



Relocating with children during divorce or separation – Part 1

Presented by:

Min Jin, Staff Lawyer, Luke's Place

Phebe Quaye, Program Manager, Luke's Place

About Luke's Place



Luke's Place

Luke's Place is an award-winning non-profit centre of excellence organization solely devoted to improving the safety and experience of women and their children as they proceed through the family law process after fleeing an abusive relationship.

lukesplace.ca

905-728-0978

Contextualizing Relocation



Some research suggests that 90 to 95 percent of parents proposing to relocate with a child are women.



A woman may need to move away from the area in order to keep herself and her children safe. This move may be to another home or apartment in the same town or community, or it could be a move to another town or community altogether.

Overview of the Process

Determine whether the move is a change in residence (s. 16.8) or a relocation (s. 16.9)



Notice

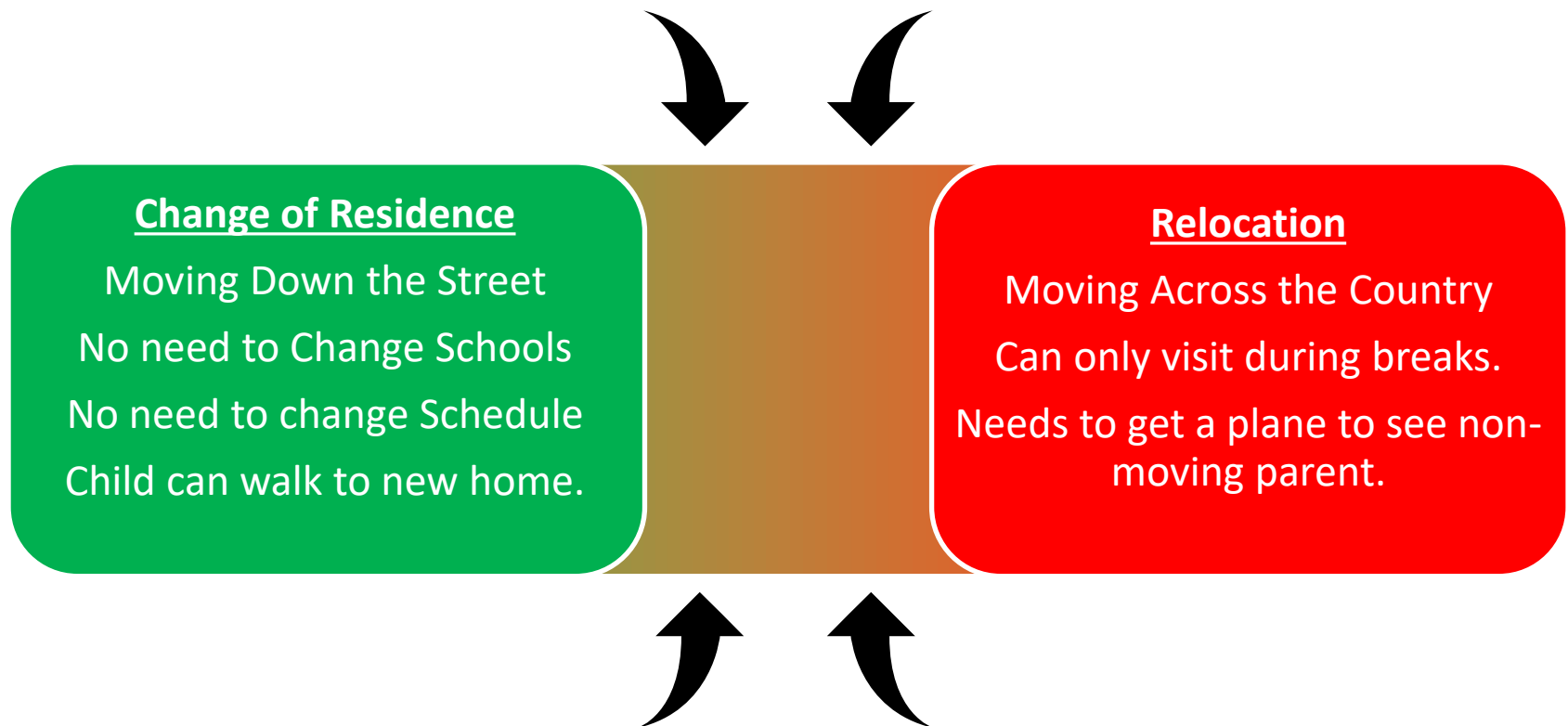


Either move or go to court and ask for a court order to move

What is the difference between “relocation” and “change in residence”

<i>DIVORCE ACT:</i>	<i>CHILDREN’S LAW REFORM ACT:</i>
Relocation Means 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;	“Relocation” means a change in residence of a child, or of a person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, that is likely to have a significant impact on the child’s relationship with, (a) another person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, or (b) a person who has contact with respect to the child under a contact order;

What does this mean in practice?



How do we determine if a move is a relocation?



Is it the distance? No.

