

The Law of Relocation in Singapore: Relocation in the Time of COVID-19

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At a glance:

- Relocation of a child requires the consent of both parents, failing which a court order is needed to vary custody arrangements or grant relocation
- Guidance on the law of relocation and factors to be considered
- Guidance on the Singapore Court's approach to relocation during the COVID-19 pandemic.

Introduction

Relocation cases are a relatively recent phenomenon due to increased transnational and cross-border marriages and Singapore's particular and central location where different nationalities come together to work, love and live and sadly, also divorce. Online dating has also led to such unions that cross borders. Since the turn of the millennium, we have started to see a rise in actual reported cases in Singapore referring to relocation.

Globalization is one reason for the rise in the number of cross-border marriages. Singapore, in particular, is a typical destination country for cross-border marriages in Asia, with divorces between a Singapore and a non-resident spouse or between two non-residents filed in the Singapore Family Justice Courts rising from 16.2% to 22.2% during the 2011 to 2015 period, accounting for 1 in 5 divorces in Singapore.

The modern Singaporean family is more likely to be the product of a cross-border marriage, the breakdown of which would potentially raise complex cross-border issues, such as applications for relocation.

A typical relocation case will involve a union between persons of 2 different nationalities, meeting in Singapore or elsewhere, and eventually choosing to make Singapore their home.

In most cases, one party is more financially dependent on the other, and the parties usually settle where the financially-able partner is working. The other either is usually unable to seek employment due to immigration restrictions, the family's decision that she (as it is often the wife or female partner who finds herself in this situation) does not have to.

This is all good when all is well in the relationship. But when the relationship breaks down, and especially if there is family violence, you will often find the less financially-able partner wanting to return to her place of origin for a variety of reasons, but mostly for reasons of financial and familial support. Many who may have arrived to a foreign culture and lifestyle for the sake of the marriage, also look to return to the familiar, in their original home.

And where children are present, the relocation issue becomes a key concern.

The first thing to do is of course to see if a discussion with the other parent is possible and an amicable agreement arrived at. But this is not always possible. Let's review the applicable law and principles that can come into play.

Applicable Law and Legal Principles

- Statute Law

Women's Charter

The Women's Charter is the relevant statute where the parents are married to each other.

Section 126(3) of the Women's Charter (Cap 353) requires a parent who wishes to relocate to first obtain either (i) the consent of the other parent in writing; or (ii) an Order of Court. To apply for an Order of Court, the party seeking relocation can either (i) seek to vary the custody order under s 128 of the Women's Charter, citing a material change in the circumstances or (ii) seek an Order of Court granting relocation during ancillary proceedings. Breach of this provision is a criminal offence punishable by a fine, imprisonment or both.

Under section 131, the Court can issue an injunction or may give leave for such child to be taken out of Singapore either unconditionally or subject to such conditions or such undertaking on application of either parent (a) where any matrimonial proceedings are pending; or (b) where, under any agreement or order of court, one parent has custody, or care and control, of the child to the exclusion of the other, or to any interested party preventing other parent or any person other than custodian from taking child out of jurisdiction.

Guardianship of Infants Act

Where parties are not married or have not commenced divorce proceedings, an application for relocation can still be made under the Guardianship of Infants Act (Cap122).

International Child Abduction Act

On 28 December 2010, Singapore, through its Ministry of Community Development, Youth and Sports (now known as Ministry of Social and Family Development ("MSF")) acceded to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("HCCAICA"). To carry out the relevant functions under the HCCAICA, Singapore passed the International Child Abduction Bill on 16 September 2010. MSF is the Central Authority in Singapore to facilitate applications for the return of children who have been taken to or from Singapore without permission of the parent who has custody rights; and work with other Central Authorities on such applications.

Where a parent has left jurisdiction for the purposes of relocating with a child without the consent of the other party or without the necessary Order of Court, the left-behind parent also has potential recourse to the International Child Abduction Act in Singapore.

- Case law

Case law makes it clear that the welfare of the child is the paramount consideration in proceedings involving children in Singapore, as it is with many other jurisdictions.

This principle has been enshrined in both statutorily (see section 125(2) of the Women's Charter and section 5 of the Guardianship of Infants Act) and in case law (BNS v BNT [2015] SGCA 23 at [19]).

