

APPLICATIONS BY A PARENT SEEKING PERMANENT REMOVAL OF CHILDREN FROM THE CAYMAN ISLANDS

Removal applications are made to the Court by a parent who wishes to take a child or children to live with him or her in another country and where the other parent objects to the children leaving the Cayman Islands.

The burden of proof is on the parent wishing to show that the move is in the children's best interest. The applicant must illustrate to the Court by way of extensive affidavit and oral evidence that permanent removal to the proposed country would provide the child or children with a better overall welfare package as well as specifically addressing the question of contact with the parent who will remain. Depending on the age of the child or children, the Court may also seek to ascertain their views as to the proposed permanent removal. In almost every case the Court will also require a welfare report from an independent professional, either a social worker from the Department of Children and Family Services or from an appropriately qualified child psychologist.

The leading Cayman Islands case on relocation is ***B v B***. The Grand Court judgment was handed down in April 2013 and the Cayman Islands Court of Appeal subsequently approved that decision. A summary of the main principles are as follows.

- The first and overarching principle must be that the child or children's welfare is paramount. It takes precedence over any other consideration.
- The Court's exercise is to:
 - Review each part of the evidence;
 - Consider guidance from previous case law;
 - Apply the six questions below to the evidence; and
 - Determine the matter in line with the first and overarching principle that the child or children's welfare is paramount and by reference to the Welfare Checklist (see below).
- The six questions which the Court should consider and address when determining what is in the children's best interests and by reference to the paramountcy principle are as follows:

1. Is the application genuine in the sense that it is not motivated by some selfish desire to exclude the remaining party from the child's life?
 2. Is the remaining party's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?
 3. What would be the extent of the detriment to the remaining party and his/her future relationship with the child were the application granted?
 4. To what extent would the detriment to the remaining party if the application were granted be offset by extension of the child's relationship with the applicant's family and, if applicable, homeland?
 5. Is the application realistic and founded on practical proposals both well researched and investigated?
 6. What would be the impact on the applicant of a refusal of their realistic proposal? The weight placed on this will increase if the child or children reside with the applicant.
- The Court will ask question 1 and question 5. If the application fails either of those tests, refusal will inevitably follow. If the application passes both tests, then there must be a careful appraisal of the remaining party's opposition by asking the other four questions. The outcome of those last four questions must be considered in line with the overarching principle that the children's welfare is paramount and by reference to the Welfare Checklist which is set out at Section 3(3) of the Children Law (2012 Revision) and cited below:
 - (a) The ascertainable wishes and feelings of the children (considered in light of their age and understanding);
 - (b) Their physical, emotional and educational needs;
 - (c) The likely effect on them of any change of circumstances;
 - (d) Their age, sex, religious persuasion, background and any relevant characteristics;
 - (e) Any harm which the children have suffered or are at risk of suffering;
 - (f) How capable each of their parents are in meeting the children's needs; and
 - (g) The range of powers available to the Court under the Children Law.

In conclusion, applications seeking the Court's permission for one parent permanently to remove a child or children in order to live with him or her in another jurisdiction are among the most difficult, emotional and complicated in the area of family practice. If an application is to be made, it will require significant thought, research and work so as to increase the prospects of success.

Broadhurst LLC is one of the Cayman Island's leading law firms, with an expertise in giving objective, practical legal advice in family law matters. Given that the questions around marital breakdown are often complex, with significant consequences for the parties it is advisable to seek the assistance of a professional who can give legal advice and assist in the decision making process. For further information contact yvonne@broadhurstllc.com or lynne@broadhurstllc.com.

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