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Family Lawyer & Mediator

Bringing It On

Category: Custody & Access

Wow. Since announcing that the format of my column would be changing, (ie. answering your legal questions), I've enjoyed overwhelming positive feedback. Thanks! So keep bringing it on! Now, onto our next question.

My spouse, who has custody, (and primary residence), of our four (4) year old daughter, has just told me he plans to re-locate to another province with our daughter. I don't want this to happen. What are my legal options?

Such circumstances which raise issues of "mobility" are definitely "high stakes" kinds of cases," often the most vexing for parents, lawyers, and judges. That's because if the move proceeds, it can potentially result in the eventual destruction of any meaningful relationship between the child and the parent left behind. Here are my suggestions.

Firstly, check to see if there are any restrictions on your spouse re-locating your daughter's residence outside the province. Such provisions are typically, (but not always), included in Court Orders, or Separation Agreements.

If so, such provisions usually require either your prior written consent to the move, or Court Order. But even if you do have such restrictions in your Court Order or Agreement, don't simply sit back, and assume that your spouse will comply.

You should make it clear in writing that you do not agree to the re-location, and that you expect, and require, that he will comply with the terms. As an added precaution, if you believe a move is imminent, you should also contact police, and authorities at any potential border crossing, airline, etc

But don't despair, even if there are no such restrictions on re-locating your daughter. That's because in most cases, a Court will be prepared to make an order preventing a parent from re-locating a child until the issue can be properly heard, and determined, at a formal hearing. In such event, the judge will, after considering the evidence from both parents, make a decision based upon what the

judge determines is in your daughter's best interests. Factors will include examining the reasons for the proposed move, yours and your spouses' relationship with your daughter, and what, (if any), steps can be taken to preserve your relationship, if in fact, the re-location is allowed to proceed.

How important is my choice of divorce lawyer?

No doubt about it, mucho important! Your choice of divorce lawyer can make a huge difference, not only in the outcome, but the cost of your divorce.

In fact this past week, I read a column in a national publication which compared "divorce lawyers" to "white knights" during stressful times of divorce or separation. But it helps to keep some things in mind.

It's okay, (and in fact I recommend it), to meet with several prospective family lawyers before choosing one. Ask about their level of experience, hourly rates, and how many of their cases settle, or proceed to trial.

If the vast majority of their cases proceed to trial, it's a good bet that yours will too. Not that there's anything wrong with that, since some cases will never be resolved short of trial, but I'm also a firm believer that a trial should only be used as a last resort. (I consider trials to be essentially a "lose – lose" proposition for both parties.)

Don't overlook a lawyer with the experience, and inclination, to make use of all available alternatives to trial, such as mediation, collaborative divorce, etc.

But most importantly, hire someone who you feel will treat you, and your case, with the attention, and professional courtesy, that you deserve. After all, you don't want your white knight turning into a "knight - mare". 🐎