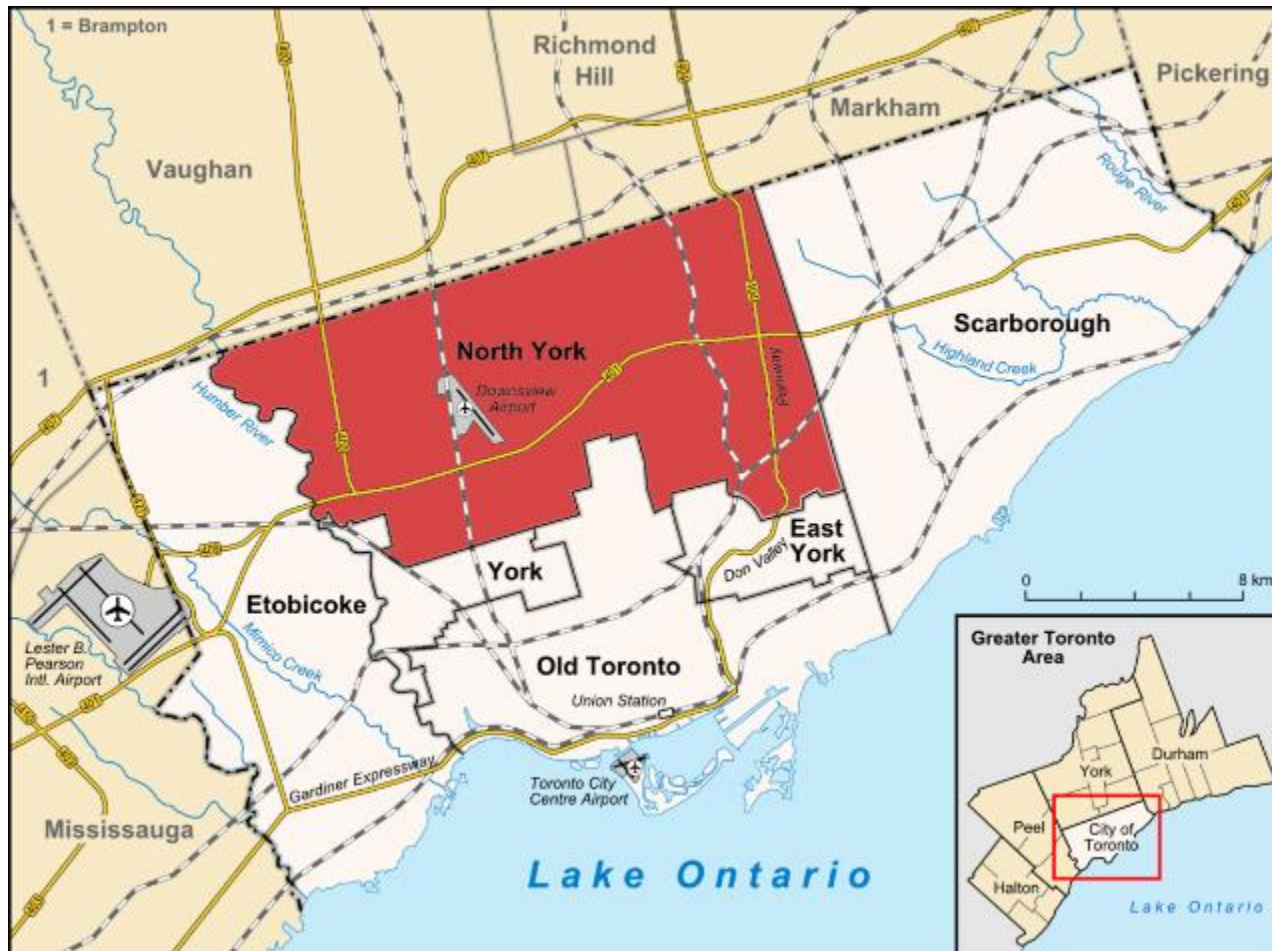


Is it the added cost? No.



Is it the school? No.

How do we determine if a move is a relocation?



Some of the Factors to Consider as Summarized by the Courts

How the move would change the parenting time of the non-moving parent, both in absolute and in proportion

The distance that a party is moving and the change in the length of commute for the parents

How the move would affect the degree of involvement of the non-moving parent in the child's activities

