



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Relocating with children during divorce or separation: PART 2

Speakers:

Min Jin, Staff Lawyer, Luke's Place

Phebe Quaye, Program Manager, Luke's Place

Thursday February 15, 2024

12-1:30pm



What you can expect today

Lunch and Learn Series

90 minutes in total (presentation and Q+A)

This is legal information, not legal advice.

The information is current as of today's date Feb 8, 2024

Recording and slides will be sent out afterward.

ASL Interpretation is available. Subtitles (closed captioning) have also been enabled.



Land Acknowledgement

CLEO's work takes place across the home and traditional territory of the Mississaugas of the Credit, the Haudenosaunee, and the Wyandot peoples, on land that many of us know as Ontario.

As we provide legal information today, we acknowledge the ongoing impact of colonization and anti-Indigenous racism, built into our laws and legal systems, resulting in devastating pain and inequality for Indigenous Peoples of every generation.

We also recognize the incredible amount of work that Indigenous Peoples contributed to the Calls to Action in the Truth and Reconciliation Commission report calling for Equity for Indigenous Peoples in the Legal System.



Relocating with children during divorce or separation – Part 2

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.

Step 1: Determine whether it is a relocation or change in residence.

Change in residence

a move that will not significantly impact the child's relationship with the other parent

Relocation

a move that will significantly impact the child's relationship with the other parent

Step 2: Give notice

NOTICE FOR A CHANGE IN PLACE OF RESIDENCE:	NOTICE FOR RELOCATION:
<p>Section 39.1 of the <i>CLRA</i> and section 16.8 of the <i>Divorce Act</i> require the parent seeking to move with the children to let the other parent know, before the move takes place, when the move is happening, what the family's new address will be and any other new contact information.</p>	<ul style="list-style-type: none">○ To be sent 60 days before the date of the proposed move○ Should include<ul style="list-style-type: none">✦ Name of person proposing to move and children who will be moving✦ Current contact information✦ Names of any person who has PT, DMR or contact in respect of the child✦ expected date of the relocation✦ Address of the new place and contact information✦ A proposal about how PT or DMR could be exercised

Step 3: Wait and see if there is an objection

Change in residence

Once the notice has been provided, the parent can move. No consent or court order is required

The only issue that may arise is if the other parent argues that it is a relocation and not a change in residence

Relocation

The other parent has the obligation to either formally send an Objection of Relocation form or start a court application within 30 days of receiving the notice.

If they agree to the move, the parent can move so long as there is no existing court order that precludes relocation and no active family court case about the issue

What Happens if the Other Parent Opposes the Move?

Court Process

The court will need to determine whether the move should be permitted based on the best interest of the children.

Burden of Proof

The language in both the Divorce Act and Children's Law Reform Act provides some guidance on which parent bear the burden of proof.

What are some of the things a court will consider?



Best Interest of the Child

- the child's needs
- the nature and strength of the child's relationship with each spouse
- each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse
- the history of care of the child
- the child's views and preferences
- the child's cultural, linguistic, religious and spiritual upbringing and heritage
- any plans for the child's care
- the ability and willingness of each person to care for and meet the needs of the child
- the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate
- any family violence
- any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child

Family Violence

the nature, seriousness and frequency of the family violence and when it occurred

whether there is a pattern of coercive and controlling behaviour in relation to a family member

whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence

the physical, emotional and psychological harm or risk of harm to the child

any compromise to the safety of the child or other family member

whether the family violence causes the child or other family member to fear for their own safety or for that of another person

any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child

any other relevant factor

Additional Factors Specific to Relocation

Factor 1 – Reason for Relocation

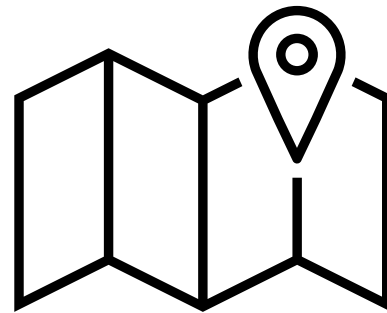
The legislation has now explicitly stated the reason as a factor to be considered to the extent it relates to the children's best interests.



