

# FAMILY LAW GUIDE FOR NEWFOUNDLANDERS AND LABRADORIANS

Third Edition



PUBLIC LEGAL INFORMATION  
Association of NL



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# MESSAGE FROM THE EXECUTIVE DIRECTOR

Public Legal Information Association of Newfoundland and Labrador (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the intention of increasing access to justice.

We hope this publication will provide readers with general information about family law in Newfoundland and Labrador. There have been changes in family law that impact the legal rights and obligations of individuals and families. **The information provided in this booklet is not intended as legal advice, but rather to provide a general overview. In order to discuss your specific situation, we suggest you speak with a lawyer who practices in family law.**

We gratefully acknowledge the Department of Justice Canada for providing funding to create, translate and print this third edition of the *Family Law Guide for Newfoundlanders and Labradorians*. We would also like to acknowledge and thank the many people who contributed to the research, writing, review, and editing. Your contributions are greatly appreciated.

The *Family Law Guide for Newfoundlanders and Labradorians* is based largely on PLIAN's original and second edition of the *Family Law Guide for Women in Newfoundland and Labrador*, which provided family law information for people in our province over the years. That publication was originally modelled after Family Law Guides from the Nova Scotia Association of the National Association of Women & the Law, the Legal Information Society of Nova Scotia and the Provincial Advisory Council on the Status of Women, Newfoundland and Labrador.

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Executive Director

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# FAMILY LAW COURTS IN NEWFOUNDLAND AND LABRADOR

Family law cases in Newfoundland and Labrador are heard in Provincial or Supreme Court depending on where the parties involved live and the issue(s) involved. Below we provide general information to assist people when deciding which court to use. However, it is strongly suggested that individuals speak with a family law lawyer if they are unsure which court should be handling the case. Filing documents with the wrong court can lead to significant delays.

Both the Supreme and Provincial Courts of Newfoundland and Labrador hear family matters dealing with custody, access, child support, and spousal support. However, *only* the Supreme Court has the authority to deal with divorce and division of matrimonial property. It should also be noted that *only* the Supreme Court can hear applications to vary custody and support orders issued as part of, or after, a divorce proceeding. The Provincial Court cannot vary a custody or support order that was issued in Supreme Court.

## Supreme Court Family Division

The Supreme Court Family Division (formerly known as the Unified Family Court) has exclusive authority to deal with all family law matters that arise within the geographic areas that come under its jurisdiction (called its “judicial area.”) This means any family law applications arising in these areas must be made to the Supreme Court of Newfoundland and Labrador Family Division. The Provincial Court in these

areas does not accept family court applications. The geographic region coming under the jurisdiction of the Supreme Court Family Division includes the following:

### East Coast

The Avalon Peninsula, as far as Holyrood and including the St. John’s metropolitan area and Bell Island.

### West Coast

The area from Grey River west along the South coast of the island portion of Newfoundland and Labrador to Channel-Port aux Basques, then north to include the whole of the Great Northern Peninsula and west to the turnoff of the Trans-Canada Highway to routes 420 and 421 to Jackson’s Arm and the Beaches respectively, to include all of the communities along both routes 420 and 421.

### Expanded Service Area

Communities from Holyrood to Port Blandford, including the Bonavista Peninsula, fall within the “expanded service area” of the Supreme Court Family Division. In these communities, people have the option of filing certain types of family law applications (such as custody, access, child support, and spousal support) with the Supreme Court Family Division or with the Provincial Court since the two Courts have concurrent jurisdiction in these communities. Please note that there is no expanded service area on the West coast of the province.

## **What about other areas of the province?**

In all other areas of the province that are not located within the “judicial area” or “expanded service area” of the Supreme Court of Newfoundland and Labrador Family Division, an application for custody of or access to a child and an application for child and/or spousal or partner support may be filed in either the Provincial Court or the Supreme Court of Newfoundland and Labrador General Division.

However, only the Supreme Court of Newfoundland and Labrador General Division has the authority to deal with divorce and the division of matrimonial property. As was stated earlier, only the Supreme Court can hear applications to vary custody and support orders issued as part of, or after, a divorce proceeding.

# Information for Self-Represented Litigants

Some people represent themselves for family court proceedings, whether by choice or out of necessity. Even though a person does not have legal representation, s/he may still benefit from getting some initial legal advice on their case. For example, if a case is started in the wrong court, this could delay matters and result in the loss of money and time for the applicant. Some cases involve limitation periods. Limitation periods are essentially deadlines in law for how long you have to make a claim. If you fail to make a claim before the limitation period expires, you could be **barred** from seeking a remedy. Not all matters have limitation periods so therefore it would be helpful to discuss your matter with a lawyer.

Court is a formal setting. There are laws as well as special rules and procedures that **must** be followed, regardless of whether a person is represented by a lawyer or not. People sometimes wonder what to call the judge. It will depend on what court the matter is being heard in. In Provincial Court, the judge is called “Your Honour”. In Supreme Court, the judge may be called “Justice,” or “My Lord” (if male), or “My Lady” (if female). A judge will normally tell self-represented persons at the beginning of a court proceeding how they prefer to be addressed. If the judge does not, a self-represented person can ask the judge in court or ask court staff before the matter is called.

Self-represented persons must become familiar with the laws and procedures that apply to their case. Ignorance of the law is no excuse in court. If someone is self-represented s/he

will need to do legal research to help prepare for their case. Below are some tips.

## Tips for Doing Legal Research

To begin legal research, a self-represented person will need to:

- Read Canadian legal material (texts, journal articles, etc.) in order to understand the general principles of the law regarding his/her specific issue.
- Check applicable Newfoundland and Labrador and/or Canadian statutes. Statutes are the laws which are passed by the Newfoundland and Labrador House of Assembly or the Canadian Parliament. Not every legal issue is governed by a statute but it is very important to know this and then, if necessary, consult the current version of the law.
- Find appropriate case law (written judgements) to see how the Newfoundland and Labrador courts have considered the issue in question or similar issues.

A self-represented person can access the following resources for help when doing legal research. But please note that only a lawyer can provide legal advice:

## The Law Society Library of Newfoundland and Labrador

[www.lawsociety.nf.ca](http://www.lawsociety.nf.ca)

The Law Library has a comprehensive collection of current Canadian legal materials, including texts, journal articles, dictionaries, etc. The Law Librarians can provide assistance with researching statutes, texts and case law.

**The librarians can provide legal research assistance but *not* legal advice.** All print materials are for use in the library only and there is no public access to the computers. However the librarians will assist with finding websites and formulating appropriate legal research terms.

**The Law Library is located at:  
196-198 Water St.  
(West of the Newfoundland and Labrador Supreme Court)  
St. John's NL A1C 1A9  
Call (709) 753-7770 to check on hours of operation.**

For those outside St. John's or who are unable to visit the library, you may contact the library using their website ([www.lslibrary.ca](http://www.lslibrary.ca)) or by email ([lawlibrary@lawsociety.nf.ca](mailto:lawlibrary@lawsociety.nf.ca)).

Where possible, questions will be responded to within 24 hours.

**Public Legal Information Association of Newfoundland and Labrador (PLIAN)  
[www.publiclegalinfo.com](http://www.publiclegalinfo.com)**

PLIAN provides legal information through education (for example, presentations to schools, community groups, etc.) and by producing publications on a variety of legal topics. The publications are free and available upon request. Many of them are available on PLIAN's website. PLIAN also offers a Lawyer Referral Service which is available to individuals who require assistance in obtaining a lawyer. The lawyers offer a half-hour session at a nominal fee. A Legal Information Line, which provides general information about the law, is also offered. **PLIAN does not provide legal advice.** Both services

are available from 9 am-12 pm Monday to Friday.

To contact PLIAN: Telephone (709) 722-2643 or toll free 1-888-660-7788  
Email: [info@publiclegalinfo.com](mailto:info@publiclegalinfo.com)

**Newfoundland and Labrador Public Libraries  
[www.nlpl.ca](http://www.nlpl.ca)**

Newfoundland and Labrador public libraries are located across the province and provide free public access to the Internet. To find the nearest library, including hours and phone numbers go to their website:

[www.nlpl.ca](http://www.nlpl.ca)

### **Internet Resources**

Listed below are a few Canadian websites that can assist a self-represented person when doing legal research. When using the internet it is important to ensure that the site is reliable and up to date. As an example, a reliable source for Canadian legal research would be a government department, university law school or a law society. When using statutes it is essential that the researcher ensure they are current and applicable to Newfoundland and Labrador. Also important to remember is that statutes vary in each province so if the issue involves Newfoundland and Labrador law the researcher cannot assume that other provincial statutes will apply.

**CanLii (Canadian Legal Information Institute)  
[www.canlii.org](http://www.canlii.org)**

CanLii is a free comprehensive Canadian database which provides judgments (cases) and statutes

from across Canada (including Newfoundland and Labrador).

### **The Law Courts of Newfoundland and Labrador**

[www.court.nl.ca](http://www.court.nl.ca)

This website provides access to Provincial Court, Supreme Court, and Court of Appeal. If a person needs to know the court rules or understand the structure of the courts, this is an excellent place to start. Also provided are links to various provincial statutes. A good place to begin is with the FAQ (Frequently Asked Questions) section.

Please be aware that court staff cannot provide legal advice.

### **Statutes & Regulations of Newfoundland and Labrador**

[www.assembly.nl.ca](http://www.assembly.nl.ca)

This site provides a direct link to the Newfoundland and Labrador statutes. Select “legislation” from the left hand column of the page and then choose “consolidation” to see a list of the current statutes and regulations. A useful feature is the “Most requested statutes” list which includes the *Family Law Act* and others.

### **Federal Statutes & Regulations**

[www.laws.justice.gc.ca](http://www.laws.justice.gc.ca)

Provides access to current Canadian legislation such as the *Divorce Act*. An alphabetical index is provided on the left hand side of the introductory page.

# Family Justice Services

Family Justice Services (FJS) offers services to people involved in family law matters. FJS can assist people with working out their custody, access and child support issues without having to go through a court hearing.

FJS places emphasis on the needs of children and promotes dispute resolution outside of court. During the process, parties talk to a neutral person to explore ways to resolve their family law issues.

FJS provides the following services:

- Parent Information Sessions on family law and parenting after separation
- Mediation Services in cases of custody, access, and child support
- Counselling for children and parents, where appropriate
- Recalculation of Child Support

FJS **does not** provide services in relation to spousal support, property division, or child protection.

**FJS does not provide legal advice.**

It is recommended that parties obtain legal advice.

## How to Access Family Justice Services

There are two ways to access Family Justice Services: a Request for Service or a formal court application. The Department of Advanced Education and Skills also has an internal process whereby applicants and recipients of Income Support are referred to FJS.

**Request for Service-** Where both people want to work out their problems

outside of the court process, they can access mediation services through a Request for Service form. This form is available at all court locations and FJS offices. Contact information for FJS offices across the province are located at the bottom of this chapter. The form is also available online on the Family Justice Services website ([www.justice.gov.nl.ca/just/legalassist/familyjustice.html](http://www.justice.gov.nl.ca/just/legalassist/familyjustice.html)). It can also be found on the Supreme Court Family Division section of the Law Courts of Newfoundland and Labrador website ([www.court.nl.ca](http://www.court.nl.ca)). Click on the link to Family Justice Services. Both parties must complete and sign a Request and forward to the nearest FJS office.

**Court Application** – Upon making application directly to court for child support, custody, or access, the application will be forwarded to FJS. FJS will then make contact with each party to advise of the Family Justice Services program and determine if they wish to pursue services through FJS instead of the court process.

## Intake

Once the court application or Request for Service is received by FJS, the parties involved will be contacted to arrange individual intake appointments. The intake interview is a private meeting with the Family Justice Services Mediator.

Some of the topics which may be discussed at intake are:

1. Past and present parenting arrangements
2. Financial support for children

3. Assessment of safety issues
4. Communication between parents
5. Possible contact with other professionals, including a lawyer
6. Outstanding issues between parents
7. Detailed discussion of individual concerns
8. Discussions of options for mediation
9. Other issues

During the intake process it will be determined if the matter is appropriate for mediation. Safety issues for both children and parents will always be a primary consideration in assessing the appropriateness of services of Family Justice. Following intake, both parties are informed of the next steps in the process.

### **Parent Information Program**

FJS offers a parent information session called “Living Apart...Parenting Together”. The session provides information that helps parents make careful and informed decisions for the best interests of the child(ren).

The program is mandatory for parents who are involved with family law processes.

Topics covered at “Living Apart... Parenting Together” include:

- The separation experience from both the child’s and the parents’ perspective
- Family Law information (custody, access and support orders)
- Services offered by FJS
- Communication
- New partners

The sessions are delivered at FJS offices throughout the province. Parents of the same child(ren) do not attend the sessions at the same time. There are no

fees charged for these sessions. Child care is not provided. Children may not attend as it is a parent-only program.

### **Mediation**

Mediation is a way to work out legal issues outside of the courtroom and occurs when two or more people agree to talk to a neutral person to explore ways to reach an agreement. This process gives people the power to make their own decisions and to settle matters outside of court.

FJS offers mediation in the following aspects of family law:

- custody
- access
- child support

### **Mediation Options include:**

1. In-Person mediation – both people meet with a neutral third party
2. Mediator as a go-between (shuttle mediation) – The people do not meet face to face. Each party has individual contact with the mediator.
3. Telephone negotiation – Where parties do not live close together the mediator may have contact with one or both by phone.

In most cases, a mediator:

- Contacts both parties
- Decides on how to proceed
- Helps define issues from both perspectives
- Keeps discussions on track
- Helps with communication
- Assists the people brainstorm and evaluate options
- Helps the people reach their own agreement

There are no fees charged for mediation services in these cases of

custody, access, and child support.

FJS mediators do not represent either party nor do they provide legal advice. It is recommended that parties obtain independent legal advice and review all issues and documents with a lawyer.

### **What Happens After Mediation?**

If an agreement is reached, the mediator provides information about how to formalize the agreement. Parties are encouraged to seek legal advice on all agreements. If an agreement is not reached, the issues can go before the court.

### **Counselling Services**

Counselling (when deemed appropriate) is available for families who are involved with FJS. Counsellors work with parties, either individually or jointly, and their children. There are no fees charged for counselling services.

### **Recalculation of Child Support**

This topic is covered in detail in the Child Support chapter of this publication.

### **Locations**

There are Family Justice Services offices located throughout the province.

### **Avalon Region:**

St. John's..... (709) 729-1183  
Carbonear..... (709) 945-3223

### **Central Region:**

Clarenville..... (709) 466-4036  
Marystown..... (709) 891-4137  
Gander..... (709) 256-1205  
Grand Falls-Windsor..... (709) 292-1194  
Lewisporte..... (709) 535-6266  
Springdale..... (709) 673-2628

### **Western Region:**

Corner Brook..... (709) 634-4174  
Stephenville..... (709) 643-8396

### **Labrador Region:**

Labrador City..... (709) 944-3209  
Happy Valley-  
Goose Bay..... (709) 896-7904

# LEGAL AID

Legal Aid is a program available to help people with serious legal problems who are in financial need and cannot afford a private lawyer. Legal Aid in Newfoundland and Labrador is funded by the Government of Canada, the Government of Newfoundland and Labrador, and the Law Foundation of Newfoundland and Labrador.