Thus, when seeking to balance the interests of the parents and their children, the Court will focus on the child and decide what is best for his or her welfare, even if this requires parents to make personal sacrifices.

In determining what is best, case law show that two factors are frequently considered:

- (i) whether the primary caregiver's wishes to relocate are reasonable; and
- (ii) how grave the child's loss of relationship with the "left-behind" parent be

In this context, the “primary caregiver” is the parent who is relocating with the child, while the “left-behind” parent is the other parent.

(i) Reasonable Wishes of the Primary Caregiver

Section 125(2)(a) of the Women’s Charter considers the wishes of the parents a relevant factor in deciding issues of custody, care and control and the child.

In the seminal case of *BNS v BNT* [2015] SGCA 23 at [20], the Singapore Court of Appeal acknowledged that “the child’s emotional and psychological welfare is... intertwined with that of the primary caregiver”. Thus, where the primary caregiver wishes to relocate because of reasonable circumstances, such as not being emotionally and psychologically stable in their present environment, this will be taken into consideration. However, this wish is relevant only to the extent that it is found that there will be a transference of his or her insecurity and negative feelings onto the child. It is, after all, the child’s welfare that lies at the heart of the inquiry, and not the interests of the relocating parent (or either of the parents for that matter).

Prior to this case, the majority of the reported local cases on parental relocation focused heavily on the reasonableness of the custodial parent’s reasons for relocation and less on the loss of relationship with the other parent. *Re C (an infant)* [2002] SGCA 50 held that it was the reasonableness of the party having custody to want to take the child out of jurisdiction which will be determinative. *Re C* therefore represented the law in Singapore then that the custodial parent would normally be allowed to move abroad with the children if the reason for moving abroad are reasonable and taken in good faith. This resulted in seemingly unfair odds since there was practically a presumption in favour of relocation. However, in more recent times, the courts have been careful not to do so.

The Court of Appeal reconciled *Re C (an infant)* by explaining that a reasonable reading of the relevant passage in *Re C* meant to convey that the primary caregiver’s wish to relocate is an important factor, but was certainly not attempting to attribute to this factor decisive weight, and this must be so given that it explicitly reminded that the welfare of the child is paramount in relocation applications. Implicit in that reminder, is a recognition by the court that there may well be other relevant factors bearing on the child’s welfare which, when considered holistically, may yet tip the balance against relocation.

BNS made it clear that at a broader level, there can be no pre-fixed precedence or hierarchy among the many composite factors which may inform the court’s decision as to where the child’s best interests ultimately lie: where these factors stand in relation to one another must depend, in the final analysis, on a consideration of all the facts in each case. It confirmed that there is no legal presumption in favour of allowing relocation when the primary caregiver’s desire to relocate is not unreasonable or founded in bad faith.

(ii) The Child’s Loss of Relationship with the “Left-Behind” Parent

BNS also provide valuable guidance on the child’s relationship with the left-behind parent. It observed that it is axiomatic that a child benefits from the nurturing presence and joint contribution of both parents in his or her life and this does not cease to be true upon the breakdown of marriage. Relocation, however, represents a serious threat to this ideal state of joint parenting since the left-behind parent would, as its appellation suggests, become less of a presence in the child’s new life.

The Court of Appeal noted that relocation would naturally decrease their presence in their child’s life. As such, when assessing this concern, courts will look at its impact on the child’s welfare by determining the strength of the existing bond between the left-behind parent and the child. In general, the stronger the bond, the larger the void in the child’s life if relocation is allowed. Hence, a stronger bond tends to mean a greater emphasis on this factor in the final analysis. *BNS* was one such example where relocation was not granted as the left-behind parent had a strong, vibrant relationship with his children and had taken steps to play an active and involved role in the children’s lives. The Court found that relocation would have disturbed what was, in the court’s eyes, the fullest extent of a “normal family life” involving both parents and was thus disallowed.

