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# The Paramountcy Principle: in the context of relocation disputes



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*'It is the interests of the child which are paramount, not the interests or needs of the parents, let alone the interests of one of them.'*<sup>1</sup>

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<sup>1</sup> U v U [2002] HCA 36 [176], per Hayne J.

## Introduction

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Opportunities to live, travel, work and study interstate and abroad are part and parcel of our day to day lives in Australia. Evolving technology, telecommunications and social media allow us to communicate effortlessly with friends and family, face to face and in real time, regardless as to whether they are suburbs away or continents apart.

Every day, children are brought into the world by parents who are expatriates, fly-in fly-out workers, immigrants, or who have temporarily or permanently relocated to pursue work or lifestyle interests. It is not uncommon for siblings to be born in different cities to each other, depending upon their parents' movements.

In the context of an intact family, travel opportunities will often bring excitement and anticipation. At times, they may bring hesitation or uncertainty. Children in these relationships, however, have the benefit of both parents supporting their move and assisting them to adapt to their new environment. What happens, however, when an opportunity or a legitimate need for a parent to relocate arises after the breakdown of a relationship?

There are many social variables which may lead a parent to seek to relocate with their child. The prospect, however, of the relocation of a parent post separation can lead to many uncertainties for their children.

Where do children fit in when determining a relocation dispute? How does a Court appropriately weigh all of the competing considerations in each situation? Why are

we seeing more disputes in relation to the geographical location of children in our news headlines? How are these disputes able to be resolved when, by their very nature, there is no 'middle ground'?

The purpose of this paper is to reflect upon how the Courts in Australia determine relocation matters in the context of the paramouncy principle and, going forward, whether it is necessary for a distinct and concise set of principles to be applied by the Courts to adequately determine a child's best interests in emerging times.<sup>2</sup>

From a practical perspective, this paper will identify the array of considerations that should be addressed when attempting to resolve a relocation dispute or when preparing a relocation matter for a final hearing.

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<sup>2</sup> It is not the intention of this paper to provide case summaries of the relevant authorities. Rather, the purpose of the paper is to highlight the considerations for a Court when determining a relocation matter in the context of the paramouncy principle and to consider whether there is scope for developing a separate and defined set of principles in relocation matters.

## The Paramouncy Principle in Australia - an overview

In deciding whether to make a particular parenting order in relation to a child, a Court must regard the best interests of the child as the paramount consideration.<sup>3</sup>

Otherwise known as 'the paramouncy principle', section 60CA of the *Family Law Act 1975* (Cth) provides the foundation for a Court in making any parenting order.

In determining a child's best interests, the Court must consider the primary considerations and the additional considerations.<sup>4</sup> The primary and additional considerations are well known to family law practitioners, however, given they are intricate to this paper and to the determination of a parenting order, including an order in relation to the relocation of a child, the considerations are identified below.

The Court will consider the following primary considerations in determining a child's best interests:

- a. the benefit to the child of having a meaningful relationship with both of the child's parents; and
- b. the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence;

with the Court to give greater weight to the latter.

The *Family Law Act 1975* (Cth) identifies the additional considerations that a Court may take into account when determining

the best interests of a child. These considerations include (but are not limited to):

- a. any expressed wishes of the child;
- b. the child's relationship with their parents or other significant persons;
- c. the effect on the child of any change in circumstances (including the practical difficulty and expense of the child spending time with and communicating with each parent); and
- d. the individual child (their maturity, culture, age, sex and background).

In relation to a child's parents, the additional considerations include:

- a. the extent to which each of the child's parents has taken, or failed to take, the opportunity to participate in the child's life and fulfilled, or failed to fulfil, their obligations to maintain the child;
- b. the capacity of each of the child's parents to provide for the needs of the child; and
- c. the attitude to the child, and to the responsibilities of parenthood, demonstrated by the child's parents.

The Court may also consider whether it would be preferable to make an order that would be least likely to lead to the institution of further proceedings in relation to the child.

In addition to the above considerations, the Court is able to take into account any other fact or circumstance it thinks is relevant to determining the best interests of a child.