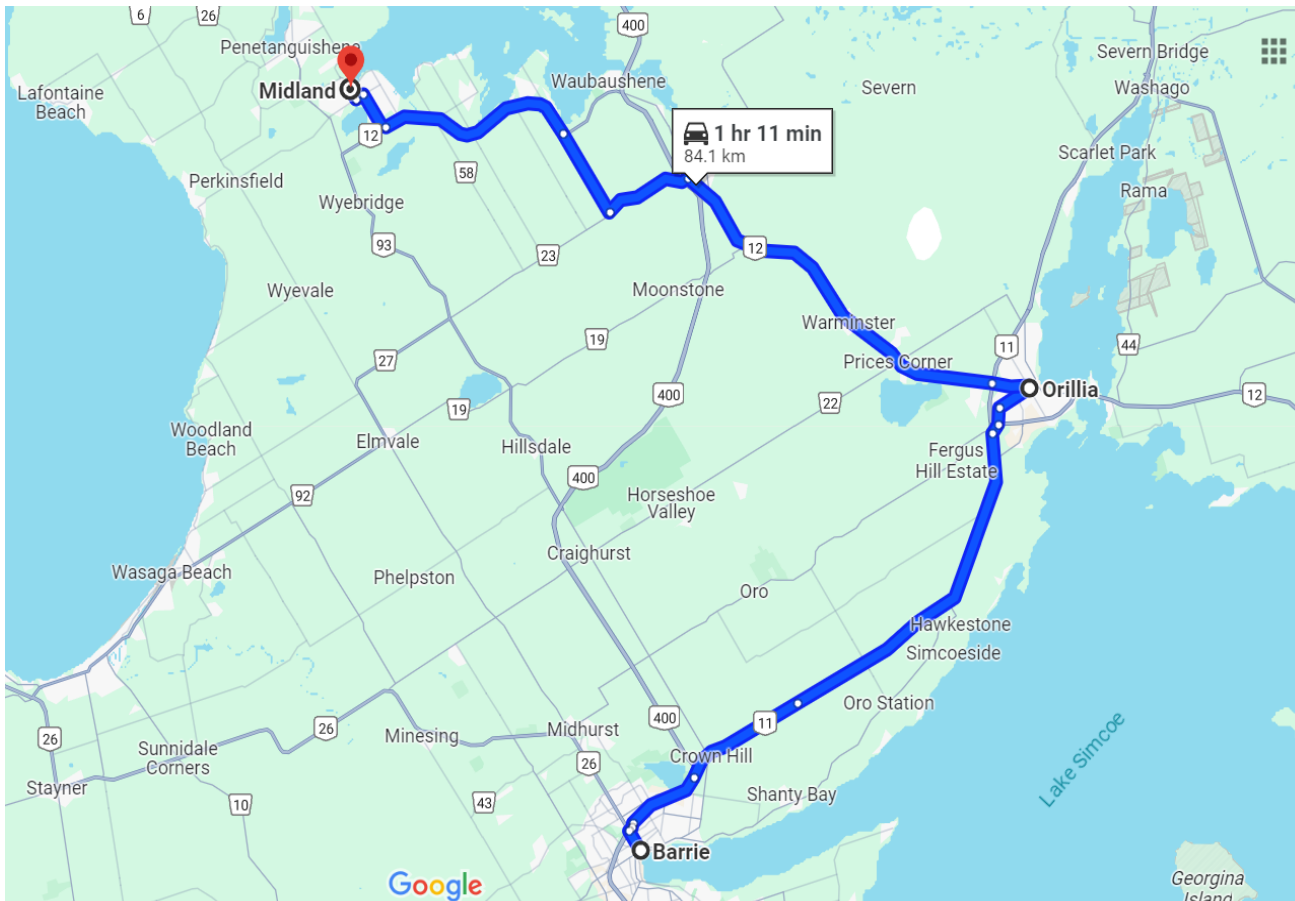
The age of the children is a factor to be considered

How the distance or commuting time between the two residences would affect the quality of parenting time

Whether the non-moving parent can commute to and from the proposed new place of residence

Case Example One:

S.C. v. J.C., 2022 ONSC 4146



- Father – Resides in Barrie
- Mother and Children – resides in Orillia, to move to Midland.

Case Example One:

S.C. v. J.C., 2022 ONSC 4146

Facts

Long standing status quo of children attend school while in mother's care. Father picked up and dropped off children from school at the beginning of his parenting time on weekends.

Proposed move will require children to change schools and change the city they reside in.

The proposed move will add 8.4km or 12 minutes to the father's driving time if he picks up the children at their new school.

The father has acknowledged the proposed move will not significantly affect the children's relationship with him or his parenting time.

Case Example One: S.C. v. J.C., 2022 ONSC 4146

Relocation or Change of Residence?

