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Parental Relocation: Factors Present In Judges' Decisions

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A thesis submitted in partial fulfillment of the requirements for the Master of Education degree in Psychology

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PARENTAL RELOCATION: FACTORS JUDGES USE IN DECISIONS

Spine Title: Judges' Decisions in Canadian Parental Relocation Cases

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by

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Submitted in partial fulfillment

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Abstract

The present study examined multiple factors that may account for Canadian judges' decisions in relocation cases where one parent contests a move away by the other parent and children after separation. The decisions were collected from a stratified random sample of judgments consisting of 50 cases where the relocation was approved and 50 where it was denied. The cases reviewed took place between 1996 and 1999 and followed the highly criticized guidelines arising from the Supreme Court decision in *Gordon v. Goertz*.

Cases were analyzed to determine the extent to which child, parent, judicial, move, and legal factors predicted court outcomes. All identified factors were screened for significance at the univariate level. Moves were significantly more likely to be approved by the court in the face of thorough planning, a good reason and clear benefits for the move, and the non-moving parent's prior limited access with the child. Moves were significantly more likely to be denied by the court in the face of a prior shared parenting plan. Binary logistic regression analysis was applied to the outcome and two factors were found to be predictive of approved moves: in particular, judges' analysis of parents' reason for and planning of the move were the most powerful factors in predicting the outcome. Implications for legislative reform and suggested guidelines for the court are discussed from the perspective of enhancing predictability for parents and lawyers considering litigation in regards to relocation.

Keywords: Judges' Decisions, Parental Relocation, Child Custody, Mobility, *Gordon v. Goertz*, best interests of the child.

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Introduction

Judges' Decisions in Canadian Parental Relocation Cases

In Canada's increasingly mobile society, parental relocation after separation is one of the most difficult situations that judges and professionals in family law face (Bala & Wheeler, 2012). The Supreme Court decision *Gordon v. Goertz*, (1996), the landmark case that guides Canadian judges on parental relocation cases, has been criticized by some family law critics as being a "demolition of any law at all" (Thompson, p. 407, 2004). There are a number of relevant factors that are to be assessed and yet there are no clear legislative guidelines for judges in Canadian relocation cases. It would be beneficial to conduct empirical research on the factors present in these cases to detect any patterns that may exist in relation to relocation requests being approved or denied.

This research study examined relevant factors in 100 Canadian judges' decisions of parental relocation cases, analyzing 50 approved and 50 denied relocation requests. The study was designed to help provide a basis for further discussion by scholars in the legal field, to assist judges and legal professionals, and to assist mental health workers who work with these families, as well as help the families navigate through the costly litigation process. This examination was a two-staged process. The first consisted of identifying the factors that reached statistical significance at the univariate level. The second stage consisted of selecting logical combinations of the statistically significant variables and analyzing them in a binomial logistic regression. The model that best fit the sample could be used as a predictive tool to explain the outcome of these cases.

The issue of relocation has social and legal foundations. The literature review first outlines the social context, including the impact of divorce on children, the gendered

debate between parents, and the relocation research. Next the legal context is provided, including the Supreme Court *Gordon v. Goertz* (1996) ruling and previous research. Both social and legal areas were considered when selecting relevant factors to be examined within the context of judicial decision-making.

Supreme Court *Gordon v. Goertz* (1996) Case

Gordon v. Goertz is the landmark decision that guides Canadian parental relocation cases; however, the decision has not appeared to help judges evaluate these cases in a consistent way. The *Gordon v. Goertz* case concerned a mother, the custodial parent, who wanted to move with her child to Australia to study orthodontics. She had proposed access visits for the father to occur in Australia. The father opposed the move because of the limited access that he would have to his child and he applied for custody. The outcome of the case was that the mother was allowed to move with her child; however, visitation was ordered to occur in Canada as well as Australia. According to the Supreme Court ruling in *Gordon v. Goertz* (1996), once a material change to the custody and access order has been established, judges should conduct a “fresh inquiry into the best interests of the child” by examining all of the issues related to the child’s needs and the ways the parents will meet those needs.

“Best interests of the child” is a broad term that attempts to capture all needs of a child. Section 16(8) of the Canada Divorce Act instructs judges that the only consideration that they should base custody decisions on is the “best interests of the child” (Divorce Act, 1985). Similarly “best interests of the child” legislation exists across the provinces to guide decisions that do not fall under the Divorce Act. Bala (2001) identifies some key best interests principles that relate to the parent, including providing guidance and education,

facilitating a relationship between the child and the access parent, and an examination of the parent's behaviour, such as a history of domestic violence. Principles that relate to the child are the child's views and the child's relationship with each parent. Legal principles include no preference for custody based on gender alone, shared parenting, and proposed parenting plans.

Literature Review

Examinations of the social and legal contexts are required to analyze the interdisciplinary topic of parental relocation. This literature review will examine the social context that influences judges when making decisions regarding parental relocation, including the impact of divorce on children, the gendered debate between parents, and the relocation research. Also significant to judges' decisions regarding parental relocation is the legal context; this literature review examines the historical landmark cases as well as the Supreme Court ruling in *Gordon v. Goertz* (1996), followed by common critiques of that case (Bala, 2001; Hovius, 1996; Thompson, 1996; 1998) and the importance of the legal question examined. All of these areas are relevant to hypothesizing about judicial decision-making in parental relocation cases.

Social Context

There are a number of social issues that have an impact on decisions regarding parental relocation after divorce. The significant divorce rate, an increasingly mobile society, and changing role of the father (Bala & Wheeler, 2012) have increased the likelihood of parental relocation requests coming before the courts. The gendered debate regarding women's rights and fathers' rights, the impact of divorce on children, and the presence of domestic violence in the parental relationship are significant factors judges

should consider when making decisions in these cases.

Canadian society has experienced an increase in divorce rates and family breakdown over the years. In 2008, Canada had 70,226 couples divorce, making the rate in the general population 2.1 per 1,000 (Stats Can, 2008). In 2006, Canada had 1,414,060 single parents, which comprised 15.9% of all families; 80% of these families are headed by women (Stats Can, 2006). Some of these children had parents who separated from their married or common law partners, and some had always lived in a single-parent household. In 2001, Canada had 462,000 children living with common-law parents who are likely to experience the separation of their parents before their tenth birthday (Dueck, 2004).

Impact of Family Dissolution on Children

The impact of divorce on children's adjustment has been widely studied. A meta-analysis by Amato (2001) found that children living with divorced parents scored significantly lower on academic achievement, psychological adjustment, and self-concept compared to children living in intact families. However, there is much variability within the group of divorced children (Amato, 2001). Amato (2001) suggested that the following factors may explain some of the variability in outcomes with children of divorced parents: pre- and post-separation conflict, parental psychological stability, changes to financial resources, and residential relocation (Amato, Loomis, & Booth, 1995; Booth & Amato, 2001; Aseltine, 1996).

Gendered Debate

Fathers' rights. Parental relocation cases are extremely contentious and involve a gendered debate polarized between women's rights advocates and fathers' rights groups

(Glenn & Blankenhorn as cited in Bruch, 2006). Fathers are the parents contesting the moves in 90% of parental relocation cases (Bala & Wheeler, 2012), which explains why fathers' rights groups hold a strong 'anti-relocation' position. Fathers' rights groups argue that judges should prohibit the move by highlighting research that may provide support for this 'anti-relocation' position.

Some commonly cited research by fathers' rights groups include that fathers are more than just financial providers for children (Amato, 2000); the relationship between the father and the child is very important in the child's development; children are better adjusted when they have frequent contact with the non-resident father (Hetherington & Kelly, 2002); and mothers make false allegations of abuse against fathers to decrease the chance that the father will get custody (Warshak, 2003 as cited in Johnston, Lee, Olesen, & Walters, 2005).

Women's rights. Children are more likely to reside primarily with their mother than to live in any other type of parenting situation (Thompson, 1998). Mothers are, therefore, the parents requesting the moves in 90% of parental relocation cases (Bala & Wheeler, 2012). Women's rights advocates generally hold a 'pro-relocation' position and highlight research that may provide support for this viewpoint. They argue that it is a mother's right to relocate with her family in order to improve work or education opportunities, to increase family supports to decrease childcare costs, to start a new relationship, or to decrease the family's exposure to conflict or violence (Boyd, 2010). Thus, women's rights advocates suggest that judges should allow relocation requests because they are largely made for justifiable reasons and will benefit both the mother and her children.

Women's rights advocates also argue that women are often oppressed in their relationships and that patriarchal oppression continues through the legal system's enforcement of equal parenting, in the name of 'the best interests of the child' (Boyd, 2010). The power dynamics in cases where there is a history of abuse from the father to the mother or father to the child are especially concerning. These court proceedings maintain power and control in the abuser's hand when the woman is required to obtain permission from her ex-spouse to relocate (Boyd, 2010). Another aspect to this debate is that when non-residential parents (usually men) move, the mother would not have any legal grounds to oppose the move.

Women's rights advocates may point to research that indicates single-parent families led by women are more likely to live in poverty (Amato, 2000); that if conflict is present, children have lower adjustment scores when they have frequent contact with non-residential fathers (Hetherington & Kelly, 2002); mothers were less likely than fathers to make unsubstantiated claims of abuse (Johnston et al., 2005); and non-resident parents' moves (usually father's moves) were found to be equally associated with negative impacts to children (Braver, Ellman, & Fabricius, 2003). Applying a gendered lens to the different treatment of men's and women's moves illuminates potential biases present in the application of parental relocation laws.

Relocation Research

The ideological divide that appears to exist between fathers' rights and women's rights on the topic of relocation has been mirrored in the social science research (e.g., focusing on research that is more pertinent to mothers or to fathers). However, there have only been a few empirical studies conducted in the United States on parental relocation.

The Wallerstein and Tanke (1996) report, which advocated “what’s best for the parent is best for the child,” was critiqued by Braver et al. (2003) and others for its lack of empirical evidence. In response to this report, Braver et al. (2003) conducted the first empirical study on parental relocation.

The Braver et al. (2003) study examined the long-term impacts of relocation on students of divorced parents and found that parental relocation was associated with their lower levels of well-being. The survey results indicated that 370 or 61% of the students’ parents relocated more than an hour away from what used to be the family home and 39% moved less than an hour away. These relocations included moves of both the residential parent and non-residential parent. A parent who had moved more than an hour away was associated with the student having less positive relationships with both parents, parents who were less likely to get along, lower parental contributions to their college expenses, and more divorce-related distress. The researchers concluded that moving is harmful for children and families who have pre-existing factors that negatively impact children are more likely to relocate.

The Braver et al. (2003) study has been critiqued on both statistical and conceptual grounds. It has been criticized for its lack of scientific merit because it used a low threshold for statistical significance, leaving too much room for type I error (Pasahow, 2005). Wallerstein and others critiqued the Braver et al. (2003) study, hypothesizing that the negative impacts were related to the presence of conflict and domestic violence between the parents – variables that were not included in the study (Fabricius & Braver, 2006). The research by Booth and Amato (2001), which identified parental conflict as a major contributor to negative child outcomes, supported this

critique.