In considering what order to make, the Court must, to the extent that it is possible to do so consistently with the child's best interests being the paramount consideration, ensure that the order:

- a. is consistent with any family violence order; and
- b. does not expose a person to an unacceptable risk of family violence.<sup>5</sup>

The Court is to consider a child spending equal time or substantial and significant time with each parent in certain circumstances.<sup>6</sup> If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the Court must:

- a. consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
- b. consider whether the child spending equal time with each of the parents is reasonably practicable; and
- c. if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

<sup>3</sup> *Family Law Act 1975* (Cth) s 60CA.

<sup>4</sup> *Family Law Act 1975* (Cth) s 60CC.

<sup>5</sup> *Family Law Act 1975* (Cth) s 60CG.

<sup>6</sup> *Family Law Act 1975* (Cth) s 65DAA.

If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child and the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents, the Court must:

- a. consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
- b. consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and
- c. if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

In determining whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:

- a. how far apart the parents live from each other; and
- b. the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
- c. the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

d. the impact that an arrangement of that kind would have on the child; and

e. such other matters as the court considers relevant.<sup>7</sup>

The legislation summarised above sets the foundations of the paramouncy principle and the approach a Court is to take when determining any parenting order.

It is also interesting to consider the application of the paramouncy principle in the context of decisions which are not, on their face, decisions in relation to parenting orders.

There are many parenting issues which come before the Family Law Courts for determination but where the Court is not being asked to make a parenting order, as such. For example, decisions in relation to procedural issues such as the release of a family report are not 'parenting orders' pursuant to section 64B of the *Family Law Act 1975* [Cth].

In *Sahadi v Savva* [2016] FAMCAFC 65 the Full Court of the Family Court noted, referring to comments of Kirby J in *CDJ v VAJ* [1998] 197 CLR 172 at 239, that these 'ancillary decisions' will be determined 'in the shadow of the paramouncy principle'.<sup>8</sup>

The Full Court in *Pascarl v Oxley* [2013] FAMCAFC 47 considered, on appeal, the application of the paramouncy principle in the context of a forum dispute. In that particular case, Bryant CJ, Faulks DCJ and Finn J considered an appeal by a father to the effect that the trial Judge erred by applying the wrong test when determining whether Australia was an appropriate forum including by placing forum above paramouncy. The Full Court

made the proposition at paragraph 86 to the effect that:

*the principles to be applied in parenting cases which involve a foreign element will be determined by the nature of the application before the court. Where an application is made under provisions of the Act which prescribe the best interests test, whether or not a child is within the jurisdiction, then it is that test, and not the test of forum conveniens, which will apply.*

In that particular case, the application by the father was in fact for parenting orders under section 64B of the *Family Law Act 1975* [Cth] and, as such, it was found that the Court must regard the interests of the child as the paramount consideration.<sup>9</sup>

Their Honours' comments in *Pascarl v Oxley* were considered by Hogan J in *Dunstan & Ziegler* [2015] FAMCA 419, again, in the context of a forum dispute. Her Honour found, in the circumstances of that particular case, that if it is in fact required of the Court to determine whether it is in the child's best interests for parenting proceedings to continue in Australia or the Cook Islands then, in those circumstances, the Court did conclude that the child's best interests were met by any proceedings about the child occurring in the Cook Islands, where he lived.<sup>10</sup>

The above cases evidence the fact that the paramouncy principle will apply not only in cases where the Court is required to determine a parenting order, but it may also apply, albeit in the shadows, in circumstances where a Court is determining ancillary matters.

<sup>7</sup> *Family Law Act 1975* [Cth] s 65DAA(5).

<sup>8</sup> *Sahadi v Savva* [2016] FAMCAFC 65 [50].

<sup>9</sup> *Pascarl v Oxley* [2013] FAMCAFC 47 [87].

<sup>10</sup> *Dunstan & Ziegler* [2015] FAMCA 419 [32]-[33], [47].



## Interplay between the paramouncy principle and the determination of relocation matters

Although relocation matters are often referred to as though they are a class of their own, in Australia, the legislation does not provide a mechanism for their determination any different to the principles applied when determining any other parenting order. The Court must apply the paramouncy principle and have regard to the best interests of the child as the overarching consideration. This is regardless as to whether the proposed relocation is interstate or international.