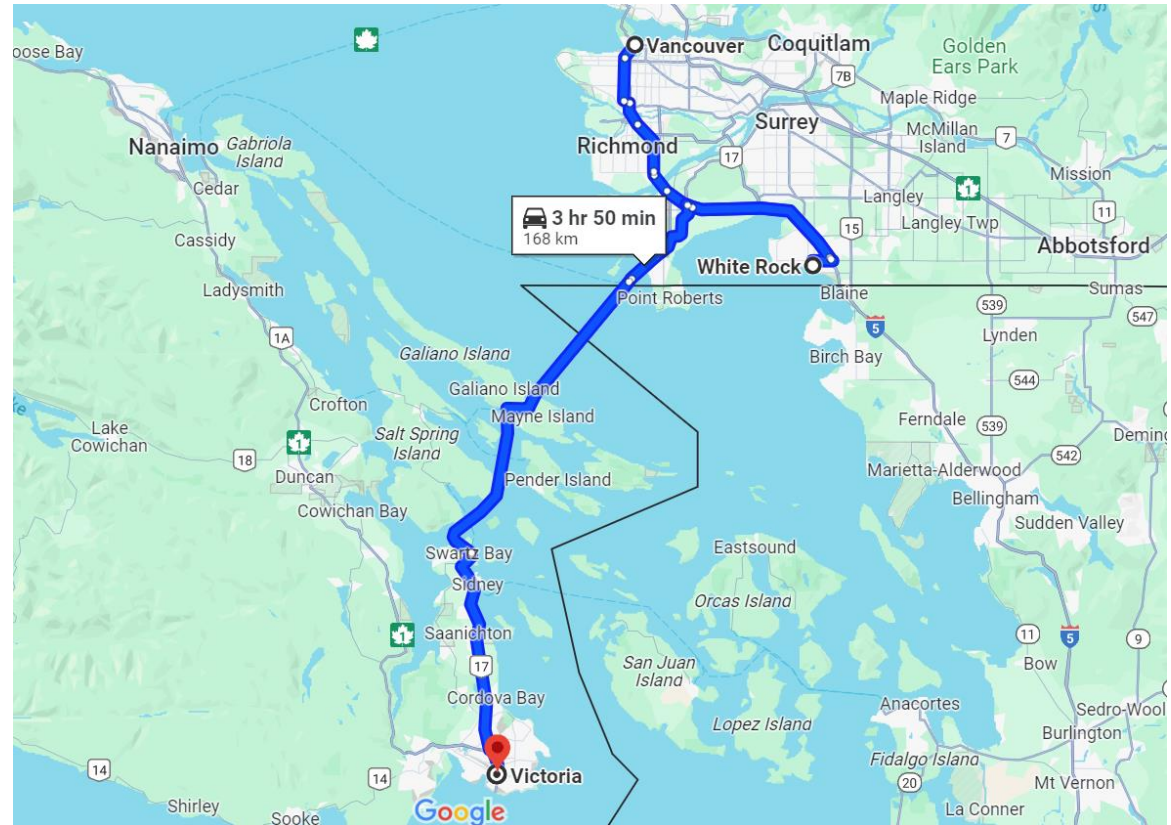
Conclusion: Change of Residence

Case Example Two:

R.P. v. G.U., 2021 BCSC 1636

(Affirmed by BC Court of Appeal)

- Mother – Resided in Vancouver.
- Father and Children – Resided in White Rock. Move to Victoria.



Case Example Two:

R.P. v. G.U., 2021 BCSC 1636

(Affirmed by BC Court of Appeal)

Facts

Mother is experiencing significant mental health challenges and her parenting time had been limited. At the completion of trial, there have been 10 supervised visits.

At the time of move, mother's parenting time with child was every Saturday during the day based on Minutes of Settlement. The father offered to maintain this after the move.

The father offered to pay for the ferry ticket between Vancouver and Victoria.

**Case Example Two:
R.P. v. G.U., 2021 BCSC 1636
(Affirmed by BC Court of Appeal)**

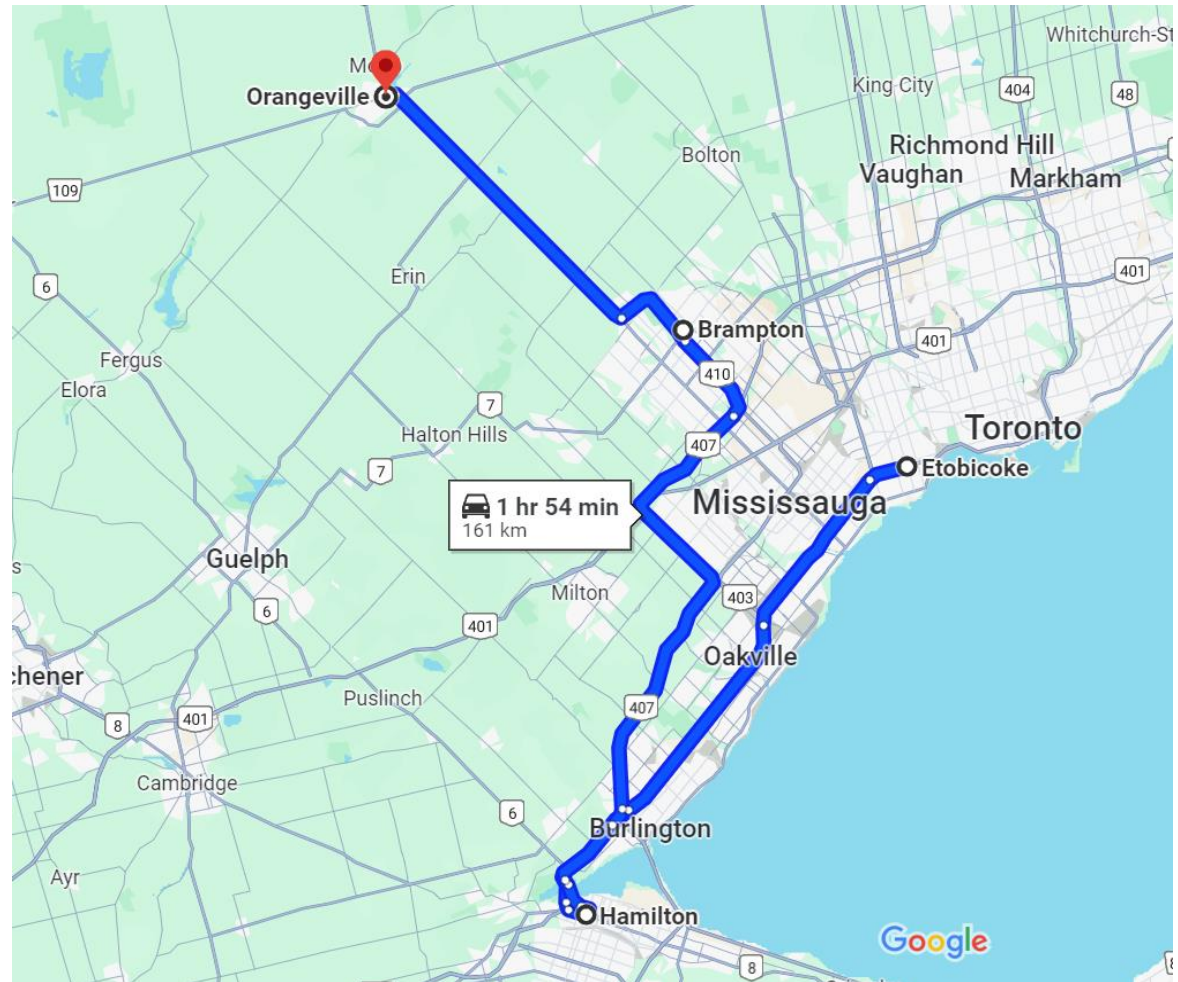
Relocation or Change of Residence?