Things like moving to be closer to family, or to benefit from housing support, childcare, better employment and education opportunities have direct and indirect impacts on the best interests of the child.

Factor 1 – Case Example

In *V.S. v. F.F.*, 2021 ONCJ 588, the father sought to relocate the child with him from Brampton to Wolf Island near Kingston.



Factor 2 – The impact of the relocation on the Child

Some common items we see discussed in cases under this factor are:

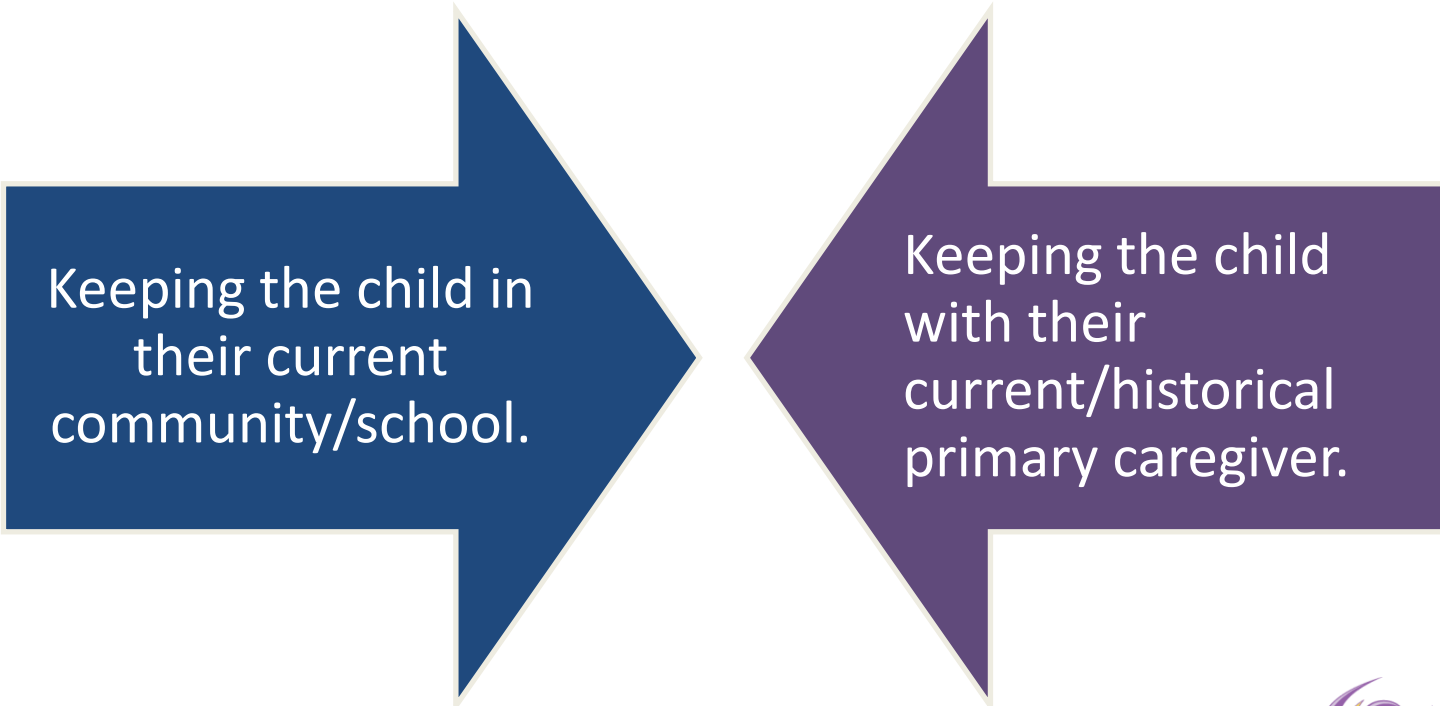
Age of
Child

The Child's
Support
System

Childrens
views and
preferences

Factor 3 – The amount of time spent with the child

- The court prefers to maintain stability. Maintaining stability could either mean:

