivated by a desire to return home or the need for more family support had an almost even chance of success. This was the case also where lifestyle choices, financial reasons, and new jobs were given as reasons

³⁴ On this issue, see Janet Bowermaster, "Relocation Custody Disputes involving Domestic Violence" (1998) 46 Kan L Rev 433.

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for the move. Where a new relationship was the reason for the proposed move, all but one of the nine cases was contested; six women were allowed to move.

Such associations, however, between reasons and case outcomes need to be treated with great caution, given that so many women had more than one reason for moving and that these reasons were often quite disparate, for example, moving home and having a new relationship. Even when only the primary reasons are considered, the number of cases for each reason given is small, making it difficult to generalize from the findings. Relocation cases are determined by judges on what they perceive to be the best interests of the child, and deciding this involves consideration of a range of factors, not least the impact of the proposed relocation on the relationship between the child and the non-resident parent. Courts permitted relocations in only a minority of cases where there had been a shared care arrangement, defined as each parent having at least 35% of nights each year caring for the child.

Fathers' Perceptions of Mothers' Reasons for Relocation

There were 40 fathers interviewed, all of whom had children with mothers who had applied to relocate. Fathers were asked why the mother wanted to relocate. This question provoked a range of responses.

Three fathers were unable to say what the reason was. For example, one man reported that the relocation and the separation were one and the same event, and she did not communicate with him at all about it:

I went to work on the Thursday and came home to find that the house had been totally stripped and they'd gone and they went to Brisbane.

She did not speak with him subsequently either.

Thirty-seven fathers reported the reasons as given by mothers to them. Table 2 shows the reasons as given to the father and/or the court.³⁵ Since there were only nine cases where both parents were interviewed, most of these fathers were reporting on the reasons of mothers who were not interviewed in this study.³⁶

Table 2: Fathers citing various reasons for the move as given by mothers ($n = 37$)

Lifestyle including financial reasons	20
Move closer to family/return home	13
Work/new job	12
'New start'/'get away from me'	11
New partner	9
Other	3

The category of 'other' consisted of three individual cases. The reasons in these cases were respectively for safety,³⁷ for the children's education, and for religious reasons in the case of a mother moving to Israel.

³⁵ Where there was a judgment available, as there was in 14 cases, these reasons were cross-checked against what the judge recorded as the reasons for the move in the judgment. In nearly all these cases, there was general consistency between the reasons given by the mother and those noted in the judgment or family report.

³⁶ There was little pattern in relation to whether or not the move was allowed for these reasons as cited by fathers.

³⁷ This was a secondary reason given by the mother in this case. The main reason she wanted to move was to live with a man she met on the internet. The father strenuously denied ever having been violent to her in any way in the 20 years of their relationship, although he did say she had been violent towards him on occasion, for example by throwing a saucepan. He perceived her application for a restraining order as a tactical one.

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Financial and lifestyle reasons were together the most common reasons cited by fathers as having been given to them by their former partners wanting to move. These included needing or wanting to move to less expensive accommodation and a preference for locations that were warmer or that might provide a different lifestyle. Fathers seemed to accept these reasons at face value, even if they did not agree with their premise. For example:

The reason being is that she believed that she could provide more of a secure and a better financial environment for Hope and her new unborn son.

She wants to be in a warmer climate, which is fine - personal choice. She's also heavily involved in - [work network] and she feels that there's more opportunity in Queensland to make money out of it there ... So I mean both are good reasons from her perspective.

I'd been proposing a 50:50 approach. She basically said '[n]o, Sydney's expensive, it means I'd have to work, I don't want to work in Sydney'. I don't think she wants to work full stop. That's just her.

No job, no partner. Just sick of C and wanted to move to the Gold Coast because life was supposed to be wonderful up there.

Similarly, fathers seemed mostly to be willing to accept that new jobs, opportunities for work, or other work-related issues were reasonable reasons for moving though it was not a common reason given by the women who were interviewed in this study. Four fathers thought that work was

not the real reason for the move, but the other eight fathers accepted this explanation.

For other reasons, however, fathers were less willing to accept that they were the real reasons for the proposed move.

Ostensible and Perceived Reasons

There were some significant differences between the reasons given to fathers ('ostensible' reasons), and their perceptions of the 'real' reason for the move (perceived/'real' reasons). The main areas of difference concerned new partners and wanting to get away, but there were other differences as well.