Conclusion: Relocation

Case Example Three:

Lawrence v. Khan, 2022 ONCJ 531

- Father – Etobicoke (Toronto). Then moved to Hamilton without notice.
- Mother and child – Reside in Brampton. Move to Orangeville.



Case Example Three

Lawrence v. Khan, 2022 ONCJ 531

Facts

Both parties approached the mother's request to move to Orangeville as a "relocation." Mother has served her Notice of Relocation. Father responded with an Objection.

There was no temporary agreement or order regarding the child's parenting time after over a year into litigation.

The child did not have special medical or educational needs.

Case Example Three: Lawrence v. Khan, 2022 ONCJ 531

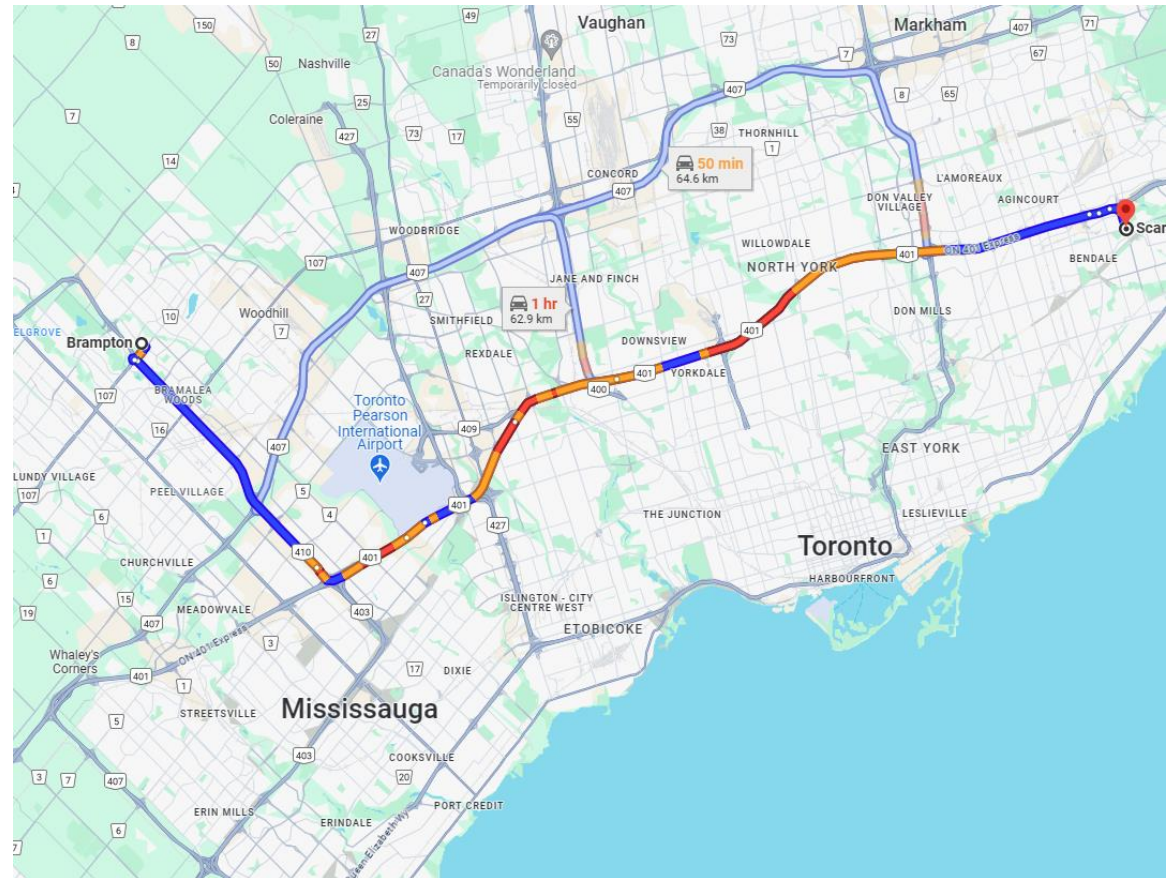
Relocation or Change of Residence?

Conclusion: Change of Residence

Case Example Four:

Rudichuk v. Higgins, 2021 ONCJ 471

- Father – Brampton
- Mother – Brampton, move to Scarborough.



Case Example Four:

Rudichuk v. Higgins, 2021 ONCJ 471

Facts

There is an increase in travel.

Time travelling has already been commented on negatively by the child.