In many cases, Legal Aid may be provided without charge, but not always. In some cases, the person receiving Legal Aid may be required to pay some of the cost of the coverage s/he receives. In order to determine whether someone can afford to cover part of the cost, and if so, what portion they will be asked to pay, the Newfoundland and Labrador Legal Aid Commission will consider his/her financial situation.

## HOW TO APPLY FOR LEGAL AID?

A person must complete an application form. Forms are available on the Newfoundland and Labrador Legal Aid Commission's website [www.legalaid.nl.ca](http://www.legalaid.nl.ca) or by contacting one of the eleven offices located throughout the province. The addresses and telephone numbers for these offices can be found at the bottom of this chapter.

Completed applications (with the required accompanying documentation) can be mailed to or dropped off at the Legal Aid office closest to the applicant. Applications can also be completed through an appointment at Legal Aid. In such cases, applicants are encouraged to call ahead and arrange an appointment rather than

drop in. This ensures that there will be an intake worker available to meet with the applicant. Intake workers are not lawyers. When calling to set up an initial appointment, the applicant should inquire what type of documents are needed for the appointment.

## HOW DOES THE LEGAL AID COMMISSION DECIDE IF A PERSON QUALIFIES?

First, an applicant must qualify financially. Legal Aid will require proof of assets, income, and debt. The intake worker will advise what documents are required. If the applicant meets the financial eligibility, then the applicant meets with a lawyer to see if there is any useful legal work which can be done and whether the case is one of the types that Legal Aid handles.

## WHAT TYPES OF CASES DO THEY HANDLE?

There are various types of cases which may qualify for Legal Aid assistance including criminal, youth justice, family (including child protection matters), immigration, civil/administrative matters and traffic tickets. They do not automatically handle cases that fall into these categories. Legal Aid looks at various factors when deciding if the case is one for which they will provide representation. For example, Legal Aid will normally only consider providing representation for a traffic ticket if upon conviction there is a likelihood of jail or the accused risks losing his/her job. In the case of family law matters, Legal Aid usually covers cases that deal with divorce, separation, custody, and access. However, child support, spousal support, or matrimonial property

matters are sometimes handled when they arise during separation, divorce, or custody and access proceedings. Such family matters may also be covered in special circumstances. The office where you apply will decide, based on your individual circumstances, whether or not Legal Aid will cover such a matter.

### **How to get more information about Legal Aid?**

For more information, a person should contact a Legal Aid office closest to him/her. Contact information is listed below. There are 11 offices province-wide. The Legal Aid Commission's website contains detailed information. Go to [www.legalaid.nl.ca](http://www.legalaid.nl.ca)

#### **Carbonear**

P.O. Box 340  
21 Industrial Crescent  
Carbonear, NL  
A1Y 1B7  
Tel: (709) 596-7835 / (709) 786-6003

#### **Clareville**

382F Memorial Drive  
Clareville, NL  
A5A 1P4  
Tel: (709) 466-7138

#### **Corner Brook**

19 Union Street  
Corner Brook, NL  
A2H 5P9  
Tel: (709) 639-9226

#### **Gander**

90 Airport Boulevard  
Gander, NL  
A1V 2M7  
Tel: (709) 256-3991

#### **Grand Falls-Windsor**

7A Queensway Drive,  
P.O. Box 6  
Grand Falls-Windsor, NL  
A2A 2J3  
Tel: (709) 489-9081

#### **Happy Valley-Goose Bay**

19-21 Burnwood Drive  
P.O. Box 442, Stn B  
Happy Valley-Goose Bay, NL  
A0P 1E0  
Tel: (709) 896-5323

#### **Labrador West**

P.O. Box 370  
Wabush Shopping Centre,  
Grenfell Drive,  
Wabush, NL  
A0R 1B0  
Tel: (709) 282-3425

#### **Marystown**

P.O. Box 474  
4 Industrial Park  
Marystown, NL  
A0E 2M0  
Tel: (709) 279-3068

#### **St. John's**

Suite 200, 251 Empire Avenue  
St. John's, NL  
A1C 3H9  
Tel: (709) 753-7863

#### **St. John's - Elizabeth Avenue Office**

69 Elizabeth Avenue,  
St. John's, NL  
A1A 1W8  
Tel: (709) 722-6981

#### **Stephenville**

135 Carolina Avenue  
P.O. Box 570  
Stephenville, NL  
A2N 3B4  
Tel: (709) 643-5263

# MARRIAGE

Marriage is a binding legal contract which affects legal rights and responsibilities. In Newfoundland and Labrador, the legal requirements for getting married can be found in the provincial *Marriage Act*. This Act can be accessed via the House of Assembly page on the Government of Newfoundland and Labrador website (<http://www.hoa.gov.nl.ca/hoa/>)

## Who Can Marry?

In Newfoundland and Labrador, any single, adult person (19 years of age or older) can marry any other single adult. Existing requirements for getting married in Newfoundland and Labrador apply to same-sex marriages. If a person under 19 years of age is seeking to get married, special consent may be required. S/he should consult with Vital Statistics to get further information about the applicable restrictions.

## The Marriage Licence

One of the initial stages in the process of getting married is obtaining the marriage licence. Applications for a marriage licence must be made in person to a marriage licence issuer. People authorized to issue marriage licences are located across the province. To request a listing of marriage licence issuers, contact Vital Statistics or visit their website which includes a listing of marriage licence issuers across the province (contact information for Vital Statistics provided in “Resource List” section at end of this booklet). While only one of the people seeking to get married needs to appear in

order to make the application, specific documentation is required. Applicants should be sure to ask the marriage licence issuer in advance what is required. There is a fee charged for having a licence issued. There are various waiting periods involved after making an application before a marriage licence will be issued. This should be checked into well in advance of a planned wedding date.

A marriage licence is only valid for 30 days after the date it is issued. While it is important to research what documentation is required well in advance of a wedding, the marriage licence should not be issued more than 30 days ahead of the wedding date.

If an applicant has been previously married, s/he must present the original Decree Absolute or Certificate of Divorce. If the documents are in a foreign language, the original plus a notarized translation must be provided. If either of the persons seeking to get married was divorced in a foreign jurisdiction, s/he will be asked to provide a letter from a practicing Newfoundland lawyer stating that s/he is eligible to marry in Newfoundland and Labrador.

## The Marriage Ceremony

The marriage ceremony is the final step when getting married. It can be civil or religious. Religious ceremonies may be performed by registered religious representatives. A civil ceremony is conducted by a marriage commissioner. A listing of marriage commissioners across the province can be found on

Vital Statistics' website (see back of booklet for contact information). Most religious organizations have at least one person on staff who is legally entitled to perform marriage ceremonies. It should be noted however that some religious organizations will not perform marriage ceremonies for same-sex couples. For some same-sex couples, their options may be limited to a civil ceremony.

The *Marriage Act* recognizes some marriages that may not be performed by a marriage commissioner or registered religious representative. These include ceremonies performed in accordance with Inuit Laws and Bylaws made in accordance with the Labrador Inuit Land Claims Agreement. As well, marriages performed within the Baha'i faith (without a marriage commissioner or registered religious representative) are also recognized if special requirements are met. It is best to consult with Vital Statistics for more information.

# CHANGE OF NAME

There is legislation in Newfoundland and Labrador called the *Change of Name Act*. This Act can be accessed via the House of Assembly page on the Government of Newfoundland and Labrador website (<http://www.hoa.gov.nl.ca/hoa/>).

A person does not necessarily have to go through a legal process in order to change his/her name. For example, a person can change their name without having to go through a formal name change if s/he is:

- using a spouse's surname or a combination of each spouse's surname as a result of marriage, or
- returning to a previously used surname, either during marriage or after a marriage breakdown

Changing a name (given name and/or surname) under any other circumstances will require an application to the Vital Statistics Division of the Newfoundland and Labrador government.

A person must have resided in Newfoundland and Labrador for at least three months before applying for a name change. The applicant must be 19 years of age or older to do so. If the applicant is under 19, a parent or legal guardian must normally complete the process. There are some exceptions. If an application is being made to change the name of a person under 19 years of age, Vital Statistics should be contacted for more specific information.

## What is the legal process for changing one's name?

If a legal change of name is required, an applicant must fill out the appropriate application form, which is available from the Vital Statistics Division.

The Division will advise what other documentation may be required, and the required fee for filing the application. All surname changes must be published in the Newfoundland Gazette. There are some exceptions to this requirement.

## How to Change a Child's Name?

If you are considering applying to change your child's name, it is best to first consult with Vital Statistics to discuss your specific situation.

The processes involved may differ depending on the circumstances. For example, if both parents were named on the child's birth registration form, then normally the consent of both parents is needed for a name change of that child. If written consent is not provided, the parent applying to change the child's name must show proof to the Registrar of Vital Statistics that s/he served notice of the name change on the other parent of the child and advised the other parent of his/her right to object to the change. Notice must be served personally on the other parent or through registered mail and proof must be provided that the other parent received the notice. If 30 days has passed from when that parent was served and that parent does not file an objection, the application for a name change may be granted by the Registrar of Vital Statistics.

In cases where both parents are listed on a birth registration form, and one parent objects to the name change and refuses to consent, the other can go to court to ask a judge to authorize the name change without the other parent's consent.

If a child is 12 years of age or older, the consent of that child is normally needed for a change of name to be authorized.

In cases where two parents are named on the birth registration form but one is deceased, the parent making the application must provide documentary proof of the other parent's death to the Registrar of Vital Statistics. If the proof is satisfactory to the Registrar, the application for a name change may be granted.

If only one parent is named on the birth registration form, an application for a name change of a child can be granted if the parent applying provides proof to the Registrar of Vital Statistics that there are no ongoing legal proceedings in relation to parentage or custody of the child.

**All forms necessary for name changes are available from Vital Statistics.**

# DOMESTIC CONTRACTS

A domestic contract is an agreement between two people who are, or have been, in an intimate relationship. There are three common types of domestic contracts. They are: marriage contracts, cohabitation agreements, and separation agreements.

A domestic contract is enforceable by the court under the provisions of the *Family Law Act*, if a written copy has been filed with the Supreme Court Family Division or the Supreme Court General Division. For information on which court to use, see page 60 of this publication for details on the jurisdiction of both. The *Family Law Act* can be accessed via the House of Assembly page on the Government of Newfoundland and Labrador website (<http://www.hoa.gov.nl.ca/hoa/>). This Act specifically states that a domestic contract cannot be enforced unless it is made in writing, signed by the parties, and witnessed.

It should be remembered that a domestic contract is exactly that - a contract. If a party breaks a term of the agreement, s/he might be sued for damages or, more importantly for specific performance. This means s/he may be ordered by a court to perform the terms of the contract.

The three common types of domestic contracts and the typical terms included are discussed below.

## Marriage Contracts

A marriage contract can be entered into before or during marriage. It can set out each person's respective rights

and obligations under the marriage or on separation, on the annulment or dissolution of the marriage, or on death. A marriage contract can clarify ownership of certain assets and outline how spouses will divide property and debts upon a marriage breakdown. Items that can be included are spousal support and issues regarding children, but only in limited ways. A marriage contract can outline issues such as education and moral training for children, but cannot deal with issues of custody and access and child support in the event of a marriage breakdown. In custody and access situations, the best interests of the children are the primary concern and that can only be determined at the time of a separation or divorce.

For a marriage contract to be enforceable under the *Family Law Act*, it must be signed by both parties and witnessed. Each party should receive independent legal advice before signing the agreement.

Marriage contracts can be filed at court, but this is not required. Such a contract is legally binding whether or not it is registered. It should be kept in a safe place such as a safety deposit box.

## Cohabitation Agreements

If a couple is living in a conjugal relationship, but are not married, the parties can enter into a cohabitation agreement. Many couples living common law consider entering into cohabitation agreements because such couples do not necessarily have the same rights as married couples under the law (see more information on

this in the section COMMON LAW RELATIONSHIPS). A cohabitation agreement can cover the same topics, and has the same restrictions, as discussed for marriage contracts.

Upon marriage, a cohabitation agreement will automatically become a marriage contract unless it is specifically cancelled in writing or if the Agreement specifically states that it will be void upon marriage.

As with all domestic contracts, such an agreement needs to be signed and witnessed and both parties should obtain independent legal advice before signing.

## Separation Agreements

If spouses have decided to separate, many issues will need to be resolved. It may be possible to resolve these legal issues without going to court, through the drafting of a separation agreement.

Items addressed in a separation agreement may include custody and access of children, support payments, division of property and debt, along with other issues relevant to the settlement of matters.

If a couple is separating on good terms, they may be able to work out many of these issues together. It can be a very emotional time, however, and negotiating a separation agreement can be very difficult. Some people might agree to certain things just in the interest of “getting it over with”. However, it is important to remember that once a separation agreement is signed, it may be very difficult to change, unless the other party agrees to change it.

Even if spouses are able to draft their own agreement, it is strongly suggested that before signing, each party seek independent legal advice.

It is very important to ensure separation agreements are put in writing. If in future either party decides to challenge the agreement, it will be very difficult to prove what was agreed upon if the separation agreement is not in writing.

It is also important to have the agreement in writing for enforcement purposes. A domestic contract and an agreement to amend or rescind a domestic contract are unenforceable unless made in writing, signed by the parties and witnessed.

Items often dealt with in a separation agreement include:

- Who gets to stay in the family home or if it is going to be sold;
- Who is responsible for the payments on the home (e.g. mortgage payments, repairs, or the lease responsibilities on a rented property) until the house is sold;
- Insurance policies and pensions (e.g. who pays the premiums, who are the beneficiaries);
- Who is responsible for any debts;
- Who gets which assets, such as cars, furniture, electronics, cottage, etc.;
- Spousal support;
- Division of employment benefits, including pensions, severance pay, vacation pay and overtime;
- Division of bank accounts and savings (e.g. RRSPs, GICs, TFSAs);
- Custody of, support for, and access to the children;
- The right to direct the education and moral upbringing of the children;
- A method of adjusting the agreement if circumstances change; and

- Other matters which may be necessary to settle the couple's affairs.

As with other domestic contracts, both parties must sign and have the agreement witnessed by a third party.

## **How Can a Domestic Contract Be Set Aside?**

If, after entering into a domestic contract, one party wants to change it and the other party agrees, the contract can be changed **in writing** by the consent of both parties.

Again, it is suggested that each party speak independently with a lawyer before agreeing to change an existing agreement.

If one spouse is unwilling to change the contract upon request, then an application can be made to court to have it set aside in its entirety or just a portion of it. This means that the court may ignore the entire contract **or** just a portion of the contract. The *Family Law Act* is very specific about situations under which a domestic contract can be set aside. For example, a domestic contract may be set aside if:

- A spouse did not tell the other spouse about significant assets or debts that existed when the contract was made;
- A spouse did not understand the nature or consequences of the contract; or
- A spouse signed the agreement because s/he was threatened to do so.

If any of the above factors are present, the Court must still look at whether the agreement is unconscionable and grossly unfair. If the Court feels that the agreement on its face is fair to both parties, then the court may exercise its

discretion and **not** set the agreement aside. However, if the Court feels that the agreement is grossly unfair to one party and the other party greatly benefited by the agreement, the Court may exercise its discretion and set aside either the whole agreement or a portion of it.

A court may also set aside a portion of a domestic contract dealing with support, education, moral training, or custody of or access to a child, where a court feels it is in the best interests of the child to do so.