New partners

While nine fathers said they were told the move was to the location of a new partner, a further three nominated it as the 'real' reason. In these three cases, the new partner was 'hidden'. One father reported that the mother's ostensible reason for wanting to move was family support, but:

We then found out ... that she's keen on this fellow down in Melbourne. We didn't know about that until later. So this whole idea that she wanted to be in Melbourne for my family is ... what's the polite phrase for bollocks?

Another father indicated that the ostensible reason for the mother moving was work-related:

Her reasoning is because of her job she had to relocate to a capital city. She works for a company ... and she had been working from home, but they insisted that she work in an office and they were happy if it was any capital city, but she chose Y, which I do know is the

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location of the gentleman that she had been having the affair with.

A third father agreed to let his former de facto partner take their daughter to one location for a few months where she had a work opportunity. However, according to the father, at the last minute the mother decided to go to an entirely different location where she 'shacked up' with a new partner.

Getting away

'Getting away' or seeking to reduce the children's contact with them were other reasons given by 11 fathers as the main motivation for the mother's move; in six cases, the ostensible reason was for work, family support, or a new relationship. For example, one father said:

The whole thing was a game. She didn't actually want to live in H ... This was all just about getting me out of the kids' lives. And that is absolutely clear.

Another father indicated that in the litigation, the mother was "exposed for creating a sham of a job opportunity". He saw the 'real' reason for the move as being "to eliminate me from the boys' lives and to start a fresh life, as if their father doesn't exist." In another case where the mother met her new partner via the internet, the father saw this as deliberate:

I'm not against internet, it's just the fact that she did it purposely for the reason of getting somebody that was a *long way away* [his emphasis] ... her aim was to move somewhere it was impossible or hard for me to get to. Because I know once she moved away, I wouldn't see C.

Three fathers said that the ostensible reason their ex-partner told them she wished to relocate was to get away from him, and they accepted this explanation. One father said:

At that point she had no partner down there - or not that I was aware of - and no family down there. So, at various stages she told me her reasons for moving down there were basically to get away from me.

Another father said that the Judge “could see that her argument was that I had made her life hell. *Q: And she just needed to get away from you? Yeah.*”

Three others identified it as the ‘real’ reason for the move even if it was not the ostensible reason.

Two other fathers said that one of the ‘real’ reasons for the mother wanting to move was to get more child support. One of these fathers said that initially the mother emphasised that he could spend as much time with the children as he wanted. However, as the financial implications with respect to child support became clear, the mother started to limit contact. In his words: “the more contact I have, the less money she gets.”³⁸ In several cases, fathers indicated that they thought their former partners did not want to work at all.

³⁸ In Australia, child support is calculated by the Child Support Agency administratively based on taxable income and taking account of other factors, including the level of contact that the non-resident parent has with the child. It has been recognised that “the prospect of having to pay child support, or of increasing one’s entitlement to receive it, may be a factor motivating parents to ensure that the children live with them for more time.” Belinda Fehlberg & Juliet Behrens, *Australian Family Law: The Contemporary Context* (Melbourne: Oxford University Press, 2008) at 373. Prior to 2008, the level of child support changed significantly if the non-resident parent cared for the child at least 109 nights per year. The formula changed in July 2008,

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Returning Home and Gaining Support from Family

Returning home and moving closer to family and friends were together the most common reasons the mothers who were interviewed gave for wanting to move, and it was also a quite common reason cited by fathers as the reason given by their former partners. Some fathers, however, also discounted these as the real reasons for the move. One father, for example, said:

She said her family's down there so there's more support ... that's where she's from but her family comes to visit probably twice a year and ever since she's been in the flat by herself.

Another said that the mother had moved to be close to her family, but:

Oh, she's got family she's never really seen. She hasn't really grown up with them or known them.

Only one father seems to have accepted family support unequivocally as a valid reason for the move, and he agreed to the relocation:

I thought well, maybe it's best that she does go back to X because at least she's got the support of her family there and I can fly down every couple of weeks to see the kids.

and one of the aims of the reforms was to reduce the financial ramifications flowing from greater levels of shared care. See generally, Patrick Parkinson, "The Future of Child Support" (2007) 33 UWA L Rev 179. The relocation issue described in this case by the father and his new partner arose before the reforms came in.