Case Example Four: Rudichuk v. Higgins, 2021 ONCJ 471

Relocation or Change of Residence?

Conclusion: Relocation

Q + A



Notice

Why is
Notice
Important?

Need to know where child(ren)
will be living

Impact of move on relationship
with the other parent

Opportunity to talk about it before
going to court

Proactively thinking about new
parenting schedule

Discourage unilateral moves
without consent

Notice Requirements for Change In Residence and Relocation

What is the notice requirement for a change in residence?

<i>Divorce Act (sec. 16.8)</i>	<i>Children's Law Reform Act (sec. 39.1)</i>
"A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to change their place of residence or that of the child shall notify any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention." Notice requirements "The notice shall be given in writing and shall set out (a) the date on which the change is expected to occur; and (b) the address of the new place of residence and contact information of the person or child, as the case may be."	"A person who has decision-making responsibility or parenting time with respect to a child and who intends to make a change in residence, or in the child's residence, shall notify any other person who has decision-making responsibility, parenting time or contact under a contact order with respect to the child of the intention" Notice requirements "The notice shall be in writing and shall set out, (a) the date on which the change is expected to occur; and (b) the address of the new residence and contact information of the person or child, as the case may be."

What is the notice requirement for a relocation?

<i>Divorce Act (sec. 16.9)</i>	<i>Children's Law Reform Act (sec. 39.3)</i>
"A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to undertake a relocation shall notify, at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations, any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention"	"A person who has decision-making responsibility or parenting time with respect to a child and who intends a relocation shall, at least 60 days before the expected date of the proposed relocation, notify any other person who has decision-making responsibility, parenting time or contact under a contact order with respect to the child of the intention." . Notice requirements "The notice shall be in the form prescribed by the regulations or, if no form is prescribed, shall be in writing and shall set out, (a) the expected date of the proposed relocation; (b) the address of the new residence and contact information of the person or child, as the case may be; (c) a proposal as to how decision-making responsibility, parenting time or contact, as the case may be, could be exercised; and (d) any other information that may be prescribed by the regulations"

What is the notice requirement for a relocation?

If the plans to move is considered a relocation, then it will require notice to the other party AND consent.

If a woman is seeking relocation with the children, she would need to provide the other parent with:

Notice of Relocation form which sets out information about the move and the proposed changes to the parenting arrangement

Provide the relocation form to the other parent at least 60 days before she plans to move for his consent

NOTICE OF RELOCATION			
Part A – Information about the person giving notice			
Name			
Current Address			
Current Phone Number		Current Email Address	

Part A

Asks basic information about the person requesting relocation. This will be the woman's information including her name, current address and contact information if safe to do so.

Part B – Information about the relocation

Please check one box:

- ☐ I am planning to relocate without my child(ren)
☐ I am planning to relocate with my child(ren)
☐ I am planning to relocate only my child(ren) not myself

1.	Name of child: ☐ Planning to relocate this child ☐ Not planning to relocate this child
2.	Name of child: ☐ Planning to relocate this child ☐ Not planning to relocate this child
3.	Name of child: ☐ Planning to relocate this child ☐ Not planning to relocate this child
4.	Name of child: ☐ Planning to relocate this child ☐ Not planning to relocate this child

Expected date of relocation:		Date (DD/MM/YYYY)	
Address of new place of residence:			
New contact information:			
Phone number:		Email address:	

Part B

Information about the relocation and names of the children involved. When supporting a woman with this, she will need to check off one box. It asks what the relocation situation is.

Part C – Names of the people who are receiving this Notice of Relocation

Part C

Names of people who are receiving this notice of relocation. This will be the name of the other parent or any other person (e.g. grandparents) who have contract order to have contact with the children.

Part D – Proposal to change parenting arrangements and/or contact arrangements

Part D

Proposal to change parenting arrangements and/or contact arrangements. This section lays out what the woman's plans are for parenting arrangements. If she is seeking to move with the children, she will need to provide an alternative plan for how the children will be spending time with the other parent.

Part E – Information for people who receive this notice

If you have parenting responsibilities: If you have a *Divorce Act* order for parenting responsibilities for a child listed in Part B (which means that you have an order giving you custody, access, parenting time or decision-making) and that child would be relocating, you **can** object to the child's relocation. If you do not agree with the plan to relocate your child and you cannot come to an agreement with the person planning to move, you have **30 days to object after you receive this notice**.

There are two ways to object:

1. you can send the person who gave you this notice an [Objection to Relocation](#) form or
2. you can apply to the court for an order to stop the relocation

IMPORTANT: If you do not make your objection within 30 days, and there is no current court order saying the move cannot happen, the relocation can go ahead without a court order on or after the date indicated in this notice.

You cannot object to a relocation that does not include the relocation of a child, but you may want to consider whether your parenting order will need to be changed.

For more information about objecting to a relocation, please see [Moving after separation or divorce?](#)

Important note: Under the *Divorce Act*, parents must 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 they know their children best. A judge may make a decision that one or both parents do not like. Even if one parent objects to the relocation, it is important to keep trying to come to an agreement, where appropriate.

If you have contact: If you have contact with a child listed in Part B, you cannot object to the child's relocation. You may, however, wish to consider whether your contact order needs to be changed.