In response, Fabricius and Braver (2006) examined the role of pre-existing parental conflict and domestic violence in the data set collected for Braver et al. (2003). The findings suggested that the higher the level of conflict and domestic violence reported by the students, the worse their parents got along, and the less likely they were to view their father as a positive supporter. In addition, there was a positive correlation between the student's ratings of both conflict and domestic violence and their own personal divorce-related distress (Fabricius & Braver, 2006).

The researchers controlled for domestic violence and conflict and found that, while these variables are associated with negative outcomes, they did not solely account for the correlations. They hypothesized that relocation accounted for the rest of the variability (Fabricius & Braver, 2006). Some of the limitations of the study were that financial changes that occurred in the families and parental psychological instability were not examined as factors. Those two factors may account for some of the variability, as research has suggested that they are key factors to consider when reflecting on child outcomes (Amato, 2001). In addition, the sample size used in this study was small and the number of participants was not specifically stated for the groups.

Other empirical studies from the United States and Australia have mixed findings on the long-term outcomes of relocation. This empirical research includes Norford's and Medway's (2002) examination of the association between social adjustment issues and residential relocation in 408 high school students; Verropoulou's, Joshi's, and Wiggins' (2002) examination of the association between children's well-being and residential relocation in response to separation or forming blended families in 1,472 children; and

Gilman's, Kawachi's, Fitzmaurice's, and Buka's (2003) examination of the association between childhood and adulthood depression and the impact of three or more residential relocations in 1,089 adults aged 18 to 39. Results from these three studies examining the long-term impacts have indicated mixed results. For example, some studies show positive impacts, others show negative impacts and some show no effect.

The findings from the following studies indicate some benefits of relocating. The study by Verropoulou et al. (2002) found differences between groups of children that relocated. Children who were relocating due to changes in their family dynamic were better adjusted in comparison to children in intact families that move. Additionally, Verropoulou et al. (2002) found positive impacts of relocation including improvements in children's reading achievement and lower levels of anxiety. Gilman et al. (2003) found that children who experienced a depressive episode in adolescence were less likely to experience future depressive episodes in adulthood if they had experienced multiple relocations in comparison to between zero to three relocations.

The findings from the following studies indicate some negative impacts of relocating. Norford and Medway (2002) found that a mother's negative feeling about the relocation was associated with a student's depression, but students reported less harmful effects than their mothers. Additionally, students were less likely to participate in extra-curricular activities as the number of moves increased and if they relocated because of family dissolution (Norford & Medway, 2002). Verropoulou et al. (2002) found that relocation was associated with slight increases in aggressive behaviour in children. Gilman et al. (2003) found that residential relocation was associated with increased risk of depression in childhood.

Norford and Medway (2002) found little evidence that relocation is associated with harmful long-term adjustment issues for adolescents. Their study found that relocation was not significantly associated with depression, social support, family cohesion, shyness, or participation in extra-curricular activities. The mixed findings provide some potential fuel for the polarized gendered positions on this issue, but do little to provide clear direction for judges.

In summary, relevant research on the factors that predict positive and negative outcomes for children in the context of family dissolution and relocation research influence the legislation that guides relocation decisions and impact judges' decisions in individual cases. Additionally, the fathers' and women's rights groups both advocate for their desired outcome, citing the relevant literature that supports their polarized positions. Considering judicial decisions are made within this social context, it is important to examine whether the unpredictable outcomes in these cases, noted by scholars in the field, are possibly influenced by those disparate values. The legal context, which is outlined next, addresses factors from both viewpoints.

Legal Context

A brief historical summary of how parental relocation cases were approached by judges prior to the *Gordon* ruling provides further insight into how relocation decisions have developed in Canada. This summary is followed by the guiding principles of *Gordon*, a critique of *Gordon*, the applicable legal questions, and a hypothesis about the judicial decision-making style that may be used in these cases.

Prior to *Gordon*, relocating parents, mostly mothers, were allowed to move with their children unless there was a court order that stated otherwise until the late 1980s

(Thompson, 2004). Then the appeal court decision *Blois v. Blois* (1988) modified the process by stating that the mother was allowed to move if it was *in good faith* and not *unreasonable* (as cited in Thompson, 2004). A good faith move would be one that was made with a valid reason and without the intention of frustrating access.

Two years later in the 1990 Ontario Court of Appeal case *Carter v. Brooks*, the judge ruled that both parents needed to present their respective arguments for and against the move (as cited in Thompson, 2004). The *reason* for the move was highlighted as an important factor and in this particular case the judge ruled that the move was not *necessary* when weighed against the father's extensive access (Hovius, 1996; Thompson, 2004). Thus, the legal questions from *Carter* were: is the move necessary? and are the benefits greater than the resulting impact of reduced contact with the other parent? (Thompson, 1996).

The 1995 Ontario Court of Appeal decision in *MacGyver v. Richards* adjusted the approach to relocation law again when the judge stated the custodial parent should be allowed to move if he or she is *acting responsibly*. This clearly put the burden of proof that the move would not be in the "child's best interests" on the noncustodial parent. Furthermore, the process differentiated from *Carter* because the decision was based on the child's best interests, not the judge's assessment of the necessity of the relocation (Thompson, 2004). The *MacGyver v. Richards* (1995) decision corresponds with the position made popular by Wallerstein (1995), a renowned divorce researcher and psychologist, who claimed that what is in the "best interests of the parent is in the best interests of the child" (Pasahow, 2005). Although Wallerstein's (1995) relocation research was criticized for lacking external validity, the trend to rule in favour of relocation

increased in the United States after her briefs reflecting those sentiments were published (Braver, Ellman, & Fabricius, 2003).

Supreme Court *Gordon v. Goertz* (1996) Guiding Principles

The following guiding principles provided by the Supreme Court ruling of *Gordon v. Goertz* (1996) are cited in most relocation decisions. As stated previously, the judge should consider all factors within a “best interests of the child” framework. The overarching legal question is, “what is in the best interests of the child in all the circumstances, old as well as new?” (*Gordon v. Goertz*, 1996). Additionally, there is no presumption in favour of the primary caregiver and the following seven factors are particularly important to consider:

1. the existing custody arrangement and relationship between the child and the custodial parent;
2. the existing access arrangement and the relationship between the child and the access parent;
3. the desirability of maximizing contact between the child and both parents;
4. the views of the child;
5. the custodial parent’s reason for moving, only in the exceptional case where it is relevant to that parent’s ability to meet the needs of the child;
6. disruption to the child of a change in custody;
7. disruption to the child consequent on removal from family, schools, and the community he or she has come to know (*Gordon v. Goertz*, 1996).

Critiques of *Gordon v. Goertz* (1996)

Two major critiques of *Gordon* are: 1) the “best interests of the child” principle is

vague (Bala, 2001; Hovius, 1996); and 2) the instruction to consider the reason for moving only in exceptional circumstances is illogical (Thompson, 1998). On its face, the “best interests” principle sends the clear message of putting children first. However, some critiques of the principle are that it is vague, encourages litigation, relies on the personal values and biases of judges, and results in an uncertain outcome (Bala, 2001; Hovius, 1996; Thompson, 1998).

In reference to the reason, Thompson (1998) asserts that the instruction to ignore the parent’s reason for moving is illogical because it is difficult or perhaps impossible to examine the benefits of moving without examining the reason. For example, if a parent’s reason for moving is a promotion with a substantial financial increase, then the benefits could be a better school, safer neighbourhood, nicer house, and one of the parents may be able to stay at home with the children. However, if the reason is not acknowledged, then how is a judge to examine the benefits of the move?

Justice McLachlin’s intent for ‘reason not relevant’ was a reference to the Divorce Act that judges should not consider past conduct of a parent unless it is directly relevant to his/her ability to meet the needs of the child (*Gordon v. Goertz*, 1996 as cited in Thompson, 1998). McLachlin was trying to avoid having parents penalized for a “less noble reason,” which would shift the inquiry “from the best interests of the child to the conduct of the custodial parent” (*Gordon v. Goertz*, 1996 as cited in *Ligate v. Richardson*, 1997). Thompson (1998) claims most judges ignore that particular instruction from *Gordon* because it is impractical to separate the reason for the move from the examination of the positive and negative impacts of the move in relation to the child.

Applicable Legal Question

The legal question a judge uses to approach their analysis of these cases provides an important context to understand and predict their outcome. *Gordon* may have attempted to provide a neutral stance to relocation through its adherence to ‘no presumptions,’ examination of all factors, and ignoring the reason unless it relates to the needs of the child. However, values and beliefs about parenting and relocation in the context of family dissolution are inherent in *Gordon* and will be inherent in any legal question constructed on the topic (McGough, 2003), as well as in judges’ applications of these questions. The question provided in *Gordon*, “what is in the best interests of the child in all the circumstances, old as well as new?,” is more neutral than *Blois*’ presumption in favour of the moving parent or *Carter’s*. However, there is limited evidence to support that judges use a neutral approach. For example, are judges using presumptions in these cases that favour a move or that are more likely to deny a move? (Thompson, 2004).

Judicial Decision-Making

Finally, it is important to examine how judges make decisions and to consider the possibility of judges’ values and biases impacting the outcome of cases. Guthrie, Rachlinski, and Wistrich, (2008) reported that two common types of decision-making processes used by judges are intuitive decision-making and deliberative decision-making. Intuitive decision-making refers to automatic or heuristic-based decision-making, reported to be spontaneous or fast, but that may rely upon biases. Deliberative decision-making is a slower process that requires more concentration and the application of previously acquired knowledge or rules (Guthrie et al., 2008).

Guthrie et al. (2008) found that judges generally relied heavily upon intuitive

decision-making processes to keep up with the large volumes of work that they had to accomplish every day. This reliance increases the likelihood of biases and lack of consistency in decisions. Similarly, Thompson (2004) critiques the decision-making in relocation disputes, calling it ‘lawless’ and ‘unpredictable,’ and implies that judges’ biases may have an impact on their decisions. Furthermore, the “best interests” test may be more likely to rely on intuitive decision-making, as it is vague, whereas presumptive rules likely rely on deliberative decision-making, which uses the application of previously acquired rules. Thus, the “best interests” principles in *Gordon* and the instruction to ‘consider all factors’ without the use of specific guidelines may promote an intuitive decision-making approach, which has been found to lead to a biased outcome.

Decision Trends in Retrospective Case Research

The previous research conducted has examined multiple factors, mainly analyzing the frequencies of these factors in approved move and denied move cases. However, it has provided little information about the methodologies used and has been limited by the lack of empirical evidence. The following section of the paper identifies and analyzes the trends found in this research regarding parental relocation decisions.

The fact-based nature of the cases creates several relevant factors and the following categories have been created to organize the literature review: legal factors, judicial factors, parental factors, child factors, and move factors. Each section considers how the judge would weigh the particular factor. This examination assisted in the development of valid measures and provided some necessary context to facilitate the data collection process.

