

## PUBLICATION

### Family Matters: Can I move to another Province (or Country) with my child?

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In Family Law, we hear this question a lot. Whether it's a new job, a new school, proximity to family, or just a change of scenery, many separated parents may find themselves seeking permission to move with their child or children. I've seen parents move first and ask permission later, which is not the right approach when seeking to move with a child after a separation.

The crux of the issue is custody and residence and its intersection with an individual's mobility rights within Canada. Put another way, the key issue is a parent's right to move wherever they want to go and whether such a move would impact the current custodial arrangement. For instance, if Dad wants to move to Ontario and take his child with him, he would be denying Mom access and custody to his child. Is that fair? The answer to this is 'maybe,' depending upon the best interests of the child.

Whatever the answer may be, the starting point is the *Divorce Act* and the leading case from the Supreme Court of Canada: *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC). The *Gordon* decision interprets how federal legislation applies to all divorce actions in Canada where one parent wishes to move with a child.

The Supreme Court breaks the inquiry into a two-pronged test: (1) Has there been a material change in circumstances (and often just proposing a move is a material change); and (2) Would the move be in the child or children's best interests? There are a number of factors the Court will look at in determining whether the move is in the child or children's best interests, such as the existing custody arrangements and the effect of the move on the child or children. Put simply, each case - each decision about moving away and changing the custody - will be decided on its facts and requires an in depth analysis.

For this reason, mobility applications (as they are called) are perhaps among the most complex and most hotly contested in Family Law. It is understandable that one parent might feel wronged or that it is unjust to have their custody and access infringed, even if the motives of the moving parent are only with the best of intentions.

What about parents who never married but are faced with the same set of circumstances, with a

parent relocating?

The appropriate provincial legislation will apply (the *Family Law Act* in Alberta), but there is likely to be large crossover in principles and methods. Alberta, for instance, has developed a large body of case law that interprets and applies the factors from *Gordon* to nonmarried couples in issues of mobility, with some key distinctions and considerations.

For further information about moving with your kids, or if your ex is suggesting a move, please contact any member of our Family Law Group.