

Family Law

Terms and Definitions

Second Edition



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Introduction

The purpose of this booklet is to provide Newfoundlanders and Labradorians with a reference for the terms and definitions that are commonly used in family Court proceedings. The vocabulary used by lawyers and judges, and written in legal documents, is not always in plain language. It is hoped that this booklet will help individuals better understand the terminology involved in family law cases. This manual was developed with information from the "Family Law Guide for Women in Newfoundland and Labrador" and the Nova Scotia Department of Justice website publication entitled "Terms and Definitions used in Family law in Nova Scotia" which can be accessed at:
http://www.courts.ns.ca/self_rep/scfd_terms&defs.pdf

The definitions provided below are intended as general information and not legal advice.

Access

Access refers to the right of a non-custodial parent to visit and spend time with the child/ren. Access also includes the right to ask questions about the child/ren and be given information about health, welfare and education etc. If parents can agree on a time and place for access, they can make the decisions surrounding this issue. However, if a decision can not be agreed upon, the Court will likely impose an "access schedule".

Types of access include reasonable access, specified access, and supervised access.

Reasonable access – allows the non-custodial/non-residential parent to visit with the children at times arranged with the custodial/residential parent. Reasonable access gives parents the flexibility to make their own arrangements.

Specified access – sets out certain times for the non-custodial/non-residential parent to be able to spend time with his or her children.

Supervised access – says that the non-custodial/non-residential parent may spend time with the children only with another adult present. Usually, the supervising adult will be named in the order or agreement. Supervised access is generally ordered in situations where the Court believes it is necessary for the welfare or best interests of the children.

Adjournment

The temporary delay of a Court proceeding.

Adultery

Sexual relations between a married person and someone other than his or her spouse.

Affidavit

A written statement of fact that is sworn under oath as being the truth. A party or witness may sometimes file an affidavit as a way of giving evidence to the Court.

Age of Majority

The age of majority is 19 years in Newfoundland and Labrador. The age of majority is the legal age when a person ceases to be considered a minor.

Alternative Dispute Resolution

Ways to settle disputes or differences without a Court trial, such as mediation or negotiation.

Appeal

After a judge has made a decision in a trial or hearing, if either party is not satisfied, they may be entitled to "appeal" the decision to a higher Court. This means asking a higher Court to review the decision. The person seeking to appeal must have proper grounds to appeal. This means there must be a legal reason to appeal (for example, the judge made a mistake when applying the law to the case).

Applicant / Plaintiff

A person who starts a legal action or application in Court.

Applicant (in a divorce proceeding)

A person who commences a divorce application.

Application

Filing an application is a way of asking the Court to make an order. An application states what type of order the person is seeking.

Application to Vary

An application to the Court to change an existing order.

Best Interests of the Child

The test that a Court uses to make decisions about custody and access. The children's needs and well being are always the most important factors. The Judge must decide what is best for the children, not what is best for either of the parents.

Case Law

Judges' decisions in previous cases that are used as precedent.

Case Management Meeting

An informal meeting between a judge, and parties or their counsel to discuss and to potentially resolve issues related to the management of Court proceedings with a view to achieving the following purposes: (a) ensuring that maximum benefit is gained from each trial day; (b) making more efficient use of Court resources; (c) ensuring adequate and accurate amounts of time are reserved for trial; and (d) providing for the public interest in access to justice in a timely and cost effective manner.

Certificate of Divorce

The final document issued by the Court at the end of a divorce proceeding. Either party may apply for this certificate 31 days after the divorce has been granted for a fee. This document says that the divorce is final and means that the parties are free to remarry.

Chambers

A process for a judge to hear applications for some Court orders. Chambers is always held in a Courtroom, and several applications may be held in any session.

Child Support

Money paid by one parent to the other parent for the support of a child or children.

Child Support Guidelines

Rules for calculating how much child support a parent will have to pay. The guidelines include support tables for each province and territory, as well as rules for calculating special or extraordinary expenses, claims of undue hardship, and child support amounts in cases of split or shared custody.

Corollary Relief Judgment

A Court order that is issued as part of a divorce proceeding and usually addresses such issues as custody, access, child support, spousal support, and the division of matrimonial assets.