Legal factors. Research indicates that there are a number of relevant legal factors

when considering relocation decisions, including residence restrictions, level of court, custody and access assessments, custody designation/child's residence, and access arrangement. Residence restrictions are frequently found in separation agreements or court orders and are defined as the requirement that parents continue to live in the same city as they were living when the parties separated (Bala & Harris, 2006). Bala and Harris (2006), Jollimore and Sladic (2008), and Thompson (2001a) (2011), suggest that prior relocation restrictions do not appear to be associated with the approval or denial of relocation requests.

Thompson's (2007) research indicated that the level of court was not an important factor in these decisions and that there was little difference between the trends in appellate and non-appellate court decisions. However, the lower courts may be less likely to explicitly refer to the parent as the 'primary caregiver' (Hughes, 2002). Thompson (2001a) argues it is the explicit labelling of the parent as the 'primary caregiver' that is associated with higher relocation approval rates by the court, thus, the lower courts may have lower approval rates.

Custody and access assessments are only used in 25% of the parental relocation cases, which is much lower than the rates of assessments in other custody and access cases (Bala & Harris, 2006; Thompson, 2001b). An explanation may be that the time-sensitive nature of relocation cases is incompatible with the length of time it may take to complete an assessment (Bala & Harris, 2006; Thompson, 2001b). Another noteworthy difference between relocation and other custody and access assessments is that judges are less likely to make decisions in line with recommendations from the assessments in parental relocation cases (Bala & Harris, 2006; Thompson, 2001b). Willingness to

endorse recommendations may depend on the assessment itself, as Jollimore and Sladic (2008) found judges' rulings and recommendations in assessments were similar when the recommendations outlined the benefits or drawbacks of a relocation for the child.

When considering the factor of custody designation and where a child resides, Thompson (1998) found that judges are more concerned with assessing the parenting arrangement and are less concerned by the legal custody agreement. Thompson's (1998) and Jollimore and Sladic's (2008) research identified that parents who had primary residential status were more likely to have their relocation request approved than if they had shared parenting status, with respective move approval rates of 64% and 46.5%. Judges also consider how the access arrangement may be reduced by the move. For example, Bala and Harris (2006) noted that relocation requests are more likely to be approved when the current access arrangement provides minimal time with the non-moving parent. The reverse is also likely true as El Fateh (2009) found the reduction of access to the non-moving parent was the most common reason cited by the judge when he or she denied a move, at a rate of 43%.

In summary, the literature suggests the legal factors associated with approved moves are: the moving parent is the primary residential parent and the child spends minimal time with the non-moving parent. The legal factors associated with denied moves are: a shared parenting arrangement and a child's more extensive involvement with the non-moving parent (Jollimore & Sladic, 2008; Thompson, 1998). The other legal factors do not have strong support to suggest associations with approved or denied moves. However, the research is in the preliminary stages and it is worth investigating the whole range of legal factors.

Judicial factors. Research indicates that there are a number of relevant judicial factors that influence parental relocation decisions, including gender of the judge, the judge's assessment of the plan for the move, and the judge's assessment of the reason for the move. There is no research on how a judge's gender impacts the outcome of parental relocation decisions. However, the gendered debate between fathers' rights groups and women's rights advocates provides some rationale to explore this factor. Additionally, Stahl (2006) reported that family courts in the United States are often blamed for treating men and women differently.

The judge assesses the overall planning of the move by considering whether there is sufficient evidence to justify the plan and whether the move has been well thought out or hastily planned (Jollimore & Sladic, 2008; Thompson, 1998). Different aspects of the move that will be examined include plans for employment, housing, education or daycare for children, and access arrangements for the other parent (Jollimore & Sladic, 2008). According to El Fateh (2009) the second most common reason that the court denies a move is that the plan was too impulsive or not enough information was provided.

When considering the reason for the relocation the judge assesses whether the parent is interfering with the access of the non-moving parent to ensure that the move is being made in good faith (Jollimore & Sladic, 2008). Then the reason is also examined to see whether it is good and has sufficient evidence to support it. According to Thompson (1998), 95% of approved cases had good reasons for the move. Good reasons included eliminating the need for social assistance, remarriage, a new job, moving closer to extended family, fleeing from a hostile relationship, and sometimes the improved well-being of the mother (Jollimore & Sladic, 2008; Thompson, 1998).

According to Thompson (1998), 70% of the denied cases had vague reasons or unclear or invalid benefits. The reason for the move is associated with denied moves when little evidence is provided, the reason is vague or invalid, the parent's testimony is not considered credible, or they did not provide a reason for the move (Thompson, 1998). Additionally, Thompson asserts that when judges make the finding 'reason not relevant,' it may eliminate a good reason and its potential benefits from being assessed (1998). Finally, an analysis of how the judge assesses the reason for the move is possibly one way to determine which approach or legal question is being applied in these cases.

In summary, the literature suggests the judicial factors associated with approved moves include well-planned moves and moves with good reasons both supported by evidence. Factors associated with denied moves include poorly planned moves with little information provided and invalid or vague reasons for the move with little evidence to support the claimed benefits.

Parental factors. Research indicates that there are a number of relevant parental factors when considering parental relocation, including the gender of the moving parent, the designation of 'primary caregiver,' the non-moving parent's relationship with the child, facilitation of access, misconduct by the non-moving parent, and whether the moving parent has already moved. There is very limited research comparing the approval of relocation requests made by mothers versus fathers. However, in more than 80% of the cases the relocating parents are mothers and the literature identified some level of gender role bias in parental relocation cases (Thompson, 1998, 2001b, 2003). For example, a parent is more likely to have their relocation request approved when the judge labels the moving parent the 'primary caregiver.' This designation is often attributed to a woman

who works in the home, but rarely used for mothers who work full time. Fathers do not receive this label even if they engage in the same duties and roles (Thompson, 2001b; Thompson, 2003). Although not all mothers receive this label from judges, it may be that overall mothers' relocation requests will be more likely to be approved than fathers' relocation requests.

Judges approve relocation requests 90% of the time when they have explicitly labelled the moving parent the 'primary caregiver' (Thompson, 1998, 2001a, 2003, 2007). In general, a primary caregiver can be defined as the person who has the most experience looking after the child's health, safety, and comfort, but this term is not applied as liberally in relocation cases (Bala, 2001; Thompson, 2001a). It is important to note that while over 80% of the parents applying for the move are the primary residential parent and would likely meet a standard definition of primary caregiver, many are not explicitly labelled as such by the judge. Thus, it is not necessarily being the primary caregiver, but being labelled so, that is associated with higher relocation request approval rates. Thompson (1998) argued that *Gordon* states that there are to be no presumptions in favour of either parent, and yet a "gender-based 'primary caregiver' presumption" is applied to relocation cases. El Fateh (2009) found the second and third most frequent reasons a court approves a relocation request are: the mother is the best caregiver (29%) and the move is in the mother's best interests (17%). Both of these reasons may be related to the mother receiving the label of 'primary caregiver.'

When examining the non-moving parent's relationship with the child as a factor, El Fateh (2009) found that relocation requests were approved 89% of the time if the relationship was classified as poor, 58% of the time if the relationship was fair, and 38%

of the time if the relationship was very good. Thus, a poor relationship between child and non-moving parent is likely to increase approvals for relocation requests and a good relationship is likely to decrease approvals.

The judge examines the “best interests” principle facilitation of access by assessing the likelihood that the moving parent will facilitate access with the non-moving parent (Bala, 2001; Jollimore & Sladic, 2008). Judges examine whether the moving parent has encouraged and facilitated contact between the child and the non-moving parent in the past and if there has been a new plan proposed to continue to accommodate access with the non-moving parent (Jollimore & Sladic, 2008). Failing to provide a plan may give the judge the impression that the moving parent has minimized the importance of the non-residential parent’s role in their children’s lives (Thompson, 2003; Jollimore & Sladic, 2008). However, Thompson (1998) found that it is very rare that a judge would deem that a move was being made explicitly to frustrate access.

When considering the roles of domestic violence and child abuse, judges explore the evidence regarding the misconduct and whether the moving parent is ‘blameless’ (Jollimore & Sladic, 2008). For example, the judge would want to know if the moving parent has retaliated in some way, such as restricting child access. Bala and Harris (2006) note that judges often seem hesitant to address domestic violence and high levels of conflict as factors in relocation cases, but they are more likely to acknowledge it in cases where children witness it directly. In slight contrast, research by El Fateh (2009) found that allowing the mother to get away from a father who had engaged in abuse was the court’s primary reason for allowing a relocation request in 12% of all cases including. This rate also included cases that did not address family violence as a concern. However,

the research did not indicate the percentage of moves that were approved when family violence is addressed as a factor in the case.

In summary, the literature suggests the parental factors associated with approved relocation requests included parents who are labelled 'primary caregivers,' a poor relationship between child and non-moving parent, or when the moving parent is likely to facilitate access. The parental factors associated with denied moves are a good relationship between the child and the non-moving parent (Thompson, 2003; Jollimore & Sladic, 2008).

Child factors. Research indicates that there are a number of relevant child factors when considering parental relocation, including gender of the children, number of children, ages of the children, and wishes of the children. The gender and number of children have not been studied in the previous research; however, they have been included in the study in the interest of thoroughness of examining all potential relevant factors. Gender may be important if a mother was moving away with a male child who would no longer have access to his father and male role model, which may make moves in these situations less likely. However, gender relates to one of the principles of the best interests of the child that custody decisions should not be made upon gender alone, which suggests that it may not have an effect (Bala, 2001). The relationship between the number of children and relocation requests may be that as the number of children increases the relocation approval rate would go down due to the increased travel costs for access to the non-moving parent.

When examining the child's age as a factor, there have been mixed results. For example, Thompson (2011) reported that he has observed different findings with respect

to the age of the child. Overall, more of the research indicated that children younger than six years of age are more likely to be approved for moves because they are less connected to their schools and communities (Bala & Harris, 2006; Jollimore, 2010). In addition, Jollimore (2010) identified that children's ages are assessed as a measurement of attachment. Perhaps the inconsistent findings with the factor of the child's age in the research literature are a reflection of the conflicting beliefs about attachment.

Gordon highlights the child's wishes as one of the key factors to consider when making decisions on these cases, and yet there are no data available to support how often their wishes are considered. It is an important factor, however, as it is a concept related to the best interests of the child (Bala, 2001) and judicial interviews of children in custody and access legal disputes is currently a hotly debated topic (Birnbaum, Bala, & Cyr, 2011). Prior research has indicated that older children's wishes will be given more weight in comparison to younger children, and the child's wishes will be given more weight if they are supported by an assessment conducted by the Office of the Children's Lawyer, or a psychologist (Bala & Harris, 2006; Jollimore & Sladic, 2008). El Fateh's (2009) research identified the child's opinion as the fifth most common reason the court allows a move. In summary, the literature suggests that the child factors associated with approved moves relate to children who are under six years of age and children who wish to move, particularly if supported by a professional's opinion.

