

## **General:**

### **What is family law and when does it apply?**

Family law deals with many different issues related to families, especially during the breakdown of a relationship. These issues include: marriage, divorce, child support and custody, spousal support, adoption, child protection, family violence and elder abuse.

### **Where are family law cases dealt with in Newfoundland and Labrador?**

Family law cases in Newfoundland and Labrador may be dealt with in Provincial or Supreme Court depending on the issue and where the people involved live. In the St. John's and Corner Brook areas, all family matters are dealt with at Unified Family Court, which may also be referred to as Supreme Court, Family Division. In the rest of the province, family law matters are divided between Provincial and Supreme Court. It is best to check with the closest court to your area to determine where your matter should be heard.

### **What services are available to people involved in family law matters in Newfoundland and Labrador?**

Family Justice Services (FJS) is a part of the Department of Justice. It provides services to help people dealing with family law disputes, and is used in situations involving child support, custody and parenting. Family Justice Services can also provide mediation to assist people in trying to make an agreement on issues like custody, access, and child support before going to court. In addition, Family Justice Services offers counselling, parenting information sessions, and recalculation of child support.

To apply for Family Justice Services, a person may complete a request for service form, which is available at all court locations and FJS offices in the province, as well as online at:

[www.justice.gov.nl.ca/just/legalassist/familyjustice.html](http://www.justice.gov.nl.ca/just/legalassist/familyjustice.html)

People may also access Family Justice Services through a formal court application. After applying to court for a family law matter, both parties will likely be contacted directly by a FJS representative to discuss if they would like to use their services.

Lawyers from the Legal Aid Commission are available to those who have serious legal problems, are in financial need and cannot afford a private lawyer. Legal Aid representation is available in family law cases in Newfoundland and Labrador. To apply for Legal Aid, contact the office closest to you or check the Legal Aid website ([www.legalaid.nl.ca](http://www.legalaid.nl.ca)).

## **Self-Representation:**

## **What organizations can help a person who is representing himself or herself in court?**

The Law Society Library of Newfoundland and Labrador

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

\*\*the librarians can provide legal research assistance but not legal advice

Public Legal Information Association of Newfoundland and Labrador (PLIAN)

[www.publiclegalinfo.com](http://www.publiclegalinfo.com)

Newfoundland and Labrador Public Libraries

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

Canadian Legal Information Institute (CanLii – ONLINE)

[www.canlii.org](http://www.canlii.org)

The Law Courts of Newfoundland and Labrador

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

Statutes & Regulations of Newfoundland and Labrador

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

Federal Statutes & Regulations

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

## **Marriage:**

### **How is marriage governed in Newfoundland and Labrador?**

In Newfoundland and Labrador (NL), marriage is a binding legal contract that affects legal rights and responsibilities. The legal requirements for marriage can be found in the provincial Marriage Act.

### **What is a domestic contract?**

A domestic contract is an agreement between two people who are, or were, in an intimate relationship. It is legal and handled by the court using the Family Law Act. The three types of domestic contracts are: marriage contracts, cohabitation agreements and separation agreements.

### **How does a person change his/her or his/her child's name or surname (last name)?**

A law exists in Newfoundland and Labrador called the *Change of Name Act*. It can be seen on the House of Assembly website at [www.hoa.gov.nl.ca/hoa](http://www.hoa.gov.nl.ca/hoa).

If a legal change of name is needed for an adult, the applicant must fill out the correct application form, which can be accessed through the Vital Statistics Division. More documentation may be needed as well as a fee to pay for filing the application.

To change a child's name, Vital Statistics must be consulted first to talk about your specific situation, as getting a name changed can be different depending on the circumstances. If a child is aged 12 years or older, that child usually needs to give permission for the change of name to be allowed.

All forms needed for name changes are available from Vital Statistics (see Resources for contact info).

## **Divorce:**

### **What are the grounds for divorce?**

The *Divorce Act* says that a divorce can be allowed when there has been a "permanent marriage breakdown." The situations outlined in the Divorce Act that define a marriage breakdown include:

- 1) The spouses have lived separate and apart for at least one year
- 2) A spouse has committed adultery (had an affair/cheated)
- 3) A spouse has treated the other spouse with physical or mental cruelty which has made it impossible for the couple to keep living together

### **Who can apply for a divorce in Newfoundland and Labrador?**

The applicant (person filing for divorce) must be a resident of Canada. The applicant OR his/her spouse must have lived in Newfoundland and Labrador for at least 12 months leading up to when the application for divorce is made.

