



**I HAVE A JUDGMENT AWARDING ME CUSTODY OF MY
CHILD—CAN MY FORMER SPOUSE OBJECT TO ME
MOVING OUT OF TOWN?**

Judgments awarding custody are intended to provide children with stability. Therefore, there must be proof of significant changes before a court will intervene to modify such judgments.

In our day and age, relocations are common and may result from a number of situations, including a job opportunity, studies, a transfer or the beginning of a relationship with a new partner. Parents may well face these kinds of situations and be required to relocate.

The relocation of a custodial parent is often considered to be a significant change justifying the court's examination of the situation. In order to be considered "significant", the additional distance between the two residences resulting from the move must be considerable and must affect previously granted access rights.

In such circumstances, the court must analyze the situation in light of certain criteria established in the case law, such as:

- (a) The terms of the existing custodial arrangement and the current relationship between the child and the custodial parent;
- (b) The terms for the exercise of the existing access rights and the current relationship between the child and the parent exercising those rights;
- (c) The benefit of maximizing contact between the child and both parents;
- (d) The child's opinion (if the child is old enough and has the necessary maturity to express an opinion)
- (e) The reason the custodial parent is moving if it relates to the ability to provide for the child's needs;
- (f) The disruption a custodial change could cause the child to suffer; and
- (g) The disruption the child could suffer by being far from family and from the schools and surroundings to which the child is accustomed.

Where the non-custodial parent can show that the custodial parent is moving in order to distance the child from the non-custodial parent and damage their relationship, the court may consider a change of custody. The court can also consider other measures, such as a change in access rights. However, regardless of the circumstances, the court's decision will be made in the best interests of the child.

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* The information provided in this document is not a legal interpretation.

The masculine gender has been used to designate persons solely in order to simplify the text.



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(CONTINUED)**

It should certainly not be assumed that a court will penalize a parent for relocating by withdrawing custody. Courts must assess each situation, analyze the impact of the move on the child and readjust access rights, while at the same time favouring the most access possible between the child and both parents.

Thus, a court will not prohibit a parent from moving, nor will the other parent be able to ask the court to do so, but the other parent will certainly be entitled to ask the court for a change of custody or a change in access rights.

Situations in which a custodial parent moves can be heartbreaking for the parties involved. To the extent possible, the court will try to minimize the negative effects of the move on the child.

When parents separate and agree amicably on the terms for custody and access, a move can also become a source of conflict. The parent who has “de facto custody” of the child does not have any more rights than if there had been a judgment awarding custody. Both parents have parental authority and must consult with one another on important decisions such as a move when the move will affect custody and access rights. If the parents cannot agree, the court will have to rule on the matter in the same manner as if there had been a judgment awarding custody.

In summary, there is no universal answer. Each case must be dealt with individually and will require a decision tailored to the specific situation.

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