Part F – Attachments (optional)

- ☐ A copy of a court order
- ☐ A description of the child(ren)'s current schedule (on a separate page)
- ☐ Other

Name of person giving notice

Date (DD/MM/YYYY)

Link to Relocation Form

[Notice of Relocation Form \(justice.gc.ca\)](https://justice.gc.ca)

What happens if you don't provide notice?

- Notice must be provided regardless of whether you are planning to move with or without your child.
- When you are planning to move **without** your child, there are few legal consequences to you moving without providing the required notice. You do not need consent from the other parent to move, but you are responsible for any minor adjustments to the parenting schedule needed before of the move.
- When you are planning to move **with** your child, there are legal consequences for moving without providing the required notice.

What happens if you don't provide notice?

Critical part of relocation process

Considered by court when deciding relocation issue

Cost consequences

Negative impact on credibility

EXAMPLE:

Valenzuela-Sone v. Barnachea, 2023 ABKB 495

- Mother relocated to Chile with the children, aged 16, without providing notice to the father, without any kind of court order or agreement.
- The court was very critical of her decision, making it clear that her failure to provide notice made the relocation unlawful.
- The mother was ordered to return the children to Edmonton so that the proper process could be followed.

Do you always have to provide notice?

A parent that wants to move can ask the court to waive the notice requirement in certain exceptional circumstances

For Notice of Relocation:

<i>Divorce Act (sec. 16.9(3))</i>	<i>Children's Law Reform Act (sec. 39.3(3))</i>
(3) Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections, or in the regulations made for the purposes of those subsections, do not apply or may modify them, including where there is a risk of family violence.	(3) On application, the court may in any circumstance provide that subsections (1) and (2) or anything prescribed by the regulations for the purposes of subsection (2) do not apply, or apply with any changes the court specifies, if the court is of the opinion that it is appropriate to do so, including if there is a risk of family violence.

Similar language when it comes to waiving notice of a change in residence (s. 16.8(3) of the *Divorce Act* and s. 39.1(3) of the *Children's Law Reform Act*)

What factors will be considered for notice to be waived?

Whether the parent has already moved without consent from the other parent and without a court order

Whether the failure to give notice was an innocent mistake or done in bad faith

Family violence made providing notice unsafe, impractical or risk

The informational and timing requirements of the notice have largely been met and the other parent had some form of notice of the relocation plan

Whether the other parent was prejudiced by the lack of notice

Whether requiring formal notice would change the result or cause undue delay, expense and uncertainty

There is no ongoing relationship between the child and the other parent

Best interests of the children otherwise requiring formal notice

*Lemay v.
Lemay, 2023
ABKB 303*



Luke's Place
Change her experience. Change their lives.

What if you don't want the other parent to know about the move?

- An application to waive the notice requirement can be made on an ex-parte basis, meaning without notice to the other parent.
 - s. 16.8(4) and s. 16.9(4) of the *Divorce Act*
 - s. 39.2(5) and s. 39.3(4) of the *Children's Law Reform Act*
- Extremely high legal threshold.

EXAMPLE: AJK v. JPB, 2022 MBQB 43

This was a case of extreme post-separation violence.

The mother's position was that her and the children needed to move so they could be safe from the violence.

The court waived the notice requirement.



What Happens after notice

What happens after notice

<i>Divorce Act, (sec. 16.91 (1))</i>	<i>Children's Law Reform Act, (sec. 39.4(2))</i>
A person who has given notice under section 16.9 and who intends to relocate a child may do so as of the date referred to in the notice if: (a) the relocation is authorized by a court; or (b) the following conditions are satisfied: (i) the person with parenting time or decision-making responsibility in respect of the child who has received a notice under subsection 16.9(1) does not object to the relocation within 30 days after the day on which the notice is received, by setting out their objection in (A) a form prescribed by the regulations, or (B) an application made under subsection 16.1(1) or paragraph 17(1)(b), and (ii) there is no order prohibiting the relocation.	A person who has given notice of a proposed relocation in accordance with section 39.3 and who intends to relocate a child may do so as of the date referred to in the notice if, (a) the relocation is authorized by a court; or (b) no objection to the relocation is made in accordance with subsection 39.3 (5) and there is no order prohibiting the relocation. 2020, c. 25, Sched. 1, s. 15.

Notice Provided



- ☒ The relocation is authorized by a court.



- ☒ No Objection Notice Received.
- ☒ No court case has been brought to prevent the relocation.
- ☒ There is no existing court order prohibiting relocation.



Objection Notice Received.

OR

Court Application is brought to either to prohibit relocation or to change primary residency of children.

Q + A



Contact Us



707 Simcoe Street South, Box #3
Oshawa, Ontario L1H 4K5



905-728-0978
1-866-516-3116



intake@lukesplace.ca



www.lukesplace.ca



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Steps to Justice

Family Law

Separation and Divorce

Decision-making and time with children

Moving or traveling with children

I don't have a court order about parenting. Can I move with my child?

All resources listed on these slides have been added to the webinar handout!

CLEO's Guided Pathways

Family Law Guided Pathways

CLEO's Family Law Guided Pathways are a series of online interviews that help you fill out the court forms you need for your family law matter. Use these tools to fill out family law court forms.

Luke's Place Support and Resource Centre for Women and Children

[Luke's Place](#) works with women who have been subjected to abuse to support them and their children through the family law process.