In order for spouses who live outside of Canada to apply for a divorce in Canada, the couple must have gotten married in Canada, and must not be able to divorce where they are living because that country does not recognize their Canadian marriage (they are not recognized as a married couple where they are living).

### **How does a person get a divorce?**

A person who wants a divorce needs to apply to the Supreme Court of Newfoundland and Labrador. Depending on where you live, the application will either be made to the Supreme Court, General Division or Family Division. Check with the closest court to you to be sure about where to make a divorce application.

### **How does a person file for divorce?**

Spouses filing by themselves will fill out an Originating Application and a Notice to Respondent, to tell the other spouse (**respondent**) that a divorce application has been filed and to tell them of their chance to petition, or disagree with, the divorce. These forms must be submitted to the court, which may ask for other documents, like a marriage certificate. The applicant then has six months to serve the papers on the other spouse. **\*Someone besides the applicant must serve the papers to the respondent.\*** An **Affidavit of Service** must be given to the court by the person serving the papers to the respondent, to prove to the court that the other spouse actually received the papers.

There is a court filing fee to pay when applying for divorce.

If the respondent (the spouse being divorced) lives in Canada or the United States, they have 30 days to respond to the divorce application from the date they receive the papers (**get served**). If s/he lives outside of Canada or the United States, s/he has 60 days to respond.

If there is no petition (challenge) to the divorce or any of the claims, the applicant spouse can continue with an “uncontested divorce”, which is a simpler process.

**PLIAN has a publication entitled “Uncontested Divorce: An Information Guide for Newfoundland and Labrador.” It is available on our website at [www.publiclegalinfo.com](http://www.publiclegalinfo.com) or a free copy can be requested by calling 1-888-660-7788**

If the responding spouse decides to argue the grounds for divorce, or challenge any claims to children, property, or another issue, this is called a contested divorce. This means the applicant spouse needs to prove that everything on their application is accurate and true. It is rare that the grounds for divorce are challenged.

### **Matrimonial Property:**

#### **What is matrimonial property and who owns it?**

Matrimonial Property can include the land or house the spouses shared as a family, even if one spouse owned the property themselves before the marriage. Matrimonial assets may also include property collected by either spouse during the marriage, including furniture, appliances, cars, bank accounts, cabins, or other land besides the primary family home. Matrimonial assets may also include work benefits like RRSPs, stocks, or pensions.

This type of property or assets are normally divided equally between the spouses when the relationship breaks down.

Some things that are generally NOT considered matrimonial property or assets include:

- Gifts, inheritances, settlements or trusts

- Family heirlooms
- Personal injury awards
- Personal possessions
- Business assets owned by one spouse
- Property that is specifically excluded by a marriage contract (ownership already agreed upon)
- Property collected after separation

### **Custody & Parental Access:**

**Do parents have to go to court to decide who will have custody of their children, and what access the other parent will have?**

If parents can make a decision together about custody and/or access, they may not have to go to court. A decision can be made if it is agreed upon by **all** parties involved.

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

Parents of a child are allowed to apply to court for custody or access issues. However, grandparents or other non-parents who may have been a parent figure for the child may also be allowed to make an application to court.

**How are 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.

**What are types of Custody Arrangements?**

Some different custody arrangements in Newfoundland and Labrador are:

- Sole – the child lives mostly with one parent. That parent is the only one with the responsibility to make major decisions for the child. The other parent would normally still be involved and typically allowed access in some way to their child.
- Joint Custody – both parents make major decisions about their child together. The child does not necessarily live with both parents the same amount of time. An arrangement is made by parents or the court deciding how much time is spent with both of them.

**What are types of Access Arrangements?**

The following are different types of access arrangements:

- **Reasonable** – the parent who does not have custody or who does not live with the child can set up times with the other “custodial” parent to see the child. This is a flexible arrangement that means that both parents have to cooperate with one another.
- **Specified** – This type of access is set out in a court order or agreement between parents. It sets certain times that a parent may take care of a child. This is basically a schedule that outlines when the parent is to see the child
- **Supervised Access** – This type of access is also set out in a court order or agreement between parents. It says that time spent by the parent with the child must be in the presence of another adult. Usually the order or agreement will state the name of the adult who will supervise the child. This type of access is usually for when one parent has either been abusive to the child or the other parent, or if a relationship with the child was minimal to non-existent before and is being revived or re-established.