The difference is, of course, the considerations of whether it would be in a child's best interests to spend equal time or substantial and significant time with each parent, and whether or not it is reasonably practicable to do so, will give rise to greater dilemmas in cases where one parent seeks to relocate a child away from the other parent. In consideration of these factors, a child's best interests must remain the paramount consideration.<sup>11</sup>

In *MRR v GR* [2010] HCA 4, the High Court considered a mother's appeal in relation to orders which had been made for her to have equal shared parental responsibility with a father and for the child spend equal time with each of them (on the basis that the mother, against her expressed wish, was living in Mt Isa). In its decision, the High Court held that the trial Judge erred in considering whether equal time with each parent was in the child's best interests as determinative, failing to consider whether or not it was reasonably practicable.

The High Court noted that, in determining whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the Court must have regard to certain matters, such as:

- a. How far apart the parents live from each other;
- b. Their capacity to implement the arrangement in question; and
- c. Such other matters as the Court considers relevant.<sup>12</sup>

A competing consideration, which factors significantly in relocation disputes, is the value society places on freedom of movement. This was acknowledged by Kirby J in *AMS v AIF* and *AIF v AMS* [1999] HCA 26 at paragraph 145:<sup>13</sup>

*Courts recognise that unwarranted interference in the life of a custodial parent may itself occasion bitterness towards the former spouse or partner which may be transmitted to the child or otherwise impinge on the happiness of the custodial (or residence) parent in a way likely to affect the welfare or best interests of the child. This said, the touchstone for the ultimate decision must remain the welfare or best interests of the child and not, as such, the wishes and interests of the parents. To the extent that earlier authority may*

*have suggested the contrary, it has now, properly, been rejected.*

In considering the interplay between the freedom of movement and the paramouncy principle, Gummow and Callinan JJ observed in *U v U* that whatever weight is afforded to freedom of mobility, it must defer to the welfare of the child if that were to be adversely affected by a movement of a parent.<sup>14</sup>

In this context, parents must be reminded that they are not asking the Court for permission to relocate themselves. The Court is only concerned whether or not a child ought to relocate. In doing so, the Court is not confined to making an order in the terms proposed by either party. If it were to do so, the Court would not be correctly applying the paramouncy principle.<sup>15</sup> The Court is therefore less so concerned with the interests or needs of the parents in comparison to those of the child.

Having recognised this, whilst the best interests of a child are the paramount consideration, they are not the only consideration.<sup>16</sup>

In fact, the interests of one or both of a child's parents may be a relevant consideration in determining a child's best interests. For example, the inability of a parent to relocate may have significant financial or emotional consequences for a parent which may ultimately transmit through to the child.

<sup>11</sup> *U v U* [2002] HCA 36.

<sup>12</sup> *MRR v GR* [2010] HCA 4 [9].

<sup>13</sup> *AMS v AIF and AIF v AMS* [1999] HCA 26 at paragraph 145, citing *Poel v Poel* [1970] 1 WLR 1469 at 1473, *P v P* [1970] 3 All ER 659 at 662, *In the Marriage of Holmes* [1988] FLC ¶91-918 at 76,664, *B and B* [1997] FLC ¶92-755 at 84,197, *Re Davis & Councillor* [1981] 7 Fam LR 619; *Thorpe v McCosker* [1983] 8 Fam LR 964.

<sup>14</sup> *U v U* [2002] HCA 36 [89].

<sup>15</sup> *U v U* [2002] HCA 36 [171].

<sup>16</sup> *AMS v AIF and AIF v AMS* [1999] HCA 26; *A v A* [2000] FamCA 751.

This gives rise to a competing tension between:

- a. the interests of a child, which are paramount; and
- b. the interests of each parent, which are relevant (not paramount) but which may impact upon the interests of a child.

In addition, a Court is effectively required to make a determination which will either leave:

- a. one parent satisfied but which will likely bring about a substantial change in the child's living arrangements; or
- b. one parent unhappy and emotionally or financially distressed;

both of which outcomes will impact significantly upon a child.



## Social considerations and expert evidence

Relocation disputes require a Court to examine and weigh many different variables and competing factors. A Court does so in the context of our legal framework, while taking into account many non-legal issues.

