



Moving after separation or divorce?

Parenting laws in the *Divorce Act*, which used to be about “custody” and “access,” have changed. However, these changes **do not apply** until March 1, 2021. Until then, the current law applies.

This page has information about the new laws that apply to moves after March 1, 2021.

The new *Divorce Act* includes a framework to guide divorced or divorcing parents, family justice professionals and courts in situations when a parent plans

- to move their child **or**
- to move away from their child

There are rules about:

- the new steps to follow when a parent plans to move
- how a court will decide whether a child can or cannot relocate.

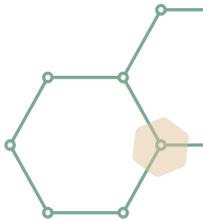
These rules are meant to help parents come to agreements about relocation and avoid going to court where possible.

What is a “relocation”?

Not all moves are considered a “relocation.” The *Divorce Act* has different rules depending on whether a move by a person with parenting responsibilities or by a child will affect the child’s relationships in a considerable way.

A “**relocation**” generally means the parenting time schedule for the child will no longer work because of the move. For example, a parent’s move with their child from Newfoundland to Ontario would generally be considered a relocation. A parent’s move from Newfoundland to Ontario away from their child would also be a relocation. This is because of the distance between the parent’s new home and the child’s current home, and how this affects the parenting time schedule.

It’s important to look at each situation and the impact on the child. Sometimes even a move of a short distance can be a “relocation” if there will be a considerable impact on the parenting schedule.



Remember:

after March 1, 2021, the terms “custody” and “access” will no longer be used in the *Divorce Act*. When this fact sheet refers to court orders for “parenting responsibilities,” it includes both old orders for “custody” and “access” as well as new parenting orders, which allocate “parenting time” and “decision-making responsibilities.”

When you need to give notice of a plan to move

If you have a court order under the *Divorce Act* for parenting responsibilities, you have to give notice of your plan to move.

You need to give notice whether you are planning to move with your child or without your child.

Who you need to give notice to

You need to give notice of your plan to move to:

- a person with parenting responsibilities
- a person with contact under a contact order

For more information on parenting and contact orders consult the [Parenting arrangements after separation or divorce](#) factsheet.

What the notice needs to say

Move that is not a relocation

If the move will not have a considerable impact on the child's relationships with the people receiving notice - for example, for most moves within your town or city - you must let the other person(s) know:

- the date you are moving
- your new address
- your new contact information

This is so other people with parenting responsibilities or a contact order will know where the child lives, and where to pick up and drop off the child.

Move that is a relocation

If the move will have a considerable impact on the child's relationships with the people receiving notice - for example, the parenting time schedule will no longer work - then it is a "relocation" and you must follow the relocation rules under the *Divorce Act*.

If you are planning to relocate, you must:

- give notice at least 60 days before the move
- provide specific details about the move. The [Notice of Relocation](#) shows you all of the information you must include in your notice. This form asks for information about:
 - when the move will take place
 - your new address

Remember: if the move is likely to have a considerable impact on the parenting time schedule, this is a relocation, so you must follow the notice rules for a relocation.

- your contact information
- how you think the parenting and any contact schedule could be changed to help support the child's relationships with the people receiving notice, if the relocation takes place

Exceptions to notice if you are scared about your safety or your child's safety

If you are scared about your or your child's safety, you can ask the court for a change to the notice rules. You can apply to the court without telling the other party (usually the other parent).

The *Divorce Act* gives the example of family violence as a situation where a change to the notice rules may be allowed. The court will need evidence of family violence (for example, 911 calls, police reports, photos) to support your request for an exception to the notice rules.

Remember: even where a parent is moving without their child, notice of a relocation is still required. This is because the move could have a considerable impact on the child's relationship with that parent.

What happens after the Notice of Relocation is given

Keep trying to come to an agreement

The *Divorce Act* expects parents to try to work out issues involving their children, including a child's possible relocation, by using out-of-court [family dispute resolution](#) processes such as negotiation and mediation, unless it would not be appropriate. It is generally better for parents to come up with their own solution, as you know your children best. A judge may also make a decision that one or both of you do not like.

There are many factors to think about when discussing whether a move is in the child's best interests, including:

- If the move happens, are there ways to make up some of the parenting time for the non-moving parent, for example, extra parenting time in the summer and during other school holidays?
- Could the move wait until the child is older?
- Could the other parent also move to the new location?
- If the move is to join a parent's new partner, could the partner move to the child's current place of residence instead, so the parenting schedule doesn't need to change?

If both parents agree to the child's relocation, no objection or court application is needed.

The person who planned the relocation with the child **can** move on or after the date set out in the notice if:

- 1) the other person with parenting responsibilities who received the relocation notice does not object to the child's move within 30 days of receiving the notice, and
- 2) there is no court order saying the move cannot happen.