Move factors. Research indicates that there are a number of relevant move factors when considering parental relocation cases, including the reason for the move, financial benefits of the move, or if the moving parent has already moved. The most common reasons for the move are related to remarriage, new employment, further education, to be

closer to extended family, or to flee from an abusive or hostile ex-partner (Jollimore & Sladic, 2008; Thompson, 2001a). The reason for the move is often linked to the child's best interests by providing evidence of improved opportunities and minimizing disruptions to the child through planning (Jollimore & Sladic, 2008; Thompson, 2001a). For example, the reason for the move may be increased financial resources provided from a new job. Some examples of the improved opportunities for the child would be a better school, a better home, a nicer and/or safer neighbourhood with children of the same age, and continuing or beginning new extra-curricular activities (Valdespino, 2006). Similarly, El Fateh (2009) cites a common reason for courts to deny a move as the move would be too disruptive for children (14% of the cases).

Financial benefits are an important factor that judges assess by examining evidence such as an increased salary, decreased living expenses, or decreased dependence on social assistance in order to determine the benefits (Jollimore & Sladic, 2008). Financial benefits could also be used to offset increased access costs (Jollimore & Sladic, 2008). El Fateh's (2009) research highlights the importance of this factor, as "improved financial conditions" was the most frequently cited reason that the court provided for approving the move.

There is conflicting data on how decisions are made when parents have already moved before the trial. In some cases, parents appear to be penalized by the judge if they did not give notice to the other parent (Thompson, 2001b, 2003; Jollimore & Sladic, 2008). However, in earlier cases, moving without prior approval was less likely to be criticized by judges (Thompson, 2003). An explanation for inconsistency with this factor may be that some of the parents in this group may have relocated to avoid abuse from the

non-moving parent and other parents may give little consideration to the child's relationship with the non-moving parent. In summary, improved financial situations are associated with approved moves and denied moves are associated with no clear evidence to support an improved financial situation (Jollimore & Sladic, 2008).

Multiple factors and trends have been examined in the research but have rarely been tested for statistical significance or further explored to find interactions that may exist between the factors in relation to the dichotomous outcome, move allowed or denied.

Part I Research Question

What are the legal, judicial, parent, child, and move factors that differ between cases where judges allow relocation and cases where it is denied?

Hypotheses Part I. There will be significant differences in factors associated with cases where a move was permitted compared to cases where it was denied. Specifically, the previous literature suggests that the presence of the following factors will be associated with approved moves: primary residential parents, parents labelled primary caregivers by judge, a child's prior minimal access with non-moving parent, a child's poor relationship with non-moving parent, domestic violence by the non-moving parent, children under six, financial benefits, and a good reason with sufficient evidence to support it. The literature suggests that the following factors will be related to denied moves: shared parenting, extensive access with the non-moving parent, a child's good relationship with the non-moving parent, children aged six and over, a bad/vague reason for move/not enough evidence to support reason, and poor planning (Bala & Harris, 2006; El Fateh, 2009; Jollimore, 2010; Jollimore & Sladic, 2008; Thompson, 1998,

2001a, 2001b, 2003, 2007).

Part II Research Question

Which of these legal, judicial, parent, child, and move factors can uniquely predict the difference between cases where moves are permitted and those where they are denied?

Hypotheses Part II. The most important factors to predict the trial outcome will be primary caregiver, facilitation of access, financial benefits and planning (Bala & Harris, 2006; El Fateh, 2009; Jollimore, 2010; Jollimore & Sladic, 2008; Thompson, 1998, 2001a, 2001b, 2003, 2007).

Methods

Participants

The current study entailed a retrospective case analysis of 100 judicial decisions to examine the factors judges reference to support or deny a parent's relocation request. The study cast a wide net with the factors measured, as research in this area is still in the preliminary stages; additionally, the fact-driven nature of these cases supports this approach. An exhaustive search for these cases was conducted from May 2, 1996, the date the 1996 Supreme Court decision *Gordon v. Goertz* was reported, until December 31, 1999. The LexisNexis Academic database was searched for relocation/mobility court cases using search terms "residential relocation" and "best interests of child;" "mobility" and "best interests of child;" and cases that cited the 1996 Supreme Court decision *Gordon v. Goertz* for the time period May 2, 1996 to December 31, 1999. Additionally, the references lists of the research literature that was available for this time period was searched, which resulted in finding five additional cases.

The inclusion criteria consisted of cases where decisions were made regarding the relocation request, either approving or denying the move. Interim decisions were included in the analysis. Although interim decisions are intended to be short term, they often continue for months, establishing a pattern of custody likely to continue after the trial (Mamo & McLeod, 2009). Additionally, many interim decisions often result in settlements due to finances running out, emotional fatigue, disclosure of information, and the influence of the judge's assessment of that initial order (Bala & Wheeler, 2012). This selection process excludes cases that did not report a clear decision; for example, when one child was allowed to move and another child was not. Additionally, excluded cases in-

cluded those that were sealed, arbitration decisions and other unreported cases, oral decisions, those that fell under the Hague Convention, cases where the custodial parent moves and the other parent does not object or renegotiate access, cases where the parent who wishes to move decides not to move rather than face proceedings, or the non-moving parent opposes the move in principle, but does not contest the move. Similar exclusions have been made by previous researchers (Thompson, 1998).

The search produced 159 cases where the court made a decision to approve or deny a move. In 57 of the cases the move was denied. Seven of these cases were excluded for reasons such as the non-residential parent was applying for the move or when a parent was allowed to move with one of the children, but the other child was ordered to remain with the non-moving parent. Therefore, all of the remaining 50 denied cases were included in the study. In 102 of the cases the move was approved; four of these were excluded for similar reasons and one case because it fell under the Hague Convention and was going to be addressed in the United States. A random numbers generator was used to select 50 approved cases for the study, making 100 cases selected in total.

Measures

The major legal factors explored are residence restriction, level of court, custody and access assessment, child's residence, and access arrangement. The definitions for the legal factors are summarized in Table 1.

Table 1

Overview of Legal Factor Definitions for the Chi Square Analysis

Legal Factor	Definition
Residence restriction	Prior clause in separation agreement or custody order requiring the parents to live in the same location that they did prior to separation.
Level of Court	Provincial Court; Federal Court; or Appellate Court.
Custody and Access Assessment	Custody reports completed by psychologists or social workers: Supports Move, Against Move; Unclear Position; and No Assessment.
Child's Residence	Moving Parent is the Primary Residential Parent; Moving Parent has Shared Physical Custody.
Access Arrangement	Extensive or Average Access is the child spends more than one day per month; or Minimal/No Access ranged from less than one day per month to no access.

The major judicial factors explored are gender, judge's assessment of the level of planning for the move, and judge's assessment of the reason for the move considering whether it is a good faith reason with evidence. The definitions for the judicial factors are summarized in Table 2.

Table 2

Overview of Judicial Factor Definitions for the Chi Square Analysis

Judicial Factor	Definition
Gender of Judge	Female; or Male
Judge Makes Finding of Poorly Planned Move	<p>Yes, Poorly Planned: criticized for the lack of thought, investigation, details, or evidence, related to parts of or entire plan. Details of the plan described as unknown, or speculative. In relation to planning, a parent may be referred to negatively such as selfish, hasty, or irresponsible; or</p> <p>No, Well-Planned: positively acknowledged, judge is persuaded by the research, details, evidence related to a parent's plan. In relation to planning, a parent may be referred to positively such as being forward-thinking, responsible, or demonstrating initiative.</p>
Judge Assesses Reason	Good Faith Reason and Evidence of Benefits; Bad reason, too little evidence of Benefits; Reason not relevant or not relevant to the best interests of the child.

Clarification of the definition 'yes, poorly planned move' is illustrated in the following case. In *Wilson v. Daffern* (1998) Justice Davies stated, "I am concerned that Ms. Daffern's expectations [regarding her job search] may be more hopeful than they are realizable. In my judgment, the entirety of the proposed move is sufficiently speculative and lacking in concrete benefit to [the child] such that I am not satisfied that such a

drastic alteration of his present circumstances is warranted or in his best interests” (para. 39).

Clarification of the definition ‘no, well-planned move’ illustrated in the following case. In *Allen v. Allen* (1998) Justice Wood stated, “I was impressed with the research which had been done by the applicant on the community to which she proposes to move ... an environment rich in services and facilities. The applicant has already secured assurance that Adam’s special needs can be met, without delay, and without wait, in the Petawawa area. Steven will have a choice of schools and of hockey teams upon which to play. The home to which they would move will be almost identical to that which they are leaving” (para. 39).

Clarification of the definition ‘good reason with evidence’ is illustrated in the following case. In *Lloyd v. Earle* (1996) Master Joyce stated, “Her reasons for moving are bona fide. More importantly, I am of the view that the move is relevant to the plaintiff’s ability to meet Joshua’s needs ... The plaintiff’s new relationship and its consequential move gives her greater financial ability while at the same time making her able to be at home for Joshua and his brother. It also provides a benefit to Joshua of having two parents in the same home. That does not replace the benefit of Joshua’s interaction with his natural father; it adds to it” (para. 15).

Clarification of the definition ‘bad reason, too little evidence of benefits’ is illustrated in the following case. In *Chapman v. Chapman* (1997) Justice Nash stated, “I am not satisfied that the move to Vancouver would be in the best interests of the children. The children have spent time in British Columbia, but only on holidays. There is no evidence concerning what their life will be like with their mother working irregular hours

and having to commute to Vancouver. What is a certainty is that their contact with their father will be severely restricted. Mrs. Chapman has, by her conduct, indicated that she would like to limit the contact that the boys have with their father” (para. 15).

Clarification of the definition ‘reason not relevant’ is illustrated in the following case. In *Supersad v. Supersad* (1999) the mother’s reason for moving was to be closer to family and she had secured employment with an increase of about \$500 per year. Justice Veit stated, “The mother’s reasons for moving to Newfoundland are irrelevant to the consideration of the best interests of the children” (para. 6).

The major parental factors explored are gender, primary caregiver, non-moving parent’s relationship with the child, and misconduct by the non-moving parent. The definitions for the parental factors are summarized in Table 3.

Table 3

Overview of Parental Factor Definitions for the Chi Square Analysis

Parent Factors	Definition
Moving Parent Gender	Female; or Male
Primary Caregiver	Judge explicitly labels moving parent primary caregiver; Moving parent meets definition of primary caregiver: main parent who meets the child's daily living needs; or Judge labels moving parent <i>not</i> primary caregiver: both or neither parents are the primary caregivers.
Non-Moving Parent's Relationship with Child	Non-moving parent's relationship with the child: Good Relationship; or Neutral/Poor.
Misconduct by Non- Moving Parent	Domestic violence or child abuse: Allegations of misconduct; or Substantiated through prior court action or by the judge.

The major child factors explored are gender, number of children, highest age of child, and the child's wishes. The definitions for the child factors are summarized in Table 4.

Table 4

Overview of Child Factor Definitions for the Chi Square Analysis

Child Factors *	Definition
Gender of Children	Only Female Children; Only Male Children; or Mixed Gender: refers to at least one female child and at least one male child in the group of children.
Number of Children	One Child; Two Children; or Three or more Children.
Highest Age of Child	Under 6; 6 to under 12; 12 and over.
Child's Wishes	Child's relationship with non-moving parent: Good Relationship; or Neutral/Poor.