### **If a person has custody does s/he have to consult the other parent before moving away?**

Before moving away, especially out of the province, a parent should talk to a lawyer to discuss their legal rights and responsibilities. Permission from the other parent is usually needed before the parent with custody can move away with the child. If there is disagreement between parents about moving a child, an application can be made to court, and a judge will consider the best interests of a child, and the possible effect on a child’s relationship with both parents.

### **How does a person handle custody or access orders from outside of NL?**

Generally, custody or access orders from other provinces or territories are recognized and enforceable (legal) in Newfoundland and Labrador, if one parent has made an application to have such an order recognized in Newfoundland and Labrador. When trying to replace an order from another jurisdiction with an order from Newfoundland and Labrador, a person should ask for legal advice, because the Children’s Law Act in this province does not explain how that type of case is dealt with in the province.

### **What rights do grandparents have for custody of or access to their grandchildren?**

Relationships between grandparents and grandchildren do not have to end with the separation or divorce of the parents. In many cases the relationship will continue like it was before. If not, a grandparent may be entitled to make a court application for access to, or custody of, their grandchild. If a grandparent cannot make an agreement with the parents of the child, even with the help of a mediator, the issue may have to be taken to court.

Laws that deal with children are always based on the child’s best interests. Unless contact would be harmful, relationships with grandparents are normally considered by the court to be in a child’s best interests.

## **Child Support:**

### **What is child support and who has to pay it?**

Child support is money that a parent pays to help support his or her child after a separation or divorce. Every person has a responsibility to provide financial support for his or her child, no matter what the relationship with the other parent. It is usually the parent with custody or that the child lives with most of the time that receives the child support payments. In some cases, step-parents may have to pay child support.

### **How does a person get child support?**

When a relationship breaks down, child support must be dealt with. If both parents agree on the amount of child support that has to be paid, this can be written down in an agreement. It has to be signed, witnessed and then filed with the correct court.

Family Justice Services (FJS) may be used for parents who cannot agree on an amount for child support, but who want to work out the issue without going to court.

If parents cannot agree on an amount or arrangement, an application can be made to court to have a judge decide.

### **How is the child support amount decided?**

Child Support Guidelines are set by both the federal and provincial governments, and judges usually follow these guidelines when setting child support amounts.

Federal guidelines are used if parents are in the process of divorce or are already divorced. Provincial guidelines are used if the parents were never legally married to each other, are separated, or are planning to separate, but have decided not to divorce.

The child support amount is based on the payer's yearly income. However, a court may decide that a payer is "underemployed" or his/her income is "incorrect", and make an order for different amounts to be paid.

Federal guidelines are available on the Department of Justice Canada website at <http://canada.justice.gc.ca>

Provincial guidelines are found on the House of Assembly website at <http://www.hoa.gov.nl.ca/hoa/>

### **What are special/extraordinary expenses and how are they accommodated?**

These are costs that the guideline table amount may not cover. They may include day-care, post secondary or orthodontic expenses. A judge might allow these costs depending on a child's best interests, and whether they are reasonable based on the payer's ability to pay them and the family's spending history.

### **What is undue hardship?**

If a judge is convinced that the guideline table amount would cause undue hardship, or extreme difficulty or cost, to the child or parent, the judge could order a different amount to be paid.

Undue hardship will be decided based on:

- If the parent asking for the change is in circumstances that would make it difficult to pay the required amount or to support the child on that amount
- If the person claiming undue hardship can show that his/her household is at a lower standard of living than the other parent's household

### **How long must child support be paid?**

Child support must be paid until the child is the age of majority, which is 19 years old in Newfoundland and Labrador. Support is normally paid for the child beyond 19 years of age if the child continues to be dependent on the parents. For example, if the child is attending university or college, or is mentally or physically disabled, child support payments may continue past age 19.

### **Are there taxes on child support?**

Child support is tax neutral. This means that the parent paying child support does not get a tax deduction, and the person receiving child support does not have to pay tax on the money.

### **Recalculation of Child Support:**

#### **What is recalculation of child support?**

Based on yearly tax information, Family Justice Services automatically recalculates the amount of child support to be paid. This is done once a year to ensure a fair level of support for the child. Either parent may disagree with the recalculated amount, and will need to file a Notice of Objection with the court if they want to argue the new amount.

#### **What are the next steps after an order or written agreement is registered with the Child Support Recalculation Service?**



Each year, payers and sometimes recipients of child support are required to submit up-to-date tax information. This information is used to recalculate child support amounts.

**How does the child support payer and recipient find out the results of the recalculation?**

If the change to the amounts is more than \$5, a Notice of Recalculation is mailed to both parents to tell them about the change.