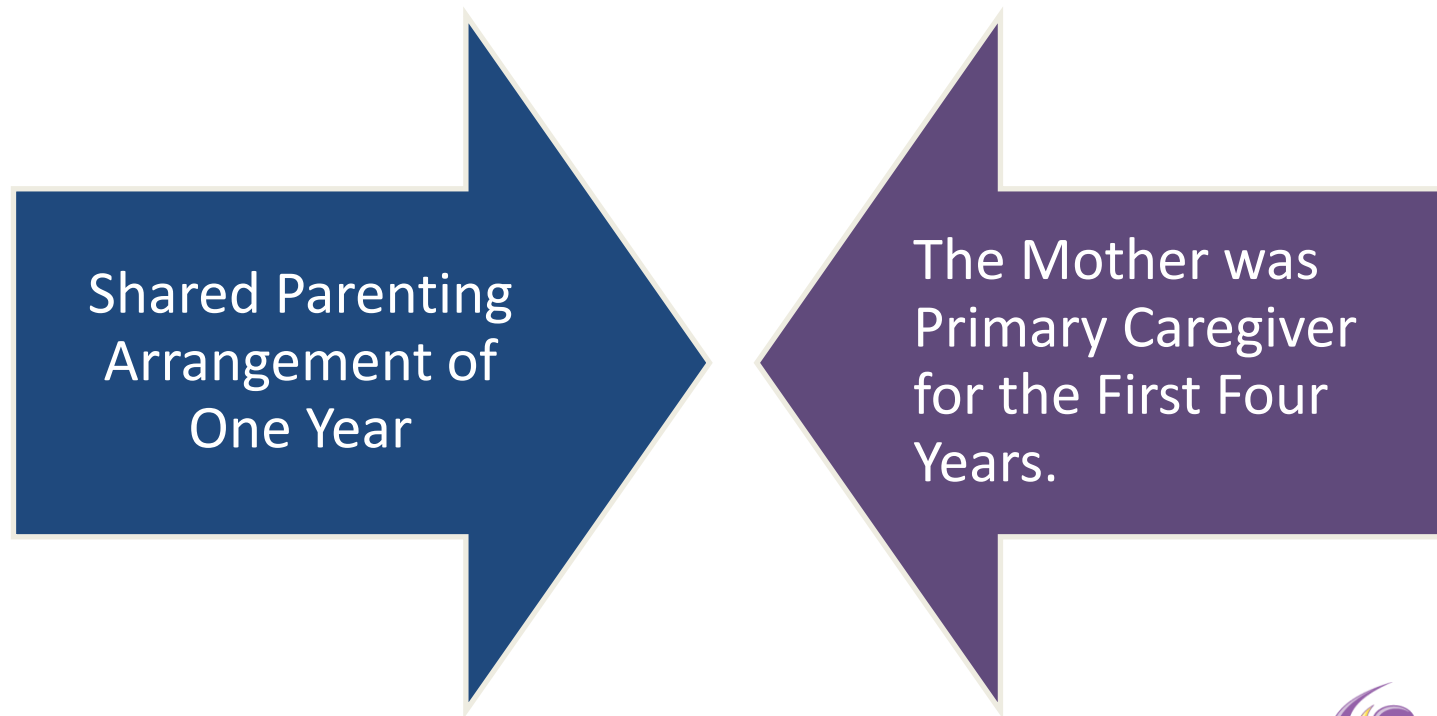


Keeping the child in
their current
community/school.

Keeping the child
with their
current/historical
primary caregiver.

Factor 3 – Case Example

- In the case of *N.F. v. S.G.*, 2023 ONSC 2644, the court considered the mother's relocation request from Barrie to Orangeville after one year of a shared parenting time arrangement.



Factor 4 – Whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement.

Factor 5 – The existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside.

