

# Moving With Your Children

There could be many valid reasons why a parent with sole custody of his or her children might want to move to a new city or province. It could be a positive step such as a new and promising job for the parent or their new partner, or for more family support from extended family. It could be for more difficult reasons such as financial necessity or fear of the other parent. Whatever the reasons, there are legal issues that should be faced openly and in a timely manner. A court application should be your last resort and just leaving with the children without notice to the other parent or against their wishes could lead to very serious problems. Here are some things to consider.

## What should I do first?

You should talk with your children's other parent or guardian. You may find that you will be able to work out an agreement amicably and thereby avoid a costly and confrontational court application. You might be able to agree that the other parent can have the children for an extended time in the summer and over major holidays such as Christmas and Easter and spring breaks. You might also suggest that the children have access to technology such as cell phones so that they can call, text and use facetime with the other parent.

## What if we can't reach an agreement?

Another possibility before going to court would be to enlist the services of a mediator to see if the assistance of a neutral third party could help you reach an agreement.

## Do I have to give the other parent or guardian notice of my move?

Yes. Most parents are joint guardians of their children. This means that unless a court has ordered otherwise, parents are required to make major decisions regarding their children together. If you have a parenting agreement or court order, those documents will usually set out the requirements for notice before you move with the children. Even if you don't have a formal agreement or order, moving with the children will usually have a pretty big impact on the children's relationship with the other parent, so it is best to give them notice.

If you choose to move with the children without notice to the other parent or guardian, you might be accused of abducting the children. The other parent could apply for an order for the children to be returned, and there could be long-term consequences for your parenting arrangements.

## What if the other parent refuses to let me move with the children?

The other parent can bring an application in court asking a judge to grant an order prohibiting you from moving with the children, or changing the primary residence of the children to him or her. You, of course, would have the opportunity to argue your position as to why you should be allowed to make the move.

## How will a judge decide?

Judges have one overriding concern when dealing with cases such as this: What is in the best interests of the child? Everything else is secondary to this consideration. In making this determination, judges consider a number of factors, such as:

- the existing parenting relationship and the relationship between the children and each parent or guardian;
- the plans that the custodial parent or guardian has in place to facilitate contact between the other parent and the children, and what efforts the parent is willing to make to see that this contact happens;

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- the views of the children, if it is appropriate. A very young child will not usually have a say in the move, while an older child or teenager would probably be asked to provide their opinion;
- the reasons why the parent with custody is moving. For example, the judge will want to know if he or she is moving for an economic reason, such as a better employment opportunity, or to have increased family support by moving back to be closer to extended family;
- the effect on the children if they were to move to the home of the parent who is not relocating. For example, if the moving parent has always spent the most time with the children, what effect would it have on the children if the other parent were to become the primary caregiver?
- the disruption to the children's lives that would occur if they have to adjust to a new community, school and extra curricular activities like hockey leagues and piano lessons, and if the move will take the children away from extended family.

### How quickly could such a court application be heard?

Unfortunately, court proceedings take time. It can take months, or even years, to get the case into the appropriate setting, such as a special court for deciding family matters. The judge will want to hear all the evidence from both parents so that he or she can decide whether the relocation of the children is in their best interests. Permission to move before a final decision is made is rare and only granted in exceptional circumstances. This is why it is best for a relocating parent to plan well in advance.

### What would happen if I just move with the children?

This is not a good idea. Some judges have suggested that the very fact that a parent moved unilaterally could be regarded as convincing evidence that the parent is not acting in the best interests of the children. A judge may, on the application of the other parent, order you to move back with the children, which is costly and extremely disruptive and upsetting to the children. The court in the province to which you have moved will have little choice but to enforce the order. It is even possible that you might face charges of abducting the children.

If you truly feel that you have no other choice but to relocate without waiting for the court's permission, many troubles can be avoided by providing the other parent with an address where they can contact you and the children. This address does not have to be your actual address. It can be an address of a friend, support agency or family member, who will notify you if anything, such as court documents, arrives.

### What if it is an emergency?

If it is a financial emergency, you should try to use all available community supports or ask for a support order. If it is a question of safety, you should seek a protection order from the court and ask for community and police assistance.

Funding provided by **Alberta LAW FOUNDATION**