**What happens when either party does not agree with the recalculation?**

If either parent does not agree with the change to the child support amount, they can file a Notice of Objection with the court. The Notice of Objection can be found with the Notice of Recalculation that was mailed to the parents. Parents have 30 days from receiving the Notice of Recalculation to file their objection. A court date will be set and a judge will decide on the new support amount.

**How does a person stop recalculation of child support if an order or agreement is no longer in effect?**

Contact the **Recalculation Office** for this:

**Family Justice Services**

**Recalculation Office**

P.O. Box 2006

Corner Brook, NL

A2H 6J8

Phone: (709) 634-4172

Fax: (709) 634-4155

**Can a person apply to court for a variation to a child support order (for example, in the case of job loss or illness)?**

Yes, a payer or recipient of child support may apply to court to vary a child support order, meaning to change the amount of child support that needs to be paid. This person must prove that there has been a material change in circumstance, which means a loss of job or illness, for example. The application to file with the court is called an Originating Application for Variation.

**Spousal Support:**

**What is spousal support?**

When a couple separates, both spouses might not have the ability to support themselves financially. In this case, the spouse who earns less may be able to get support from the other spouse. The goal of

spousal support is to make sure neither spouse experiences financial difficulty, to help each spouse become financially independent, and to consider the economic impact of marital roles – for example, if there is a stay-at-home parent who is not working when the spouses separate.

### **Who can apply for spousal support?**

Spouses may be eligible for support if they are separated, in the process of divorce, or separated from a common law relationship. Especially in the case of common law relationships, a lawyer should be consulted to ask if a spouse or partner is qualified to receive support.

Remember to first check on any spousal support that has already been dealt with in domestic contracts, such as marriage contracts or cohabitation agreements.

### **How can a person get spousal support?**

Spousal support can be dealt with in a separation agreement. If spouses cannot agree on a support amount, an application can be made to court to have a judge decide.

### **What is the amount and duration of spousal support?**

There are no guideline tables for spousal support like there are for child support. Each case will be dealt with separately, either through an agreement between the parties or by a judge's order.

### **Is spousal support taxed?**

Yes, spousal support payments are usually considered taxable income in Canada, under the following conditions:

- The payment is made according to the court order or written agreement concerning it
- The payment is actually made to the spouse
- The spouses are living separate and apart at the time of the payment and for the rest of the year
- The payments are exclusively for the support of the spouse and for no other purpose or reason
- The payments are repeated, and are not just one lump sum or in the form of a property transfer, for example

### **Enforcement of Child & Spousal Support:**

#### **How are child and spousal support enforced?**

In Newfoundland and Labrador the Support Enforcement Division provides services to make sure spousal and child support are paid and received as smoothly as possible. The Support Enforcement

Program (SEP) is the main service offered to make sure payment is properly collected and given to parents and spouses.

Any arrangements coming from a court order will be automatically registered with the SEP. However, spouses or parents can choose to opt out of the SEP.

If an agreement is registered with the SEP, the person receiving payments does not have the right to collect the payments directly from the person owing the money. The SEP collects and distributes payments for both parties.

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

The Director of Support Enforcement is the person who accepts the payment for the SEP from the spouse or parent who is making a payment. The director will then forward a government-issued cheque to the recipient of support, or may deposit the money into their bank account. This depends on the terms of the court order or agreement.

### **What if I am not getting my support payments?**

If someone is not making their support payments, there are options available to enforce payments. The Director of Support Enforcement may garnish wages (take money) directly from the payer's employer, whether from federal money like income tax refunds or employment insurance (EI), or may take money kept at financial institutions like banks. Property may be taken and sold to pay outstanding support debts. Payers may also be brought to court to explain why they are not paying, where a judge may make an order to enforce payment, or to put the payer in jail.

Unfortunately, if enforcement action is necessary, there will probably be delays. The SEP can only pay what it is able to collect.

### **Can a person get support from people outside the province?**

The SEP works best when both sides involved live in the province. If one party lives outside the province, the person trying to get support should register with the SEP in that province, and that province will take on the responsibility of monitoring and enforcing the support order. However, this can also be more difficult and take much longer.

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

The SEP in Newfoundland and Labrador must be registered with so that Newfoundland and Labrador courts will monitor and enforce the support order that is in place.