Factor 5 - Case Example

- In the case of *Lemay v Lemay*, 2023 ABKB 303, the court found that an existing order that said the parties would live close enough together in Alberta to accommodate parenting time does not engage this factor.
- The term that the parents would live close together was implicit in any shared parenting agreement or order to accommodate that arrangement.
- The court's commentary in that case was, this factor is intended to engage a situation where the very question of a geographic location of a child's residence was the subject of a binding decision or agreement.

Factor 6 – The reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses

Factor 6 - Case example

In the case of *Al Kowatli v Berrwin*, 2021 ONSC 4999, the mother proposed “liberal parenting time during school holidays,” “to waive support and provide \$15,000 a per year to offset travel expenses” and “weekly telephone/video calls.”

No specific were provided.



There were no provisions about how transfer would be done.



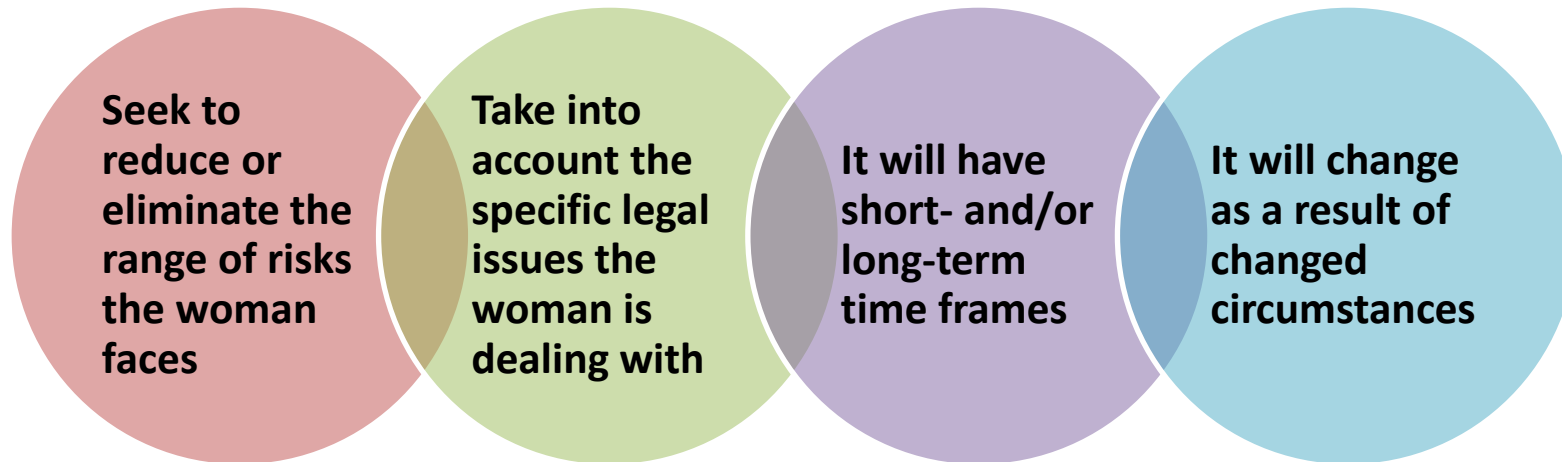
Her proposal of only one video call per week is on principle not reasonable.

