

# TRAVELLING WITH CHILDREN AFTER SEPARATION OR DIVORCE



## Travelling with children of separation or divorce

is more complicated than simply booking a flight and confirming a hotel. Parents who are going through a separation or who are divorced must think about the implications of their travel plans for the non-travelling parent. Travel plans can be even further complicated if there is no court

order in place dealing with the issues of custody and access.

In order for a separated or divorced parent to be able to travel with their children, they must obtain the consent of the non-travelling parent, or possess a court order dispensing with the requirement to

obtain the non-travelling parent's consent. For a whole host of reasons, this can become very problematic when a parent does not have a court order, or in cases where one parent chooses not to exercise access, and/or have any involvement in the lives of their children.



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## **What is the purpose of a consent letter?**

Parents frequently inquire as to the purpose of a consent letter. A consent letter is a document that helps to demonstrate to the appropriate authorities that the children, who are travelling either alone or with one parent, have the necessary permission to travel from each parent or guardian that has involvement in their lives.

Despite there being no legal requirement in Canada for children to carry a consent letter with them when they travel, a consent letter may still be requested when the children leave or enter a foreign country. Similarly, airlines or Canadian border officials may request proof of consent. It is possible for children to be denied entry into or exit from Canada if the consent is not produced.

Children under the age of majority (18 years of age in Ontario) should always carry proof of consent with them when they travel, whether they are travelling with a parent or alone. A proper travel consent letter specifies the dates of travel, and all of the destinations included in the relevant trip.

Under the current Canadian law, consent letters do not need to be certified. However, border security officers tend to trust the authenticity of travel consents that have been certified

by someone authorized to administer oaths. It is generally advisable to have a travel consent certified by a commissioner of oaths, notary public, or lawyer.

## **Is consent required if one party possesses an order for sole custody?**

Some parents believe that their status as the “sole custodial parent” entitles them to travel with their children without a travel consent. This is not the case. Even parents who have sole/full custody should obtain a consent letter from the non-travelling access parent. Absent a court order expressly allowing the sole custodial parent to travel without the consent of the access parent, the access parent’s consent is required.

In cases where a parent has sole/full custody and the other parent does not have any access rights, a travel consent letter is not required from the non-travelling parent. However, the child should carry a copy of the court order that outlines the custodial and no-access arrangement with them when they travel.

## **What if one of the parents is deceased?**

If one of the parents of the children is deceased, it is advisable that the children carry a copy of the death certificate of the deceased parent. This will ensure that the child is able to

travel without any interruption or complication to their travel plans.

## **What if one parent refuses to sign a travel consent?**

Often times, one parent will refuse to sign a travel consent, thereby complicating the travel plans for the children. These situations can be very frustrating and can add to the turmoil between the parents.

First and foremost, the parent requesting the consent should try to figure out the exact reason as to why the non-travelling parent will not sign the consent. Sometimes the refusal can stem from a simple misunderstanding, or concerns that can be easily addressed.

Other times, however, it becomes clear that the parent’s reason for refusing to give their consent is malicious, spiteful or simply unreasonable. In these cases, the parent seeking the consent is left with very specific options.

Depending on the relationship that the parents have with one another, a first step may be to try to mediate the issue. This can be less expensive than seeking resolution through the courts, and may help the parents come to an agreement.



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In the case that mediation is not an option, the parent seeking travel consent is forced to turn to the courts. If there is an existing court order, the parent is able to bring a motion for an order dispensing with the need for the other parent's consent (either for a single trip or for all future trips). If the parents do not have a court order, the parent seeking consent will need to file a formal court application. The court process can take a long time. Therefore, if you do not have a court order and you are planning to travel with your children, you should begin to think about this process and consult a family lawyer as soon as possible.

If a parent is not involved in the lives of their children, and does not exercise access, this does not mitigate the need to obtain their consent for travel. If no formal court order exists denying access to a parent, that parent continues to have the right to make a claim for access. The parent's lack of involvement in their children's lives is not enough, in and of itself, to dispense with the need for that parent's consent. For this reason, it is extremely important to ensure that a court order addresses these, and other outstanding issues. If you are a parent dealing with the other parent's lack of involvement, a family lawyer can help to resolve these issues for you.

## How can I obtain a passport for my child without the other parent's signature?

Yet another obstacle often faced by parents who have separated or divorced is the challenge of obtaining the required parental signatures necessary for passport applications. If a parent is not involved in their children's lives, it can prove very difficult to obtain that parent's signature. Parents who find themselves in this situation will once again be required to turn to the court system. In the absence of a court order that deals with travel documents, the parent wishing to apply for documentation will be required to bring an application and deal with all outstanding issues surrounding custody and access. If there is an existing court order, but that order is silent on travel documents, the parent wishing to obtain the travel document will need to bring a motion to change a final order. It is recommended that you consult a family lawyer to deal with any issues relating to obtaining travel documents for your children.



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## UPCOMING TOPICS

1. DOMESTIC CONTRACTS
2. HOW TO PREPARE FOR SEPARATION
3. STEPS INVOLVED IN DIVORCE
4. CUSTODY VS. ACCESS
5. CHILD SUPPORT VS. SECTION 7 EXPENSES

## About Adina:

Adina began her work at Hummingbird Lawyers as a summer intern in 2013 and completed 10 months as a Student-at-Law with the firm. Adina is now an Associate Lawyer working in Hummingbird LLP's Family Law Department. She maintains a strong interest in Family Law, Real Estate and Civil Litigation. Adina's desire to practice law comes from her hope to make a difference, not only in the community at large, but also in individual clients' lives.

Adina has expanded her knowledge and abilities through her volunteer work and community involvement. Volunteering for Community Legal Aid as a caseworker and litigator in both their regular program and Family Law Program and for Pro Bono Students Canada (Family Law Project) allowed her to truly understand what it means to advocate for clients.

Adina has experience in helping clients dealing with separation and divorce. Her main focus is on custody and access issues that stem from family turmoil and breakdown. Adina's family law practice includes Collaborative Family Law, Simple or

Uncontested Divorces, Spousal Support, Termination of Spousal Support, Child Support, Termination of Child Support, Custody and Access Rights, Mobility Issues and Rights, Division of Property, including the Matrimonial Home, Equalization of Net Family Property, Litigation Strategy and Management, Separation Agreements, Marriage Contracts, Cohabitation Agreements, Prenuptial Agreements and Representation at Mediation and Arbitration Dispute Resolution.

The Hummingbird Law team provides top class legal counsel to the families and businesses in our community.

As family-oriented entrepreneurs, we understand the deep links between work and home. Innovators in our community put their families first, and families are active contributors to thriving ventures. Our legal team sees the full picture, and is ready to stand with you for the long haul, in personal and commercial matters.