* Half siblings/siblings that were not going to be moving were not included in the count.

The major move factors explored are reason for the move, financial benefits of the move, new access plan, new job, new house, child's daycare, and whether the moving parent has already moved. The definitions for the move factors are summarized in Table 5.

Table 5

Overview of Move Factor Definitions for the Chi Square Analysis

Move factors	Definition
Reason For Move	Financial benefits; New Relationship; or Extended Family.
financial benefits of Move	Evidence of financial benefits; or Not Enough Evidence of financial benefits.
New Access Plan	Clear and reasonable; Clear, but not viable; or Vague/No Plan.
New Job	Reasonable Plan; or Vague/No Plan.
New House	Housing secured/Reasonable plan; or Vague Plan/No Plan.
Child's Daycare	Registered Child; Reasonable Plan; or Vague/No Plan.
Already Moved	Parent moved without consent from the other party or the courts.

In addition, all variables were coded as missing if they were not present in the decision reports. The following assumptions were made that assessments would be noted in the judicial decision if they were conducted, and prior residence restriction orders would be noted if they existed.

Procedure

Coding system. The decisions were independently assessed by two reviewers who graded the factors according to the levels on the coding data sheet (See Appendix A Coding Data Sheet). Training on the coding system was provided for a graduate student and an undergraduate student with regard to the level assigned to each factor. The coding system was tested for inter-rater reliability with eleven cases, six with approved moves and five with denied moves. The two independent raters yielded a 95% overlap in the agreement of data on these 11 cases. The rest of the coding was conducted on the 100

selected cases by one of the graduate students using the coding system.

Data Analysis Plan

All identified factors were screened at the univariate level using a chi square. The factors that reached statistical significance were then analyzed together using a binary logistic regression to determine the predictive weight of the factors in determining an approved move or a denied move.

Results

Descriptive Characteristics of Judges and Cases

There were 100 cases reviewed in the present study. The cases involved decisions made by male judges in 66% of cases, female judges in 29% of cases, there was at least one female judge *and* at least one male judge in 4% of the cases, and in one case the gender of the judge was not indicated. The majority of these cases consisted of variation orders. Final custody orders, interim orders, and appeals were also included. The distribution of cases by the level of court was: provincial 24%, federal 68%, and appellate 8%. The jurisdictions in which the judges made these decisions were: British Columbia 26%, Ontario 25%, Alberta 14%, Quebec 11%, Saskatchewan 9%, Newfoundland 6%, Nova Scotia 3%, Manitoba 3%, New Brunswick 1%, Yukon Territory 1%, and Northwest Territories 1%. Only 16% of the moves were to cities within the same province, 57% to other provinces, 16% to the United States, and 11% to other continents. Finally, the distance of the moves ranged from approximately 58 to 13,542 kilometers.

Descriptive Characteristics of the Parents

In the majority of cases, the parent that wished to move was female (91%); and the gender of the parent that did not wish to move was male (90%). In one case, the gender of both parents was female. There was a wide range of socio-economic status in the sample; for example, child or spousal support payments or the combined total of these support payments ranged from \$150 to \$5,000 per month. Additionally, 31% of the parents who wished to move were in receipt or had been in receipt of social assistance; however, financial factors were often missing from the decisions.

Descriptive Characteristics of the Children

The children in these families ranged from 16 months to 16 years of age at the time the decisions were made, with a mean age of 5.76 years ($SD=2.76$) for the youngest child in the family and a mean age of 7.41 ($SD=3.43$) for the oldest child in the family. The number of children in these families ranged from one to four, with a mean number of 1.73 ($SD=0.84$). There was one child in 49% of the cases, two children in 32% of the cases, three children in 16% of the cases, and four children in 3% of the cases.

Chi Square Analysis of Legal factors

Only two of the four legal factors evaluated were found to be significant. There was no statistically significant difference in a judge's decision to approve or not approve a move in cases where there was a prior move restriction, $\chi^2 (1, N = 99) = 0.044, p = .834$. In the majority of cases, 79%, no custody and access assessment was conducted. Judges were not less likely to approve a move when an assessment made a recommendation against the move, $\chi^2 (2, N = 98) = 2.24, p = .326$. Judges were more likely to deny a move when shared parenting existed, $\chi^2 (1, N = 99) = 4.00, p = .046$. Finally, judges were more likely to approve a move when a parent had minimal access with the child, $\chi^2 (1, N = 98) = 3.87, p = .049$. Table 6 illustrates an overview of the results for the legal factors.

Table 6

Frequencies & Total Percentages of Legal Factors in context of Trial Outcome

	Trial Outcome		χ^2
	move approved	move denied	
	n (%)	n (%)	
Prior Move Restriction	n=50	n=50	
Yes	17 (34)	18 (36)	.044
No	33 (66)	32 (64)	
Assessment			
Recommends No Move	4 (8)	9 (18)	2.24
Unclear Move Position	4 (8)	4 (8)	
No Assessment	42 (84)	37 (74)	
Primary Residence Move Par.			
Yes Moving Parent	48 (96)	42 (84)	4.00*
No Shared Residence	2 (4)	8 (16)	
Non-Moving Parent Access ¹			
Extensive/Average	42 (84)	47 (95.9)	3.87*
Minimal/None	8 (16)	2 (5.1)	

Note. ¹missing data, (n=50), (n=49); * $p < .05$

Chi Square Analysis of Judicial Factors

Two of the three judicial factors evaluated were significant. Male and female judges approved moves at approximately the same rate, $\chi^2 (1, N = 94) = 0.000, p = .985$. Judges were less likely to approve moves they assessed as poorly planned, $\chi^2 (1, N = 67)$

= 42.53, $p < .001$. Judges were more likely to approve moves where they made a finding of a good reason that was supported by evidence, $\chi^2 (2, N = 97) = 57.68, p < .001$. Table 7 illustrates an overview of the judge-related factors in this study.

Table 7

Frequencies & Total Percentages of Judicial Factors in context of Trial Outcome

	Trial Outcome		χ^2
	move approved n (%)	move denied n (%)	
Gender¹			
Female Judges	14 (30.4)	15 (30.6)	.000
Male Judges	32 (69.6)	34 (69.4)	
Poorly Planned Move²			
Yes	3 (10.34)	35 (89.74)	42.53**
No	26 (89.66)	4 (10.26)	
Reason For Move³			
Good with Evidence	43 (87.8)	6 (12)	57.68 **
Too little evidence	3 (6.1)	34 (68)	
Reason not relevant	3 (6.1)	10 (20)	

Note: missing data: ¹ (n=46), (n=49); ² (n = 29), (n = 39); ³ (n= 49), (n= 50); * $p < .05$, ** $p < .001$;

Chi Square Analysis of Parent Factors

Only one of the four parent factors evaluated reflected significant findings. Judges were not more likely to approve moves proposed by mothers than fathers, $\chi^2 (1, N = 99) =$

1.10, $p = .295$. Judges were more likely to approve moves in which they had labelled the moving parent the 'primary caregiver,' $\chi^2 (2, N = 73) = 18.80, p < .001$. Judges were not more likely to approve moves in which the quality of the relationship between the child and the non-moving parent was poor, $\chi^2 (1, N = 99) = 2.17, p = .140$. Judges were not more likely to approve moves in which they had substantiated domestic violence or child abuse by the non-moving parent, $\chi^2 (1, N = 21) = 3.27, p = .07$. Table 8 illustrates the parent-related factors in this study.

Table 8

Frequencies & Total Percentages of Parental Factors in context of Trial Outcome

	Trial Outcome		χ^2
	move approved	move denied	
	n (%)	n (%)	
Parent Factors	N=50	N=50	
Female	47 (94)	44 (88)	1.10
Male	3 (6)	6 (12)	
Moving Parent/Primarycaregiver ¹			
Judge labels MP PC	27 (67.5)	10 (28.6)	18.80 **
MP meets definition of PC	10 (25)	7 (20)	
Judge labels MP <i>not</i> PC	3 (7.5)	18 (51.4)	
NMP Relationship with Child			
Good Relationship	44 (88)	48 (96)	2.17
Neutral or Poor	6 (12)	2 (4)	
NMP Abuse Allegations ²			
Unsubstantiated	2 (14.3)	4 (50)	3.27
Substantiated	12 (85.7)	4 (50)	

Note: missing data: ¹ (n=40), (n=35); ² (n = 14), (n = 8); ** $p < .001$;

Chi Square Analysis of Child Factors

None of the four child factors evaluated reflected significant findings. Judges were not more likely to approve moves with female children, $\chi^2 (2, N = 96) = 2.30, p = .316$; with one child, $\chi^2 (2, N = 98) = 3.25, p = .197$; or with younger children (under six

years of age), $\chi^2 (2, N=98) = .682, p = .106$. The trial outcome did not differ by the child's clear or unclear wishes to move, $\chi^2 (1, N=21) = 1.64, p = .201$. Table 9 illustrates the child-related factors in this study.

Table 9

Total Percentages of Trial Outcome over Child Factors

	Trial Outcome		χ^2
	move approved	move denied	
	n (%)	n (%)	
<hr/>			
Gender Children in Family ¹			
Only Female Children	20 (40)	17 (35.4)	2.30
Only Male Children	20 (40)	15 (31.2)	
Mixed Gender	10 (20)	16 (33.3)	
Number of Children			
One Child	29 (58)	20 (40)	3.25
Two Children	13 (26)	19 (38)	
Three of more Children	8 (16)	11 (22)	
Age of Child			
Under 6	21 (42)	17 (34)	.682
6 to under 12	23 (46)	26 (52)	
12 and over	6 (12)	7 (14)	
Child's Wishes ²			
Clear	7 (63.6)	4 (36.4)	1.64
Unclear	4 (36.4)	7 (63.6)	

Note: missing data: ¹(n=50) (n=48); ²(n=11), (n=11).

Chi Square Analysis of Move Factors

Four out of seven of the move factors evaluated reflected significant findings.

Judges were not more likely to approve a move based upon the parent's reason for the move, $\chi^2(2, N=96) = 1.80, p = .407$. Judges were more likely to approve a move based upon evidence of financial benefits, $\chi^2(1, N = 94) = 12.26, p < .001$. Judges were more likely to approve moves when parents presented a new access plan that was both clear and viable, $\chi^2(2, N = 64) = 7.53, p = .023$. Parents who proposed no access plan or a vague one were more likely to have their move denied. However, simply presenting a clear plan did not increase or decrease the likelihood of a move being approved or denied. Judges were more likely to approve a move if the parent had secured a job or provided a reasonable plan for securing a job in the new location, $\chi^2(1, N=93) = .391, p = .048$. Judges were not more likely to approve a move when the parent had secured housing or provided a reasonable plan for securing housing in the new location, $\chi^2(1, N=65) = .176, p = .675$. Judges were more likely to approve a move if the child's school or daycare had been secured or a reasonable plan had been provided in the new location, $\chi^2(1, N=53) = 12.97, p < .001$. Moves were more likely to be approved when there was a reasonable plan or the child had been registered for school or daycare and were more likely to be denied when a vague plan or no plan was put in place for the child's school or daycare. There was no significant difference between cases where the parent had already moved to the new location and parents that had not already moved, $\chi^2(1, N=99) = 1.77, p = .140$. Table 10 illustrates the move-related factors in this study.