Violence

No father cited escaping violence or abuse as a motivating factor for the mother's wish to relocate. However, a number of fathers referred to allegations of violence against them. One father, for example, said "her affidavit later said that her reason for going was because she feared for her life and because Matthew had dropped a biscuit and I'd smacked him. And it didn't happen." Another father said that there had been allegations of violence, but he said that during the court hearing "her lawyer was very careful not to go into that at all as to who caused or whatever with the violence." Another father said:

All in the times that she was in hospital she'd already organized social workers on it saying I was abusive and she couldn't go back to the mental abuse, I abused her other son, she's got another son to another father ... And on the Monday she went to A, she fled.

Another father acknowledged being violent on one occasion immediately before the separation. He said:

Unfortunately for myself I guess, I assaulted her, or what she said was assault. And I had to leave the house under an AVO, apprehended violence order. And then three days later we're at Court and I get handed a key back to the house and the house was empty, she's already gone. It was - basically it was a planned thing. So as soon as I was taken away from the house, she relocated.

Comparing the Responses of Former Partners

There were nine former couples in this study. In all nine cases, it was the mother who applied to relocate. These nine cases were not typical of the cohort as a whole, because

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disproportionately, they were cases involving new relationships (five out of the nine, according to mothers, and six out of the nine, according to fathers). Only one mother cited family support or returning home as a primary reason and two gave one of these as a secondary reason.

In seven out of the nine cases, the mother and the father reported the same primary reason, and in four cases, exactly the same primary and secondary reasons for the move.

Although there was a great deal of alignment between what the fathers and mothers said, there were important differences. For example, for both former couples who cited ‘getting away’ as the primary reason, the mothers and fathers expressed dissimilar explanations about why and from whom the mother wanted to get away. In one former couple, the mother said that she needed to get away because “I need to be able to get on with my life and not have him bugging me all the time.” The father, on the other hand, while acknowledging that she moved to get away from him, gave as the explanation that he didn’t initially want their son when he was conceived, and “she’s very hung up on that still today.” The other former couple who agreed that getting away was the primary reason differed even more as to why. The mother said that she wanted to go “anywhere away from him,” referring to her ex-partner, as he was verbally abusive and very controlling. However, the father said that she wanted to move because her new partner needed to get away from their town.

There are two cases where the mother and father cite different primary reasons. In one case, the father noted that he perceived the real primary reason to be different than that put forward by the mother. The father said: “[o]n paper it showed ‘I’m moving for education’ and the relationship was a secondary component of that, whereas I believe it was totally the other way around.” In the other case, the mother said in her interview that her new partner said:

‘Well, look because you’re struggling financially and because this relationship’s going well, why don’t you look at moving in with me, just until you get on your feet’ ... and I thought, well it’s only been six months, I didn’t want to put [her son] in that position because he’d already had a big change over at dad’s. I didn’t want him going through another one with me but it really did come down to economics at that point. I thought well he can help me get on my feet, I can keep going to uni. When I have my degree I’m self-sufficient.

In contrast, the father said that she had told him:

My boyfriend can find me employment on the north shore. There’s more avenues for me to get employed in Sydney. There’s more this. There’s more that. ... And then we can start our new life together and all this sort of thing.”

The mother indicated that she felt ‘backed into a corner’ financially and that relocating would allow her to better provide for her son in the long run. The father, on the other hand, discussed the situation as if the mother was empowered to exercise much more choice in the matter than she indicated.

In comparing and contrasting the point of view of the nine former couples, it is clear that although a mother and father may have corresponding stories, the similarity may be less apparent in reality than first appears.

DISCUSSION

Multiple Reasons for Relocation

Consistent with the findings of other researchers,³⁹ the evidence from this study is that mothers usually had more than one reason for moving. Indeed, all but eight of the mothers gave more than one reason. Eleven had three reasons, and one gave five reasons.

Sometimes the reasons given were related, for example ‘going home’ and wanting more family support, or escaping violence, getting away, and having a new job; but sometimes the reasons given were quite different in character. For example, mothers might report ‘getting away’ as the primary reason and a better lifestyle as the second reason.