Although the *Divorce Act* does not require it, it can be a good idea to have the new parenting schedule and place of residence set out in an updated court order. If you and the other person with parenting responsibilities agree, the agreement can be put in a court order relatively easily. If you do not update the court order, it may cause difficulties with schools and other authorities, and it would be difficult to enforce the new arrangement, if needed.

If you don't agree with the plan to relocate your child, there are two ways for you to object

If you do not agree with the plan to relocate your child, and you cannot come to an agreement with the other person with parenting responsibilities, you have **30 days to object after you receive the notice**.

There are two ways to object:

1. you can object by giving the other person specific details about your objection. The [Objection to Relocation](#) form shows you all of the information you must include in your objection; or
2. you can apply to the court to stop the relocation

Once you object, the relocation cannot take place until a judge decides that it is in the child's best interests.

The Objection to Relocation form asks you to explain:

- that you object to the relocation
- why you object
- your views on the proposal for parenting time, contact and decision-making responsibility

If you receive an **Objection to Relocation**, or a court application opposing the relocation has been filed, **you cannot move the child until the court makes an order allowing the move**.

Two points about objections:

1. It is only possible to object to the plan to relocate your **child**; one parent cannot object to the other parent's plan to move.
2. Only a person with parenting responsibilities can object. A person with a contact order cannot object to a plan to relocate a child. They can, however, ask for a contact order to be changed if the relocation is permitted.

How a court will decide whether a child can or cannot relocate

The court will decide whether a child can or cannot relocate based on the best interests of the child.

Best interests of the child factors

There are a number of factors the court will look at to determine the best interests of the child (see [parenting arrangements](#) fact sheet). There are also other factors the court must look at in a relocation case.

No single factor will decide the case, and the court will look at how each one applies in your situation.

In a relocation case, the extra factors the court will look at are:

1. **The reason for the relocation** – the court will want to know why there is a plan to move. For example, is it for a new job, to be with a new partner, or for the child to attend a specific school?
2. **The impact of the relocation** on the child – for example, what are the child's family connections to the current community and the proposed new community?
3. **The parenting time and involvement** that each parent has with the child – the court will want to know, for example, whether the child has equally strong relationships with both parents, or whether one of the parents has very little involvement with the child.
4. **Whether the person planning the relocation has followed the notice rules** – the court will want to know if the move has been well planned and if the other parent has been informed and given an opportunity to respond to the proposal. If you do not follow these rules, the court may see this negatively.
5. **Whether there is a court order, agreement or arbitral award** that says a child is supposed to live in a certain place. For example, if you and the other parent have a separation agreement that says that the child must continue to live in a specific city, this is a factor the court will look at.
6. **Whether the proposal to change the parenting arrangement is reasonable.** The court will look at the location of the child's proposed new home, and how practical and costly it would be for the non-moving parent to travel to the child's new location to spend time together. The court will also look at how easy it is for the child to travel back to their old place of residence. A child's age and personality, along with airline, train and bus rules about children's travel, are all important to think about.
7. **Whether parents have been complying with their family law orders, agreements and arbitral awards.** For example, a court would want to know whether a parent who is proposing a move has denied parenting time in the past. This may predict future problems. The court might also want to know if the parent who does not want the move has failed in the past to use their parenting time or not paid child support, putting the other parent at financial risk.

Remember: The court can make exceptions to the notice rules in certain cases, for example, where there has been family violence.

An **arbitral award** is a decision made by an arbitrator (a person other than a judge, that the spouses have agreed can make a decision for them). Provincial laws determine who can arbitrate in a family law case.

Who has to prove whether the relocation is in the best interests of the child

The *Divorce Act* has two other rules to promote stability for the child and give the parties guidance about how relocation cases will be decided.

Equal parenting time

If both parents have **substantially equal parenting time** with the child (have roughly equal responsibility for caring for the child), the person planning to relocate with the child must prove on the balance of probabilities (which means it is more likely than not) that the move is in the best interests of the child.

Clear primary caregiver

If the person planning to relocate with the child has the **vast majority of the parenting time** with the child, the other parent must prove on the balance of probabilities (which means it is more likely than not) that the move would not be in the best interests of the child.

Travel expenses to exercise parenting time

If a relocation happens, the child and the non-moving parent may need to travel to be together, which has costs, such as airline or train travel and hotels.

The *Divorce Act* allows the court to make an order about whether and how these expenses would be shared between the parents.

Related links

- [Making Plans: A guide to parenting arrangements after separation or divorce](#)
- [The parenting plan checklist](#)
- [Access the parenting plan tool](#)
- [Parenting Fact Sheet](#)
- [Divorce and Family Violence](#)
- [Family dispute resolution: resolving family law issues out of court](#)

These two other rules only apply where:

- the parenting arrangement is set out in a court order, agreement or arbitral award, and
- the parents are complying with it.

This is because, in these cases, a court or the parents have already decided what is in the best interests of the child, and now someone is proposing to change that living arrangement.