



Travelling with Children By Jodi Wyman

Many of the common questions family law lawyers answer relate to moving with children. When parents have separated, can one parent move away with the children?

As a general rule, Courts take a move very seriously and it can be a cause of major litigation.

The first step is to consider how far away the parent wants to move. If the move is close enough to still allow the other parent regular access as before, there is usually no issue. Some driving may be necessary, but at least the relationship with the non-custodial parent will not be seriously affected.

Bigger problems arise when the parent wants to take the children to another province, or even another country. Clearly, this would have a serious impact on the non-custodial parent's relationship with their children.

The basic rule from the Manitoba Court of Appeal is that the parent is not allowed to move with the children until there is a trial. At the trial, the

Judge has to decide what plan is best for the children. Should they be allowed to move away with their parent, or should they stay in their home town but live with the other parent?

This is clearly a very difficult decision for a Judge. There is really no room for compromise. They usually look at a number of factors, such as the reason for the move, the opportunities for the parent and the children in the new area, the nature of the relationship with the parent left behind, the presence of extended family, the ages of the children etc. Younger children are seen as better able to handle a move, yet their relationship with their other parent will be more easily jeopardized. On the other hand, older children can be more devastated at leaving their friends than the other parent.

Joint custody does not mean that the other parent cannot move. Having an Order or agreement of joint custody or sole custody will not make a great deal of difference in a case where one parent wants to move

away. If the non-custodial parent objects, the Judge has to look at the whole picture regardless.

Frequency of visits with the other parent is a more important factor. If the other parent is used to seeing the children often during the week and is involved in extra-curricular activities etc, it may be easier to convince a Judge that the children should not move.

Potential long-distance access is also a factor. With emails, webcams, cell phones and airline seat sales, keeping in touch from far away can be done, and not cost-prohibitive.

Vacations are a whole different matter. There seems to be a misconception that with an Order of joint custody, the other parent cannot travel with the children without consent. This is not true. If either parent is allowed to have the children for an extended time, they are free to travel out of province without the written consent of the other parent.

It is however common courtesy to let the other parent know where their children are.

Travel out of country is a different situation however. Parents with sole or joint custody are advised at Customs that they need a Notarized letter from the other parent confirming their consent to the trip.