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## Legal Brief\*

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### Moving and the New *Divorce Act*

The new *Divorce Act* (hereinafter the “Act”), which came into force on March 1, 2021, governs moves by separated persons with parenting time or decision-making responsibilities in respect of a child of the marriage. There are two regimes that distinguish between a change in the place of residence and a relocation.

#### Change in the place of residence

Section 16.8 of the Act sets out the regime applicable to a change in the place of residence. The person moving must give a written notice to any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of the child. The notice must set out the expected date of the change, the new address and the new contact information of the person or child, as the case may be.

In exceptional cases, the court may provide that these requirements will not apply, such as where there is a risk of family violence. This exception also applies in the case of a relocation.

#### Relocation

In the case of a relocation, the person who wants to move must give a written notice to any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of the child or pursuant to the institution of proceedings. These new obligations are described in sections 16.9 to 16.96 of the Act.

The definition of “relocation” is included in section 2(1) of the Act and reads as follows

**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; (*déménagement important*)

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\* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



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## **Moving and the New Divorce Act (continued)**

The notice of relocation form is already available on the Government of Canada's Department of Justice website.<sup>1</sup> The notice must be sent at least 60 days before the expected relocation date and must set out the expected relocation date, the address of the new place of residence and contact information of the person or child, a proposal as to how parenting time, decision-making responsibility or contact could be exercised and any other information prescribed by the regulations.

The relocation can take place if there is no objection within 30 days of receipt of the relocation notice and there is no order prohibiting the relocation.

Only persons who have parenting time or decision-making responsibility in respect of the child can object to the relocation. The two ways of objecting to a relocation are set out in section 16.91(1) of the Act.

The person who wishes to object can fill out the objection to relocation form which is available on the Government of Canada's Department of Justice website.<sup>2</sup> In the form, the person objecting must set out the reasons for the objection, the person's views on the proposal for the exercise of parenting time, decision-making responsibility or contact that is set out in the notice and any other information prescribed by the regulations. If no agreement is reached following receipt of the notice of objection to relocation, the person who wishes to relocate will have to apply to the court.

Alternatively, upon receiving the notice of relocation, the person who objects may choose to file an application with the court under sections 16.1(1) and 17(1)(b) of the Act.

If you want to know your rights when faced with a planned move or a notice regarding a move, don't hesitate to make an appointment at your nearest legal aid office.

<sup>1</sup> <https://www.justice.gc.ca/eng/fl-df/divorce/nrf-fad.html>

<sup>2</sup> <https://www.justice.gc.ca/eng/fl-df/divorce/orf-fod.html>

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Don't hesitate to have your eligibility for legal aid evaluated by making an appointment at a legal aid office near you.

To find the contact information for your legal aid office, please visit our website at [www.csj.qc.ca](http://www.csj.qc.ca).

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