Common Law Relationship

Two people are considered to be in a common law relationship when they live together in a conjugal (married-like) relationship without having been legally married.

Contract

A written or oral agreement that is legally binding.

Costs

A judge may choose to order costs at the end of a trial. "Costs" refers to money to be paid by one side if there is a contested hearing or trial between the parties. Costs are

intended to help compensate the successful party for his/her legal expenses as a result of being in Court. Costs may also be ordered against a person who fails to follow the Court's directions or instructions before or during a trial.

Counseling

Guidance in resolving conflicts which may be used at the beginning of marriage breakdown, separation and divorce proceedings. A counselor may meet with you and your spouse and offer suggestions. The goal of counseling is to resolve the problems between you and your spouse.

Court Order

A decision by a Judge which must be followed by the parties.

Custodial Parent

The parent with whom the children live is known as the "custodial" or the "residential" parent. The other parent is the "non-custodial" or "non-residential" parent.

Custody

This describes the arrangement made for the care of the children after parents separate. Custody refers to decision making and responsibility for the children. Parents may have joint custody, meaning they are both involved in decision-making for the children, or one parent may have sole custody, meaning s/he has all of the decision-making authority. Even where parents have joint custody, the children may live primarily or totally with one parent.

Default

Default is the failure to do something. Examples are not obeying the terms of a Court order or not filing documents the Court needs.

Defendant / Respondent

A person against whom a legal action or application is brought.

Divorce

The legal ending of a marriage.

Divorce Judgment

An order from the Court that says that two people are divorced. Unless the husband or wife appeals, the divorce judgment becomes effective on the 31st day after the date of the judgment.

Docket

A list of the Court matters to be heard on a particular day in Court.

Evidence

Information given by parties or witnesses, either orally or in writing (in an affidavit), which the judge uses to make a decision.

Exclusive Possession

The right of one party to be the only one to use a residence or other asset, usually a matrimonial home (the family home) or its contents. The Supreme Court may award exclusive possession when one of the parties applies for it or may include it as a term in a separation agreement. This remedy is not available in Family Court.

Exhibit

A paper, document or piece of physical evidence provided to the Court at a trial or hearing or as a part of an affidavit.

Ex Parte

This is a type of Court application which is made on behalf of only one party, without notice to any other party.

Fees

Fees refer to the monetary charge for labour or services.

Financial Statement

See *Statement of Financial Information*

Hearing

A Courtroom procedure in front of a judge at which evidence and arguments may be presented to decide some issue of fact or law, or both. A hearing is held before a trial. A hearing is usually shorter than a trial and involves a specific question. If the problem is solved at the hearing stage, you will not need a trial. Sometimes a hearing is called a trial.

In Camera

Only the parties and Court staff are present during the Court proceedings.

Information

A sworn statement (see swear-affirm) by a person or the police requesting a peace bond or alleging that an accused committed an offence. An information gives the time and the place of an incident and the law that may have been broken.

Interim Order

A temporary order dealing with some matters until the final decision of the Court. An interim order may also be referred to as an Interlocutory Order.

Interlocutory Order

See *Interim Order*

Judgment

A decision made by a judge.

Leave of the Court

The Court's permission to proceed with certain types of applications.

Legislation

Laws made and enacted by Parliament or the provincial legislature.

Litigation

Legal action.

Maintenance

Money paid by a person toward the living expenses of a spouse, child, or dependant parent. (See also child support and spousal support)

Matrimonial Home

The home and real property in which the family usually resided during the marriage. Either one or both spouses may own the matrimonial home, which can be a house, condominium, mobile home or trailer. Regardless of which spouse is the registered owner of the matrimonial home, by virtue of the *Family Law Act*, each spouse has a one-half interest in the home and has the same right to use and reside in the home. This right can be varied by Court order or contract. If one spouse dies the surviving spouse becomes the sole owner of the matrimonial home.

Matrimonial Property

A term defined by the *Family Law Act*. Matrimonial property includes all property acquired by either or both spouses during the marriage with some exceptions. The exceptions

include: gifts, inheritances, trusts, settlements, personal injury awards, personal effects, business assets, property exempted under a marriage contract or separation agreement, family heirlooms and property acquired after separation. Other exemptions apply.