Custody and access laws have changed

On March 1, 2021, significant changes to the custody and access provisions of the federal *Divorce Act* and Ontario's *Children's Law Reform Act* came into effect. See Luke's Place [Toolkits and Presentations](#) for these changes.

The law and parenting arrangements after separation

[Toolkit on post-separation parenting arrangements](#)

[What do I need to do if I want to move?](#)

[Resources for service providers](#)

Luke's Place Support and Resource Centre for Women and Children

[Luke's Place Legal Clinic](#) connects women with lawyers for free legal advice on family law issues. Call 905-728-0978 or 1-866-516-3116.

[A toolkit for women - the law and parenting arrangements after separation.](#)

[Summary of cases involving family violence and relocation](#)

[Blog post on the changes to the legislation involving relocation](#)

Luke's Place Support and Resource Centre for Women and Children

[Blog post on relocation and what a court will consider when deciding whether to allow a parent to relocate with their child.](#)

[RESOURCES FROM OUR EMERGENCY MOTION WEBINAR OCT 17](#)

Family Court and Beyond website: [The family court survival workbook for women leaving abusive relationships - Family Court & Beyond \(familycourtbeyond.ca\)](#)

Customized training on relocation for community workers and legal advocates [Training for service providers - Luke's Place \(lukesplace.ca\)](#)

Community Legal Clinics

[Luke's Place Legal Clinic](#) connects women with lawyers for free legal advice on family law issues. Call 905-728-0978 or 1-866-516-3116.

For women living in Durham Region. Connect with a family court support worker.

Call at 905.728.0978 ext.235 or toll free at 1.866.516.3116 ext.235, or email at intake@lukesplace.ca to learn more or book an appointment.

Located elsewhere in Ontario?

If you live elsewhere in Ontario, find support in your area by visiting this listing of [Family Court Support Workers](#). We can also connect you to a family law lawyer for free summary legal advice through our Legal Clinic.



Community Legal Clinics

[Aboriginal Legal Services](#)

[Support for Indigenous Families involved with Family Court + Alternatives to Court for Indigenous Families – list of resources](#)

[Barbra Schlifer Commemorative Clinic](#)

We help women in Toronto who've experienced physical, sexual, or psychological abuse. The Clinic represents women in family and immigration court for free. The Clinic accepts collect calls and can be reached at 416-323-9140 or 416-323-1361 (TTY).

[List of Services in Ontario - Where there is Partner Abuse](#)

[Find your Community Legal Clinic](#)

Community and Legal Resources

Legal Aid Ontario

[How do I apply for Legal Aid?](#)

Call Monday to Friday, 8 a.m. to 5 p.m.

1. [416-979-1446](tel:416-979-1446) (Greater Toronto Area)
2. [1-800-668-8258](tel:1-800-668-8258) (toll-free)

Justice Net [JusticeNet](#) is a not-for-profit service helping people in need of legal expertise, whose income is too high to access legal aid and too low to afford standard legal fees.

Government Resources

Government of Ontario - Children's Law Reform Act forms

[Find Notice of Relocation forms here](#)

Government of Canada - Divorce Act forms

[Find Notice of Relocation forms here](#)

[Infographic - Relocation](#)

Helplines

There is emergency, 24-hour a day telephone support available. These helplines offer emotional support over the telephone and can refer you to community services for people who've experienced abuse. Their services are available free of charge. You can call:

The [distress line](#) in your region

[The Assaulted Women's Helpline](#): **1-800-863-0511**. Help is available in English and translators are available by phone in many other languages

Hope for Wellness Helpline: 1-855-242-3310. Help is available in English and French and on request Cree, Ojibway, and Inuktitut.

[Support for Indigenous Families involved with Family Court + Alternatives to Court for Indigenous Families.](#)

Helplines

Talk4Healing: If you are an Indigenous woman living in Northern Ontario and speak English, Ojibway, Oji-Cree, or Cree, call 1-855-554-4325

Ganohkwasra Family Assault Support Services: If you are part of the Six Nations of the Grand River community, call 519-445-4324

If you speak French, you can call:

Fem'aide: 1-877-336-2433 at any time

Oasis centre des femmes: 416-591-6565

La Maison d'hébergement pour femmes francophones: 647-777-6419

Shelters

You can find your local shelter by visiting sheltersafe.ca or 211ontario.ca or by calling 2-1-1 from anywhere in Ontario.

Resources

Calls to action: Truth and Reconciliation

[Truth and Reconciliation Commission of Canada: Calls to Action](#)

[Luke's Place – Impact of the Truth and Reconciliation Commission's
Recommendations on Violence against Women](#)

[Settlers Take Action](#)

Decolonizing Family Law + trauma-based approach to family law

[Decolonizing Family Law – Rise Women's Legal Centre](#)

Resources

Support

[Survivors Secretariat – recovery, reclamation and revitalization](#)

Education

[Indigenous Canada - Free Course](#)

[Whose Land?](#)

Learn about where you are situated, information for land acknowledgements and learn about the treaties and agreements signed across Canada (Turtle Island).

Thank you for joining us!

Subscribe to [CLEO Connect](#) for updates on new legal information and upcoming webinars.

Steps to Justice – [Steps to Justice](#)

Contact me! Karen Dick at CLEO
karen.dick@cleo.on.ca