(iii) Other Factors

A list of non-exhaustive relevant factors have been considered to be as follows:

1. Reasonableness of Custodial parent's wish to relocate: Re C [2002] SGCA 50
2. Remarriage: Tan Kah Imm v D'Aranjo Joanne Abegail [1998] SGHC 247, BX v BY [2003] SGDC 29, C v B [2003] SGDC 226
3. Education opportunities: Tan Kah Imm (supra)
4. Term of relocation: Tan Kah Imm (supra), Liew Kah Heng v Kwok Fong Ee [2000] SGDC 7
5. Family support abroad
6. Singaporean boys and National Service
7. Loss of relationship with other parent
8. Taking an Inquisitorial approach of different options

Relocation in the Time of COVID-19

Obviously with the COVID-19 pandemic, movement even within jurisdictions have been restricted to a large extent, let alone in and out of the country. Again, this has been raised as a factor to argue for and against relocation which entails moving to another country.

Some parents have argued that the other parent should not be allowed to relocate the children because of the covid-related dangers associated with the other country. This is not a new argument. In the past, the political situation, crime rate or even geographical safety (such as the propensity for natural disasters) of the intended destination have been used as reasons to argue against relocation, quite apart from individual circumstances. Some guidance was given in the recent Singapore High Court case of UYK v UYJ [2020] SGHCF 9 where COVID-19 was specifically raised as one of the reasons.

The countries involved Singapore and the United Kingdom with the intended relocation to the UK. The arguments made by the Father against relocation were that

- Compared to the UK, the COVID-19 situation was under control in Singapore.
- Second, international travel posed risks of infection to the parties and the child. Due to the Father's medical condition, travelling presented a high risk to his health, which would therefore impact on his ability to travel to the UK for access with the child.
- Third, quarantine measures and travel restrictions that were in place would make it difficult for the Father to have access to the child. Travelling could also jeopardise the Father's residence status in Singapore.
- Fourth, the Mother's plans which were made prior to the COVID-19 situation, such as finding employment in the UK, were now less viable.
- Fifth, the Father submitted that the Mother had admitted that relocation could not take place in the immediate future, which he claimed was an admission that relocation at the present time was not in the child's best interests.

The Mother submitted that the COVID-19 situation was rapidly evolving, and should have no impact on the relocation decision which concerns the child's long-term welfare and best interests.

The Court held that the evidence relating to the COVID-19 pandemic could not be given inordinate weight. The COVID-19 situation is fast-evolving, and depending on whether the situation improves or deteriorates, travel may or may not be allowed in the near future. The Court should not be making orders on relocation depending on the

COVID-19 situation at each specific point in time, as these orders would quickly become outdated as the global situation changes.

The Court considered the evidence in relation to the COVID-19 issues, and weighed them together with all the other factors to decide whether relocation should be granted. Where the balancing of all the circumstances led to the conclusion that relocation is the best step for the child and family, it was felt that the COVID-19 situation in itself should not hold the child back from being relocated. The Court accepted the Mother's submission that relocation ultimately concerned the child's long-term interests with ramifications that would last far beyond this pandemic. Each state seeks to protect its people from the risk of COVID-19 in the way it thinks appropriate, bearing in mind the swiftly evolving state of affairs. As British citizens, the child and his parents also had benefits in the UK that will ensure that they have the state's protection. This was held to be the more relevant consideration than one that involved the Court's assessment and comparison the sufficiency and quality of policies and systems of the two states, the United Kingdom and Singapore, which, in any case, the court was not in a position to do.

Conclusion

Singapore has definitely served as a melting pot of cultures in bringing together and connecting people from around the world. It has seen geographical, cultural, language and religious barriers transcended. But when these relationships unravel, complex legal issues surrounding parental relocation and the children's welfare arise. Having an awareness of these challenges ahead of facing this predicament, however remote or theoretical, is wise. It behooves couples and their lawyers to put the children's interest in the fore, instead of merely treating them as collateral damage in the ensuing battlefield.

Ultimately, the analysis is fact-specific. The extent to which the above factors affect the success of your case really depends on the circumstances your client are facing. The presence or lack of the factors are not themselves determinative of how successful you will be.

More importantly, it must be remembered that the courts expect parents to try their best to be cooperative under the circumstances. More recently, the notion of Therapeutic Justice has been explored and encouraged in the Singapore Family Justice Courts. Parents are urged to look beyond their acrimony and ill-feelings towards each other, and co-parent for the benefit of their children's future.

If you are considering relocating yourself or your family, it is important to understand the law with respect to how the courts will determine the merits of your application. You may also want to consider starting a meaningful conversation with your partner to explore a collaborative way of resolving the issue without incurring the cost and angst of a full-blown litigated result.

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