Factor 7 - Whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance

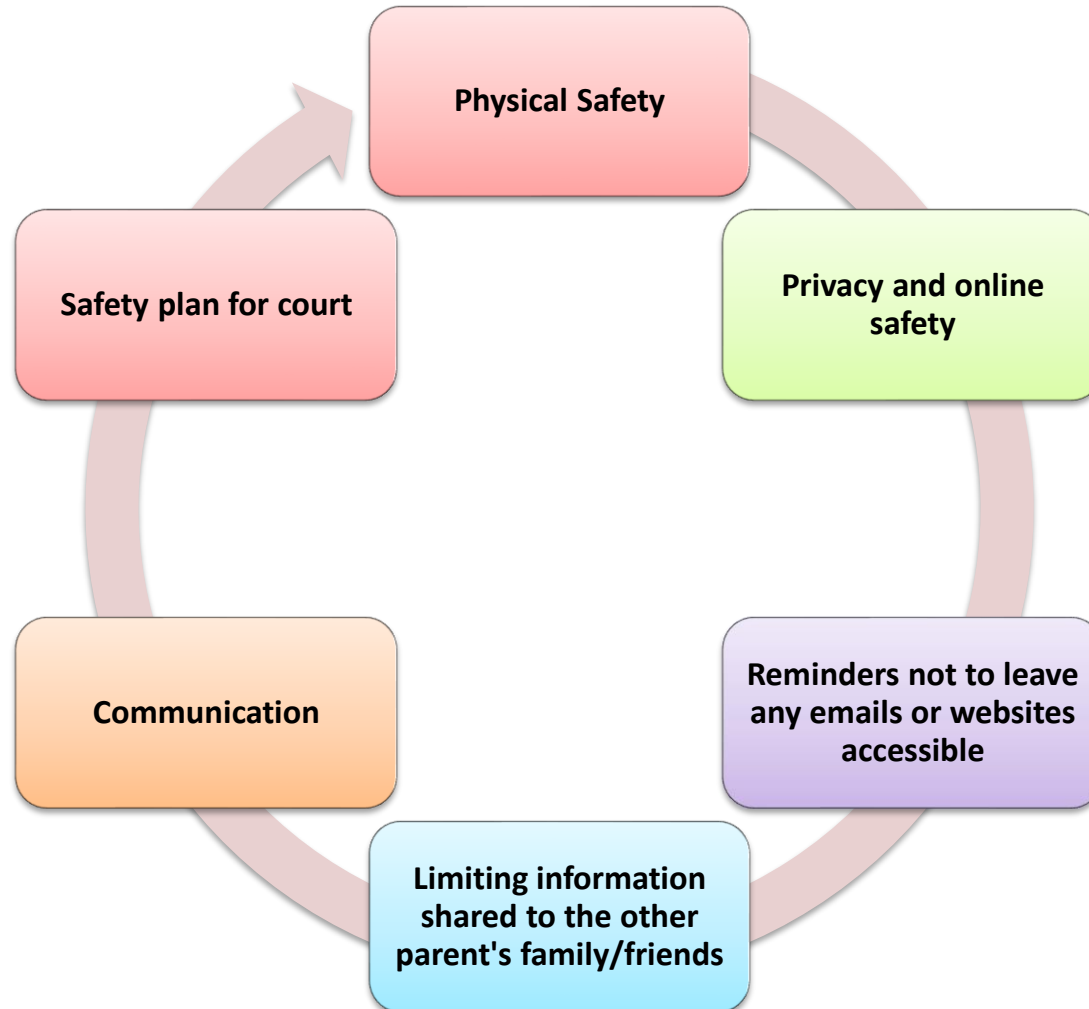
Questions?



