



PUBLIC LEGAL INFORMATION
Association of NL

Family Law Guide

Contents

Family Law	1
Representation.....	1
Legal Aid	1
Self-representation.....	3
Custody and Access	3
Custody.....	3
Access	4
How do I get Custody or Access?	5
What happens when someone breaks the Agreement/Order?	5
Child Support	6
How do I get Child Support?.....	6
What if I cannot afford the amount of Child Support in the Agreement/Order?.....	7
What can I do if I stop receiving Child Support Payments?	7
Divorce	7
How do I get a Divorce?.....	7
Spousal or Partner Support.....	9
How do I get Spousal or Partner Support?	9

Family Law

Family law deals with any issues that need to be settled after the end of a romantic relationship, including a marriage or common-law relationship.

Family law issues include parenting arrangements for children (sometimes referred to as “custody and access”), divorce, child support, spousal or partner support, and division of property from a relationship. In some parts of Newfoundland and Labrador, both the Supreme Court and Provincial Court hear family matters dealing with custody, access, child support, and spousal support. **However, in St. John’s and the surrounding areas, all family issues are dealt with by the Supreme Court Family Division.**

The Supreme Court Family Division in St. John’s is at 21 Kings Bridge Rd. It can be reached by phone at (709) 729-3358, or by email at FamilyInquiries@Supreme.Court.nl.ca.

To start a family law claim or respond to a claim someone else has started against you, you will need to file the correct forms at the courthouse. The forms are available online on the court’s website, www.court.nl.ca/supreme/family or in hard copy at the courthouse. Court staff can answer questions about how to fill out these forms and how the Court works. However, they cannot give you legal advice. This means that they cannot tell you the best way to make an argument, what words to use, or what a judge will decide.

If you want to bring a claim outside of the eastern Avalon area, ask Family Division staff what court you should use. Information on where to bring claims can also be found on the Family Division’s website at www.court.nl.ca/supreme/family. You can also contact PLIAN’s legal information line at 1- 888-660-7788 or (709) 722-0054.

Representation

You do not need to have a lawyer to start or respond to a family law claim. Many people choose to represent themselves in the family law process. However, since family law matters can be complicated, it is best to get legal assistance if you can.

Legal Aid

Legal Aid provides lawyers in family and criminal matters for people who qualify financially. Although Legal Aid is often free, clients who can afford to pay for some of their services will be charged for a share of legal costs. To see whether you qualify for Legal Aid, and whether you can afford to cover some of your own costs, Legal Aid staff will ask for proof of your assets, income, and debt.

Legal Aid tries to represent clients who have serious legal matters. They will therefore not take every family law case. **Custody, access, divorce, and separation are usually handled by Legal Aid.** Legal Aid will sometimes cover child support, spousal support, and property disputes, especially if these cases also involve custody, access, divorce, and separation.

There are three ways to apply for Legal Aid.

1. Call the Legal Aid office nearest to you and set up an appointment. Make sure to ask about what documents you will need to bring with you. If you have an upcoming court date, are under investigation, or have an emergency, tell this to Legal Aid staff.
2. Mail in your application to a Legal Aid office. Application forms are available at all legal aid offices, as well as online at www.legalaid.nl.ca/pdf/application.pdf. Include all required financial documents with your application. Call Legal Aid to learn which documents to include.
3. Drop off your completed application form and financial documents to a Legal Aid office near you.

If your application is approved you will be contacted by Legal Aid and given the name and contact information of your lawyer.

Below is a list of Legal Aid offices, along with their contact information.

Carbonear

P.O. Box 340
21 Industrial Crescent
A1Y 1B7
Tel: (709) 596-7835 / 786-6003
Fax: (709) 596-1301

Clarenville

382 Memorial Drive
A5A 1P4
Tel: (709) 466-7138
Fax: (709) 466-7024

Corner Brook

19 Union Street
A2H 5P9
Tel: (709) 639-9226
Fax: (709) 634-3760

Gander

94 Airport Boulevard
A1V 2M7
Tel: (709) 256-3991
Fax: (709) 256-4336

Grand Falls-Windsor

7A Queensway Drive,
P.O. Box 6
A2A 2J3
Tel: (709) 489-9081
Fax: (709) 489-1197

Wabush

P.O. Box 370
Wabush Shopping Centre,
Grenfell Drive, A0R 1B0
Tel: (709) 282-3425
Fax: (709) 282-3427

Marystown
P.O. Box 474
4 Industrial Park
AOE 2M0
Tel: (709) 279-3068
Fax: (709) 279-4249

St. John's (Empire Avenue)
Suite 200, 251 Empire Avenue
A1C 3H9
Tel: (709) 753-7863
Fax: (709) 753-6226

St. John's (Elizabeth Avenue)
69 Elizabeth Avenue,
A1A 1W8
Tel: (709) 722-6981
Fax: (709) 722-6984

Stephenville
135 Carolina Avenue
P.O. Box 570
A2N 3B4
Tel: (709) 643-5263
Fax: (709) 643-2798

Self-representation

If you cannot get the help of Legal Aid, or choose not to apply for Legal Aid, you may choose to represent yourself. **Self-represented people are expected to know the law and court procedure – they will not be given special treatment in court.** To prepare for court, you may want to look at past cases, laws, and rules.