# DIVORCE

Divorce is the legal termination of a marriage. A divorce does not release spouses from all obligations. Spouses must still provide support for any children of the marriage and, in some cases, for each other. Nor does divorce deny either spouse the right to see his/her children. It simply ends the legal relationship that was created when two people were married.

In Canada, divorce is governed by the *Divorce Act*, which is a federal law. This Act can be accessed via the Department of Justice (Canada) website (<http://canada.justice.gc.ca>)

## What are the Grounds for Divorce?

The *Divorce Act* states that a divorce can be granted when there has been a “permanent marriage breakdown.” To prove that such a breakdown has taken place, it must be shown to the court that the criteria for divorce as set down in the *Divorce Act* have been met.

A divorce may be granted if one of the following situations has occurred:

1. Spouses have lived separate and apart for at least one year. It is the least difficult to prove and the most commonly cited ground for divorce. This does not mean that there has to have been a legal separation agreement or even that the spouses have lived in separate houses. It just needs to be proven to the court that the spouses have been living separate lives for at least one year. Of course, it is more difficult to prove if spouses continue to live in the same home. If spouses reconcile for more than 90 days, but decide to

continue with the divorce, the one year separation period will have to begin again once the parties have separated for a second time.

2. A spouse has committed adultery.
3. A spouse has treated the other spouse with physical or mental cruelty which has made it impossible for the couple to continue to live together.

If spouses are living separate and apart, an application for divorce may be filed immediately. The divorce will not be granted, however, until they have been living separate lives for one year, or have demonstrated that one of the other grounds for divorce is present (i.e. adultery, or mental/physical cruelty).

## Who Can Apply For a Divorce?

To file for divorce in Newfoundland and Labrador, the applicant normally must be a resident of Canada. Also, either the applicant or his/her spouse must have lived in Newfoundland and Labrador for at least 12 months immediately before the application for divorce is made.

In some cases, spouses living outside of Canada may apply to divorce in Canada but only in special circumstances. Such couples must meet two criteria under the Federal *Civil Marriage Act*:

- The couple must have married in Canada; and
- The couple cannot undo their marriage in the country where the spouses live because that country does not recognize their Canadian marriage.

\*In such cases, it is best to seek advice from a lawyer practising in the Canadian province or territory where the couple was married.

The person who files for divorce is called the applicant. The other spouse is the respondent. Sometimes spouses will file for divorce jointly as co-applicants.

The person who files for divorce on the grounds of adultery or cruelty cannot be the same person who is alleged to have committed the acts involved.

### **Where do I go to obtain a divorce?**

Applications for divorce are made to the Supreme Court of Newfoundland and Labrador. Depending on where you live, it will either be General Division or Family Division. For information on which Division to apply to, see page (# *to be inserted once content finalized*) of this publication. Provincial Court does not handle divorce cases.

### **How to File for Divorce?**

In cases where a spouse decides to file for divorce on his/her own (and not as joint applicants), s/he will need to complete a court form called Originating Application. The form contains several sections that must be filled out, including details about the marriage, the grounds for seeking a divorce, and whether spousal and/or child support is being sought, to name a few of the items. Another document which must be completed is the Notice to Respondent. It is a form that notifies the other spouse that a divorce application has been filed, and that if s/he wishes to contest the divorce petition, they must respond.

Both of these forms must be filed (submitted) with the court. The court will need to be provided with various other documentation, including the marriage certificate or separation agreement (if one exists). The court should be contacted to determine what other documentation may be required.

There is a court filing fee when applying for divorce. Once the required documents are issued (signed) by the court clerk, the applicant will have six months to serve the other spouse (the respondent) the documentation, including a response form that the respondent completes. In some special cases, an application can be made to court to extend the time needed for service. The documents must be given to the spouse personally, by someone other than the applicant. The person who gives (serves) these papers to the spouse must complete an Affidavit of Service to prove to the court that the spouse has officially been served. The Affidavit of Service must be filed (submitted) with the court.

If the respondent spouse lives in Canada or the United States, s/he has 30 days to respond to the divorce application from the date of service. If the spouse lives outside Canada or the United States, s/he has 60 days to respond. The responding spouse must contact the court where the application was made in order to file a response. If the applicant is requesting spousal or child support, the responding spouse will have to include other documents such as financial statements.

If the spouse does not respond to the petition or challenge any of the claims, the applicant spouse can proceed with an uncontested divorce. It is a fairly straightforward procedure. Public Legal

Information Association (PLIAN) has a publication entitled “Uncontested Divorce: An Information Guide for Newfoundland and Labrador.” It is available on PLIAN’s website [www.publiclegalinfo.com](http://www.publiclegalinfo.com) or by calling 1-888-660-7788 to request a free copy.

The responding spouse may decide to dispute the grounds for divorce or challenge any claim to custody of any children, support, division of property, etc. This is called a contested divorce. A contested divorce means that the spouse applying for a divorce will have to prove the contents of their application for divorce. The applicant may have to prove that the grounds for divorce are present and/or give evidence as to why custody and/or support, etc. is at issue. The responding spouse will have an opportunity to put forward his/her case as well. The focus of the hearing in court is often custody, support, or division of property. It is rare that the grounds for divorce will be challenged.

Once a couple is officially divorced, a Certificate of Divorce will be issued by the court. There is a fee charged by the court for the certificate.

### **What are the Barriers to Divorce?**

Even if there are adequate grounds for a divorce, certain actions may prevent the divorce from being granted. The court will not grant a divorce if spouses have not made reasonable arrangements for the support of any children of the marriage or if either have misled the court about the grounds of the divorce in order to have the case dealt with more quickly.

As was discussed earlier, another barrier to the divorce process is a reconciliation of over 90 days if a divorce is being sought on the grounds of separation. After a separation, spouses can live together again for up to 90 days before the court will consider the one year separation period as interrupted. If spouses have reconciled for longer than 90 days, but then decide to continue with the divorce, the one year separation period will have to begin again.

# DIVISION OF PROPERTY

The *Family Law Act* attempts to recognize the contribution of both spouses to marriage through an equal division of matrimonial assets following marriage breakdown. Please note that throughout this section (“Division of Property” and “Who owns Matrimonial Property?”) any reference to “spouse” or “spouses” is as defined under the *Family Law Act*. The Act does not apply in all cases. For example, a couple may decide to opt out of the Act through a marriage contract. The law respecting property division does not apply to common law couples unless they opt into the provisions of the *Family Law Act* through a domestic contract.

A court application for division of property can be made following death, divorce, or separation. The family law legislation relevant to division of property in Newfoundland and Labrador is the *Family Law Act*. Court applications dealing with the division of property can **only** be heard at the Supreme Court of Newfoundland and Labrador. It cannot be heard at the provincial court.

It is important to note that there are time limits regarding when an application for division of property should be filed. It is a good idea to speak with a family law lawyer to determine what the time limit is for a particular situation.

Remember, spouses always have the option of agreeing on how property will be divided. An application for the division of matrimonial property is usually addressed in court after such an attempt fails. However spouses can still continue to negotiate after such

an application has been filed with the court. If there is still no agreement, the matter will be heard by the court, usually as part of a contested divorce hearing.

The law presumes that assets purchased during a marriage were acquired by both spouses and upon marriage breakdown the assets are usually divided equally. This presumption is in recognition of both spouses’ contributions to the marriage – in the form of money, child care, home care, and otherwise.

It is important to remember, however, that not all property will be considered “matrimonial assets”. The following assets are not usually considered matrimonial assets:

- Gifts, inheritances, settlements or trusts, unless such assets were used for a family purpose or were used to buy family assets, or given/inherited by both spouses jointly;
- Family heirlooms;
- Personal injury awards- except any portion that compensates for economic loss, for example lost earnings, etc;
- Personal possessions;
- Business assets owned by one spouse;
- Property that is specifically excluded under a marriage contract; and
- Property acquired after separation.

There are exceptions to the above-noted categories, depending on the facts of the case. For example, if a spouse inherited a home which was used as a matrimonial home, it might be considered a matrimonial asset and subject to division. In addition, if a

spouse can show that they contributed to their spouse's business, s/he might be able to make a claim for division of business assets.

## Who Owns the Matrimonial Property?

### (i) Matrimonial Home

The matrimonial home is the home and land that spouses shared together as a family. It could include a house, trailer, mobile home, and condominium. Both spouses are entitled to an equal share of the matrimonial home regardless of whether it was previously owned by one spouse, how and when it was acquired, or if it was purchased in only one name. Married spouses own the home as joint tenants, which means that both have equal ownership rights to the property.

If one spouse dies, the surviving spouse normally gets the house and land automatically. An additional consequence of this joint ownership is that both must agree in writing whenever the matrimonial home and land is to be sold or mortgaged.

Following separation, both spouses are entitled to live in the matrimonial home. If one moves out, the person who remains is not allowed to change the locks or deny the other access to the home, unless s/he has bought out the other's interest in the home or has an order for exclusive possession of the home. Both parties must continue to pay for the mortgage, insurance costs and property taxes associated with the property, unless the parties agree otherwise.

Exclusive possession means that a spouse can continue to live in the house without the other even though both still own the home as joint

tenants. Either spouse can apply to the court for exclusive possession upon the breakdown of a marriage but exclusive possession is usually only granted by a judge for a short period of time and in limited situations.

### (ii) Matrimonial Assets

Matrimonial assets include property acquired by either spouse during the marriage. This may include household items such as furniture and appliances, automobiles, bank accounts, work related benefits such as pensions, severance and vacation pay, RRSPs, stocks, bonds, and any cabins or land used by the family. Both spouses are considered to have contributed to these assets and they are usually divided equally to reflect this fact.

## The 50/50 Split

If spouses cannot agree on how to divide the property they share, an application can be made to court to request that a judge divide the assets. The general principle of the *Family Law Act* is that both spouses own all matrimonial assets equally. Therefore, on an application for division of property, the court will usually split the value of the matrimonial assets equally between the spouses.

In many cases, both spouses will seek independent legal advice and reach their own agreement as to property division. If the parties cannot agree, however, the matter may go to court. If the matter goes to court, both spouses will have to file documentation that gives complete and up-to-date information on the owned property. This is what is referred to as a Property Statement. You can obtain a copy from the Supreme Court of Newfoundland and Labrador or via the Court's website.

Based on this information, the court will attempt to divide the property equally.

If one spouse feels that an equal division of property is unfair, s/he may make an application for an unequal division of property. For the court to accept this, however, that spouse must prove that an equal division is “grossly unjust or unconscionable.”

The court does not normally consider the misconduct of either spouse, including adultery, in dividing matrimonial assets. The spouse who leaves the home does not forfeit their right to equal assets, nor is the spouse who remains with the children entitled to more. Instances where the court may divide the property unequally include if a spouse deliberately wasted or squandered marital assets.

# MATRIMONIAL PROPERTY ON RESERVES

Historically, the division of real property (ie. land and houses) has been different on reserves than non-reserve communities in Newfoundland and Labrador. The *Indian Act* which applies to reserve land does not cover the topic of matrimonial real property and provincial legislation about matrimonial property does not apply on reserves. In an attempt to fill this legislative gap, federal legislation called the *Family Homes on Reserves and Matrimonial Interests or Rights Act* was passed on June 19, 2013. As of the date of printing of this publication, the *Act* has not yet come into force. Once the *Act* comes into force, First Nations communities can choose to either follow the federal rules or they can choose to enact their own laws related to matrimonial real property rights and interests. In other words, they can design laws to meet their particular needs and respect their particular customs.

A 12-month transition period was added to the *Act* which provides time for First Nations communities to enact their own laws before the federal provisional rules take effect. However, First Nations are not limited to the 12-month transition period and may enact their community-specific laws at any time once the *Act* comes into force.

Since the new legislation is not yet in force as of the printing of this publication, we will provide details about the current system. Spouses who live on a reserve and are separating or divorcing should check with their Band Council to inquire what system is currently in place, since provincial laws of matrimonial property do not apply to reserves.

Some reserves issue Certificates of Possession to homeowners. A Certificate of Possession is evidence of the right to possess the home. It can be issued for one person or can be issued jointly for two people. A person can transfer their Certificate of Possession to another Band member. This means that if both spouses are both band members and have come to an agreement about who will keep the house, then a transfer of the Certificate of Possession can be made. The Minister of Aboriginal Affairs and Northern Development must approve a transfer of possession.

If both partners cannot agree on a transfer of possession there is no way to force it. If the Certificate of Possession is in the name of one spouse, the named spouse has the right to keep the home.

Sometimes Bands do not issue Certificates of Possession. If this is the case, then the Band has the right to decide who stays in the home. They might offer one spouse another home. If there are children involved, the Band may let the parent who has the children for most of the time stay in the home.

Courts do have some powers in matrimonial property cases on reserves. For example, the courts may take the value of the house and any land into consideration when ordering the division of assets. If one spouse cannot keep the home, the court may order the remaining spouse to pay money to make up for this. This is not always easy, however, as it can be very hard to find out the value a house on a reserve

because it cannot be sold on the open market.

If a spouse is forced to give up their home, s/he will not necessarily have to leave the reserve. If s/he is a Band member, the Band may provide an alternate home.

# CUSTODY AND ACCESS

When two parents are living together in a common law relationship or are legally married, custody of a child is usually not an issue. However, the relationship between parents may break down resulting in separation and/or divorce. During this time, a decision must be made about parenting arrangements for the child. In some cases, parents of a child never lived together as a couple and need to decide on parenting arrangements.

**Custody** is a legal term that refers to decision making and responsibility for a child. A person who has custody of a child has the responsibility for making important decisions about a child's life, such as decisions about education, health care and religion. There are different types of custody arrangements. Making decisions about child custody can prove to be difficult for some parents. It is important for parents to consult with a lawyer to ensure they are informed about their rights and obligations.

**Access** is often referred to as visitation and is the right of a non-custodial parent (or other important person such as a grandparent) to visit and spend time with the child(ren) on a regular basis. Access also usually includes the right to ask questions about the child and be given information about health, welfare, and education.

## **Do parents have to go to Court to decide custody/access issues?**

If parents can make a decision together about custody and/or access, they may not have to go to court. Custody

and access can be decided among the parents or guardians of the child if a decision can be agreed upon by all parties involved. If parents are unable to come to a decision, even with the help of a mediator, the issue may have to be resolved in court.

## **Who can make a court application for custody or access?**

Parents of a child are entitled to apply to court for such matters. However, parents are not the only people who can make application for custody and access. For example, grandparents may be entitled to make application to court. There are also other non-parents who may be entitled to make a custody or access application if they are a family member or if they have stood in the place of a parent. Applications for custody and access may be started under the Federal *Divorce Act* (if divorce proceedings are involved) or under the provincial *Children's Law Act*. The applicable law determines the procedure for a non-parent making a custody or access application. Under the *Divorce Act*, a non-parent must first be given "leave" or permission of the court before s/he can move forward with such an application.

If a non-parent is considering making a court application for custody or access to a child, a lawyer should be consulted.

## How is custody and access decided in Court?

During a court hearing, the judge will hear information about the situation and make a decision based on the best interests of the child.

### Types of Custody Arrangements

The following are terms used to describe some of the different custody arrangements in Newfoundland and Labrador.

