

## Want to move with your children? Relocation laws are changing in Canada

February 4, 2021; by Kelly Watson\*

Are you separated and hoping to move to another city/province/country with your children? Relocation is one of the most frequently litigated family law issues.<sup>1</sup> The law in Canada regarding a parent's ability to move with children (also called relocation or mobility) is changing. Effective March 1, 2021, these new changes will be governed by section 16.9 of the *Divorce Act* (Bill C-78) and incorporated into sections 39.1 to 39.4 of the *Children's Law Reform Act*.

Here is a summary of what parents need to know if you want to move with your child(ren):

- You have to notify the other parent and/or anyone else with a parenting order (which may include other family members such as grandparents) at least 60 days before you intend to move, including the date of proposed move, new address, and outline a proposal for how to continue parenting time and maintain the children's relationship with the other parent and other family members. They have 30 days to respond indicating whether or not they consent to or reject the move. If you cannot agree, lawyers have a duty to encourage you to negotiate out of court and ideally reach a mutually agreeable resolution. But if you still cannot agree, the court can assist.
- As always, the test is what is in the best interest of the child(ren). The factors a court will use to determine whether or not it is in the best interest of the children are:
  - Reasons for the move;
  - Impact the move will have on the children;
  - Current parenting schedule and effect a proposed move would have on your children's relationship with the other parent or possibly even extended family such as a grandparent and how involved the other parent or family member(s) are in the child's life;
  - Did the parent wanting to move give proper notice to other parent?;
  - Is there a court order or agreement currently in place that specifies a geographic area for the children to live? Are both parents following this order or agreement? Would a potential move affect the compliance with the order or agreement?;
  - Reasonableness of the proposed move, for example: Are there financial considerations? Is there a job opportunity? Are there extended family members that live in the proposed new location?; and

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<sup>1</sup> Legislative Background: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act (Bill C-78 in the 42nd Parliament), available here: <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/c78/03.html>

- Increased travel costs associated with a proposed move – be prepared to share or pay a greater percentage of the moving costs if you are the one requesting the relocation.
- The court shall **not** consider whether the parent would move to the proposed new location – with or without the children.
- If the children live primarily with you, then the other parent has the onus (responsibility) to show why the move is not in the children’s best interest.
- If the children spend substantially equal time with both parents, then the parent requesting the move has the onus (responsibility) to show why a move is in the children’s best interest.

The court can make exceptions if there has been family violence especially if the violence is still ongoing.

If you have any questions and wish to schedule a consultation with a lawyer at our firm, please contact Kelly Watson at [kwatson@nathenssiegel.com](mailto:kwatson@nathenssiegel.com). Thank you.

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