Reasons for Getting Away and Benefits of the New Location

The reasons given by mothers, and those cited by fathers, were both reasons for getting away from the previous location and reasons for choosing the new location. That is, in some cases the benefits of the new location were less important to the mothers than the fact that it was a new location. When judges assess the “competing proposals” of the parents and focus attention on the mother’s proposals for life in the new location, they may give insufficient attention to the importance to the mother of getting away and having a fresh start.

In the same way, asking the question routinely about whether the father could relocate to the same destination as the

³⁹ *Supra* note 27.

mother, as required by the Australian High Court,⁴⁰ may ignore the fact that an important motivation for the mother is to get away from the father and to have more autonomy. Some fathers express this negatively, in terms of the mothers wanting to reduce their contact with their children. Mothers tended to express the reason in terms of getting the father out of their lives, rather than necessarily removing him from the lives of the children. In reality, these might just be different sides of the same coin.

Gender Differences

In nine of the 71 cases in this study, both the mother and father participated, allowing for their versions to be compared. In this group, there was a considerable degree of congruence between the reasons for relocation given by the mother and the reasons as perceived by the father. In the other 62 cases, however, only one parent's version of events is available.

Overall, there are some substantial differences between the pattern of reasons the mothers gave and the reasons given by mothers as reported to the fathers. Women's reasons were predominantly relational, in particular, wanting to go 'home' and receive more support from the family of origin or in order to further new relationships. More than three-quarters gave these as reasons for wanting to move. None cited employment as a primary reason for going, and only four listed it among their reasons at all.

Conversely, financial and lifestyle reasons were reported by more than half the men as reasons given to them by their former partner for wanting to move. Twelve men (nearly a

⁴⁰ Since the decision of the High Court of Australia in *U v U* (2002) 211 CLR 238, courts have been required to consider whether fathers could move to the same location as the mother.

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third of those who reported a reason) referred to work and ten of the 12 indicated that it was the primary or only reason for moving. In marked contrast to the mothers who were interviewed, only one in three men cited 'going home' or moving for family support, but a number of those men discounted that explanation in their own evaluations of the mother's real reasons for wanting to move. Similarly, a number of men suspected that a new relationship was the primary reason for moving, although this was the ostensible reason or the primary reason for only a minority of mothers.

The magnitude of these differences is somewhat surprising.⁴¹ A substantial majority of the cases were either determined by the judge or reached the stage of a court hearing before being settled. In many other cases, the parties would have completed the preliminary stages of preparation for litigation. They would have therefore exchanged affidavits where one might expect that the mother would have provided her reasons for the relocation application, in the course of putting forward her proposals to the Court.

How is this gender difference to be explained? It is of course possible that the fathers in this research gave an account of the mother's reasons that the mother would have endorsed, had she been interviewed. Yet the cohort is large enough, and the patterns of women's reasons for moving clear enough, that there are reasonable grounds for believing that the mothers' reasons are generalisable to the wider population of relocating parents.

⁴¹ It is true that there was a greater degree of congruence in the nine cases where the responses of both former partners could be compared, but disproportionately these were new relationship cases, and neither 'going home' nor family support featured prominently as reasons for the mothers' move in this group of cases, whereas these were the most significant reasons given by the mothers in the cohort as a whole.

The sample size in this study, taking account of the number of relocation cases litigated in Australia, is quite substantial. Behrens, Smyth and Kaspiew were able to identify 190 cases involving relocation in the judgment database of the Family Court of Australia in the three-year period between 2002 and 2004.⁴² Other relocation cases would have been heard in the Federal Magistrates Court during that same period. Parkinson, in a study of reported decisions between July 1st 2006 and April 2008, was able to identify 58 cases as relocation cases during that period. Both counts excluded interim decisions. Most of the 71 cases in this study were collected over an 18 month time-frame, with the majority having been resolved quite recently before the first interview took place. More than half of these cases resulted in judicial determinations. A conservative estimate would be that this study included participants from about a quarter to a third of all such cases in those jurisdictions from which most participants were drawn and which were finalised during the period when people were being invited to participate in the study.⁴³

The reasons given by mothers in this study are also reasonably consistent with those reported by Easteal and Harkins in an analysis of 50 reported judgments heard both before and after the changes in the law in 2006. By way of contrast, a study by Easteal, Behrens and Young, conducted in Canberra and Perth more than a decade ago, found that employment was the most common reason given by women for

⁴² Behrens, Smyth & Kaspiew, *supra* note 1. This study did not include the Family Court of Western Australia.