*\*Please note that in the context of the Child Support Guidelines, the term “custody” refers to the percentage of time a child spends in each parents’ home. It does not refer parenting or decision making. Refer to the Guidelines for those particular definitions [See Child Support section of this booklet for information on how to access the Child Support Guidelines].*

#### (i) Sole

In a sole custody arrangement, the child usually lives primarily with one parent. That parent has the sole responsibility to make major decisions for the child. It does not normally mean that the other parent is uninvolved because the other parent is usually awarded access.

#### (ii) Joint Custody

Joint custody means that both parents make major decisions about their child together. It does not necessarily mean that the child lives with both parents an equal amount of time. Instead, an arrangement is made either by the parents or the court to decide how much time is spent with both. The primary home or residence of the child is the place where the child spends the most amount of time.

Joint Custody can also mean that the child(ren) live with both parents on an equal basis. Each parent would have the child for an equal amount of time.

### Types of Access Arrangements

There are several types of access arrangements:

#### (i) Reasonable

A reasonable access arrangement means that the parent who does not have custody, or who does not live with the child, can arrange to set up times with the custodial parent to see the child. This basically means that the parents of the child work together to see that the child spends time with both parents when it is in the best interests in the child, taking into account extracurricular activities and schooling. This is a flexible arrangement that means that both parents have to cooperate with one another.

#### (ii) Specified

This type of access, set out in a court order or agreement between the parents, provides certain times that a parent may have the child in his or her care. It is essentially a schedule which outlines when the parent is to see the child.

#### (iii) Supervised Access

This type of access, set out in a court order or agreement between the parents, provides that time spent by the parent with the child must be in the presence of another adult. Usually, the supervising adult will be named in the order or agreement. Supervised access generally occurs if one parent has never

had a relationship with the child and the relationship is being re-established, if the parent has ever been physically abusive towards the other parent or to the child, and so forth.

### **If I have custody do I have to consult the other parent before I move away?**

A parent should consult with a lawyer prior to moving away to discuss his/her legal rights and responsibilities. If there is already a custody order or custody agreement in place, this question may already be addressed in those documents. Consent by the other parent is normally required before the custodial parent can move away with the child. If there is no custody order or agreement in place, the parent wanting to move would normally need the permission of the other parent before the child can be moved. If that parent will not give consent, then an application can be made to court to seek permission to move with the children. The judge will consider many factors in making that decision including whether the move is in the best interest of the child and whether the move will prohibit one parent from having a relationship with the child if s/he moves.

party is seeking to supersede (replace) a custody/access order from a different jurisdiction with an order from Newfoundland and Labrador. In such circumstances, it is suggested to seek legal advice.

### **Custody/Access Orders from Other Jurisdictions**

Generally speaking, custody/access orders from other jurisdictions (such as other provinces and territories) are recognized and enforceable in Newfoundland and Labrador where a party has made a court application to have such an order recognized in Newfoundland and Labrador. However, the *Children's Law Act* of Newfoundland and Labrador does provide direction in cases where a

# GRANDPARENTS' RIGHTS

The relationship between a grandparent and grandchild does not necessarily end with the separation or divorce of the child's parents. In many cases, the relationship will continue as before. If this is not the case, grandparents need to know their rights under the law.

A grandparent may be entitled to make a court application for access to, or custody of, their grandchild. Applications for custody and access may be started under the Federal *Divorce Act* (if divorce proceedings are involved) or under the provincial *Children's Law Act*. The applicable law determines the procedure for a grandparent making a custody or access application. Under the *Divorce Act*, a grandparent must first be given "leave" or permission of the court before s/he can move forward with such an application.

If a person is having difficulty accessing their grandchild, it is recommended that s/he speak with a lawyer about legal options. If a grandparent is unable to come to an agreement with the parents of the child, even with the help of a mediator, the issue may have to be resolved in court.

The laws that deal with children are based on what is in their "best interests." Unless contact with a grandparent is harmful, it is normally in a child's best interests to have a relationship with them. Children have the right to all the love and support available to them and it can be important to their social, emotional, and intellectual development to have

grandparents in their lives. Regular contact with extended families is often considered to be in the best interest of the child.

# CHILD SUPPORT

Child support is money that a parent pays to help support his or her child financially after a separation or divorce. The goal of child support is to make sure that when the relationship between a child's parents ends, both parents contribute to the financial support of their child in accordance with their ability to contribute to that support. It is not a punishment or a reward for the behaviour of the parents.

## Who Has to Pay Child Support?

Every person has a responsibility to provide financial support for his or her child. Parents are financially responsible for their child whatever the state of their relationship with each other. Parents will have to support their child even if their relationship with one another has ended. It does not matter whether they have been married or how long their relationship lasted. It does not matter if they have a big or a small income, except in extreme circumstances. It is not possible to avoid paying child support by not having a relationship with the other parent or by not being in contact with the child.

It is most often the parent with custody, or the parent who the child lives with most of the time, who receives the support payments. The money is intended to help with housing, clothing, feeding, educating, and caring for the child.

In some cases, step-parents may be required to pay child support for a child.

## How to Get Child Support?

Child support must be dealt with when a relationship breaks down. If both parents agree on the amount of child support to be paid, then it can put it in writing, such as in a separation agreement. Once it is signed and witnessed, it can then be filed with the appropriate court. A judge will look at the amount to see if it is reasonable in comparison to the *Federal Child Support Guidelines*. (These guidelines used to determine how much support should be paid are described in detail below).

If both parents cannot agree on an amount for child support, but want to work out the issue outside of court, the services of Family Justice Services can be used (see the "Family Justice Services" section of this publication).

If an agreement cannot be reached between the parents, an application can be made directly to court to have a judge decide the issue. See page (# to be inserted once content finalized) of this publication for information to assist in determining in which court to make the application. However, upon making application directly to court for child support, the matter will be forwarded to Family Justice Services to see if an agreement can be reached with the assistance of a mediator. If no agreement can be reached, the matter will be referred back to court.

## What Are the Child Support Guidelines?

The Child Support Guidelines are the rules and tables used to determine how much child support should be

paid. There are Federal Child Support Guidelines and provincial guidelines. Both are law, and judges have little discretion to deviate from them.

The Federal Child Support Guidelines apply if parents are married but filing for divorce or have already divorced or they have already divorced. The provincial guidelines apply if parents have never been married to each other or are separated, or planning to separate, but have decided not to divorce.

Child Support Guidelines provide a method of calculating child support. The Guidelines take into account various factors including the payer's province or territory of residence, the number of children, and where the child(ren) live.

Child support is based on the payor's annual income. The court will generally look at the payor's gross annual income (line 150 on their income tax return). There are a number of additions or deductions that can be made to a payer's income. For example, if the payer is a member of a union, s/he may ask the court to deduct his union fees from his annual salary. Conversely, a court may impute income to the payer if the Court finds that the payer's income is incorrect or is underemployed (e.g. the payer quit his job after being served with a child support application).

The Federal Child Support Guidelines are available on the Department of Justice Canada website (<http://canada.justice.gc.ca>). The provincial Child Support Guidelines are available through the House of Assembly page on the Government of Newfoundland and Labrador website (<http://www>.

[hoa.gov.nl.ca/hoa/](http://hoa.gov.nl.ca/hoa/)).

In certain cases a judge may decide to order a different amount than one specified in the child support tables. The child support amounts calculated according to the tables can be increased or decreased according to the situation. For example, the paying parent might pay less if they are suffering undue hardship as explained below and defined under the Guidelines. Or the judge may order more child support if the child has "special expenses."

### **Special or Extraordinary Expenses**

Special or extraordinary expenses are expenses that the table amounts may not cover. When deciding whether to allow for the special expense(s), a judge will consider if the expense is necessary in relation to the best interests of the child and whether it is reasonable given the means of the parents and the child and the family's spending pattern before the separation. Normally, these expenses are shared between parents in proportion to their incomes. Expenses that may be considered under this category could include (list not exhaustive) day-care expenses, expenses for post-secondary education, or orthodontic expenses.

### **Undue Hardship**

The court may make an order for more or less than the child support amount specified in the child support tables where either parent convinces the judge that the table amount would cause undue hardship to the parent or child. Under the guidelines, either parent may ask for a different child support amount at a higher or lower level if the parent or the child is experiencing undue hardship.

For example, this provision could apply where a parent has incurred unusually high debts from supporting the family prior to the separation. A two-step test must be used to determine undue hardship:

- it must be determined whether the parent requesting the change is in circumstances that would make it difficult either to pay the required amount or to support the child on that amount; and
- the person claiming undue hardship must show that his or her household is at a lower standard of living than the other parent's household. The standards of living of both households must be compared. The income of every member of both households must be looked at to compare standards of living. If the parent claiming undue hardship is not found to have a household's standard of living lower than the other parent's, the claim for undue hardship will be rejected.

### **How long is child support paid?**

Child support is generally payable until the age of majority, which is 19 years of age in Newfoundland and Labrador. Support is normally paid for the child beyond that age if the child continues to be dependent on the parents. Reasons for continuing support may be that the child is attending a post-secondary school (university or college) or because the child is physically or mentally disabled.

### **Is Child Support Taxed?**

Orders made under the Child Support Guidelines are tax neutral. This means that the parent who pays child support does not get a tax deduction, and the person who receives it does not have to pay tax on the money.

## **Recalculation of Child Support**

Family Justice Services offers a child support recalculation service that automatically recalculates the amount of child support paid based on annual tax information. Parties must either agree to use this service or have it ordered by a judge. A recalculation clause will then be included in the order or agreement.

Recalculation under this service is done once a year in order to ensure a fair level of support for the child. Income tax information is submitted yearly by both the payer and receiver of child support. The information is reviewed and, where the new information would result in a change in child support of \$5 or more (either increased or decreased), the parents are both notified of the recalculated amount. Provided neither parent files an objection to the recalculated amount, a new order is made. Either parent may object to the recalculated amount by filing a Notice of Objection with the court. This stops the recalculation process and the judge then makes a decision whether the person should pay the recalculated amount or some other amount.

### **Which orders or agreements are recalculated?**

The Child Support Recalculation Service recalculates child support orders and written agreements, which permit recalculation and are filed in Newfoundland and Labrador courts. This service applies to orders and written agreements that are filed with the court on or after April 1, 2007 (except for previous orders made under the Western Child Support Service Regulations).

## **What needs to be done after an order or written agreement is registered with the Child Support Recalculation Service?**

Each year, payers and some recipients of child support are requested to provide updated income tax information. This information is used to recalculate child support. When the service does not receive the requested income tax information, the recalculation is based on a 10% increase to the payer's income indicated on the most recent court order.

The Recalculation Office must be notified of changes in mailing addresses and/or phone numbers. If the service is not provided with up-to-date contact information, the parties might not receive notification when child support is recalculated and filed with the court.

## **How does the payer and recipient find out about the results of the recalculation?**

After reviewing updated income tax information, the Recalculation Office uses the Child Support Guidelines tables to recalculate the child support amount. If the recalculation results in a change of at least \$5, the new child support amount is noted in a Notice of Recalculation, which is mailed to both parents.

## **What happens if either party does not agree with the recalculated amount?**

After receipt of the Notice of Recalculation either party may file a Notice of Objection that is attached to the Notice of Recalculation with the court that made the original order.

Parties have 30 days from the date of receiving the Notice of Recalculation to do so. They will then be given a date and time by registered mail from the court of when to appear in court. The judge will then decide on the new support amount.

If no Notice of Objection is filed with the court, the new child support amount stated in the Notice of Recalculation will come into force.

## **How can I terminate the recalculation process if the original child support order or agreement is no longer in effect?**

Contact the Recalculation Office for information on this.

## **There are no fees to parents for the services they receive from the Child Support Recalculation Office.**

### **CONTACT INFORMATION**

Family Justice Services  
Recalculation Office  
P.O. Box 2006  
Corner Brook, NL A2H 6J8  
Tel: (709) 634-4172 • Fax: (709) 634-4155

## **Applying to court to vary a child support order.**

The payer or recipient may apply to the court at any time to vary a child support order. However, the applicant must prove that there has been a material change in circumstance (i.e. loss of job, illness, etc.). The applicant must file an "Originating Application for Variation" at the Court.

# SPOUSAL SUPPORT

When a couple separates, both spouses may not have the same ability to support themselves financially. In such cases it may be possible for the spouse who earns less to receive support. The following goals should be kept in mind to first determine whether a person has a legal claim to support. Spousal support should compensate spouses for the economic impact of the marriage and marital roles, most typically staying out of the labour force to care for children, both during the marriage and after the marriage breakdown. Another goal is to make sure that after a marriage is over, one spouse does not suffer economic hardship. Finally, spousal support should help each spouse become economically independent within a reasonable amount of time, if possible.

A judge will also consider various factors when deciding whether to order such support. These factors may include the length of the relationship, the financial means and needs of each spouse, the contribution one has made to the other's career, and the living situation of the children. These factors are not exhaustive and there may be other considerations the judge will take into account.

Generally the court will not consider the behaviour or misconduct of either spouse in deciding on support payments.

## **Who can apply for Spousal Support?**

If spouses have separated, but not divorced, a spouse may be eligible to make a claim for spousal support. If a couple is going through a divorce,

a spouse may be eligible for spousal support. If a couple is not married but have been living in a common law relationship, a partner might be eligible to apply for spousal support. For common law relationship cases, it is especially important to consult with a family lawyer to inquire about possible eligibility for such support.

It is important to know that issues of spousal support can be dealt with in domestic contracts, such as marriage contracts and cohabitation agreements. Before going to court about spousal support it is important to check any agreement to see if the issue is already addressed within the agreement. For more information see the section in this publication on DOMESTIC CONTRACTS.

## **How to Get Spousal Support?**

Spousal support can be addressed in a separation agreement. If this issue is addressed within a separation agreement, it should be remembered that it may become part of the final divorce order.

If an agreement cannot be reached between the spouses, an application can be made directly to court to have a judge decide the issue. See page 3 of this publication to assist in determining which court to make the application in.

## **What is the Amount and Duration of Spousal Support?**

While child support is dealt with in legislated guidelines (guidelines that are part of the law), this is not the case for spousal support. There is a

document called the Spousal Support Advisory Guidelines that provide ranges for the amount and duration of spousal support. These guidelines are recommendations; they are not law. Often judges will refer to these guidelines in deciding how much spousal support should be paid and for how long. The guidelines can be viewed on the Department of Justice Canada website ([www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)).

It is important to remember that priority in the courts is always given to children. If there are children involved, priority is given to child support. This means that any money that could be used for spousal support must come from what is left over after child support is paid.

Support can come in different forms. It can be ordered in a lump sum payment, periodic payments (which can be paid monthly or on some other basis), or through a transfer of specific property (for example, a portion of your spouse's share of the matrimonial home). The judge makes the final decision on how, and for how long, spousal support is paid.

When circumstances change, it may be possible to have spousal support payments stopped or the amount paid changed. If the two people involved cannot decide on the changes, the court will decide the issue. The court will take into account various factors when deciding whether a change in the support order is necessary, including:

1. whether there has been a material or significant change in the financial circumstances of the payer or dependent spouse;
2. has the dependant spouse taken all reasonable steps available to improve self-sufficiency (for example, has

the dependent spouse attempted to find employment, started a retraining program or gone back to school); and

3. whether new evidence has become available at this court hearing that was not previously available.