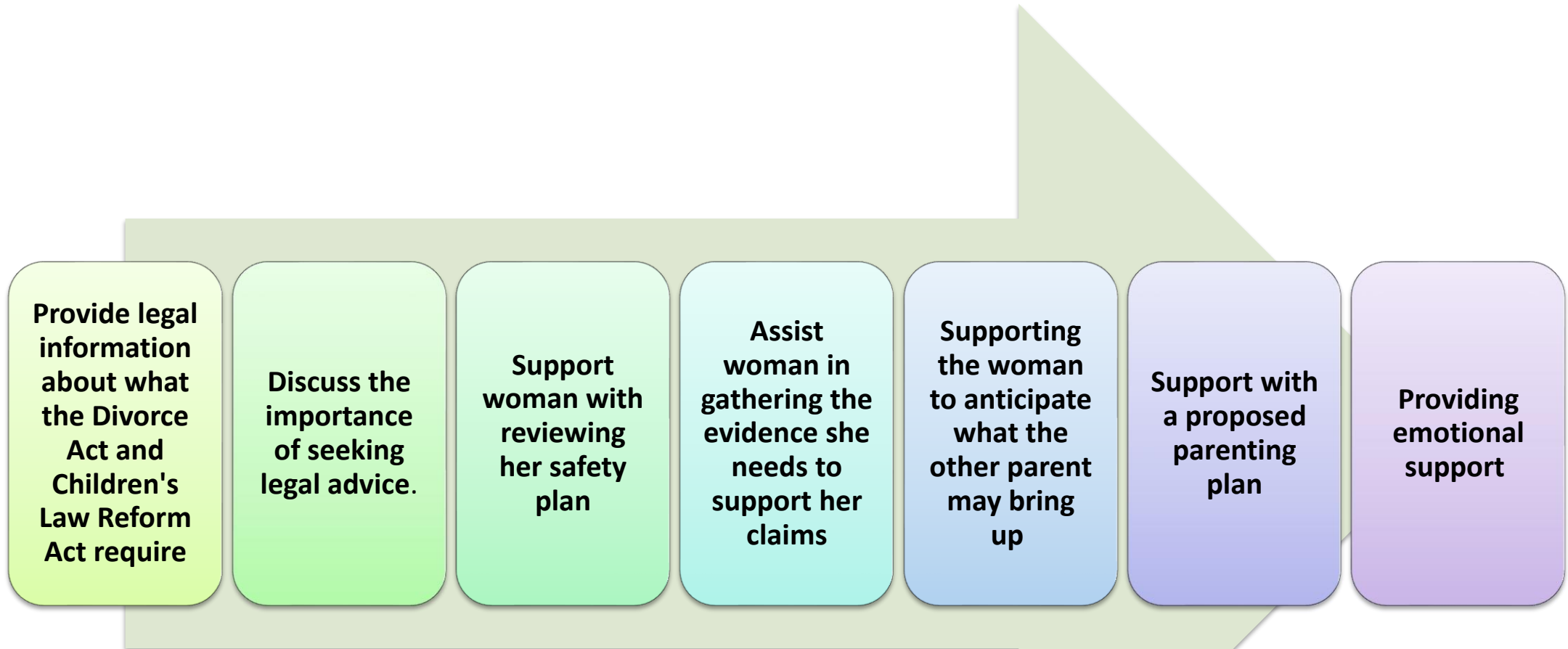
Safety Planning and How to Support the Client