⁴³ Most participants lived, at the time of interview, in the Australian Capital Territory, NSW, Queensland and Victoria, and most cases were heard in one of those jurisdictions. Due to distance and cost, it was only possible to draw a small number of participants from Western Australia, and none from the Northern Territory.

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wanting to move,⁴⁴ however, Canberra, with quite a mobile and professional workforce, many of whom are employed in public service and defence force roles, is likely to be atypical of the country as a whole.

Assuming that the pattern of reasons given by mothers in this study is representative of those of relocating mothers across Australia generally, then three explanations might be given for the gender differences found in this study.

Poor Communication

The first explanation is that some fathers had very little communication with the mothers and therefore either did not know their reasons for moving or identified only the most apparent reason – such as a new job. A minority of the cases in this study were resolved without going to trial, usually by the acquiescence of the father.⁴⁵ Not infrequently, the mother made a unilateral decision to move without informing the father, and sooner or later he accepted the ‘fait accompli’. Australian courts will sometimes order a mother to return with the children at an interim hearing pending final resolution of the relocation dispute,⁴⁶ but not all fathers in this situation sought such an order from the Court.

⁴⁴ Patricia Easteal, Juliet Behrens & Lisa Young, “Relocation Decisions in Canberra and Perth: A Blurry Snapshot” (2000) 14 *Austl J Fam L* 234. Easteal, Behrens, and Young included employment opportunities for a new partner as an employment reason, whereas in our study this was classified as a relationship motivation, given that in those cases the relationship was not yet firmly established.

⁴⁵ See Parkinson, Cashmore & Single, *supra* note 6.

⁴⁶ *Morgan & Miles*, (2007) FLC ¶93-343; *Deiter and Deiter*, [2011] FamCAFC 82.

Strategic Explanations about Reasons

The second possible explanation is that the reasons given by mothers in interviews with the researchers differed, at least in some cases, from the reasons that were given most prominence in the court documents and in explanations to their former partners. This may be a reason for the prominence given in men's accounts to work as a reason for moving. Easteal, Behrens and Young, in the Canberra and Perth study, observed that lawyers perceived "that employment reasons are likely to help a client's case" and that consequently "they may advise a client to get a job offer before applying for permission to move."⁴⁷ This explanation is also supported by the accounts of some fathers who did not accept that work was the real explanation for the mother wanting to move, or who referred to a new partner as being the main, if undisclosed, reason for wanting to move when some other explanation was being offered.

Employment reasons might also be a more palatable reason for some fathers than other reasons. If the mother earns more, this will reduce his child support obligations. However, the child support laws as they were before July 1st 2008 did not take account of the mother's income in most cases. The mother's income would be considered only when it exceeded average weekly earnings. In 2004-05, only 12% of payees had

⁴⁷ *Supra* note 44 at 243. There is also evidence, from a study in British Columbia, that judges look favourably on financial advancement. See El Fateh, *supra* note 15. One of the difficulties with offers of employment, of course, is that the employer may not be prepared to wait the long time that it can take to have a relocation dispute decided by the court. For that reason, it seems unlikely that job offers would be a credible reason for relocation in most cases unless the mother moved immediately, and subsequently sought to resist a return to her previous location.

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income that counted in the application of the basic child support formula.⁴⁸

To test this hypothesis, we examined the judgments and family reports that had been made available to us by the mothers to see whether there was any discordance between the reasons they gave to us and the reasons that were given greatest prominence in the court documents. In the eight cases for which judgments were available, there was a quite a high degree of congruence, but three cases illustrate how the reasons for moving can be adjusted or filtered in communications with the other parent or in the way a case is presented in court.