## Is Spousal Support Taxed?

Spousal support payments are generally considered taxable income in Canada. Before the income is taxed and a deduction available, certain requirements must be met including:

1. the payment must be made pursuant to a court order or written agreement;
2. the payment must be made to a spouse (married or common law);
3. you must be living separate and apart from your spouse at the time of the payment and for the remainder of the year;
4. payment is for the purpose of providing support; and
5. the payments must be periodic.  
It does not apply to lump sum payments of money or a transfer of property.

If the above-noted conditions are met, this generally means that the person paying spousal support will receive a deduction, and the person receiving support must report it as income to the Canada Revenue Agency.

# SUPPORT ENFORCEMENT

The Support Enforcement Program (SEP) is a service provided by the Support Enforcement Division of the provincial Department of Justice. It is a program designed to make the exchange of spousal and/or child support payments run as smoothly as possible. The authority for the establishment of the agency comes under the *Support Orders Enforcement Act, 2006*.

The SEP coordinates a number of services related to the collection and distribution of support payments required under court orders or agreements that have been registered with the program. The services provided can be grouped into two main categories. The first is administration of payments. The second is the collection of payments from those who have not been paying.

If a support arrangement has resulted from a court order, it is automatically registered with the SEP, unless the parties choose to opt out.

If the parties to a support arrangement have reached a written agreement outside of court, they will need to file it in court if they want it enforced by the SEP. The SEP will only enforce agreements that have been filed with court. If an existing agreement has been changed, it should be re-filed with the court. The SEP must be notified of the revised agreement.

If a court order or an agreement is registered with the SEP, then the individual who is entitled to receive support (called the creditor) does not have the right to collect the payments

directly from the person owing the money (called the debtor). Direct payments should not be accepted. If a creditor receives a direct payment, s/he should immediately notify the Support Enforcement Program so that accurate accounting records are maintained.

## **How are payments made under the SEP?**

The person required to pay support must make payments to the Director of Support Enforcement on the date(s) set out in the support order. The Director will then forward a government cheque to the creditor or deposit the money collected directly into a bank account of the creditor, in accordance with the terms of the support order.

If a person is not making their support payments, the SEP has a number of enforcement options available. The Director of Support Enforcement can demand a financial statement from a person who is required to pay support. The Director of Support Enforcement also has collection tools available and may use one or more of them. The Director may garnish wages from the debtor's employer, from federal sources of funds such as income tax refunds and employment insurances and can seize monies held at financial institutions. In addition, property may be seized and sold to pay outstanding arrears. There are other enforcement tools that may be used. As well, the debtor may be brought before a court to explain the non-payment. The court has a number of options including making an order to enforce payment of arrears or putting the debtor in jail.

If enforcement action is necessary, there will be delays. The program can only pay to recipients what it has been able to collect.

## **Can They Get Support From People Outside the Province?**

The Support Enforcement Program works best when the parties involved live in this province. Other provinces have similar programs and access to these can be gained by registering with their Support Enforcement Program. The other jurisdiction then assumes the responsibility to monitor and enforce the support order. However, enforcement is more difficult and may take longer.

## **What if a support order was made in another province?**

If a support order was made in another province and the debtor resides in Newfoundland and Labrador, the SEP will enforce the support order after it is registered with a Newfoundland and Labrador court.

For more information on the program visit the NL Department of Justice website (<http://www.justice.gov.nl.ca/just/>) and follow the link to the Support Enforcement Program.

## **How to Contact the SEP?**

Support Enforcement Division  
Department of Justice  
2<sup>nd</sup> Floor, Sir Richard Squires Building  
P.O. Box 2006  
Corner Brook, NL A2H 6J8  
Telephone (709) 637-2608  
Facsimile (709) 634-9518

# INTERJURISDICTIONAL SUPPORT ORDERS

If a person is looking to get or change a support order (for spousal support and/or child support) relating to a party who lives in another province or country, there are processes to follow. The *Interjurisdictional Support Orders Act* (ISO) is a provincial law that helps with these processes.

*The Interjurisdictional Support Orders Act* is used to obtain or vary an order for support or to request registration and enforcement of an order where one of the parties does not live in the same jurisdiction within Canada, the United States or any other reciprocating country. Under this law, Newfoundland and Labrador has agreements with many different places to recognize and honour each other's support orders. Since this is a legal document, parties may wish to consult a lawyer for assistance in completing the application or responding to one. Family Justice Services can provide general information to the public about the Interjurisdictional Support Order (ISO) process and application forms. As some employees of Family Justice Services are Notary Publics they can witness and notarize the application once it is fully completed by the party.

Once completed by the party, the ISO application is forwarded to the Designated Authority (DA) located within the Support Enforcement Program (SEP) Office (address below) who will then forward to the Designated Authority office in the reciprocating jurisdiction. The forms are reviewed by the DA for completeness but not for substance before they are sent. SEP's only involvement under ISO is to receive and or transmit applications and orders

for the applicant or claimant under the responsibility of the "Designated Authority."

Necessary paperwork can be filed with the Support Enforcement Program (ISO Designated Authority) at the address below:

## **Support Enforcement Program**

Attention: ISO Designated Authority  
Department of Justice  
2<sup>nd</sup> floor, Sir Richard Squires Building  
P.O. Box 2006  
Corner Brook, NL A2H 6J8  
Tel: (709) 637-2608  
Fax: (709) 634-9518

## **What are Reciprocating Jurisdictions?**

They include all the provinces and territories of Canada, and many foreign countries.

## **When Does the Law Apply & How?**

The ISO can be used to obtain a new order for child or spousal support, or to vary an existing agreement, when one party lives in Newfoundland and Labrador and the other in a reciprocating jurisdiction.

If any party lives in a non-reciprocating jurisdiction, the ISO procedures will not apply.

These ISO procedures cannot be used to apply for or to vary an order with respect to custody of or access to a child. The *Children's Law Act* of Newfoundland and Labrador does provide direction in cases where a party is seeking to supersede (meaning

replace) a custody or access order from a different jurisdiction that relates to a child living in Newfoundland and Labrador. If a person is seeking to replace an order for custody/access in such circumstances, it is suggested to seek legal advice.

## **Support Orders Made Under the Divorce Act**

This application process also does not apply if you want to change an order made under the *Divorce Act*. A support order made under the *Divorce Act* is valid and enforceable across Canada, and will *usually* be enforceable under the *Interjurisdictional Support Orders Act*.

However, in order to change a support order made under the *Divorce Act*, when one spouse resides in another province or territory, the spouse must be served with the application and the other spouse must also agree to have the Newfoundland and Labrador court decide the application. Another option is to apply to have part of the hearing to be held in the province where one spouse lives and the rest where the other spouse lives.

# SAME-SEX COUPLES

Same-sex couples in Newfoundland and Labrador (or any province or territory across Canada) are legally entitled to marry. This was not always the case, however, same-sex couples now have the legal right to marry if they choose to do so.

## Marriage

In Newfoundland and Labrador, any single, adult person (19 years of age or older) can marry any other single adult (of the same or opposite sex). Existing requirements for getting married in Newfoundland and Labrador apply to same-sex marriages. If a person under 19 years of age is seeking to get married, they should consult with Vital Statistics to get further information about the applicable restrictions.

A marriage ceremony can be civil or religious. Religious ceremonies may be performed by registered religious representatives. A civil ceremony is conducted by a marriage commissioner. A listing of marriage commissioners across the province can be found on Vital Statistics' website (see back of booklet for contact information). Most religious organizations have at least one person on staff who is legally entitled to perform marriage ceremonies. It should be noted however that some religious organizations will not perform marriage ceremonies for same-sex couples. For some same-sex couples, their option may be limited to a civil ceremony.

This publication contains a chapter on the topic of marriage. Please see this chapter for more detailed information on this topic.

## Living Common Law:

This is when two people live together in a marriage-like relationship. The two people can be of the same sex or of the opposite sex. No legal formalities are required. A common law relationship will NOT automatically become a legal marriage after a certain amount of time. To have a legal marriage there must be a legal ceremony, either religious or civil, and other requirements, such as a marriage license.

A mistaken belief about common law relationships is that there is one set of requirements in Canada to obtain common law status. This is incorrect. In fact, federal and provincial laws, employers, insurance plans, and pension plans may all set out different criteria for recognizing common law relationships. It may depend on such factors as the length of the relationship, if the partners have children together, and/or whether or not there is still a husband or wife from a previous relationship.

Common law couples have *some* of the same rights as those legally married, but these rights are not always the same and they are not as well defined as rights which flow from marriage.

This publication contains a chapter on the topic of common law relationships. Please see this chapter for more detailed information on this topic.

## Domestic Contracts

A domestic contract is an agreement between two people who are, or have

been, in an intimate relationship. There are three common types of domestic contracts. They are marriage contracts, cohabitation agreements, and separation agreements.

A domestic contract is enforceable by the court under the provisions of the *Family Law Act*, if a written copy has been filed with the Supreme Court Family Division or the Supreme Court General Division. For information on which court to use, see page 3 of this publication for details on the jurisdiction of both. The *Family Law Act* can be accessed via the House of Assembly page on the Government of Newfoundland and Labrador website ([www.hoa.gov.nl.ca/hoa/](http://www.hoa.gov.nl.ca/hoa/)). This Act specifically states that a domestic contract cannot be enforced unless it is made in writing, signed by the parties, and witnessed.

It should be remembered that a domestic contract is exactly that- a contract. If a party breaks a term of the agreement, s/he might be sued for damages or, more importantly for specific performance. This means s/he may be ordered by a court to perform the terms of the contract.

This publication contains a chapter on the topic of domestic contracts and more specific information on the various types of domestic contracts. Please see this chapter for more detailed information.

## Children

Many same-sex couples choose to have children, whether through birth or adoption. If a couple is looking for information about adoption in Newfoundland and Labrador, they should contact Adoption Services

(see RESOURCES section of this publication for contact information).

If a same-sex couple has children and the relationship later breaks down, the couple must deal with the same legal issues as opposite sex couples in such circumstances. Child support, custody and access must be addressed. It is important to note that custody and access cannot be dealt with in a domestic contract (such as a co-habitation agreement or marriage contract) before the breakdown of a relationship. In custody and access situations, the best interests of the children are the primary concern and that can only be determined at the time of a separation or divorce.

This publication contains chapters on the topics of custody/access and child support. Please see this chapter for more detailed information on these topics.

## Human Rights Issues

Same-sex couples sometimes face discrimination when simply trying to live their lives as a couple and family. There are protections against discrimination on the basis of sexual orientation set out in human rights legislation. If a person would like more information or feels s/he has been discriminated against, contact the Newfoundland and Labrador Human Rights Commission (see RESOURCES section of this publication for contact information).

## Family Violence

Violence sometimes happens between family members, including same-sex couples. **No one has the right to hurt another person. If a family member is threatened or harmed by another**

**member of their family, there is help available.** This publication contains a chapter on the topic of family violence and provides information on the options available for victims. Please see that chapter for more detailed information.

## **Divorce**

Divorce is the legal termination of a marriage. Please refer back to the ‘Divorce’ chapter in this publication for detailed information on this topic.

## **Division of Property**

The *Family Law Act* attempts to recognize the contribution of both spouses to marriage through an equal division of matrimonial assets following marriage breakdown. Please note that throughout this section any reference to “spouse” or “spouses” is as defined in section two of the *Family Law Act*. The Act does not apply in all cases. For example, a couple may decide to opt out of the Act through a marriage contract. The law respecting property division does not apply to common law couples unless they opt into the provisions of the *Family Law Act* through a domestic contract.

A court application for division of property can be made following death, divorce, or separation. The family law legislation relevant to division of property in Newfoundland and Labrador is the *Family Law Act*.

It is important to note that there are time limits regarding when an application for division of property should be filed. It is a good idea to speak with a family law lawyer to determine what the time limit is for a

particular situation.

Remember, spouses always have the option of agreeing on how property will be divided. An application for the division of matrimonial property is usually addressed in court after such an attempt fails. However, spouses can still continue to negotiate after such an application has been filed with the court. If there is still no agreement, the matter will be heard by the court, usually as part of a contested divorce hearing.

The law presumes that assets purchased during a marriage were acquired by both spouses and upon marriage breakdown the assets are usually divided equally. This presumption is in recognition of both spouses’ contribution to the marriage – money, child care, home care and otherwise.

This publication contains a chapter on the topic of division of property. Please see this chapter for more detailed information on this topic.

## **Spousal Support**

When a couple separates, both spouses may not have the same ability to support themselves financially. In this case it may be possible for the spouse who earns less to receive support. The following goals should be kept in mind to first determine whether a person has a legal claim to support. Spousal support should compensate spouses for the economic impact of the marriage and marital roles, most typically staying out of the labour force participation to care for children, both during the marriage and after the marriage breakdown. Another goal is to make sure that after a marriage is over, one spouse does not suffer economic

hardship. Finally, spousal support should help each spouse become economically independent within a reasonable amount of time, if possible.

A judge will also consider various factors when deciding whether to order such support. These factors include the length of the relationship, the financial means and needs of each spouses, the contribution one has made to the other's career, and the living situation of the children. These factors are not exhaustive and there may be other considerations the judge will take into account.

Common law spouses may also be eligible for spousal support.

This publication contains a chapter on the topic of spousal support. Please see this chapter for more detailed information on this topic.

# COMMON LAW COUPLES

## What is a Common Law Relationship?

A common law relationship occurs when two people (of the same or opposite sex) live together in a marriage-like relationship. No legal formalities are required.

A common law relationship will NOT automatically become a legal marriage after a certain amount of time. To have a legal marriage there must be a legal ceremony, either religious or civil, and other requirements, such as a marriage license.

## How Long Must A Couple Live Together To Be Common Law?

A mistaken belief about common law relationships is that there is one set of requirements in Canada to obtain common law status. This is incorrect. In fact, federal and provincial laws, employers, insurance plans, and pension plans may all set out different criteria for recognizing common law relationships. It may depend on such factors as the length of the relationship, if the partners have children together, and/or whether or not there is still a husband or wife from a previous relationship.

Common law couples have *some* of the same rights as those legally married, but these rights are not always the same and they are not as well defined as rights which flow from marriage.

For Example: A common law spouse is not *automatically* entitled to half ownership of the home when the relationship breaks down (if the house is only in one spouse's name).

It is very important to consult a lawyer to determine your rights upon the breakdown of your common law relationship.

Also, it is not illegal to be in a common law relationship if either partner is married to someone else. In some cases, some rights or obligations may flow from a common law relationship even though one of the partners in the common law relationship is married. These situations may be very complex and it is suggested that legal advice be sought in such circumstances.

Many of the issues regarding common-law rights and obligations come about when the relationship breaks down. There may be issues of child custody, child and spousal support and division of property. These topics will be addressed separately below.

## Child Custody

Common law spouses who are the biological parents of a child normally have equal rights to custody, unless a court order or an agreement between the parents says otherwise. If a couple cannot agree upon custody and access arrangements, a Family Justice Services mediator may be able to assist parents reach an agreement. If the parents cannot reach a mutually satisfactory agreement, then the matter will be decided by a judge. When deciding the issue of custody and access, the best interests of the child are the primary concern of the court.

## **Child Support**

All parents are required to support their children, regardless of the parents' marital status. Child Support Guidelines are used to determine the amount of child support to be paid. They are referred to as "guidelines." However, they are law and judges have little discretion to deviate from them.