### **How can the SEP be contacted?**

More information on the SEP can be found at the NL Department of Justice website  
<http://www.justice.gov.nl.ca/just/>

Support Enforcement Division  
Department of Justice  
2<sup>nd</sup> Floor, Sir Richard Squires Building  
P.O. Box 2006  
Corner Brook, NL  
A2H 6J8

Phone: (709) 637-2608  
Fax: (709) 634-9518

### **Inter-jurisdictional Support Orders:**

#### **How does a person get or change a support order for someone who lives in another province?**

The Interjurisdictional Support Order Act is a provincial law that helps with the processes of receiving and changing a support order when a party involved lives in another province.

Under this law, Newfoundland and Labrador has agreements in place with many other jurisdictions to recognize and enforce each other's support orders. The Support Enforcement Program (SEP) works under this law and with other jurisdictions to recognize court orders or agreements about child and spousal support from outside of the province.

#### **What are reciprocating jurisdictions?**

Reciprocating jurisdictions are the regions that Newfoundland and Labrador works with in child and spousal support orders. They include all provinces and territories within Canada, as well as many foreign countries. These are listed in a regulation under the Interjurisdictional Support Orders Act.

#### **How does the law apply?**

The law can be used to get a new order for child or spousal support or to change an existing agreement, when one party lives in Newfoundland and Labrador and the other does not (but does live in a reciprocating jurisdiction – see previous question).

If any party lives in a non-reciprocating jurisdiction, the process will be different.

The Interjurisdictional Support Orders (ISO) Act cannot be applied to custody or access issues with children. The Children's Law Act of Newfoundland and Labrador would explain how to deal with these cases.

### **Same-Sex Couples:**

#### **Can two people of the same sex marry in Newfoundland and Labrador?**

Yes. Same-sex couples in Newfoundland and Labrador (or **any** province or territory across Canada) are legally entitled to marry or to live in a common-law relationship. Same-sex couples have the same rights under family law as opposite-sex couples.

See the Marriage section of these FAQs for more information.

#### **Who can same-sex couples contact in the case of human rights issues (e.g. discrimination on the basis of sexual orientation)?**

Same-sex couples can sometimes face discrimination when simply living their lives as a couple and/or family. There are protections against discrimination on the basis of sexual orientation set out in human rights legislation. The Newfoundland and Labrador Human Rights Commission can be contacted if a person feels they have been discriminated against, or if they would simply like more information.

### **Common Law Couples:**

#### **What is a common law relationship?**

A common law relationship is when two people of the same or opposite sex live together in a marriage-like relationship. No legal ceremonies are needed. A common law relationship will **not** automatically become a legal marriage after a certain amount of time – legal ceremonies and marriage licenses, along with other requirements are necessary for this to happen.

#### **How long must a couple live together to be common law?**

A myth about common law relationships is that there is one set of requirements in Canada to get common law status. This is incorrect. In fact, federal and provincial laws, as well as employers, insurance and pension plans may all set out different requirements for recognizing common law relationships.

Recognizing a relationship as common law may depend on the length of the relationship, if the partners have children, and if there is a husband or wife involved from a previous relationship.

**Some** of the same rights of legal marriage also apply to common law relationship. However these rights are not usually as clear as those for a marriage. For example, division of property for common law couples is not as easily decided. It is important to talk to a lawyer to determine your rights in the case of a breakdown of a common law relationship.

### **How does child custody work in a common law relationship?**

Common law spouses who are the biological parents of a child usually have equal rights to custody – unless a court order or agreement between the parents says otherwise. If spouses cannot agree upon custody or access arrangements, a mediator may be able to help with reaching an agreement. If mediation is not successful then the issue will be decided by a judge. As always, the best interests of the child are the main consideration of a judge when making a decision on custody or access.

### **How do child and spousal support work in a common law relationship?**

No matter what the parents' marital status, all parents have to support their children. A common law spouse who is not the biological parent of a child might still be required to pay child support if a court finds that s/he "stood" in place of a parent, or acted like a parent to the child.

Please see the [Child Support](#) section of these FAQs for more information.

Spousal support situations and agreements for common law relationships can be very similar to those in a marriage.

Please see the [Spousal Support](#) section of these FAQs for more information.

### **How does division of property work in a common law relationship?**

Division of property after a common law couple separates is different from a legally married couple. The Family Law Act that applies to married couples does not apply to a common law relationship – unless the couple agrees that it will apply. When a common law relationship breaks down, it is assumed that each partner only owns the things that s/he brought into the relationship, bought, or that are registered in his/her name. This might mean that one partner leaves the relationship with nothing.

The longer the relationship has been ongoing, the more likely a court is to consider dividing up 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 worked and made an effort to purchase or perform the upkeep for a property.