Table 10

Move-Related Factors Connected to Judges' Ratings

	Trial Outcome		χ^2
	move approved	move denied	
	n (%)	n (%)	
<hr/>			
Parent's Reason For Move ¹			
Financial	42 (85.7)	38 (77.6)	1.80
New Relationship	4 (8.2)	4 (8.2)	
Family	3 (6.1)	7 (14.3)	
Financial Factors ²			
Financial benefits Yes	39 (81.2)	22 (46.8)	12.26**
Financial benefits No	9 (18.8)	25 (53.2)	
New Access Plan ³			
Clear and viable	15 (42.9)	6 (19.4)	7.53 *
Clear	15 (42.9)	12 (38.7)	
Vague/No Plan	5 (14.3)	13 (41.9)	
New Job ⁴			
Reasonable Plan	31 (82.61)	31 (64.58)	3.91*
Vague/No Plan	12 (17.39)	17 (35.4)	
New House ⁵			
Yes	32 (86.49)	24 (82.76)	.176
No	5 (13.51)	5 (17.24)	

Child School/Daycare ⁶			
Reasonable Plan	26 (89.7)	11 (44)	12.97**
Vague/No Plan	3 (10.3)	14 (56)	
Moved without Consent			
Already Moved Yes	11 (22)	6 (12)	1.77
Already Moved No	39 (78)	44 (88)	

missing data: ¹ (n=49), (n=49); ² (n = 48), (n = 47); ³ (n= 35), (n= 31); ⁴ (n=46), (n=48);

⁵(n=37), (n=29); ⁶(n=29), (n=25); * p< .05, **p < .001

Summary of significant factors. Table 11 provides a list of all of the significant factors that will be grouped and run in the regression model.

Table 11

Factors differing between cases approved for relocation

	Trial Outcome		χ^2
	move approved	move denied	
	n (%)	n (%)	
<hr/>			
Judges' Assessment of Reason ¹			
Good with Evidence	43 (87.8)	6 (12)	57.68 **
Bad and/or too little evidence	3 (6.1)	34 (68)	
Reason not relevant	3 (6.1)	10 (20)	
Poorly Planned Move ²			
Yes	3 (10.34)	35 (89.74)	42.53**
No	26 (89.66)	4 (10.26)	
New Access Plan ³			
Clear and reasonable	15 (42.9)	6 (19.4)	7.53 *
Vague/No Plan	5 (14.3)	13 (41.9)	
New Job ⁴			
Vague/No Plan	12 (17.39)	17 (35.4)	3.91 *
Child School/Daycare ⁵			
Registered Child	26 (89.7)	11 (44)	12.97 **
Vague/No Plan	3 (10.3)	14 (56)	
Primary Residence Move Parent			
Shared Residence	2 (4)	8 (16)	4.00*

NMP Access to Child ⁶			
Minimal/None	8 (16)	2 (5.1)	3.87*
Financial benefits from Move ⁷			
No	9 (18.8)	25 (53.2)	12.26**
Moving Parent & Primary Caregiver ⁸			
Judge labels MP PC	27 (67.5)	10 (28.6)	18.80**
Judge labels MP <i>not</i> PC	3 (7.5)	18 (51.4)	

missing data: ¹ (n=49), (n=50); ² (n = 29), (n = 39); ³ (n= 43), (n= 23); ⁴ (n=46), (n=48);
⁵ (n=29), (n=25); ⁶ (n=50), (n=49); ⁷ (n=48), (n=47); ⁸ (n= 40), (n= 35), * p< .05, **p < .001

Predictive Model

Poorly planned move and judge's assessment of the reason for the move were implemented into the regression and the resulting predictive factors are listed in Table 12.

Table 12

Logistic Regression Model predicting Parental Relocation Trial Outcome

Variable	B	S.E.	Wald	df	Sig	Odds Ratio	(95% CI)
Poorly Planned	3.66	.930	15.47	1	P < .001	.026	6.27 - 240.08
Good Reason	-3.55	1.29	7.63	1	P = .006	34.91	.002 - .356

The odds ratio of poorly planned moves indicates that if a judge finds a parent's move to be poorly planned, it is 97.4% more likely to be denied. [To make the calculation of how many more times a poorly planned move is likely to be denied, take 100 percent and subtract 2.6 percent.] The results also indicate that if a judge finds the parent's reason

for the move to be valid and supported by evidence, it is 34.91 times more likely to be approved. Based on the 68 cases for which complete data were available, the classification accuracy of these two predictors is 89.7%.

Discussion

The overall purpose of this study was to examine how judges make decisions in parental relocation cases. The results will be discussed in two parts: the impact of individual factors and then the combination of factors in the regression analysis.

Individual analyses suggested that moves were more likely to be denied when there was an existing shared parenting arrangement or the moves were poorly planned. Relocation requests were more likely to be approved when the moving parent was labelled the primary caregiver; planned for employment, for access, and for the child's school; or provided a good reason and evidence of benefits of the move, such as family finances. Additionally, moves were more likely to be approved when the non-moving parent had prior minimal access with the child. All of these findings were supported by the first hypothesis.

Many of the variables studied did not differentiate decisions allowing parents to relocate in comparison to decisions denying those requests. For example, approved or denied relocation decisions were not more likely to occur depending on a prior move restriction; the gender of the moving parent; primary residential status of the moving parent; a child's poor relationship with the non-moving parent; domestic violence perpetrated by the non-moving parent; gender, number, age and wishes of children; arranging for housing in the new location; or having already moved to the new location, as predicted. The lack of findings on some of the factors may be due to the small sample size, and missing information in the decisions for some of the variables.

Impact of Individual Factors

Legal factors. The two legal factors that reached significance and were in line

with the study's predictions were related to shared parenting and minimal access time. Specifically, relocation requests that involved shared parenting were more likely to be denied, which was supported by the literature (Bala & Wheeler, 2012; Thompson, 2003; Jollimore & Sladic, 2008). Judges appear to begin their assessment of the factors by discerning who is primarily responsible for the child. It is likely the judge will find parents equally responsible for the needs of a child in a shared parenting situation; thus, the child would be more dependent on the non-moving parent for their day-to-day needs. Principles from the best interests of the child and *Gordon* that relate to the factor of shared parenting are the custody arrangement, the child's relationship with both parents, and the maximum time principle. Research to support these principles includes that children are better adjusted when they maintain contact with both parents after divorce or separation (Hetherington & Kelly, 2002).

The finding that moves were more likely to be approved when the non-moving parent has minimal access were supported by Bala and Harris (2006). One explanation for this finding is that a judge may believe that the non-moving parent plays less of a role in attending to the day-to-day needs of a child. Thus, the benefits of the move may outweigh the decreased amount of time the child would spend with the non-moving parent. An alternative explanation may be that the move will not significantly decrease the amount of access the child has to the other parent and, thus, it is assumed that the move would not be as disruptive to the child. Another consideration is that minimal or no access could relate to a poor relationship between the parent and the child and/or the presence of domestic violence or child abuse. In the case of domestic violence or child abuse, the moving parent may be limiting access to protect the child (Boyd, 2010).

Judicial factors. The two judicial factors that reached significance were related to the judge's assessment of the overall planning involved in organizing the move and the judge's assessment of the reason for the move. Specifically, well-planned moves were associated with moves being approved and poorly planned moves were associated with moves being denied, supported by the literature (Jollimore & Sladic, 2008; Thompson, 2001a). Judges' emphasis on planning appears to relate to *Gordon's* recommendations that minimizing the disruptive elements of the move are important for the child's best interests.

Parents who plan their moves well are more likely to minimize the negative impacts to the child by securing employment, stable housing, education, extra-curricular activities, and providing a new and viable option for access with the non-moving parent (Jollimore & Sladic, 2008). Additionally, when parents clearly articulate the benefits of the move, it makes it easier to convince the judge that the move may improve the child's life. In contrast, moves that are poorly planned are less likely to be approved, as they are seen as disruptive to the child and the benefits are not well-supported by evidence (Jollimore & Sladic, 2008; Thompson, 2001a).

Moves were more likely to be approved in cases where the judge found the reason for the move to be made in good faith and supported by evidence. Moves were more likely to be denied in cases where the judge found the reason to be poor and/or not supported by evidence. Previous research by Jollimore and Sladic (2008) supported these findings. When the judge found the reason for the move was not relevant or not relevant to the child's needs, it was more likely to be denied. The significant finding on this level of the variable contrasted Thompson's (1998) assertion that judges do not follow

Gordon's instruction to ignore the reason for the move. The judge's identification of the reason for the move not being relevant to the child's needs may illustrate an approach that is an 'anti-relocation' position. For example, Thompson (1998) asserted that although this part of *Gordon* is largely ignored when judges make the finding 'reason not relevant,' it may eliminate a good reason and its potential benefits from being assessed.

Parental factors. The only parental factor that reached significance was 'primary caregiver.' Judges approved a move of a parent they had labelled as the 'primary caregiver' 75% of the time. The increased likelihood of approved moves for those identified as 'primary caregivers' was supported by Thompson (1998, 2001a, 2001b, 2003). In contrast, Thompson (1998) found that 90% of the parents labelled as the 'primary caregiver' were given approval to their relocation requests. Additionally, the current study also found that if a judge explicitly labelled a parent as *not* the primary caregiver, then the move was more likely to be denied.

When parents met a standard definition of primary caregiver, but were not labelled as such by judge, they were not more likely to have their relocation approved or denied. These findings reflect inconsistencies with the way that this factor is assessed, which may relate to judges' values and beliefs about the importance of the role. One explanation may be that judges who label the moving parent the 'primary caregiver' may hold the view echoed by Wallerstein "what's best for the parent is best for the child" or they may be operating from what Thompson (1998) terms a gender-based 'primary caregiver' presumption in favour of the move. An alternative explanation could be that it may relate to a judge's approach to the case. For example, *Gordon* instructs judges that there should be no presumption in favour of the primary caregiver. Thus, judges who

avoid applying the term ‘primary caregiver’ to parents may simply be following the principles in *Gordon* more strictly than judges who do apply the term to parents. Also the judges that apply the term ‘primary caregiver’ may be applying more emphasis to the guideline of providing great respect to the custodial parent.

Although not statistically significant, the factor misconduct by the non-moving parent was a trend that occurred in the study. Moves were approved more often when misconduct by the non-moving parent was substantiated as opposed to unsubstantiated. Bala and Wheeler (2012) found that moves were more likely to be approved when family violence was substantiated and were more likely to be denied when allegations of family violence were clearly unsubstantiated.