A common law spouse who is not the biological parent of a child might still be required to pay child support if the court finds that s/he "stood in place of the parent" or acted as a parent to the child.

## **Spousal Support**

Requests for spousal support are sometimes made following the breakdown of common law relationships. Parties are sometimes able to come to mutually satisfactory agreements with the assistance of lawyers and/or mediators.

In cases where an agreement cannot be reached, an application for spousal support can be made to court. There are time limits for filing an application for spousal support. There are factors which determine whether someone is qualified to make such an application. It is strongly suggested that a person speak with a family law lawyer if s/he is considering filing such an application. There are many considerations for a judge when deciding whether or not to grant spousal support.

## **Division of Property**

The division of property after the separation of a common law couple is different from that of a legally

married couple. The *Family Law Act*, which essentially divides the marital assets equally between two married spouses, does not apply to a common law relationship (unless the couple agrees that it will apply). This Act can be accessed via the House of Assembly page on the Government of Newfoundland and Labrador website (<http://www.hoa.gov.nl.ca/hoa/>).

For example, if a couple is married, the matrimonial home, no matter whose name it is in, is presumed to be owned equally by both spouses (unless the spouses have agreed otherwise). The same does not apply for a common law couple who shares a home (unless they have chosen to enter into an agreement which says they share the home equally or have the property in both names).

When a common law relationship breaks down, each partner is presumed to own only those things that s/he brought into the relationship, purchased or that are registered in his/her name. This can mean that one partner might leave the relationship with nothing. For example, if the house is registered in the name of only one spouse then that person is presumed to own the house. In cases such as this, disputes over property division often end up in court. A court may order that property be divided if it is shown that one person contributed financially to it, or contributed in a way that allowed the other person to accumulate property. An example of this might be if one partner stayed at home to raise the children, allowing the other partner to work. The longer the relationship has been ongoing, the greater the chances are that the court will consider dividing the assets. To support a claim for division of property in a common law relationship, records should be kept

of who purchased which pieces of property and who contributed work and effort to the purchase and upkeep of property.

signing a co-habitation agreement, the agreement will become a marriage contract unless the agreement is cancelled in writing.

## **In the Event of Death**

If one common law partner dies without leaving a will, his or her assets will not automatically pass to the other partner. This is so even if the couple have been living together at the time of death. If there is no will, the deceased person's estate will be distributed according to *the Intestate Succession Act*. This Act can be accessed via the House of Assembly page on the Government of Newfoundland and Labrador website ([www.hoa.gov.nl.ca/hoa](http://www.hoa.gov.nl.ca/hoa)).

In order to ensure that a common law partner inherits all or a portion of the deceased partner's estate, it should be stated in a will.

## **Cohabitation Agreements**

A cohabitation agreement is a contract between a common law couple that sets out each of their rights and obligations while living together, on ceasing to cohabit or on death.

The basic requirements to make a cohabitation agreement are as follows:  
(1) the agreement must be in writing;  
(2) it must be signed by both parties;  
and (3) it must be witnessed.

A person or couple may choose to draft the terms of the agreement, but it is advisable for each partner to seek independent legal advice before signing it to ensure s/he understands the rights and obligations under the agreement. If a common law couple marries after

# NEWCOMERS TO CANADA

If someone has moved to Newfoundland and Labrador from a foreign country and is facing a family law matter, s/he needs to familiarize him/herself with the family laws and procedures in our province. There are federal laws and provincial laws that apply in family law matters. The laws and the processes involved may be very different from laws and procedures in the person's country of origin. This publication contains general information about many family law topics that newcomers should become familiar with. However, below we discuss some subjects that may be of particular interest to newcomers.

## Divorce

To file for divorce in Newfoundland and Labrador, the applicant must normally be a resident of Canada. Also, either the applicant or his/her spouse must have lived in Newfoundland and Labrador for at least 12 months immediately before the application for divorce is made. If the responding spouse lives in the United States, s/he has 30 days to file a response after being served with the divorce documentation. If the spouse lives in a foreign country other than the United States, s/he has 60 days to file a response after being served.

## For spouses married in Canada but living in a foreign country

In some cases, spouses living outside of Canada may apply to divorce in Canada but only in special circumstances. Such couples must meet two criteria under the Federal *Civil Marriage Act*.

- The couple must have married in Canada; and

- The couple cannot undo their marriage in the country where the spouses live because that country does not recognize their Canadian marriage.

In such cases, it is best to seek advice from a lawyer practising in the Canadian province or territory where the couple was married.

## Recognition of Divorces from foreign countries

Generally, Canada recognizes divorces from other countries if:

- The divorce was valid under the laws of that country; and
- One or both spouses lived in that country for a full year immediately before applying for the divorce.

There are other factors that may affect whether a foreign divorce is recognized in Canada. If a person is seeking advice on their specific situation, it is best to speak with a lawyer.

## Divorcing a Sponsor

In some cases, a Canadian will sponsor his/her foreign spouse to live in Canada. The spouse who acts as the sponsor must sign an undertaking outlining his/her responsibilities. That undertaking remains in effect for three years after the person becomes a permanent resident, even if the couple divorces or separates during that period. The sponsor is responsible for the basic needs of their sponsored spouse for the full period of the sponsorship undertaking.

## GETTING OR CHANGING SUPPORT ORDERS OUTSIDE OF NEWFOUNDLAND AND LABRADOR

If a person is looking to get or change a support order (for spousal support and/or child support) relating to a party who lives in another province or country, there are added challenges. The *Interjurisdictional Support Orders Act* (ISO) is a provincial law that helps with these challenges. Under this law, Newfoundland and Labrador has agreements with many different places to recognize and honour each other's support orders. The ISO can be used to obtain a new order for child or spousal support, or to vary an existing agreement, when one party lives in Newfoundland and Labrador and the other in a reciprocating jurisdiction. This publication contains a chapter on the topic of interjurisdictional support orders. Please see this chapter for more detailed information on this topic.

The ISO procedures cannot be used to apply for or to vary an order with respect to custody of or access to a child. The *Children's Law Act* of Newfoundland and Labrador does provide direction in cases where a party is seeking to supersede (meaning replace) a custody or access order from a different jurisdiction that relates to a child living in Newfoundland and Labrador. If a person is seeking to replace an order for custody/access in such circumstances, it is suggested to seek legal advice.

## Court Services in a Language Other than English

If a person requires court services and/or forms in a language other than English, we suggest contacting the relevant court to inquire what services/forms are available.

## Human Rights Issues

People sometimes face discrimination in the community at large or at work. There are protections against discrimination set out in human rights legislation. If a person would like more information or feels s/he has been discriminated against, contact the Newfoundland and Labrador Human Rights Commission (see RESOURCES section of this publication for contact information).

## Family Violence

Violence sometimes happens between family members. **No one has the right to hurt another person. If a family member is threatened or harmed by another member of their family, there is help available.** This publication contains a chapter on the topic of family violence and provides information on the options available for victims. Please see that chapter for more detailed information.

## Resources for New Canadians

Below is the contact information for organizations that that may be of particular interest to newcomers.

Association for New Canadians  
144 Military Road  
St. John's, NL, A1C 5R6  
Tel: (709)722-9680

Refugee and Immigrant Advisory Council  
204 Water Street, Suite 3000  
St. John's, NL, A1C 1A9  
Tel: (709) 754-4122

Multicultural Women's Organization of NL  
P.O. Box 9, Nuport Building  
44 Torbay Road  
St. John's, NL, A1A 2G4  
Tel: (709) 726-0321

# ADOPTION

## What is adoption?

Adoption is a legal process in which a child becomes the child of the adoptive parent(s) and the adoptive parent(s) becomes the parent(s) of the child.

After the granting of an adoption order, the adopting parent(s) have the same legal rights, obligations, and duties as if s/he were the birth parent(s) of the child. The provincial legislation governing adoptions in Newfoundland and Labrador is the *Adoption Act*.

## Who Can Adopt a Child?

One adult alone or two adults jointly can apply to adopt a child. One person can also apply to jointly become a parent with the parent of the child (step-parent adoptions). A relative of a child, as defined in the *Adoption Act*, may also apply to adopt a child. The *Act* defines “relative” as a parent, grandparent, aunt, uncle or sibling of a child by birth or adoption.

All adoptive applicants, with the exception of relative or step-parent adoptions, must be approved by the Department of Child, Youth and Family Services (CYFS). A self-help Kit is available at CYFS offices or through the department’s website to assist with relative or step-parent adoptions.

CYFS must provide written approval before a person can receive a child into their home for adoption. The exception to this requirement is when the adoptive parent(s) are relatives of the child as defined by the *Adoption Act* or in the case of a step-parent adoption. Inter-country and interprovincial adoptive applicants must also receive approval from CYFS.

Before an adoption order is made, the child must reside with the prospective adoptive parent(s) for at least a 6 month period. This requirement also applies to relative or step-parent adoptions.

## Where Does a Person Apply To Adopt?

An application to adopt a child can be made under the provisions of the *Adoption Act* to CYFS. If you are interested in more information about adoption or would like to make an application to adopt, you should contact a local CYFS office or call (709)729-4394.

## Who Can Place Their Child For Adoption?

The consent of a child’s birth parents and any other person having custody of the child is usually required before the child can be placed for adoption. A CYFS social worker in your area will be able to provide details about the required consent(s) to adoption.

A child must be at least 7 days old before the birth parents can sign a consent to an adoption. If the child is over 12 years of age, s/he must also consent to the adoption.

The *Adoption Act* gives birth parents the option of identifying someone they know personally to adopt their child or selecting adoptive parent(s) from the provincial adoption list by reviewing their non-identifying information. Where a birth parent requests that their child be placed with a person they know, a written plan outlining this request must be submitted to CYFS. Prior to the placement of the child with the identified adoptive parent(s),

CYFS must have approved the plan and approved the identified adoptive parent(s).

## **Openness**

The *Adoption Act* which came into effect on April 30, 2003 provides for greater openness in adoption. The adoptive parent(s), the birth parents, or other persons significant to the child have the option of mutually agreeing to remain in contact with each other.

## **Adoption Records**

Adopted persons and birth parents may apply to the Vital Statistics Division, Service NL, to obtain copies of records on file. An adopted person, 19 years of age or older, who was born and adopted in this province may apply to the Vital Statistics Division for a copy of their original birth registration in their birth name (including the name of any birth parent on record) and a copy of their adoption order provided a disclosure veto has not been filed (see Limitations of Disclosure below). Birth parents of an adopted person, 19 years of age and older, may apply for a copy of the adopted person's original birth registration, the adopted person's birth registration following adoption (including any changes of name consequent to the adoption), and the adoption order. The child's adopted name will be included on the adoption order but not the name(s) of the adoptive parent(s).

## **Limitations of Disclosure**

Where an adoption was finalized in this province prior to April 30, 2003, an adopted person or birth parent may file a disclosure veto or no-contact declaration with the Registrar of Vital Statistics, Service NL. Where a disclosure veto exists the Vital

Statistics Division will not release adoption records and will maintain the confidentiality of the person who filed the veto. Where a no-contact declaration exists, the Vital Statistics Division will contact the applicant and advise them of the situation. The person applying for the record will be provided with a Statutory Declaration and Undertaking Form that requires notarization and which specifies the conditions under which information will be released. Only after processing the undertaking will the adoption information and any written statement that has been filed be released. For more information, please contact Vital Statistics Division at <http://www.servicenl.gov.nl.ca/>, or visit a Government Service Centre location.

## **Post Adoption Services**

An adopted person who has obtained their records from the Vital Statistics Division (see Adoption Records above) may apply to CYFS for assistance in locating his or her birth parent or birth grandparent, adult birth or adopted sibling, or other adult birth or adopted relatives. A birth parent who has obtained their records may request assistance in locating his or her adopted child. An adopted person, birth parent or other adult relative may also register with the Provincial Director of Adoptions to exchange identifying or non-identifying information. For further information regarding search and reunion services, please contact Post Adoption Services at (709)729-4394.

**Please note that as of date of printing of this publication, it is expected that there will be upcoming changes to the legislation concerning adoption. Readers are advised to check for updates to the law.**

# FAMILY VIOLENCE

Violence sometimes happens between family members. Types of family violence may include:

- Physical - hitting, kicking, pushing, etc.
- Sexual - unwanted sexual activity including touching, fondling, intercourse, etc.
- Emotional/Psychological - use of isolation, threats, coercion, name-calling, etc.

No one has the right to hurt another person. If a family member is threatened or harmed by another member of their family, there is help available. Options include:

1. Calling the Police/Pursuing Criminal Charges
2. Going to a Shelter
3. Applying for an Emergency Protection Order (EPO)
4. Applying for a Peace Bond
5. Consulting a Lawyer

Victims of family violence may want to consider doing all of the above.

The most important thing must be the safety of victim(s). People may want to consider keeping important items like MCP, insurance, bank and credit cards, medicine, IDs, any court papers, and some money together in a safe place so they can be easily found if it is necessary to leave the home quickly.

The police investigate complaints of family violence. They should be contacted immediately. They will ask for a statement and the names of witnesses. The police may also interview the person who has threatened or hurt the victim(s). Police will review the evidence and

the statements and decide if there is enough evidence to lay criminal charges. If criminal charges are laid, the accused will be arrested or given a notice to appear in court.

As of July 1, 2006, the *Family Violence Protection Act* is law in Newfoundland and Labrador. This legislation provides another option to help adult victims of family violence and their children in emergency situations. Victims can apply to court for an Emergency Protection Order (EPO). An EPO is a court order that can be granted quickly in cases of family violence. To get an EPO the applicant needs to have lived in a conjugal (married-like) relationship or have a child with the person who is being violent. An EPO can allow police to remove the alleged abuser from the home, take away any firearms or weapons, give the victim temporary custody of the home and the children, and any other conditions the court thinks necessary. The police can make an application for an EPO 24 hours a day. The police need the victim's consent to make the application. As well, an application for an EPO can be made directly by the victim or a lawyer on his/her behalf. However, if the application is made by the victim or his/her lawyer, it will need to be done during regular hours to the Provincial Court. There is no fee for applying for an emergency protection order. Application forms are available from the Provincial Court or online at the Provincial Court website ([www.provincial.court.nl.ca](http://www.provincial.court.nl.ca)). Normally, the judge will decide whether an EPO will be granted within 24 hours of receiving the application. An EPO is temporary and will not last for more than 90 days.

An EPO is not a criminal charge, but if it is broken, the person can be charged under the *Family Violence Protection Act* (and potentially receive jail time if found guilty).

A victim can also apply to court for a peace bond. However, there are limitations on peace bonds which curb its ability to effectively address family violence. Limitations include:

- Peace bonds are not monitored by the police.
- The police only become involved after a bond is broken.
- The process of getting a peace bond put in place can be lengthy.

A peace bond is a court order that places specific conditions on an individual's behaviour. It will include various conditions that must be followed. These conditions include keeping the peace, no communication with the applicant in any manner, and restriction of firearm possession. If the person ordered to follow the peace bond breaks a condition, it should be reported to the police immediately. The police may decide to lay a charge. If the charge is proven in court, the punishment may include jail time. There is no fee for applying for a peace bond and the order can be valid for up to 12 months. A peace bond is not a criminal charge, but if it is broken, the person can be charged criminally.