### **What happens in the event of a death of a common law partner?**

If a common law partner dies without leaving a will, his/her asset will not automatically pass to the other partner. This is true even if the couple were living together at the time of death. If there is no will, the person's estate will be divided according to the Intestate Succession Act, but the common-law partner is not typically included in that division.

### **What is a cohabitation agreement?**

A cohabitation agreement is a contract between a common law couple that sets out each of their rights and obligations while living together.

Basic requirements for cohabitation agreements are as follows:

- The agreement must be in writing
- The agreement must be signed by both partners
- The agreement must be witnessed

If a common law couple marries after signing a cohabitation agreement, the agreement will become a marriage contract unless the agreement is cancelled in writing.

### **Newcomers to Canada:**

#### **Can a person apply for divorce in Canada as a newcomer to Canada?**

Normally, to file for divorce in Newfoundland and Labrador, an applicant must be a resident of Canada. The applicant or his/her spouse must also have lived in Newfoundland and Labrador for at least 12 months immediately before the application for divorce is made.

#### **If a person's marriage was in Canada but s/he lives in a foreign country, how does s/he apply for divorce?**

In some cases, spouses living outside of Canada may apply to divorce in Canada – but **only** in special circumstances. These are:

- The couple must have married in Canada
- The couple is not able to undo their marriage in the country they live in, because that country does not recognize their Canadian marriage

#### **Does Canada recognize divorce from foreign countries?**

Usually, Canada recognizes divorces from other countries if:

- The divorce was valid under the laws of that country

- One or both spouses lived in that country for a full year immediately before applying for the divorce

### **What happens in the case of divorcing a sponsor?**

If a Canadian sponsors his/her foreign spouse to live in Canada, that sponsor must sign an “undertaking” that outlines 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 time.

A sponsor is responsible for the basic needs of their sponsored spouse for the full period of the sponsorship undertaking, even if the couple divorces or separates during that time.

### **Adoption:**

#### **What is adoption?**

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

After an adoption order is given, adopting parents have the same legal rights, obligations and duties as birth parents. The law that applies in Newfoundland and Labrador is the Adoption Act.

#### **Who can adopt a child?**

A child can be adopted by one adult alone or two adults together. Step-parent adoptions can also happen when a person applies to become a parent with someone who is already the parent of the child. A relative of a child (as defined in the Adoption Act) can also apply to adopt a child. A relative may be defined as a parent, grandparent, aunt, uncle or sibling of a child by birth or adoption.

#### **Where does a person apply to adopt?**

An application to adopt a child can be made under the rules of the Adoption Act to Child, Youth and Family Services (CYFS). More information about adoption and making an application for adoption can be found by contacting a local CYFS office or calling (709)-729-4394

#### **Who can place their child for adoption?**

The permission of a child’s birth parents or any other person with custody is usually required before a child can be placed for adoption. A CYFS social worker in your area can give you details about whose permission is required for adoption.



A child must be at least 7 days old before the birth parents can place them for adoption. If the child is over 12 years of age, s/he must also give permission for the adoption.

### **What is openness in adoption?**

On April 30, 2003, the Adoption Act came into effect, which allows there to be more openness in adoption. This means that the adoptive parents, birth parents and/or other people significant to the child have the option of agreeing to stay in contact with each other.

### **What post adoption services are available to adopted persons or birth parents?**

An adopted person who has received his/her records from the Vital Statistics Division may apply to CYFS for assistance in finding his/her birth parent or grandparent, adult birth or adopted sibling or other adult birth or adopted relatives. A birth parent who has received their records can ask for assistance in finding his or her adopted child.

For more information, contact Post Adoption Services at (709)-729-4394.

### **Family Violence:**

#### **What types of violence can family violence include?**

Family violence involves different types of violence between family members, including:

- Physical violence– like hitting, kicking or pushing
- Sexual violence – including unwanted sexual activity like touching, fondling or intercourse
- Emotional (psychological) – isolation, threatening, coercion (threatening, intimidation), or name-calling

#### **Who can a family member contact if they are threatened or harmed by another family member?**

**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.

1. Call the **Police**
2. Go to a **Shelter**
3. Apply for an **Emergency Protection Order (EPO)**
4. Apply for a **Peace Bond**
5. Consult a **Lawyer**

#### **What are some helpful tips for those who feel they are or could be victims of family violence?**

The safety of victims, whether real or potential, is the most important thing. An important tip is to keep the following items in a safe place where they can be easily found if someone needs to leave his/her home quickly, if it is unsafe to stay:

- MCP Card (health card)
- Insurance information
- Bank and credit cards
- Medicine
- Identification (ID) cards (example: driver's license)
- Court papers
- Money

### **Who handles complaints of family violence?**

The police investigate complaints of family violence. They should be contacted immediately. The police will ask for a statement, and the names of any witnesses involved in the situation. The police may also interview the person who has threatened or hurt the victim(s). They will then review the evidence and statements, and decide if they can lay criminal charges.