Move-related factors. The four move-related factors that reached significance were related to financial benefits, planning for employment, providing a new access plan, and making school or daycare arrangements for the child. Parents who provided evidence that their move would result in increased financial resources for the family were more likely to have their move approved. Similarly, when parents presented a reasonable plan for employment, judges were more likely to approve their move. Both of these factors are connected to financial benefits, which Jollimore and Sladic (2008) found to be associated with approved moves. Further, the divorce literature identified that when a family’s financial resources increased post-separation then the children from that family were more likely to experience positive outcomes (Amato, 2001).

Parents who provided the courts with a clear and viable access plan were more likely to have their move approved, as previously supported by Jollimore and Sladic (2008). In contrast, parents who presented a vague plan or no access plan were less likely

to have their move approved. When parents do not present a new access plan, judges may interpret it as a lack of willingness to facilitate access or not valuing the relationship between the child and the access parent (Bala & Harris, 2006; Jollimore & Sladic, 2008; Thompson, 2001).

Parents who secured daycare or school arrangements for their children were more likely to have their move approved; and a vague plan or no plan for the child's daycare or school was more likely to be denied. Prior research on these factors had not been done specifically, but Jollimore and Sladic (2008) identified that they were considered when assessing the plans for the relocation. These two factors reflect planning for the child's needs and are related to *Gordon's* direction to follow the "best interests of the child" principles.

In summary, judges consider many factors, starting with how each parent meets the child's needs, which appears to be directly assessed by the factor primary caregiver and indirectly assessed by the custody status or living arrangements for the child and the terms of access. Judges also assess the level of planning and reason for the move in order to determine the potential benefits.

Combined Factors in Regression Analysis

The second purpose of the study was to develop a tool to predict the trial outcome in these cases by examining the interaction of multiple factors that judges may be considering. Four significant factors found in the screening at the univariate level were tested through a binary logistic regression which weighed the factors. These four factors were selected to represent the following categories: financial benefits, primary caregiver, facilitation of access, and poor planning. This model failed to predict the sample, thus the

hypothesis was not supported.

The model that best fit the sample consisted of the judge finding the parent's move to be poorly planned and the parent's reason for the move to be valid and supported with evidence. A judge's finding of poor planning makes the move approximately 38 times more likely to be denied. A judge's finding of the reason being valid and supported by evidence makes the move approximately 35 more times likely to be approved.

Although intuitively the two variables appear to be measuring the opposite ends of the same variable, it is important to note that these are two separate and statistically different factors. If they had been measuring the same concept or opposite ends of the same concept, one of the factors would not have reached significance and the standard error would have been high, neither of which are the case.

The excerpts from the following cases help to illustrate the distinctions between these factors. The factor 'yes, poorly planned move' is illustrated in the following case. In *Wilson v. Daffern* (1998) Justice Davies stated, "I am concerned that Ms. Daffern's expectations [regarding her job search] may be more hopeful than they are realizable ... the entirety of the proposed move is sufficiently speculative and lacking in concrete benefit to Luke" (para. 39). In summary the key points of poor planning are that the job search is unrealistic and the entire move is described as speculative and lacking in evidence.

The factor 'good reason with evidence' is illustrated in the following case. In *Lloyd v. Earle* (1996) Master Joyce stated, "Her reasons for moving are bona fide. More importantly, I am of the view that the move is relevant to the plaintiff's ability to meet Joshua's needs ... The plaintiff's new relationship and its consequential move gives her

greater financial ability while at the same time making her able to be at home for Joshua and his brother” (para. 15). Some key defining characteristics of this factor are the assessment of whether the reason for the move is made in good faith and evidence of the benefits are provided. Whereas the planning related factor does not assess good faith and benefits, but is more likely to assess how disruptive a move would be to a child.

A limitation of this model is that poor planning and a good reason with evidence may be considered judicial thinking and outcome variables rather than case characteristics. For example, judges would come to the conclusion that a move is poorly planned based on their assessment of factors such as no new employment, no daycare arrangement, and no viable access plan presented. Thus, the model may not be useful for a lawyer to predict the outcome of a case because it may be difficult for them to predict how a judge would make those assessments. In spite of this fact, the factors poor planning and good reason may be useful concepts to explore in future research to examine whether the outcome of the case depends on judges’ approaches to cases and/or their biases or to the unique facts of the case.

The model could be further tested by running the logistic regression with poor planning as the outcome variable and the significant indicators of move decisions (i.e., financial benefits, secured employment, daycare, and provided a new access plan) as the ‘independent variables.’ If the model was found to explain the sample fairly well, then we could have more confidence that judges use the individual factors to decide the outcome of cases. Using an example to break down the process may help clarify this point. A parent provides evidence to a judge about his or her new job, the new school the children are registered in, and the new access plan he or she proposed to the other parent. From

this information the judge makes a finding that the move is well-planned, and then the judge approves the move. This process illustrates that the judge is not merely relying on intuitive decision making or a pro-relocation bias, but perhaps basing it on how smooth the transition of the move will be for the child given the appropriate planning. If this new model does not explain the sample, we have two hypotheses: judges may be relying on intuitive decision-making, which may lead to bias, or there is too much missing information in order to accurately identify how judges make decisions about these cases.

A final consideration is that one predictive model may not be the best approach to use if the sample is heterogeneous, consisting of several different clusters or groups. To illustrate the point of a heterogeneous sample consider the following hypothetical cases. One case could contain the factors, shared parenting, poor planning, and domestic violence, which may be approved, whereas another case may have shared parenting, good reason supported by evidence, and good planning and be denied. Judges' approaches to the cases could also create a heterogeneous sample. For example, the various legal questions that a judge actually uses to analyze the case and their different accompanying presumptions also appear to make some factors much more or less important. For example, there may be judges that use *Gordon's* question with no presumptions for either parent and there may be judges that operate with a presumption in favour of the primary caregiver or moving parent.

Recommendations for Future Research

Better method for heterogeneous sample. The parental relocation sample of cases appears heterogeneous or to consist of different clusters of factors. Judges may rely upon the different groupings of factors in order to make their decisions. However, this

study used a variable-oriented approach to analyze the judges' decisions, which does not consider how different factors may or may not be important in relation to different categories within the sample. The same example as used above illustrates this point. One case may have shared parenting, poor planning, and domestic violence, which may be approved, whereas another case may have shared parenting, good reason supported by evidence, and good planning and be denied. Thus, it is the groupings of factors that would be related to an outcome, rather than single factors.

Profile analysis is argued to be a more effective way to study a heterogeneous group (Bergman & Magnusson, 1997). Profile analysis is a person-oriented method that Bergman and Magnusson (1997) claimed is often a better method when there is a pattern of factors causing the outcome. They argue that it is the patterns of variables in relation to each other that are important and as single units variables have limited meaning (Bergman & Magnusson, 1997). As stated previously, the best interests of the child guides these decisions. Thus, additional rationale for using a person-oriented approach for parental relocation cases comes from Mnookin (1975), who states that the best interests of the child principles relies on analyzing "the whole person viewed as a social being" (as cited in Peskind, 2005), with the person being referenced in these cases being the parent.

Long-term outcomes of relocation. While it is important to analyze the patterns that exist in the way that parental relocation cases are decided in the courts, it is even more important to start building the research on the impacts of these decisions. Research on the long-term outcomes of parental relocation has not been conducted in Canada. The research from the United States is limited as well, and the American Judge W. Dennis Duggan reported, "There is no evidence that our decisions in [parental relocation] cases

result in an outcome that is any better for the child than if the parents did rock-paper-scissors” (Duggan, p. 193, 2007). The judge’s sentiments appear to reflect frustration with the process and the limited data available surrounding long-term outcomes for children (Bala & Wheeler, 2012). Recall the research from the United States and Australia consisted of some empirical research with mixed findings. Relocation was not found to be significantly associated with depression, social support, family cohesion, or shyness (Norford & Medway, 2002).

Two benefits of relocation were improvements in children’s reading achievement and lower levels of anxiety (Verropoulou et al., 2002); improved child adjustment when the family moved due to changes in family dynamics (Verropoulou et al., 2002); and children who moved multiple times were less likely to be depressed as adults (Gilman et al., 2003).

Some of the negative impacts of relocation on children included increased childhood depression (Gilman et al., 2003); less participation in extra-curricular activities (Norford & Medway, 2002); increased aggressive behaviour in children (Verropoulou et al., 2002); and for college aged young adults poorer relationships with parents, parents with higher levels of conflict, lower parental contributions to college expenses, and more divorce-related distress (Braver et al., 2003). One explanation of the mixed results may be that different clusters of groups may be more represented in one study in comparison to another study impacting the results. It is imperative that research with samples from Canada be conducted to provide a clear picture of what truly is in the best interests of the child.

Future Directions for Professionals

Clinical practice. Mental health professionals may become involved in these matters by counselling parents and children involved in these cases. An added awareness of the unpredictability around the outcome and the factors that may guide the decision could help a practitioner support a parent engaged in this litigation. In general, custody and access litigation puts immense pressure on children, and counselling can be an opportunity to express their fears and worries about a move or excitement about the benefits. Mental health professionals may help parents involved in litigation to focus on the needs of their children and the benefits and limitations of moving away from the other parent. Providing support to a parent around planning for an approved or denied move is important both for parents and children, regardless of the outcome. Planning for moves is particularly important to mitigate disruptions for children. For instance, making arrangements for the child's education, activities, and access with the other parent are all key aspects that need to be addressed (Jollimore & Sladic, 2008).

Mental health professionals such as social workers and psychologists may also become involved in these cases by completing assessments for the court. It is important for these professionals to understand the court decision-making process and important factors to consider when conducting and writing the assessment in order to provide useful information to the court (Stahl, 2011).

Judges, lawyers and divorcing parents. Lawyers need to advise parents on the likely outcome and benefits of litigation in these cases. At the present time, there is not a lot of guidance in this matter aside from one Supreme Court case that has resulted in a wide range of interpretations. A recent larger scaled study by Bala and Wheeler (2012), which had a sample of 738 cases, found significance in a number of factors that differen-

tiated judicial decisions on relocation. The authors recommend a presumption in favour of the relocation in cases where the moving parent is the sole custodial parent, the non-moving parent has perpetrated acts of familial abuse, or the child expresses the wish to move. They recommend a presumption against relocation in cases that involve shared physical custody, unfounded allegations of abuse made by the moving parent, the child expressing the wish not to move, an interim decision, and unilateral moves. Bala and Wheeler (2012) argue that these ideas provide an excellent starting point to developing more consistency in deciding these cases.

These proposed changes by Bala and Wheeler (2012) could be made for the process used in Canada in one of two ways. First, Bala and Wheeler (2012) suggest legislative changes in order to make relocation decisions more predictable and consistent. Other jurisdictions in the United States including Tennessee, Oklahoma, and Washington have addressed parental relocation in this way. For example, Oklahoma and Washington have a presumption in favour of the moving parent (Bala & Wheeler, 2012). In addition to a list of factors the Washington guidelines instruct the judge to examine the good faith of both parties and not just the moving parent, as tends to be done in Canada (Washington State Relocation Act, 2000). This point might help prevent an ex-partner from contesting a move mainly for the purpose of trying to control the moving parent.