# PROTECTION OF CHILDREN

The *Children and Youth Care and Protection Act (CYCP Act)* is the provincial law that mandates the delivery of protective intervention services to children, youth and families in Newfoundland and Labrador. The purpose of the law is to promote the safety and well-being of children and youth who are in need of protection. A range of supports and services are provided through the Department of Child, Youth and Family Services (CYFS) to protect children and youth from further maltreatment by their parents, and to support their well-being and healthy development in families and the community.

Everyone in Newfoundland and Labrador has a duty to report information that a child is or may be in need of protective intervention. This information must be reported immediately to CYFS or the police.

## Who Are The Children In Need Of Protective Intervention?

A child may be considered in need of protective intervention if s/he is under 16 years of age, and is:

- at risk of or is being physically, emotionally, or sexually abused by a parent;
- not being protected by their parents from physical, sexual, or emotional abuse inflicted by someone else;
- not receiving essential medical care, including psychiatric care;
- living in a situation where there is violence;
- left without adequate supervision appropriate to the child's developmental level; or,
- abandoned

The above list is not exhaustive. Please see the *CYCP Act* available on the Government of Newfoundland and Labrador's website for full information on what circumstances indicate that a child is or may be in need of protective intervention.

## What Happens after a Report is made to Authorities?

Under the *CYCP Act* social workers have the authority to assess and investigate information that a child is being maltreated or may be at risk of maltreatment. When an initial report of maltreatment is received, a social worker review the information to decide if further investigation is required. In some cases, the social worker may decide that further investigation is not needed as the information does not meet the definition of a child in need of protection. A parent will be notified that CYFS has received information even if no investigation is required.

If an investigation is required, the information is assigned to a social worker for follow up. The process is called a protection investigation, which involves gathering and analyzing information from a number of sources such as:

- Interviews with the child victim, their siblings and parents;
- CYFS historical records;
- a social worker's own observations of the child, his/her siblings and parents; and,
- collateral information such as a family doctor, teacher, or counselor.

At the conclusion of the protection investigation, the social worker decides whether the child protection allegations were verified and if on-going CYFS involvement with the family is required to ensure the safety and well-being of the child. If ongoing involvement is required, CYFS will work with the family to develop a plan to address identified risks for a child including services to assist the family and child.

In some cases, CYFS determines that it is not safe for the child to remain in the parent's care. When it is determined that a child cannot safely remain in the care of his or her parent(s), a social worker will explore the options available to ensure the child's safety. These options can include:

- a parent entering into a voluntary agreement with a relative or someone significant to care for the child until the safety concerns and risks of maltreatment is reduced;
- a parent entering into a voluntary agreement with CYFS to place the child in the care of CYFS;
- a social worker applying to the court for a warrant to remove the child from the parent's care or a social worker removing the child without a warrant if there is immediate danger to a child and there isn't sufficient time to seek a warrant.

## **What Happens After a Child Has Been Removed from the Parent's Home?**

At the time of a child's removal, the social worker files a written application with the court for a protective intervention hearing and an order that the child is in need of protective intervention services. Before such a hearing takes place, a less formal hearing is held. This first hearing is called the "presentation hearing" and

is held within 10 days after the date on which the application is filed and is normally concluded within a day. This hearing is held before a judge to consider the circumstances surrounding the child's removal and to determine whether there is enough evidence to proceed to the protective intervention hearing. At the end of the presentation hearing, a judge has several options some of which are listed below (please note this list is not exhaustive):

- a judge may dismiss the application for a protective intervention hearing;
- a judge may order that the child be returned to, or remain with, the parent under the supervision of CYFS until the conclusion of the protective intervention hearing;
- a judge order that the child be placed in the custody of a parent, other than the parent from whom the child was removed, under the supervision of CYFS until the conclusion of the protective intervention hearing;
- a judge may order that the child be placed in, or remain in the custody of CYFS, until the conclusion of the protective intervention hearing; or
- a judge may make a declaration that the child is in need of protective intervention.

The presentation hearing is an important prelude to the protective intervention hearing, but may result in a judge making a final order thus removing the necessity for a protective intervention hearing.

If required, the second more formal hearing is called the "protective intervention hearing." It is a hearing held after a presentation hearing if the matter has not been resolved at the presentation hearing. At the protective intervention hearing, the judge will hear evidence, determine whether the child is in need of protective intervention and give a final order with respect to

the application before the court. If a judge finds that a child is in need of protective intervention, there are various orders that a judge can make such as:

- the child be returned to, or remain with, the parent and under CYFS' supervision for a specified period of up to six (6) months;
- the child be placed in the temporary custody of the child's family or a person significant to the child other than the parent from whom the child was removed, with the consent of that person and under the supervision of CYFS, for a specified period in accordance with the CYCP Act;
- the child be placed in the temporary custody of CYFS for a specified period in accordance with the CYCP Act; or
- the child be placed in the continuous custody of CYFS.

Where a court action is taken, CYFS social workers will ensure that parents and children 12 years of age and over are notified of the application before the court, all hearings in relation to an application, and the reasons for taking these actions. Information provided to children is explained in an age and developmentally appropriate manner.

### **What Are Temporary And Continuous Custody Orders?**

A court may place a child in the temporary or continuous custody of a CYFS manager. Temporary custody means that CYFS has the rights and responsibilities of a parent for a specified period of time, usually between 3 and 6 months, depending on the age of the child. The court may grant CYFS a maximum of two temporary custody orders over the span of a child's life, unless there is

an exceptional circumstance where a third may be ordered. While a child is in temporary custody, CYFS has the legal authority to make all decisions regarding a child's care with the exception of some medical decisions. However, when a child is in temporary custody, CYFS normally makes decisions about a child in consultation with the parents unless it is not in a child's best interest. A child cannot be adopted while s/he is under a temporary custody order.

Continuous custody means a CYFS manager has sole custody and thus has the right to make all decisions concerning a child, including decisions about the child's medical care and future contact with their biological family. After continuous custody has been granted, CYFS can consent to the adoption of the child.

### **How Are Children Placed?**

When a child is removed from his or her family, the goal of CYFS is to find a placement that will least disrupt the child by maintaining connections with the child's family, culture and community. Relatives or someone significant to the child are always considered first when exploring placement options. If a child cannot be placed with a family member or significant other, s/he will be placed with a foster parent or other residential placement approved by CYFS. Every effort is also made to keep siblings together. All regular foster parents must participate in a Parent Resources for Information Development and Education (PRIDE) training program, and undergo an assessment and home inspection before approval is granted.

# ELDER ABUSE

Elder abuse is a single or repeated act, or lack of appropriate action, occurring in any relationship where there is an expectation of trust that causes harm or distress to an older person. There are different types of elder abuse that exist including physical abuse (including sexual abuse), psychological or emotional abuse, neglect, and financial abuse. If there is one form of abuse present, it will often be accompanied by other forms.

An abusive person is usually someone known to the victim. There is normally an imbalance of power – the victim depends on the abuser for something, and the abuser has control and influence over the senior in some fashion. Abusers will often isolate the senior from friends, neighbours and caring family members.

An abuser might be anyone including:

- A spouse
- A family member
- A friend
- Any caregiver (paid or unpaid)
- Anyone working for an elderly person
- Staff in a facility where an elderly person lives
- A stranger
- A landlord

There are various sources of help for seniors who may be victims of, or at risk of, financial abuse. Below is a list of some community resources that may be of assistance:

- Police will receive complaints of abuse (including financial), investi-

- gate and lay charges when warranted.
- The Seniors Resource Centre of Newfoundland and Labrador has a toll-free information and referral line that is answered by trained volunteers. Call 1-800-563-5599 (toll-free).
- Public Legal Information Association of NL (PLIAN) has a toll-free legal information telephone line and Lawyer Referral Service that operates from 9 am to noon on weekdays, and many publications that may be of assistance. PLIAN also provides community presentations. Call 1-888-660-7788 (toll-free).
- There is 24-hour support offered on the toll-free provincial mental health line to help those feeling stressed and overwhelmed by their situation. Call 1-800-737-4668 (toll-free).
- To contact your Regional Health Authority for support with elder abuse concerns, please call:

## **Eastern Health:**

Rural Avalon - (709) 786-5245  
St. John's - (709) 752-4885  
Bonavista/Clarenville/Burin Peninsula - (709) 466-5707

**Central Health:** (709) 651-6340

**Western Health:** (709) 634-5551,  
ext. 226

## **Labrador Grenfell Health:**

(709) 454-0372

# COLLABORATIVE FAMILY LAW

There are lawyers in Newfoundland and Labrador who have been trained in and practice an alternative family law model called Collaborative Family Law. Collaborative Family Law is a way for a separating or divorcing couple to work as a team with trained professionals to resolve disputes respectfully, without going to court. Both parties and their lawyers agree not to go to court and the final decisions

about parenting arrangements, spousal support and property division are ultimately made by the clients themselves, with professional help from lawyers. Counsellors, child specialists, and financial advisors are also brought into the process, when needed, to help clients and their children deal with the emotional and/or financial aspects of the separation.

# RESOURCE LIST

We have included a list of resources which may be helpful. Please note that the list provides just a sample of organizations/agencies and is not meant to be exhaustive.

## THE COURTS

### The Law Courts of Newfoundland and Labrador

website: [www.court.nl.ca/](http://www.court.nl.ca/)

### St. John's (Supreme Court Family Division)

21 King's Bridge Road  
St. John's, NL  
A1C 3K4  
Registry: (709) 729-2258  
Fax: (709) 729-0784

### Corner Brook (Supreme Court Family Division)

Courthouse  
82 Mt. Bernard Avenue  
P.O. Box 2006  
Corner Brook, NL  
A2H 6J8  
Registry: (709) 637-2227  
Fax: (709) 637-8036

### Gander Supreme Court

Law Court Building  
98 Airport Boulevard  
P.O. Box 2222  
Gander, NL  
A1V 2N9  
Registry: (709) 256-1115  
Fax: (709) 256-1120

### Grand Bank Supreme Court

T. Alex Hickman Courthouse  
69 Grandview Blvd.  
P.O. Box 910  
Grand Bank, NL  
A0E 1W0  
Registry: (709) 832-1720  
Fax: (709) 832-2755

### Grand Falls- Windsor Supreme Court

The Law Courts  
55 Cromer Avenue  
Grand Falls, NL  
A2A 1W9  
Registry: (709) 292-4260  
Fax: (709) 292-4224

### Happy Valley - Goose Bay Supreme Court

P.O. Box 3014, Station B  
Happy Valley-Goose Bay, NL  
A0P 1E0  
Registry: (709) 896-7892  
Fax: (709) 896-9212

### Provincial Court of Newfoundland and Labrador

#### St. John's Office

215 Water Street  
P.O. Box 68, Atlantic Place  
St. John's, NL A1C 6C9  
Tel: (709) 729-1004  
Fax: (709) 729-4319

### Harbour Grace Office

2 Harvey Street  
P.O. Box 519  
Harbour Grace, NL A0A 2M0  
Tel: (709) 596-6141  
Fax: (709) 596-4304

### Clarenville Office

47 Marine Drive  
Clarenville, NL A5A 1M5  
Fax: (709) 466-3147  
Tel: (709) 466-2635

### Grand Bank Office

P.O. Box 339  
Grand Bank-Fortune Highway  
Grand Bank, NL A0E 1W0  
Tel: (709) 832-1450  
Fax: (709) 832-1758

### Gander Office

100 Airport Road  
P.O. Box 2222  
Gander, NL A1V 2N9  
Tel: (709) 256-1100  
Fax: (709) 256-1097

### Grand Falls-Windsor Office

The Law Courts Building  
Grand Falls-Windsor, NL  
A2A 1W9  
Tel: (709) 292-2412  
Fax: (709) 292-4388

### Corner Brook Office

82 Mt. Bernard Avenue  
P.O. Box 2006  
Corner Brook, NL A2H 6J8  
Tel: (709) 637-2323  
Fax: (709) 637-2656

**Stephenville Office**

35 Alabama Drive  
Stephenville, NL A2N 3K9  
Tel: (709) 643-2966  
Fax: (709) 643-4022

**Happy Valley-Goose Bay Office**

P.O. Box 3014, Stn B  
Happy Valley-Goose Bay, NL  
A0P 1E0  
Tel: (709) 896-7870  
Fax: (709) 896-8767

**Wabush Office**

Whiteway Drive ,  
P.O. Box 1060  
Tel: (709) 282-6617  
Fax: (709) 282-6905  
Wabush, NL A0R 1B0

**FAMILY JUSTICE SERVICES****AVALON REGION:****St. John's**

(709) 729-1183

**Carbonear**

(709) 945-3223

**CENTRAL REGION:****Clarenville**

(709) 466-4036

**Marystown**

(709) 891-4137

**Gander**

(709) 256-1205

**Grand Falls-Windsor**

(709) 292-1194

**Lewisporte**

(709) 535-6266

**Springdale**

(709) 673-2628

**WESTERN REGION:**

Corner Brook  
(709) 634-4174

**Stephenville**

(709) 643-8396

**LABRADOR REGION:****Labrador City**

(709) 944-3209

**Happy Valley-Goose Bay**

(709) 896-7904

**Family Justice Services  
Recalculation Office**

P.O. Box 2006  
Corner Brook, NL A2H 6J8  
Tel: (709) 634-4172  
Fax: (709) 634-4155

