

Moving With Children

If you share parenting time with other parents or guardians, moving to a new city, province or even country is complicated. Whether it is for a new job or to be closer to family, moving becomes a legal issue. There are lots of things to consider, including notifying others of the move or getting the court's permission.

What Should I Do First?

You have parenting time with a child and you want to move. You should take a few steps first:

1. You should review your parenting agreement or court orders.

Usually these documents state that you must give notice to other parents, guardians or persons with contact if you want to move. You might be abducting the children if you move them without providing these other people with notice. The other parent or guardian could apply for an order for the return of the children. There could be long-term consequences on the parenting arrangements.

2. You should review your legal obligations to notify others of the move.

The *Divorce Act* sets out notice requirements for everyone involved. The *Divorce Act* also sets out an objection process. If your order is made under the *Divorce Act*, you must obey these notice requirements, unless your order says otherwise. For more information, see CPLEA's resource called **Moving and the Divorce Act**. This resource and more are freely available at www.cplea.ca.

You may face legal consequences if you move with the children without notice to the other parent, against the other parent's wishes or without the court's approval.

You should always think about what is in the best interests of the child. How will your move impact the child?

3. You should talk with the other parents or guardians and anyone who has contact with the children.

You might be able to work out a new parenting schedule with the other parent or guardian and avoid going to court. You could also use a mediator or collaborative process to come to a new agreement. For example, you might agree that the children will be with the other parent or guardian on all school holidays. You could also suggest ways to ensure the parent or guardian stays in contact with the children using technology. For example, you could buy a cell phone for the child so that the other parent or guardian can send text messages and call the child at any time.

4. You could talk to a lawyer for advice on whether you can move with the child.

What if We Do Not Agree On the Move?

If you and the other parents or guardians cannot reach an agreement, you can try to resolve the dispute through mediation or collaborative processes. If you still cannot reach an agreement, then you will need to apply to court to get a judge's permission to move. The other parents or guardians can apply to the court for an order that stops you from moving with the children or that changes the primary home of the children. You will be able to tell the judge why they should allow you to move the children. The judge will make a decision in the children's best interests, including looking at the factors listed on page 3. Going to court should always be the last resort.

Do I Have to Give the Other Parent or Guardian Notice of My Move?

Yes, in most cases. Most parents are joint guardians of their children. This means that unless a court has ordered otherwise, you must make major decisions about your children together.

If you have a parenting agreement or court order, those documents will usually say what kind of notice you must give before you can move with the children. If your court order is under the *Divorce Act*, you will have to give formal notice according to the process set out in the *Divorce Act*. For more information, see CPLEA's resource called **Moving and the Divorce Act**. This resource and more are freely available at www.cplea.ca.

Even if you do not have a formal agreement or court order, moving with the children usually has a big impact on the children's relationship with the other parents or guardians.

What Happens if I Do Not Give Notice and Move With the Children?

You may be abducting the children if you choose to move with them without giving notice to the other parents or guardians. The other parents or guardians could apply to court for an order that you return the children. This would be costly and negatively impact the children.

A judge might also interpret your move without permission as you not acting in the best interests of the children. This could have long-lasting impacts on your parenting arrangements and responsibilities. The move might backfire and be held against you.

How Will a Judge Decide?

Judges only think about what is in the **best interests of the children** when making decisions. In making a decision about whether moving is in the children's best interests, the court thinks about:

- parenting arrangements and the relationship between the children and each parent or guardian
- how each parent or guardian supports communication between the children and the other parents or guardians
- efforts you will take to make sure the children stay in contact with their other parents and guardians
- views of the children (depending on their age and maturity)
- reasons why you are moving
- impact on the children if they were to move to the home of the parent who is not moving. For example, if the children live most of the time with you (the parent who is moving), what is the impact on the children if the other parent becomes the primary caregiver?
- impact on the children's lives, such as moving away from family members or adjusting to a new community, schools and activities
- any orders or agreements that say in what area the child should live

If there are concerns of family violence, talk to a lawyer or Family Court Counsellor before giving notice and moving.

The court will NOT look at whether the person who intends to relocate would still move if the child was not allowed to move.

How Quickly Can I Go to Court?

Court proceedings take time. It can take months, or even years, to go through the court processes and have a judge make a decision. The judge will want to hear all the evidence from all parents or guardians so they can decide if the move is in the children's best interest. The judge usually does not give permission to move before making a final decision. It is best to make your court application well in advance of your planned move.

What if it is an Emergency?

If it is a financial emergency, you should try to use all other community supports or ask the court for a support order.

If your or your children's safety is an issue, you should try to get a protection order from the court and ask for community and police assistance.

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