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Le droit de la femme à savoir

Moving with your Child: What every Parent should know about the Law

September 16th, 2021

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Valerie Dye, Lawyer, Dye Law

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This webinar is for general information purposes only and is not legal advice.

It is not intended to be used as legal advice for a specific legal problem.

METRAC

METRAC: Action on Violence

- works to end violence against women, youth and children, Two Spirit, Trans and Nonbinary people.
- a not-for-profit, community-based organization

www.metrac.org

METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca

www.undroitdefamille.ca

Presenter

Valerie Dye

Family Lawyer, Dye Law

Valerie is the owner of DYE LAW of which she is a sole practitioner. Her practice focuses mainly on family law, real estate and; wills and estate. Valerie Has also taught business law at Ryerson University as a sessional lecturer.

Valerie was first admitted to practice in Guyana where she practiced briefly before moving to St. Kitts and Nevis, where she worked as Crown Counsel for the Ministry of the Attorney General. She later attended the University of Manchester in the United Kingdom where she did postgraduate studies and where she also taught for a number of years. Valerie also taught at the University of Liverpool online LLM programme.

Valerie was called to the Ontario Bar in 2013 and has been in solo practice since February 2014.





Introduction

Topics to be Covered

- Requirements for divorced & separated parents who wish to move or relocate with a child under the Divorce Act & Children's Law Reform Act
- The new definition of relocation which has been included in the Divorce Act & Children's Law Reform Act
- Details on the notice of relocation & notice of residence for persons with Parenting Orders & Contact

Information is accurate as of September 16th , 2021

The Divorce Act and Children's Law Reform Act

The ***Divorce Act*** and ***Children's Law Reform Act***, now tells parents what they can do:

a) if they want to move with their child
and

a) If they want to move without their child

Relocation

Relocation is defined as:

*a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility — or who has a pending application for a parenting order — **that is likely to have a significant impact on the child's relationship with:***

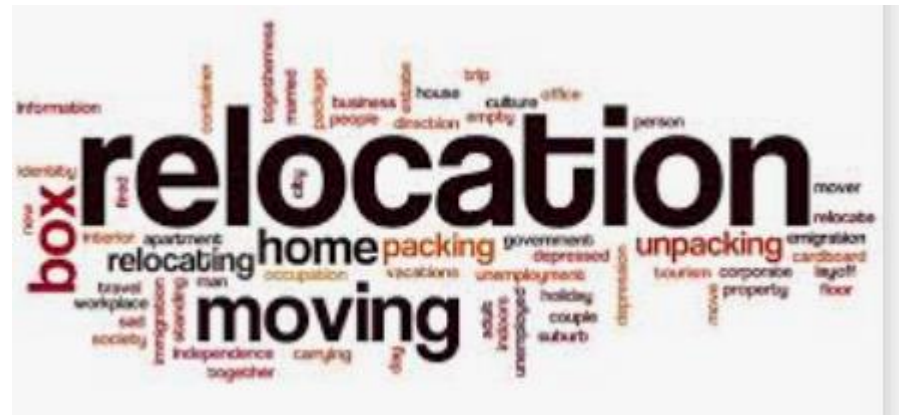
(a) a person who has parenting time, decision-making responsibility, or an application for a parenting order in respect of that child pending; or

(b) a person who has contact with the child under a contact order.

What is NOT relocation

- A **change in residence** is not a relocation i.e. A **change in address** that would **not have a significant impact** on a child's relationship with anyone who has **parenting time** or **contact** is not a relocation.

NOTICE PRIOR TO RELOCATION



Landmark case...

Gordon v Goertz

- Material Change and process of deciding mobility



Changes to the Legislation

- Divorce Act, as of March 2021, and
- Children's Law Reform Act, March/April 2021
- New terms for **Custody** and **Access**:
- Custody is now called **Decision making responsibility**
- Access is now called **Parenting Time**

Notice of Relocation

When should **Notice** be given?

What should be the content of the **Notice**?

Who needs to give **Notice**?

Exceptions to the **Notice**?

What happens once **Notice** is given to the other party?

NOTICE OF RELOCATION			
Part A – Information about the person giving notice			
Name			
Current Address			
Current Phone Number		Current Email Address	
Part B – Information about the relocation			
<i>Please check one box:</i>			
<input type="checkbox"/> I am planning to relocate without my child(ren)			
<input type="checkbox"/> I am planning to relocate with my child(ren)			
<input type="checkbox"/> I am planning to relocate only my child(ren) not myself			
1.	Name of child: <input type="checkbox"/> Planning to relocate this child <input type="checkbox"/> Not planning to relocate this child		
2.	Name of child: <input type="checkbox"/> Planning to relocate this child <input type="checkbox"/> Not planning to relocate this child		
3.	Name of child: <input type="checkbox"/> Planning to relocate this child <input type="checkbox"/> Not planning to relocate this child		
4.	Name of child: <input type="checkbox"/> Planning to relocate this child <input type="checkbox"/> Not planning to relocate this child		

Mobility Under the Children's Law Reform Act



How Does the Court Decide?

...Best interest of the Child

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;

How Does the Court Decide? Cont'd

- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;

How Does the Court Decide? Cont'd

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Family violence

The court will consider :

- (a) the nature, seriousness and frequency of the family violence and when it occurred;
- (b) whether there is a pattern of coercive and controlling behavior in relation to a family member;
- (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
- (d) the physical, emotional and psychological harm or risk of harm to the child;
- (e) any compromise to the safety of the child or other family member;
- (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
- (h) any other relevant factor.

Other Factors

Apart from the factors that help determine the child's best interest the courts will consider:

- a. the reasons for the relocation;
- b. the impact of the relocation on the child;
- c. the amount of time spent with the child by each person who has parenting time or is an applicant for a parenting order with respect to the child, and the level of involvement in the child's life of each of those persons;
- d. whether the person who intends to relocate the child has complied with any applicable notice requirement under section 39.3 and any applicable Act, regulation, order, family arbitration award and agreement;

Other factors, Con'td

- e. the existence of an order, family arbitration award or agreement that specifies the geographic area in which the child is to reside;
- f. the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of decision-making responsibility, parenting time or contact, taking into consideration, among other things, the location of the new residence and the travel expenses; and
- g. whether each person who has decision-making responsibility or parenting time or is an applicant for a parenting order with respect to the child has complied with their obligations under any applicable Act, regulation, order, family arbitration award or agreement, and the likelihood of future compliance

BURDEN OF PROOF

Costs Relating to Exercise of Parenting Time

- What happens if the court permits a relocation?



Final Thoughts:

1. Relocation is defined as a change of residence that will impact the **parenting time** and **contact** with another person
2. Change of residence is simply a move that does not create such an impact
3. In both situations **Notice** is required but for a relocation 60 days' notice is required.
4. There are various specific contents in the notice
5. A response should be provided within 30 days.
6. If the matter goes before the court the court will make a determination based on what is in the best interest of the child.
7. The court will also take additional factors into consideration such as the reason for the relocation, the impact of the relocation of the child.



Q & A

Please fill out this survey!

<https://www.surveymonkey.com/r/S8MW6F8>



THANK YOU

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