One problem with trying to get legislative change is that parental relocation cases are only a small percentage of the custody cases that end up in courts. Many may view parental relocation as a less important issue which decreases the likelihood that legislative changes will occur. Another potential problem is that the gendered aspects of relocation may impede the process of legislative reform. In the United States the American Bar

Association organized a panel to examine this issue and a gender war between fathers' rights and women's advocacy groups erupted halting the process (Bala & Wheeler, 2012).

Recognizing that legislative reform is unlikely in this narrow area of family law and the potential impact of the debate between fathers' rights and women's advocacy groups, Bala and Wheeler (2012) suggest that legal scholars, policy makers, judges, researchers, and mental health professional convene a special meeting to discuss the proposed guidelines. Part of this discussion could examine jurisdictions where specific laws on relocation already exist, such as the Washington State relocation guidelines. The product of this meeting could be a discussion paper to guide judges in their analysis of relocation cases. Bala and Wheeler (2012) make an interesting comparison to the proposed guidelines and the support guidelines that judges currently follow. In order to facilitate a judge's decision-making process a consensus needs to be achieved and clearly outlined in the new guidelines, perhaps in a similar way that support guidelines have been outlined. It is hoped that future research would continue to be incorporated into developing and revising guidelines both in the ways these decisions are made and in how these decisions impact families over the long term.

Limitations of Study

This study has several limitations to consider when making interpretations of the findings. The study's findings are not generalizable to all parental relocation cases. Moreover, the purpose of this study was to increase knowledge of the factors that influenced the outcome in the Canadian relocation cases that were contested and reported during the time period that followed the *Gordon v. Goertz* Supreme Court Decision in

May of 1996 until the end of the year in 1999. The study's findings may be limited to Canadian cases within that time period, but Bala's and Wheeler's (2012) research used more recent cases and their results support some of this study's findings. The similar findings in the two studies suggest that some of the key factors have not changed over the years. However, the factors in this study's predictive model were not examined in Bala's and Wheeler's (2012) study. Future research should test the model constructed in this study with 100 more recent cases to see if poor planning and good reason with evidence of the benefits predicts the trial outcome of more recent cases with the same degree of accuracy as with the older cases. Additionally, performing a second regression using 'poor planning' or 'good reason with evidence' as outcome variables would provide more information about whether or not judges were using the individual factors to make their decisions.

Additionally this study's results may not apply to cases that are not litigated such as when a parent leaves and the other parent does not contest, perhaps because he or she cannot afford a trial or appeal, gives up, or is not as invested in parenting. However, it is generally accepted in the field that patterns with the way decisions are made in reported cases influence the outcome of cases that never go to trial. For example, lawyers may discourage a parent from trying to relocate or from contesting their ex-partner's relocation because of trends in previous court decisions. Thus, the findings may be applicable in understanding the outcome of the cases where the client has limited funds to litigate. It is generally accepted that 95% of cases settle, especially if the odds are poor for one of the parents to succeed at trial.

Additionally, other authors exploring judicial decision-making have pointed to

concerns with reliability, validity, and lack of objectivity with judicial decisions that limit the application of the findings of the study (Azar, Benjet, Fuhrmann, & Cavallero, 1995). While the impact of bias on judicial decisions is not known, this study was conducted with the assumption that the decisions represent objective data. However, preliminary findings from this study suggest the possibility of bias influencing judicial decisions which needs to be examined further. For example, did judges emphasize factors after the decision was made to justify their rulings? The reliability and validity of the data was also impacted by the high percentage of missing information on many of factors, particularly the more objective financial-related factors such as income and child support. Given that post-separation changes to financial resources are related to child outcomes (Aseltine, 2006), it would be useful to examine whether more objective measures of this factor such as income impacted the trial outcome.

Finally, the sample size selected for this study, ($n = 50$) approved move cases and ($n = 50$) denied move cases, was small. The small sample size produced limited data on variables of interest such as custody and access assessments, shared parenting situations, and domestic violence. However, these factors were present at the same rates in this study as they were in the research conducted by Bala and Wheeler (2012). The small sample size in this study should be taken into consideration when interpreting the results and further research should use a larger sample to replicate the findings.

Conclusion

This study explored the legal, judicial, parent, child, and move factors in parental relocation cases in Canada for the three years following the Supreme Court case *Gordon v. Goertz* (1996). Findings from this study and Bala and Wheeler's (2012) recent study

with a much larger sample indicate that there are individual factors that are guiding these decisions. However, the regression from this study was unable to determine whether the judges were using the individual factors to make their decisions, as the two predictors for these cases appear to represent judicial findings. Two possible explanations are that the factors are being used, but there was too much missing information, or alternatively that judges rely on an intuitive decision-making process that is more likely to be influenced by values about relocation and parenting.

More than 15 years after *Gordon v. Goertz*, the number of litigated parental relocation cases has increased and experts in the field continue to view these cases as some of the most contentious and difficult to predict in family law where no middle ground can be established (Bala & Wheeler, 2012). It is argued that the “best interests” test set out in *Gordon v. Goertz* leads to uncertain outcomes, thereby increasing the litigation and resulting conflict (Thompson, 2004). While there is limited research into the long-term impacts of parental relocation on parents and children, there is substantial research of the negative impact that continued post-separation conflict has on children (Amato, 2001) supporting the use of more structured guidelines for these cases.

Finally, recent research by Bala and Wheeler (2012) may help promote the development of guidelines by the family law stakeholders to provide more predictability in the outcome of these cases. Clearer guidelines may result in fewer cases going to trial, thereby decreasing the litigation and conflict experienced by the family. The divorce research in combination with the findings of this study illustrate patterns in the decisions and provide some rationale for proposing presumptions to facilitate the process for judges, lawyers, and, most importantly, parents and children in crisis.

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Appendix A

Coding Data sheet

Parental Relocation Variables Examined in Judges' Decisions Case Name:

1. Gender of Judge	1 = Female	2 = Male	3 = Both	4 = Can't find
2. Gender Moving Parent	1 = Female	2 = Male		
3. Gender NonMv Parent	1 = Female	2 = Male		
4. Gender of Child(ren)	1 = Female	2 = Male	3 = Both	4 = NA
5. # of Child(ren)	1 = 1 child	2 = 2 children	3 = 3 children	4 = 4 or more
6. Support Increased	1 = Yes	2 = No	3= NA	
7. Support \$_____	1= \$0-300	2= \$301-800	3=\$801-1500	4=\$1501+ 5=NA
8. Social Assistance 1=Yes current, 2= Yes, in past, 3=Not Mentioned.	Moving Parent 1 2 3	MPs Partner 1 2 3	Non-moving Parent 1 2 3	NMP's Partner 1 2 3
9. Financial Benefits of the move	1 = Yes	2 = No	3=Unsure, difficult to determine from info 4=Financial related info not mentioned.	
10. Job: Income NA []	Moving Parent \$	Moving Partner \$	Nonmoving Parent \$	Nonmoving Partner \$
11. Household Income	MP Household Income = \$		NMP Household Income = \$	
12. Judge deems MP "primary caregiver" 1 = Yes, explicitly states	2 = J describes MP as PC	3 = Both parents /neither parents PC	4 = J says MP is not PC explicitly	5 = Not Mentioned
13. Moving Parent Meets Definition of Primary Caregiver	1 = Yes	2 = No	3 = Unsure/too little info 4=Not Mentioned	
14. Failure to Make Support Payments	1=Pays nothing	2 = Pays too little	3 = Pays adequate	4 = NA
15. Innocent Victim [] NA				
16. Misconduct (Child Abuse or DV By Moving Parent)	1 = Allegations	2 = Charges	3 = Convicted/J substantiates	4= NA
17. Misconduct (Child Abuse or DV By Non-Moving Parent)	1 = Allegations	2 = Charges	3 = Conviction or J substantiates	4= NA
18. Moving Parent's Previous Bad Faith	1= Yes,	2 = No	3= NA	

19. J's Assessment of Plan	1=J says move well-planned. 2=J implies well-planned, but doesn't state specifically. 3=parts of move are well-planned/parts are not. 4=Judge say move is not well-planned or that it needs to be investigated further. 5=Judge describes plan that seems well-planned, but it is not stated explicitly, 6= Missing Information 7=Judge notes parent has already moved, but doesn't comment about or describe plan.			
20. Well Planned Move Job/House/Child's School 1-secured, 2- reasonable plan, 3-inquired/quite a vague plan, 4- NA or No plan	Moving Parent's Partner's Job 1 2 3 4 5	New Access Plan is: 1-Clear/reasonable plan, 2-clear plan, 3- a plan is mentioned, but not clearly detailed, 4-No plan 5-Access Plan is not mentioned by the Moving Parent		
	MP Parent Job/School 1 2 3 4 5	Housing 1 2 3 4 5	Child school/daycare 1 2 3 4 5	New Access Plan 1 2 3 4 5
21. Judge's Assessment of Reason for Move 1= reason valid/bona fide and supported by evidence	2 = reason not valid and/or not enough evidence	3 = reason not relevant to best interests of child	4 = Not Mentioned	5=reason & evidence provided, but judge doesn't explicitly state it valid/invalid
22. Reasons for Move	1= Financial	2= New relationship	3= Family	4 = Not mentioned
23. Driving Distance	From:	To:	=	km
24. Distance in kilometres	1= 0-550; 2=551-1000; 3=1001-2000; 4=2001-4500; 5=4500+			
25. Wishes/views of Child(ren) for move	1 = Yes 2 = No 3 = Mixed 4=J says child too young to ask 5 = NA			
26. Ages of Children				
27. Age of Child(ren) (youngest aged child)	1 = Under 6	2 = 6 - under 12,	3 = 12 and over	
28. Age of Child(ren) (oldest aged child)	1 = Under 6	2 = 6 - under 12,	3 = 12 and over	
29. Assessment 1=Recommends move	2=Does not recommend move	3= differing recommendations	4= Inconclusive findings/incomplete	5= No assessment
30. Custody Designation	1= Joint,	2 = Joint, neither	3= Sole, primary residence with MP	

	prim. residence MP	parent has prim. res		
31. Access Arrangement of nonmoving parent	1= Extensive Access	2 =Average Access	3 = Minimal access	4 = No access
32. Level of Court *See sheet	1=Provincial Court 2=Superior Court 3=Appeal Court 4=Supreme Court of Canada			
33. Travel time old to new	hours			
34. Travel Time Range	1 = 0 – 9.99	2 = 10 – 19.99	3 = 20 – 44.99	4 = 45 and over
35. Moving Parent Likely to Facilitate Access	1 = Yes	2 = No	3= NA	4 = Unsure
36. Relationship between Child(ren) and Non-Moving Parent	1 =Good	2 =Neutral	3 = Poor	
37. Conflict in Parental Relationship	1 = Low	2 = Medium	3 = High	
38. Prior Move Restriction Order	1 = Yes, prior restriction 2 = No, no prior restriction 3=Not enough information to infer yes or no.			

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