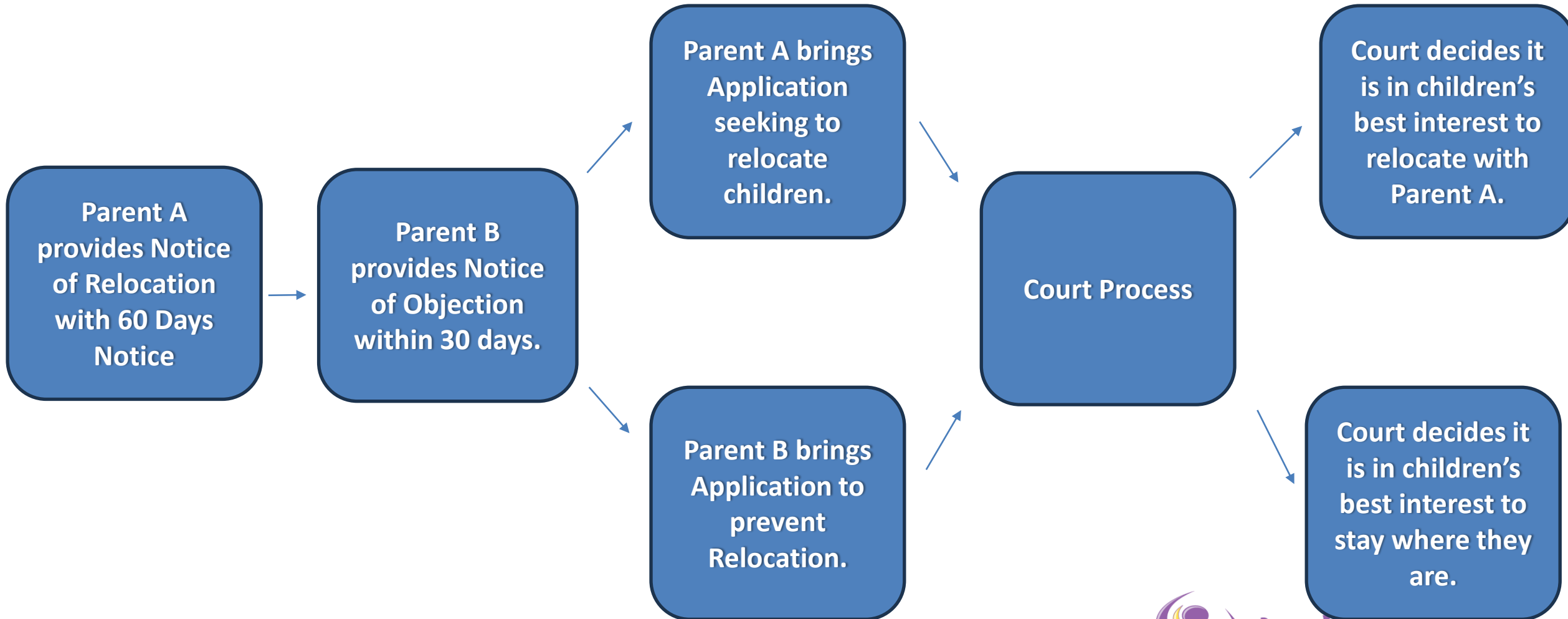
Elements that might be included in a safety plan for a woman involved in a relocation process could include:



Tips for Supporting Your clients



Court Process



What if I need to move right away?

- A court will be more reluctant to upset the status quo on an interim basis and permit the move when there is a genuine issue for trial.
- There can be compelling circumstances that might dictate that a judge ought to allow the move. For example, the move may result in a financial benefit to the family unit, which will be lost if the matter awaits a trial, or the best interests of the children might dictate that they commence school at a new location.
- Although there may be a genuine issue for trial, the move may be permitted on an interim basis if there is a strong probability that the custodial parent's position will prevail at a trial.
- See case examples: *Borrens v. Siddiqui*, 2021 ONSC 7829 and *Abbas v. Ayoade*, 2020 ONSC 5821

What if I have already moved?

- Courts will try and discourage self-help remedies as much as possible. This means they don't really like approving moves that have taken place without the proper process having been followed.
- If someone has taken matters into their own hands and moved with a child without a court order or agreement, the court may make an order requiring that the child be returned to the jurisdiction where they lived right before the move.

Case example – Jennings v. Cormier, 2022 ONCJ 338

- Mother moved with children from Toronto to Pembroke, Ontario after receiving father's Objection to Relocation Form and without a court order permitting the move
- Court ordered that mother return the children to Toronto

“The mother's willingness to relocate with the children almost five hours from their father in the face of the father's clear opposition is concerning for the court. The mother was aware of her obligations under the Act to provide notice to the father of her desired move. She therefore knew or ought to have known that once she obtained a Notice of Objection from the father, she requires a court order permitting the move. Her decision to move despite the father's objection cannot be condoned by the court.” (para 65)

What do I do if the court says the kids cannot move with me?

- If the court makes an order denying relocation, she cannot relocate with the child.
- She may decide to proceed with the move, which she can do as long as she does not take the child with her.
- In that case, woman and the other parent will need to modify the parenting agreement to reflect a realistic plan that takes into account the relocating parent's new location.

Q & A?





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Resources

Steps to Justice

Family Law

Separation and Divorce

Decision-making and time with children

My Safety Plan – template to create one

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 😊



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Resources

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.



Resources

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](#)



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Resources

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](#)



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Resources

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 \(familycourtabeyond.ca\)](#)

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.



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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).



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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