In the first case, the mother wanted to move across the country with her young daughter to a town where her sister lives. The mother had never lived with the father, and from early on in their relationship as parents, there had been a lot of tension and conflict. The interview reveals a range of motivations for wanting to move. She had never really liked the town in which they were both living; there were the difficulties with the father; and she was quite afraid of him. There was also an opportunity to go to be with her sister in this other town and to open a retail business with her there. Meanwhile, she met a man who lived in her sister's town and with whom she formed a serious relationship. The trial judge referred to an email she had sent the father, explaining the reasons why she wanted to move. In this email, she referred to 'a fantastic financial opportunity' with her sister, which she did not intend to pass up as it would set the child and her up for the future. She also described the difficulties that she had in getting work in the town where she was. She further referred to 'personal and family reasons' for wanting to move, but without elaborating on these. She proposed to the father that he only have to pay for flights and would not have to pay for child support.

⁴⁸ Ministerial Taskforce on Child Support, *In the Best Interests of Children*, (Canberra: Commonwealth of Australia, 2005) at 89.

The father in this case (who was not a participant in this study) may well have heard the financial opportunity with the new business as the main reason for going. It was a reason – certainly it offered a means of financial support to her – but it would be hard to identify it as the main reason. There were multiple reasons both for leaving one place and for going to the other. In fact, the business lasted less than a year before being sold. The relationship with the new partner also did not last long.

In another case, the mother, who had come to Australia from overseas, spoke of always wanting to move out of the city where she lived in order to move to a rural area. That had been an issue in the post-separation negotiations with her husband, who insisted on some limits in terms of how far she could move (expressed in hours of travel) from the city. Later she met a man in that city, but who had family in another (smaller) city thousands of kilometres away. The trial judge focused on that new relationship and the family connections in that city as the reason for the move, but there was a very significant element of lifestyle choice involved as well.

In a third case, a Maori woman wanted to move back to New Zealand. The first reason for moving listed in the family report was that her young daughter would be able to be in touch with her Maori culture, particularly through her large extended family. That was something to which the Court would be likely to give considerable significance,⁴⁹ but it was not a

⁴⁹ Section 60CC(3) of the *Family Law Act* 1975 (Cth of Australia) requires the judge to consider, inter alia, 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; and, if the child is an

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reason that found any prominence in the mother's interview. She did make reference to her Maori heritage, but the emphasis was on going home and receiving support from her mother and family. Cultural reasons may have been implicit in her account but were elaborated upon in the family report and formal court processes.

What Women Say, and What Men Hear

The third possible explanation for the gender differences in reasons for relocation is that men may hear the reasons given by mothers in a different way than mothers articulate them. It is possible that when there is more than one reason for the move (and in most cases, there was), men may be more inclined to hear an explanation that makes more sense to them in terms of their own perceptions of valid reasons for relocation. Men, socialised to fulfil the role of provider, may be more attuned to financial and lifestyle issues as explanations for wanting to move than returning 'home' to a place that has not been the mother's home for a considerable period of time, or because she needs family support.

Men might also hear explanations differently about returning home if men and women have different understandings of 'home'. Is home where the heart is, where the furniture is, or where one's mother is? It is possible that while both men and women may respond to the word 'home'

Aboriginal child or a Torres Strait Islander child:

- (i) The child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
- (ii) The likely impact any proposed parenting order under this Part will have on that right.

A Maori heritage would in all probability be attributed the same significance as an Aboriginal heritage.

by reference to all of these meanings, men may view ‘home’ much more in terms of the present location where house, furniture and children are located, and in the local community of which they are currently a part. Conversely, women may be more likely to respond to the word ‘home’ in terms of their family of origin, especially in circumstances where there has been a rupture in terms of the mother’s independent family life, apart from her parents, and siblings.⁵⁰

It may also be that men may not attribute the same significance as women to the importance of support in childrearing from a woman’s family and friends. Fathers felt that despite the breakdown of the couple relationship, they should continue to play a very active role in raising their children and thereby provide support to the mother in that childrearing role. In the anger, distress, and bitterness of the relationship breakdown, it may well be that some mothers do not want that kind of support to be given by fathers from whom they are estranged. That is, mothers may want ‘divorce’ from all of the different connections they have with the father, apart from receiving child support, while fathers may wish to reaffirm the indissolubility of parenthood.⁵¹

That there is some discordance between the reasons that were most important to women, and the reasons they presented to the father and the Court, is supported by the findings of Behrens and Smyth in another Australian study of relocation

⁵⁰ On the importance of understanding and contextualizing women’s concerns within the network of relationships that are important to them, see Susan Boyd, “Autonomy for Mothers? Relational Theory and Parenting Apart” (2010) 18 *Fem Legal Stud* 137.