Mediation

Mediation is a type of alternative dispute resolution in which trained, impartial mediator helps the parties reach agreements about issues such as custody and access and sometimes also about child support, spousal support, and the division of matrimonial assets and debts.

Originating Application (for divorce)

A petition is an application to start a divorce. Either spouse may file a petition for divorce with the Court, or both spouses may file a joint petition.

Parenting Plan

A plan developed by a parent for the day-to-day care and visiting or access arrangements for the children when the parties are no longer living together.

Parties

The person or people on one side of a dispute or an agreement. Parties are the people who have the right to appear in Court and to seek an order from the Court (See also applicant, respondent).

Payee

The person who receives child and/or spousal support or maintenance.

Payor

The person who pays child and/or spousal maintenance or support.

Peace Bond

An order (specifically called a recognizance) made under section 810 of the *Criminal Code of Canada* whereby a Defendant is ordered to comply with specified conditions.

Personal Property

Any moveable or intangible thing that can be owned and not classified as Real Property.

Plaintiff / Applicant

The person who starts a legal action or application in Court.

Property

Everything which can be owned such as, real estate, and personal property (i.e. furniture, cars, bank accounts and investments). See also Real Property, Matrimonial Property and Personal Property.

Real Property

Property which is immovable and permanent (i.e. houses and land).

Recipient

The person who receives child or spousal maintenance or support.

Respondent / Defendant

A person against whom a legal action or application is brought.

Response

The formal answer or reply to an Originating Application. It should address the claims made by the Applicant and state clearly the reason the Respondent is defending the action.

Rules of Court

Procedures which must be followed and forms to be used when seeking an order from the Court. They are called Family Court Rules in Family Court and the Civil Procedure Rules in the Supreme Court.

Separation

Two people who are married to each other but who are living separate are considered to be officially separated in the eyes of the law. You do not need an official document in order to be "legally" separated.

Separation Agreement

A contract between two spouses to live apart on certain terms and conditions, which usually include custody and access, support, and the division of matrimonial assets and debts.

Service

The delivery of Court documents to the required person, usually to give him or her notice of a legal proceeding. Some documents may be served by mail or left with a designated person on behalf of the named person. In some situations, documents must be personally served by placing the documents directly into the hands of the named person.

Settlement Conference

A short meeting with a judge who is not going to be hearing the trial. At this meeting, the parties briefly explain to the judge their own positions on each issue. The judge then gives a brief opinion based on how he or she thinks the case could be resolved. This meeting is used to help settle cases.

Spousal Support

Money paid by one spouse to another to contribute to the other's living expenses. The support can be paid either by a set amount every month, one lump sum or as a transfer of property.

Standing

A person who has standing has the right to be a party in a Court proceeding and the right to have their case heard and decided. People who do not automatically have standing can apply to the Court to get standing.

Statement of Financial Information

A document that sets out all sources of gross income, assets and expenses. If child support is being addressed, the statement of financial information must also include the information required by the Child Support Guidelines.

Statement of Property

Anyone asking the Supreme Court to decide a question dealing with property must file a statement of property. A statement of property sets out what assets a person owns and the debts they owe.

Subpoena

A document that requires a person to give evidence of a Court proceeding.

Support

See child support or spousal support.

Swear-Affirm

When any party or any witness swears on a holy book, such as the bible, to tell the truth, or makes a solemn affirmation (a promise) during a trial that they will tell the Court the truth. The process of swearing to tell the truth or taking a solemn affirmation is often referred to as "being sworn".

Variation

A variation is an application to change an existing Court order.

Warrant

A Court document that orders the police, or other peace officers, to arrest someone. The Court can issue a warrant if someone fails to appear in Court or does not obey a Court order.

Witnesses

The people who give information and evidence to the Court so that the judge can make a decision.

Will

The legal expression in written form of a person's wishes as to the distribution of his or her property after he or she dies.

This publication contains general information only, and is not intended as legal advice. For legal advice please contact a lawyer.

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