### **What is an Emergency Protection Order (EPO)?**

An EPO is a court order that can be granted quickly in cases of family violence. An EPO can let the police remove the alleged abuser from the home, take away any firearms or weapons, and give the victim temporary custody of the home and the children, along with any other conditions the court feels are necessary.

### **How does a person get an EPO?**

To get an EPO, the applicant needs to have been in a marriage-like relationship or have a child with the person who is being violent.

Police can make an application for an EPO 24 hours a day. The police need the victim's consent to make the application. A victim or his/her lawyer can make the application, but this can only be done during regular hours and directly at the Provincial Court. There is no cost to apply for an EPO.

Normally, a 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.**

### **What is a peace bond and how does a person get one?**

A peace bond is a court order that places specific conditions on an individual's behaviour. It will include conditions that must be followed. These conditions include keeping the peace, no communication with the applicant in any way, and no firearm possession.

If a person ordered to follow a 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 might include jail time. There is no fee for applying for a peace bond, and the order can be last up to 12 months. A peace bond is not a criminal charge, but a person can be charged criminally if s/he breaks the peace bond.

Limitations on peace bonds:

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

### **Protection of Children:**

#### **What law governs child protection in Newfoundland and Labrador?**

The Children and Youth Care and Protection Act is the provincial law that deals with “protective intervention services” to children, youth and families in Newfoundland and Labrador. The purpose of this law is to promote the safety and well-being of children and youth who need protection.

#### **Who are the children in need of protection?**

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

- At risk of being physically, emotionally or sexually abused by a parent
- Not being protected by their parents from physical, emotional or sexual abuse inflicted by someone else
- Not receiving necessary medical care, including psychiatric care
- Living in a situation where there is violence
- Left without necessary supervision with regards to the child’s age or developmental level
- Abandoned

#### **What happens after a report is made to authorities?**

Under the CYCP Act, social workers are allowed to investigate information that a child is being maltreated or is at risk of maltreatment. When a report is received, a social worker reviews the information to decide if more investigation is required. A parent will be notified that Child, Youth and Family Services (CYFS) has received information, even if no investigation is ever required.

If an investigation is required, the information is assigned to a social worker for a follow up. The process is called a protection investigation, where information is gathered and analyzed from sources like:

- Interviews with the child victim

- CYFS historical records
- A social worker's own observations of the child, his/her siblings and parents
- Collateral information, for example, from a family doctor, teacher or counselor

If CYFS determines that it is not safe for the child to stay in the parent's care, a social worker will look at the options available to make sure the child is safe, which may include:

- A parent agreeing to have another person, such as a relative, take care of the child until the safety concern and risk of maltreatment is gone
- A parent agreeing with CYFS to have CYFS care for the child
- 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 enough time to seek a warrant

### **What happens after a child has been removed from the parent's home?**

First, a "presentation hearing" will be held, usually within one day. This is held in front of a judge to consider the situation the child was removed from and to determine whether there is enough evidence to continue to have a "protective intervention hearing". At the presentation hearing, a judge might:

- Dismiss the application for a protective intervention hearing
- Order that the child stay with the parents under the supervision of CYFS until the end of a protective intervention hearing
- Order that the child be placed in the custody of a parent that is not the parent the child was removed from, under the supervision of CYFS until the end of the protective intervention hearing
- Order that the child be placed in the custody of CYFS until the end of the protective intervention hearing
- Make a declaration that the child does not need protective intervention

The protective intervention hearing is much more formal than the presentation hearing. It is only held if the problem is not resolved at the presentation hearing. Here, the judge will hear evidence, decide whether the child is in need of protective intervention and give a final decision based on the application to court. The child may be returned to the parent(s), placed under CYFS supervision for a period of time, placed in temporary or continuous custody of CYFS or the child's family, or placed with a person that is important to the child but is not the parent whom the child was removed from.

### **What are temporary and continuous custody orders?**

Temporary custody means that CYFS has the rights and responsibilities of a parent for a specified period of time (usually 3-6 months), depending on the age of the child. The court may give CYFS a maximum of two temporary custody orders over the span of a child's life, except in the case of exceptional circumstances. While a child is in temporary custody, CYFS has the legal authority to make all decisions

about a child's care with the exception of some medical decisions. A child cannot be adopted while s/he is under a temporary custody order.