A relocating parent is not required to provide compelling reasons for, or against, relocation.<sup>17</sup> Having said this, it is important, for example, to consider when determining a child's best interests why a person might be seeking to relocate with a child in the first instance. It will be a matter of giving sufficient consideration to all of the reasons why a parent is seeking to relocate, in the context of the child's best interests.

Specifically, a parent may have a legitimate necessity to relocate. That parent particular may, however, be the child's primary carer and there may be no question that the relocating parent will not abandon the child. If these circumstances arise, a Court must consider the effect on the child should it not be permitted to relocate (indirectly, having regard to the effect on the parent who has a legitimate need to relocate) and balance these considerations with the impact on the child of relocating and the consequent effect this has on the child's relationship with the non-relocating parent.

The authors in *Relocation in separated and non-separated families: Equivocal evidence from the social science literature*<sup>18</sup> noted that the reasons behind proposed relocations were multifarious.

Often there is more than one reason for a proposed relocation. The authors identified the most frequent reason behind a proposed relocation (at the time of their article) to be employment and, secondly, reuniting with extended family. This may occur, for example, where a parent has relocated during their relationship for the purpose of pursuing the other parent's employment and where, upon the breakdown of the relationship, the first parent finds themselves in an environment where they have limited or no support network or they may have limited financial support or otherwise be unable to obtain employment in the particular geographical location in which they find themselves.

As such, a parent might find themselves without sufficient emotional or financial support at a time when, presumably, it is most needed.

There may be issues of family violence which must also be carefully considered in the context of a relocation dispute.<sup>19</sup> Of course, any issues of violence are given primary consideration in the application of the paramountcy principle.

It must be remembered that as legal practitioners, we do not possess the skills necessary to analyse or perhaps fully appreciate the impact a proposed relocation may have upon a child, or their parents, in a social context. An expert's opinion in a relocation dispute is of utmost importance. Although a Court is not bound to accept the recommendations of an expert (such as a family report), often the

recommendations of a family consultant will be pivotal to resolving a dispute in relation to relocation.

Consideration must also be given to whether the appointment of an independent children's lawyer is necessary.<sup>20</sup> The family consultant or independent children's lawyer has the opportunity to meet with the children first hand, an opportunity which the Court will not have.

The difficulties faced by a Court when asked to determine an international relocation dispute without the benefit of any expert evidence were acknowledged by the Full Court in *McCall v Clark* [2009] FAMCAFC 92.

Where parties to litigation have not appointed an expert of their own volition, the Court may do so.<sup>21</sup>

As practitioners, the importance of obtaining an expert report prior to the institution of proceedings cannot be underestimated. There may be a misconception that the resolution of a relocation matter, through mediation or alternative dispute resolution, is unfeasible in circumstances where the parties are not able to 'meet halfway' so to speak. The assistance of a family consultant or expert report writer early on may, however, provide valuable insight to either or both parents and may ultimately assist parties to resolve their matter and preclude the need to have recourse to litigation.

<sup>17</sup> *A v A* [2000] FamCA 751.  
<sup>18</sup> [2010] 24 AJFL 34

<sup>19</sup> Briony Horsfall and Rae Kaspiew, 'Relocation in separated and non-separated families: Equivocal evidence from the social science literature' [2010] 24 AJFL 34

<sup>20</sup> *Re K* (1994) 117 FLR 63.

<sup>21</sup> *Family Law Act 1975* (Cth) s 11F.

## Interplay between the Paramouncy Principle and the determination of Hague matters

Relocation matters must be distinguished from the determination of Hague Convention matters, where a child's best interests are not the paramount consideration. Of course, the difference being, the consent of one parent to remove a child, or the permission of the Court, has not been sought and a parent absconds from Australia, or does not return to Australia, with the child.

It is potentially for this reason that Hague Convention matters often appear before us in the news headlines. It is not the function of a Court in determining a Hague Convention matter to treat a child's interests as paramount but, rather, to return a child to their country of habitual residence. The issue for determination by a Court in Hague Convention matters is one of jurisdiction, as distinct from a child's best interests.