**FAMILY VIOLENCE****The Royal Newfoundland  
Constabulary**

**St. John's Metro  
and Corner Brook** 911  
**St. John's (North East  
Avalon)**  
Tel: (709) 729-8000

**Labrador City**

Tel: (709) 944-7602

**Churchill Falls**

Tel: (709) 925-3524

**The Royal Canadian  
Mounted Police**

**Province Wide Non-  
Emergencies:**  
1-800-709-7267

**Baie Verte**

P.O. Box 69, Baie Verte, NL  
A0K 1B0  
(709) 532-4221

**Barachois Brook**

40 Oregon Dr, Stephenville, NL  
A2N 3M3  
(709) 646-2692

**Bay d'Espoir**

P.O. Box 99, Milltown, NL  
A0H 1W0  
(709) 882-2230

**Bay Roberts**

P.O. Box 550, Harbour Grace,  
NL A0A 2M0  
(709) 786-2118

**Bell Island**

P.O. Box 1179, Bell Island, NL  
A0A 4H0  
(709) 488-3312

**Bonavista**

P.O. Box 850, Bonavista, NL  
A0C 1B0  
(709) 468-7333

**Botwood**

P.O. Box 420, Grand Falls-  
Windsor, NL A2A 2J8  
(709) 257-2312

**Buchans**

P.O. Box 420, Grand Falls-  
Windsor, NL A2A 2J8  
(709) 672-3944

**Burgeo**

2 Church Rd, Burgeo, NL  
A0M 1A0  
(709) 886-2241

**Burin**

General Delivery, Burin, NL  
A0E 1E0  
(709) 891-2569

**Carmanville**

P.O. Box 190, Carmanville, NL  
A0G 1N0  
(709) 534-2686

**Cartwright**

General Delivery, Cartwright,  
NL A0K 1V0  
(709) 938-7218

**Channel Port aux Basques**

P.O. Box 820, Channel P.A.B.,  
NL A0M 1C0  
(709) 695-2149

**Clarenville**

174 Trans Canada Highway,  
Clarenville, NL A5A 1Y3  
(709) 466-3211

**Corner Brook**

78 Mount Bernard Ave, Corner  
Brook, NL A2H 5E9  
(709) 637-4433

**Deer Lake**

41 Old Bonne Bay Rd, Deer  
Lake, NL A8A 1X7  
(709) 635-2173

**Ferryland**

P.O. Box 70, Ferryland, NL  
A0A 2H0  
(709) 432-2440

**Flowers Cove**

P.O. Box 130, Flowers Cove,  
NL A0K 2N0  
(709) 456-2500

**Fogo Island**

P.O. Box 208, Fogo, NL  
A0G 2B0  
(709) 266-2251

**Forteau**

P.O. Box 10, Forteau, NL  
A0K 2P0  
(709) 931-2790

**Gander**

301 James Blvd, Gander, NL  
A1V 1W7  
(709) 256-6841

**Glovertown**

P.O. Box 269, Glovertown, NL  
A0G 2L0  
(709) 533-2828

**Grand Bank**

P.O. Box 1240, Marystown, NL  
A0E 2M0  
(709) 832-2677

**Grand Falls-Windsor**

P.O. Box 420, Grand Falls-  
Windsor, NL A2A 2J8  
(709) 489-2121

**Happy Valley-Goose Bay**

Stn B, P.O. Box 1480,  
HV-Goose Bay, NL A0P 1E0  
(709) 896-3383

**Harbour Breton**

P.O. Box 119, Harbour Breton,  
NL A0H 1P0  
(709) 885-2320

**Harbour Grace**

P.O. Box 550, Harbour Grace,  
NL A0A 2M0  
(709) 596-5014

**Holyrood**

P.O. Box 119, Holyrood, NL  
A0A 2R0  
(709) 229-3892

**Hopedale**

P.O. Box 106, Hopedale, NL  
A0P 1G0  
(709) 933-3820

**Lewisporte**

P.O. Box 310, Lewisporte, NL  
A0G 3A0  
(709) 535-8637

**Makkovik**

P.O. Box 131, Makkovik, NL  
A0P 1J0  
(709) 923-2405

**Mary's Harbour**

P.O. Box 128, Mary's Harbour,  
NL A0K 3P0  
(709) 921-6229

**Marystown**

P.O. Box 1240, Marystown, NL  
A0E 2M0  
(709) 279-3001

**Nain**

P.O. Box 448, Nain, NL  
A0P 1L0  
(709) 922-2862

**Natuashish**

P.O. Box 181, Natuashish, NL  
A0P 1A0  
(709) 478-8900

**New-Wes Valley**

P.O. Box 129, New-Wes Valley,  
NL A0G 4R0  
(709) 536-2419

**Piccadilly**

40 Oregon Dr, Stephenville, NL  
A2N 3M3  
(709) 642-5316

**Placentia**

P.O. Box 160, Placentia, NL  
A0B 2Y0  
(709) 227-2000

**Port Saunders**

P.O. Box 99, Port Saunders, NL  
A0K 4H0  
(709) 861-3555

**Rigolet**

General Delivery, Rigolet, NL  
A0P 1P0  
(709) 947-3400

### **Rocky Harbour**

P.O. Box 70, Rocky Harbour,  
NL A0K 4N0  
(709) 458-2222

### **Roddickton**

P.O. Box 159, Roddickton, NL  
A0K 4P0  
(709) 457-2468

### **Sheshatshiu**

Stn B, P.O. Box 1480,  
HV-Goose Bay, NL A0P 1E0  
(709) 497-8700

### **Springdale**

P.O. Box 190, Springdale, NL  
A0J 1T0  
(709) 673-3864

### **Stephenville**

40 Oregon Dr, Stephenville, NL  
A2N 3M3  
(709) 643-2118

### **St. Anthony**

P.O. Box 117, St. Anthony, NL  
A0K 4S0  
(709) 454-3543

### **Trepassey**

P.O. Box 29, Trepassey, NL  
A0A 4B0  
(709) 438-2700

### **Twillingate**

P.O. Box 400, Twillingate, NL  
A0G 4M0  
(709) 884-2811

### **Whitbourne**

P.O. Box 160, Placentia, NL  
A0B 2Y0  
(709) 759-2801

### **NEWFOUNDLAND AND LABRADOR SEXUAL ASSAULT CRISIS AND PREVENTION CENTRE**

360 Topsail Road, Suite 101  
St. John's, NL Canada A1E 2B6  
Phone: (709) 747-7757  
Fax: (709) 747-7758

### **MENTAL HEALTH SERVICES CRISIS LINE**

Tel: 1-888-737-4668

## **WOMEN'S CENTRES**

### **ST. JOHN'S**

#### **St. John's Status of Women Council and Women's Centre**

170 Cashin Avenue Extension  
St. John's, NL A1E 3B6  
Tel: (709) 753-0220  
Fax: (709) 753-3817  
Email: [info@margueritesplace.ca](mailto:info@margueritesplace.ca)  
[www.margueritesplace.ca/  
home/womens-centre/](http://www.margueritesplace.ca/home/womens-centre/)

### **HAPPY VALLEY-GOOSE BAY Mokami Status of Women Council**

Glenn Plaza -  
Hamilton River Road  
P.O. Box 329, St. B  
Happy Valley - Goose Bay, NL  
A0P 1E0  
Tel: (709) 896-3484  
Fax: (709) 896-3472  
[mokamiwomen@nf.aibn.com](mailto:mokamiwomen@nf.aibn.com)

### **STEPHENVILLE**

#### **Bay St. George Status of Women Council**

P.O. Box 501  
Stephenville, NL A2N 3B4  
Tel: (709) 643-4444  
Fax: (709) 643-4707  
Email: [admin@  
bsgwomenscentre.com](mailto:admin@bsgwomenscentre.com)

### **CORNER BROOK**

#### **Corner Brook Status of Women Council**

2 Carmen Avenue  
P.O. Box 373  
Corner Brook, NL A2H 6E3  
Tel: (709) 639-8522  
Fax: (709) 639-1093  
Email: [cbwomenscentre@  
gmail.com](mailto:cbwomenscentre@gmail.com)  
Website: [www.  
cbwomenscentre.com](http://www.cbwomenscentre.com)

### **GANDER**

#### **Gander Status of Women Council**

1st Floor Polaris Building  
61 Elizabeth Drive  
Gander, NL A1V 1G4  
Tel: (709) 256-4395  
Fax: (709) 256-7767  
Email:  
[women.gander@nf.aibn.com](mailto:women.gander@nf.aibn.com)

### **PORT-AUX-BASQUES**

#### **Gateway Status of Women Council**

4 Anderson's Lane  
P.O. Box 1359  
Port Aux Basques, NL  
A0M 1C0  
Tel: (709)695-7505  
Fax: (709) 695-9756  
Email: [gswc@nf.aibn.com](mailto:gswc@nf.aibn.com)

### **LABRADOR CITY/WABUSH**

#### **Labrador West Status of Women Council**

P.O. Box 171  
Labrador City, NL A2V 2K5  
Tel: (709) 944-6562  
Fax: (709) 944-4078  
Email: [lsws@crstsv.net](mailto:lsws@crstsv.net)

## **GRAND FALLS-WINDSOR Status of Women Central**

11 Hardy Avenue  
Grand Falls-Windsor, NL  
A2A 2P8  
Tel: (709) 489-8919  
Fax: (709) 489-8919  
Email: women@nflfd.net

## **TRANSITION HOUSES**

### **GANDER & AREA Cara Transition House**

Local Crisis Line:  
(709) 256-7707  
Toll Free Crisis Line:  
1-877-800-2272  
www.carahouse.com

### **CORNER BROOK & AREA Corner Brook Transition House**

Local Crisis Line:  
(709) 634-4198  
Toll Free Crisis Line:  
1-866-634-4198  
www.transitionhouse.ca

### **MARYSTOWN & AREA Grace Sparkes House**

Local Crisis Line:  
(709) 279-3562  
Toll Free Crisis Line:  
1-877-774-4957  
www.gracesparkeshouse.com

### **ST. JOHN'S & AREA Iris Kirby House**

Local Crisis Line:  
(709) 753-1492  
Toll Free Crisis Line:  
1-877-753-1492  
www.iriskirbyhouse.nf.net

## **CARBONEAR & CBN AREA O'Shaughnessy House**

Local Crisis Line:  
(709) 596-8709  
Toll Free Crisis Line: 1-888-  
596-8709

### **LABRADOR CITY-WABUSH Hope Haven**

Local Crisis Line:  
(709) 944-6900  
Toll Free Crisis Line: 1-888-  
332-0000  
www.hopehaven.ca

### **HAPPY VALLEY-GOOSE BAY Libra House**

Local Crisis Line:  
(709) 896-3014 (voice/tdd)  
Toll Free Crisis Line (NL only):  
1-877-896-3014  
www.librahouse.ca

### **NAIN Nain Transition House**

Local Crisis Line:  
(709) 922-1229  
Toll Free Crisis Line:  
1-866-922-1230

### **RIGOLET Kirkina House**

Crisis line: (709) 947-3333

### **SHESHATSHIU Nukum Munik Shelter**

Crisis Line: (709) 497-8869

### **NATUASHISH Natuashish Safe House**

Crisis Line: (709) 478-2390

### **HOPEDALE Selma Onalik Safe House** [Currently Closed for renovations at the time of printing this publication] Phone: (709) 933-3420

## **CHILDREN:**

### **Office of the Child Youth Advocate**

193 Lemarchant Road  
St. John's, NL A1C 2H5  
Telephone: (709) 753-3888  
TTY: (709) 753-4366  
Toll Free: 1-877-753-3888  
Fax: (709) 753-3988  
email: office@ocya.nl.ca

### **Kids Help Phone**

Tel: 1-800-668-6868

## **ELDER ABUSE**

### **Seniors' Resource Centre of Newfoundland and Labrador**

370 Torbay Road, Suite W 100  
St. John's, NL, A1A 3W8  
Canada  
Telephone: (709) 737-2333  
Toll Free\*: 1-800-563-5599  
Fax: (709) 737-3717  
E-mail:  
info@seniorsresource.ca

## **LAWYERS/LEGAL RESOURCES**

### **Public Legal Information Association of NL**

Suite 227, 31 Peet Street  
St. John's, NL A1B 3W8  
Tel: (709) 722-2643  
Tel: 1-888-660-7788 (toll-free)  
Fax: (709) 722-0054  
info@publiclegalinfo.com  
www.publiclegalinfo.com  
Note: We do not provide legal  
advice however, we do host a  
Lawyer Referral Service

**Newfoundland and  
Labrador Legal Aid  
Commission**

**Carbonear**

21 Industrial Crescent  
P.O. Box 340  
Carbonear, NL  
A1Y 1B7  
Tel: (709) 596-7835 /  
(709) 786-6003

**Clarenville**

382F Memorial Drive  
Clarenville, NL  
A5A 1P4  
Tel: (709) 466-7138

**Corner Brook**

19 Union Street  
Corner Brook, NL  
A2H 5P9  
Tel: (709) 639-9226

**Gander**

90 Airport Boulevard  
Gander, NL  
A1V 2M7  
Tel: (709) 256-3991

**Grand Falls-Windsor**

7A Queensway Drive,  
P.O. Box 6  
Grand Falls-Windsor, NL  
A2A 2J3  
Tel: (709) 489-9081

**Happy Valley-Goose Bay**

19-21 Burnwood Drive  
P.O. Box 442, Stn B  
Happy Valley-Goose Bay, NL  
A0P 1E0  
Tel: (709) 896-5323

**Labrador West**

Wabush Shopping Centre,  
Grenfell Drive,  
P.O. Box 370  
Wabush, NL  
A0R 1B0  
Tel: (709) 282-3425

**Marystown**

4 Industrial Park  
P.O. Box 474  
Marystown, NL  
A0E 2M0  
Tel: (709) 279-3068

**St. John's**

Suite 200, 251 Empire Avenue  
St. John's, NL  
A1C 3H9  
Tel: (709) 753-7863

**St. John's**

69 Elizabeth Avenue,  
St. John's, NL A1A 1W8  
Tel: (709) 722-6981

**Stephenville**

135 Carolina Avenue  
P.O. Box 570  
Stephenville, NL  
A2N 3B4  
Tel: (709) 643-5263

Detailed information about  
Legal Aid can be accessed  
online at:  
[www.legalaid.nl.ca](http://www.legalaid.nl.ca)

**GOVERNMENT AGENCIES**

**Vital Statistics Division  
Service NL**

P.O. Box 8700  
St. John's, NL  
A1B 4J6  
Tel: (709) 729-3308  
Fax: (709) 729-0946  
Email: [vstats@gov.nl.ca](mailto:vstats@gov.nl.ca)

**VICTIM SERVICES**

**St. John's**

3rd Floor, Atlantic Place  
P.O. Box 8700  
St. John's, NL A1B 4J6  
Tel: (709) 729-0900  
Fax: (709) 729-0053

**Happy Valley - Goose Bay**

171 Hamilton River Road  
P.O. Box 3014, Stn. "B"  
Happy Valley - Goose Bay, NL  
A0P 1E0  
Tel: (709) 896-0446 /  
896-3251  
Fax: (709) 896-2230

**Grand Falls-Windsor**

4th Floor, Provincial Building  
Grand Falls-Windsor, NL  
A2A 1W9  
Tel: (709) 292-4544 /  
292-4548 / 292-4508  
Fax: (709) 292-4511

**Clarenville**

Clarenville Public Building  
97 Manitoba Drive, Suite 101  
Clarenville, NL A5A 1K3  
Tel: (709) 466-5808  
Fax: (709) 466-4031

**Nain**

General Delivery  
P.O. Box 2006  
Nain, NL A0P 1L0  
Tel: (709) 922-2360  
Fax: (709) 922-2238

**Gander**

2nd Floor, McCurdy Building  
P.O. Box 2222  
Gander, NL A1V 2N9  
Tel: (709) 256-1028 /  
256-1070  
Fax: (709) 256-1024

**Corner Brook**

84 Mount Bernard Avenue  
9th Floor Sir Richard Squires  
Building  
P.O. Box 2006  
Corner Brook, NL A2H 6J8  
Tel: (709) 637-2614  
Fax: (709) 637-2530

**Carbonear**

Carlyle Bldg., Unit 3  
80 Powell Drive  
Carbonear, NL A1Y 1A5  
Tel: (709) 945-3019 /  
945-3046  
Fax: (709) 945-3018

**Stephenville**

35 Alabama Drive  
Stephenville, NL A2N 3K9  
Tel: (709) 643-6588 /  
634-6618  
Fax: (709) 643-9231

**Port Saunders**

90 Route 430  
The Dobbin Building  
P.O. Box 149  
Port Saunders, NL A0K 4H0  
Tel: (709) 861-2147  
Fax: (709) 861-3302

**Marystown**

Marystown Public Building  
61-69 Ville Marie Drive  
P.O. Box 1182  
Marystown, NL A0E 2M0  
Tel: (709) 279-3216  
Fax: (709) 279-4256

**Support Enforcement  
Division****Department of Justice**

2nd Floor, Sir Richard Squires  
Building  
P.O. Box 2006  
Corner Brook, NF A2H 6J8  
Tel: (709) 637-2608  
Fax: (709) 634-9518





**PUBLIC LEGAL INFORMATION**  
Association of NL

Suite 227, 31 Peet Street, St. John's, NL A1B 3W8  
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