Continuous custody means a CYFS manager has sole custody and so has the right to make all decisions about 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 allow the adoption of a child.

### **How are children placed?**

When a child is removed from his/her family, the goal of CYFS is to find a placement that will disrupt the child the least, by maintaining connections with the child's family, culture and community. Relatives or someone important to the child are always considered first when exploring placement options. If placement with this type of person is not possible, a foster parent or other residential placement will be chosen.

All regular foster parents must participate in the Parent Resources for Information Development and Education (PRIDE) training program, and undergo an assessment and home inspection before approval is granted.

### **Elder Abuse:**

#### **What is elder abuse?**

Elder abuse is a single or repeated act, or lack of action, happening in any relationship where there is an expectation of trust that causes harm or distress to an older person. Different types of elder abuse can include physical abuse, psychological or emotional abuse, financial abuse, and neglect.

#### **What sources of help can seniors avail of who may be victims of, or at risk of, abuse?**

Various sources of help exist for seniors who may be victims of or at risk of all forms of abuse:

- Police will receive complaints of abuse 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 – 1-800-563-5599.
- Public Legal Information Association of NL has a toll-free legal information line and Lawyer Referral Service that operates from 9am-12 noon weekdays. Call 1-888-660-7788.
- There is 24-hour support offered on a toll-free provincial mental health line to help those feeling stressed and overwhelmed by their situation. Call 1-800-737-4668.
- Contact your Regional Health Authority for support with elder abuse concerns:
  - o 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 extension 226
- Labrador Grenfell Health (709) 454-0372

**Important Terms:**

**Access:** this is when a child is allowed to spend time with the parent that they do not regularly live with.

**Act:** this is a law passed by provincial or federal government. An Act may also be called a statute.

**Cohabitate:** living together.

**Custody:** having the responsibility of taking care of a child and making decisions for a child.

**CYFS:** This is short for **Child, Youth and Family Services**, a government organization that deals with custody, adoption, child protection and more.

**Discrimination:** This happens when someone is mistreated for reasons based on certain characteristics they have, such as their sex, religion, race, ethnicity, sexual orientation, disability, or other characteristics. These reasons are called “grounds for discrimination”.

**FJS:** This is short for **Family Justice Services**. This is an organization that helps people dealing with family law problems; they offer things like counselling and parenting advice.

**Hearing (court):** This is a legal meeting in court where people can present their opinion or their side of a problem, and it will be heard by a judge who makes a decision on the problem.

**Interjurisdictional:** When a law applies to more than one jurisdiction (place). This could mean more than one province, or more than one country.

**Jurisdiction:** The area where a law applies. This could be a province or country.

**Legal Aid:** This is a place that a person can get free legal advice or free representation (like a lawyer to represent/speak for them in court) if they cannot afford it on their own.

**Newcomer:** In Canada, a newcomer is an immigrant who has applied to be or is a permanent resident, or who have been approved to stay in Canada by Citizenship and Immigrant Canada.

**Order (court):** This is a decision made by a judge that tells someone to do or not do something.

**Party/Parties:** A party can be one or many people. A party is what makes up one side of an argument. For example, in the case of a divorce, there are usually two parties involved – the two people who are divorcing from each other.

**Payer:** The payer, in the case of child or spousal support, is the person who is supposed to pay the support to the person who needs it, or who takes care of a child who needs it.

**Recipient:** The recipient, in the case of child or spousal support, is the person who gets the money (from the payer), because they need it, or are taking care of a child who needs it.

**Respondent / Responding Spouse:** The respondent is the person who gets legal action taken against them, like in the case of a divorce. The person who starts the divorce process is the Petitioner, and the person who is being divorced is the Respondent or Responding Spouse.

**Self-representation:** Self-representation is when a person chooses not to have a lawyer speak for them in court and instead they speak for herself or himself in court.

**SEP:** This is short for **Support Enforcement Program**. This is a government (provincial) program that collects money from payers and make sure it is given to the recipients who are exchanging child or spousal support.

**Sponsor:** A sponsor is someone involved with the immigration process – s/he is the person who helps an immigrant into Canada by helping them with housing, their financial situation, learning a new language and other general help until the person immigrating can support his/herself.

**Spouse:** Is a husband or wife. In Newfoundland and Labrador, spouse typically refers only to married couples, whether they are same-sex or opposite-sex.

**Support:** Money paid by one spouse to another spouse, either as child or spousal support.