In making a determination, however, it must be recognised that a Court is bound to consider, amongst other factors, whether there is a grave risk that the return of the child under the Convention would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

Whilst it is not the intention of this paper to analyse the Hague Convention, it is interesting to consider its comparison to our treatment of relocation matters, where the child's best interests are paramount.

Hague Convention matters in Australia are governed by the *Family Law (Child Abduction Conventions) Regulations 1986 (the Regulations)*. The Regulations effectively exist to enable the enforcement of Australia's obligations under the

Convention of the Civil Aspects of International Child Abduction dated 25 October 1980 (**the Hague Convention**).<sup>22</sup>

The Regulations apply in circumstances where a child has been wrongfully removed from Australia to another 'convention' country or wrongfully retained in Australia, having been removed from a 'convention' country.

Regulation 16(1) imposes a mandatory obligation upon a Court to order the return of a child if it is established that a child's removal or retention is wrongful. A child's removal from a convention country will be considered wrongful if:

- a. the child was under 16; and
- b. the child habitually resided in a convention country immediately before the child's removal to, or retention in, Australia; and
- c. the person, institution or other body seeking the child's return had rights of custody in relation to the child under the law of the country in which the child habitually resided immediately before the child's removal to, or retention in, Australia; and
- d. the child's removal to, or retention in, Australia is in breach of those rights of custody; and
- e. at the time of the child's removal or retention, the person, institution or other body:

i. was actually exercising the rights of custody (either jointly or alone); or

ii. would have exercised those rights if the child had not been removed or retained.<sup>23</sup>

There are a number of circumstances where a Court is not required to make the return order for a child. These circumstances include a situation where there is a grave risk that the return of the child under the Convention would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. Another example of a circumstance where a Court is not required to make a return order is where the return of the child would not be permitted by the fundamental principles of Australia relating to the protection of human rights and fundamental freedoms.<sup>24</sup>

The purpose of the Regulations are to recognise, in accordance with the Hague Convention, that the appropriate forum for resolving disputes relating to a child's care, welfare and development is ordinarily the child's country of habitual residence.<sup>25</sup> As such, although a child's best interests is not the paramount consideration in Hague Convention matters, effectively, they are determined on the premise that it is in a child's best interests to have any dispute in respect of their parenting arrangements determined in their country of habitual residence.

<sup>23</sup> *Family Law (Child Abduction Conventions) Regulations 1986* reg 16(1A).

<sup>24</sup> *Family Law (Child Abduction Conventions) Regulations 1986* reg 16(3).

<sup>25</sup> *Family Law (Child Abduction Conventions) Regulations 1986* reg 1A(2)(b).

<sup>22</sup> *Family Law Act 1975* (Cth) s 111D; *Family Law (Child Abduction Conventions) Regulations 1986* reg 1A.



## Relocation: a legal practitioner's perspective

As relocation disputes become more prevalent, it is useful to give consideration to the relevant factors that a practitioner should turn their mind to when advising clients as to their prospects of successfully seeking or opposing the relocation of a child, preparing for mediation and drafting evidence in chief.

Practitioners and parents must appreciate the far reaching consequences of an order permitting a child to relocate and therefore the necessity for sufficient and relevant evidence to be presented to assist a Court to make a determination in a particular matter.

The list compiled below evidences the necessity to have regard to a variety of issues when ultimately determining a child's best interests.

By no means exhaustive, below is a summary of various factors a legal practitioner may turn their mind to in a relocation dispute, when determining a child's best interests.

### Guided considerations in relocation matters<sup>26</sup>

1. Is there evidence that the parties contemplated relocation during their relationship?
2. Is the relocating parent (or their new partner) required to move for employment reasons? If so, what would

the impact be on the relocating parent if they are not permitted to move? Would this impact transmit through to the child (ie. financially or emotionally)?

3. Is the relocating parent seeking to move closer to their support network? Does the relocating parent have any support in their current place of residence? Who is the child's support network and where are they located?

4. Is the relocating parent seeking to pursue a new relationship and is this the reason for the relocation? Are there any prospects of the new partner or spouse being able to relocate?

5. Is there any expert evidence available to assist the Court to make a determination? For example, has a family report been prepared or is there an independent children's lawyer? If there is a family report, is it current or does the evidence require updating prior to trial? Has the child consulted with any psychologists or counsellors who may be able to assist the Court?