⁵¹ On these gender differences, and how they represent a tension within the family law system as a whole, see Patrick Parkinson, *Family Law and the Indissolubility of Parenthood* (New York: Cambridge UP, 2011).

disputes. Based on interviews with nine women and two men who applied to relocate, they found that:⁵²

A very consistent theme in what applicants to relocate told us was that they gave multiple, mixed and complicated reasons for their decision to move, often involving a combination of work and relationship factors, and a combination of 'push' and 'pull' factors.

They further found that psychological factors were often more significant than material ones, and that the quality of the relationship with the former partner was often a key aspect.⁵³ They also observed, however, that “the law and legal strategy tends to focus on reasons in a somewhat simple, reductionist way and on reasons that can be established by objective evidence.” Jobs and new relationships were the more concrete or material bases for moving. Other reasons might be less concrete and “hard to capture in language and evidence.”⁵⁴ In some cases, these reasons may include a desire to get away from the other parent or to make a fresh start, for which a new job provided a tangible opportunity.

CONCLUSION

In most cases where there is a relocation dispute, the applicant parent has more than one reason for relocating. Sometimes there are quite disparate reasons. Mothers’ reasons are primarily relational – going ‘home’, having support from the family of origin, and furthering new relationships. Men’s perceptions of women’s reasons for relocating tend to focus on jobs, new relationships, and lifestyle issues. While there was,

⁵² Behrens & Smyth, *supra* note 19 at 13.

⁵³ *Ibid* at 18.

⁵⁴ *Ibid* at 14.

of course, some congruence between men's and women's accounts, particularly in the nine former couples in this cohort, the differences between the genders were nonetheless both striking and surprising.

This research raises issues about how much focus there should be on reasons for relocation. Behrens and Smyth point out the dangers in too great a focus on reasons:⁵⁵

The danger of such an approach is that it requires reduction of a complex mix of factors into a more simplistic picture, which may actually misrepresent and inadequately capture what lies behind the relocation. There is also a danger that there will be an artificial focus on more concrete reasons of which evidence can be provided (employment, repartnering and so on), whereas for the parents we spoke with who wanted to relocate, psychological, personal and relationship issues were at least as strong as these and often stronger.

This study suggests that the explanations for relocation presented, at least to some fathers, may not adequately represent the range of reasons that women had for wanting to move away. However, this does not mean, as the Supreme Court of Canada has indicated, that reasons for relocation should only be explored in exceptional cases.⁵⁶ It is hard to see how they could be ignored, given that reasons for relocation inevitably feature into an assessment of the hardship that would

⁵⁵ *Ibid* at 18.

⁵⁶ See *Gordon*, *supra* note 13, and accompanying text.

be caused to the parent who wants to relocate if the court were to refuse permission to do so.⁵⁷

Rather, the findings of this research should assist both mediators and judicial decision-makers to look more deeply and holistically into the reasons for relocation, rather than taking at face value just the reasons presented in court documents. Those reasons are unlikely to be inaccurate; but at the same time, they might not be the most significant factors in the case. There may be a bias in the presented reasons in favour of motivations that are seen as more likely to persuade a court, and a tendency to promote the benefits of the new location rather than focus on the poor relationship with the other parent, given that the court might hold both parents responsible for that conflict. A deeper examination of the reasons for the move may well indicate that there are both reasons for leaving the old place and reasons for going to the new that need to be considered.

Relocation cases are rarely straightforward, and nor, in many cases, are the reasons why parents want to relocate.

⁵⁷ The Attorney-General's Department of British Columbia has specifically recommended that reasons for the move be considered in assessing the 'good faith' of a parent who is applying to relocate against the wishes of the other parent: British Columbia, Ministry of the Attorney-General, Justice Services Branch, Civil Policy and Legislation Office, *White Paper on Family Relations Act Reform: Proposals for a New Family Law Act*, (Vancouver: Ministry of the Attorney-General, 2010) at 72, online: <<http://www.ag.gov.bc.ca/legislation/pdf/Family-Law-White-Paper.pdf>>. For discussion, see Boyd, *supra* note 16, above.