



CAN NON-CUSTODIAL PARENTS DECIDE TO TRAVEL ABROAD ON THEIR OWN WITH THEIR CHILD?

X had been living in Québec for three years, having immigrated after being sponsored by his wife, Y, who had been living and working in Québec for 10 years. The couple separated and the mother initiated divorce proceedings. The judgment on provisional measures awarded custody of the child to the mother. The father, who was alone in Québec and missed his family, planned a trip to his country of origin that summer, before starting university in September.

He wanted to bring his daughter, who was now 20 months old, with him. Unfortunately, the mother refused to sign the authorization allowing him to travel with their daughter and also refused to sign the application for a Canadian passport for the child. The father filed a motion before the Superior Court seeking an authorization to travel.

In order to prove to the court his desire to return to Québec at the end of his trip, during the trial the father produced his lease, which he had renewed, as well as confirmation that he would be receiving loans and bursaries as of September. The mother admitted that she knew her ex-husband's parents and the house where he would be staying with the child during the vacation. However, she pointed out that the region to which he would be travelling raised safety concerns for the child. In order to prove this fact, she filed a document regarding her ex-husband's country of origin, drawn from the website of the department of Foreign Affairs and International Trade Canada.¹ This site, which deals with the safety of people travelling to various countries, identified the destination as a country in which travellers should "exercise a high degree of caution." Furthermore, the country was not one of the signatories of the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoptions*, an agreement signed by various countries in order to facilitate the return of children who are not brought back to Canada after a trip to the signatory country.

Was it in the child's interest to travel to this country that summer? The court ruled that the mother's refusal was not unreasonable. The father did not have real ties with Québec—he had no job there, no property and no family. The child was too young to appreciate or remember the trip. The father had never paid support for the child; the court decided that, for the time being, it would be preferable for the father to see to the child's basic needs before taking her with him on a trip.

Courts must ensure the protection of children. Therefore, in this case, the court dismissed the father's motion, because it was not in the child's interest to take a trip which did not provide sufficient guarantees that the child would be returned to Canada.

¹ [http : www.voyage.gc.ca/countries_pays/menu-eng.asp](http://www.voyage.gc.ca/countries_pays/menu-eng.asp)

Text prepared by
M^e Angela Todaro,
lawyer at
the Maisonneuve-Mercier
legal aid office
in Montreal

Contact Us

Commission des
services juridiques
Communications
Department
2 Complexe Desjardins
East Tower
Suite 1404
P.O. Box 123
Succursale Desjardins
Montreal, Quebec
H5B 1B3

Telephone: 514-873-3562
Fax: 514-873-7046

www.csj.qc.ca

* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.