6. Has the relocating parent given proper consideration to the proposed relocation? Have they prepared a budget? Have they considered all of the alternatives?

7. Is the Court able to be confident that the relocating parent will facilitate and encourage a relationship between the child and the non-relocating parent? Has the relocating parent demonstrated that they will be able to facilitate and promote the relationship between

the child and the non-relocating parent? What is the relocating parent's proposal in terms of the children maintaining face to face and electronic communication with the non-relocating parent?

8. Practically, how would the child maintain their relationship with the non-relocating parent? Should the relocating parent be required to bear the full cost of travel? Does the child need to be accompanied on any flights? What are the requirements of relevant airlines in relation to travel of unaccompanied minors? If there is more than one flight, do the children need to be accompanied during their connections?

9. Are the children well-travelled or would the proposed relocation be the children's first time outside of their hometown?

10. Is the non-relocating parent able to move themselves? If not, what are the factors impeding the non-relocating parent from moving, having consideration to their particular skills, training, experience, support network, or other attachments to their current place of residence?

11. How resilient is the particular child? How is the child progressing at school? Does the child easily make new friends? Does the child have special needs?

<sup>26</sup> This list is not exhaustive and is simply prepared to assist practitioners to turn their mind to relevant considerations in relocation disputes. It is intended to be used in addition to the considerations specifically identified in section 60CC *Family Law Act 1975* (Cth).

12. Is the child familiar with the proposed place of residence? If not, how will the relocating parent assist the child to adjust to their new environment? What will the relocating parent do to assist the child to establish new friends if they are permitted to relocate?

13. How aware is the child of their parent's proposal to relocate? Will there be any impact upon their relationship with either parent? For example, will the child blame either parent for seeking to relocate or objecting to it?

14. Consider the effect on the parent seeking the relocation if the child is not permitted to relocate. What would they do? What will be the flow-on effect, if any, to the child?

As referred to early on in this paper, in addition to the primary and additional considerations of a Court when determining a child's best interests, the Court is able to take into account any other fact or circumstance it considers relevant.

Practitioners must therefore be alive to the particular circumstances of their client's situation and the overarching consideration must always revert to the child's best interests.

It is not sufficient, in advocating for or against a child's relocation, to simply state that the proposed relocation does or does not reflect a child's best interests. Detailed evidence must be provided to allow a Court to properly determine the issue.

It may be quite overwhelming for a practitioner or parent to identify and articulate their most compelling reasons for or against relocation. This can only be achieved, in the writer's opinion, with the assistance of expert evidence and a clear understanding of the potential impact on a child of the proposed relocation or the refusal to permit relocation.

## Conclusion

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The considerations which may be relevant for a Court to make a determination in a relocation dispute are extensive and perhaps it can be queried whether there is a need for a concise set of principles, reflective of the current society in which we live.

Whilst this may appear enticing to practitioners and perhaps a Court, it would seem quite impossible to develop a list of principles which would adequately foreshadow each and every situation. Each individual matter requires consideration of factors unique to the particular circumstances of a case. The best interests of a child in one family will not reflect the best interests of a child in another family.

Further, it would seem that regardless of the technology and social media available today to facilitate communication between families separated by their geographical location, a relevant consideration for a Court will always remain whether or not it can be confident that a relocating parent will facilitate the communication between the child and the non-relocating parent.

With this mind, one would argue that the application of the paramountcy principle and the section 60CC factors provide a sufficient basis for ensuring all relevant factors are considered when determining a relocation dispute. The list of guided considerations identified in this paper will, however, assist parents and practitioners to turn their minds to issues which may be relevant to the best interests of a child in the context of their particular family or client.

While the best interests of a child are the paramount consideration they are not the only consideration and the Court will consider the reasons behind a parent's proposal to relocate. With this in mind, it is important to be aware, however, that the interests of a parent are merely peripheral to, but may impact upon, the interests of their child.

The preparation of an expert report by a family consultant will often be invaluable to the resolution or determination of a relocation matter, while also assisting practitioners and even parents to identify the relevant and most important considerations in their circumstances.

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