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REMOVAL OF CHILDREN FROM NEW ZEALAND

S77 of the Care of Children Act 2004 ("Act") empowers the Family Court to make Orders preventing the removal of children from New Zealand. Invariably when parents separate the non custodial parent can become somewhat concerned if they believe the custodial parent is about to take the parties children out of New Zealand without consent.

Before making an Application pursuant to S77 of the Act preventing removal of the children you must be able to provide the Court evidence. An applicant must provide evidence that a person intends to take a child out of New Zealand and that such removal would defeat the other parties rights of day - to - day care or contact.

The position becomes compounded as a result of the provisions of the Passports Act 1992. When a child under 16 years of age applies for a Passport it only requires the consent of a parent or guardian (not both).

This is not a situation where you can simply make an Application to the Court as a safe guard strategy. An Order will only be made under S77 of the Act provided an applicant can produce evidence that the other person intends leaving New Zealand. Examples of such evidence would be statements made to friends, travel documentation, booking tickets, changing currency, selling possessions or giving up accommodation.

The other issue of concern of course is where a party is transferred overseas for employment reasons. The other person in the marriage or relationship needs to ensure that their marriage or relationship is fairly solid! If a separation occurs overseas then this provides some serious difficulties should a party wish to return to New Zealand. New Zealand is a member of the Hague Convention where in principle any disputes over children are to be resolved in the country of jurisdiction where the dispute arose.

An example of this of course is that one party could be transferred to Australia for employment reasons. While in Australia the parties separate and one party wishes to return to New Zealand with the children so that they have the support of family. Because that party has only been in Australia for a short time they probably have no family or friends to support them after separation especially with the children. It then becomes problematic for that party to return to New Zealand because the Hague Convention states that any issues over the children are to be resolved in the Australian jurisdiction. It would be wise to give very serious consideration to move overseas especially with young children where you are leaving behind the support of family friends which are essential at the time of separation.

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