You can get assistance with finding the right legal information at the Law Library, which is operated by the Law Society of Newfoundland and Labrador. The Law Library is located at 196-198 Water Street, St. John's. 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) or by email (lawlibrary@lawsociety.nf.ca).

Cases, legislation, and some commentary can also be found on **Canlii** – a free, online legal database available to the public. To access Canlii, visit <https://www.canlii.org/>.

Legal information is also available from PLIAN, which has guides for self-represented people on its website www.publiclegalinfo.com. For more assistance, you can also call PLIAN's legal information line at either (709) 722-2643 or 1-888-660-7788, or email PLIAN at info@publiclegalinfo.com.

Custody and Access

Custody

Custody involves responsibility for a child. A person who has custody of a child is responsible for deciding important things about a child's life, including about education and

health care. If parents can decide who has custody of a child, and where the child will live, there is no need to go to court. However, if there is a disagreement, one parent will need to apply for custody or respond to another person's application for custody, and the issue may have to be decided in court.

Although parents always have the right to apply for custody of a child, other people may also apply. For example, grandparents and other relatives of the child may be allowed to apply in some cases, along with non-relatives who have taken parent-like responsibility for the child in the past. If you are not a parent and are considering making a court application for custody of a child, you should speak with a lawyer.

There are different types of custody arrangements. It is important to understand each form of custody before applying for or responding to a custody claim.

Sole Custody: Here the child usually lives with one parent. That parent alone has responsibility to make major decisions for the child. It does not normally mean that the other parent is completely uninvolved - the other parent will often be allowed to see the child at certain times, based on a schedule.

Joint-Custody: Joint custody means that both parents make major decisions about their child together. It does not always mean that the child lives with both parents an equal amount of time. Instead, it means that either the court or the parents decide how much time the child spends with each parent. The primary home of the child is where the child spends the most amount of time.

Access

Access (sometimes called "visitation") is the right of a parent without custody (or another important person, such as a grandparent) to visit and spend time with the child on a regular basis. Access also usually includes the right to ask questions about the child and be given information about the child's health, well-being, and education.

There are different types of access arrangement. These are listed below.

Reasonable: Here the parent who does not have custody, or who does not live with the child, can set up times to see the child with the parent who does have custody. This is a flexible arrangement, but it only works if both parents cooperate with one another and can agree on a schedule for the parent without custody to see the child.

Specified: This type of access, made by court order or agreement between the parents, tells parents what times one of them may have the child in his or her care. It is a schedule that states exactly when the parent is to see the child.

Supervised: In this arrangement, a court order or agreement between parents requires that one parent can only see the child if in the presence of the other parent or another adult who

is authorized to supervise the visits. Usually, the supervising adult will be named in the order or agreement. Supervised access may happen if one parent has never had a relationship with the child and the relationship is being re-established or if there has been violence or abuse in the past within the family.

How do I get Custody or Access?

One way to create a parenting agreement without going to court is by applying through **Family Justice Services (FJS)**. FJS offers free parent information programs, counselling, and mediation to try and help parents come to an agreement without going to court. FJS can be contacted by phone at (709) 729-1183 if you are in the St. John's area. More information about family justice services can be found at <http://www.court.nl.ca/supreme/family/fjs.html>.

To apply for parenting rights to a child, you must file the correct forms in the right court. For matters in St. John's, this means that you must fill out an **Originating Application** requesting parenting rights at the Supreme Court Family Division. Contact Legal Aid or PLIAN for assistance.

What happens when someone breaks the Agreement/Order?

If one person breaks the terms of an agreement or court order, the court may enforce the agreement or order by punishing that person or compensating the other person. **For example, if you are scheduled to take care of your child on a certain day, and the other parent or guardian refuses to let you have the child, then you can apply to the court to have the agreement or order enforced.** The court can do any of the following things to enforce an agreement or order:

- If one parent lost time with the child because the other broke the agreement, the court can order **compensatory access** – giving that parent time with the child to compensate for the lost period.
- Require **supervision** of the agreement or order by a court-appointed person.
- Order **mediation** between the parties.

However, it is legal to deny someone access if the person who is trying to take the child:

- Is likely to hurt or harm the child.
- Is likely to harm the other parent/guardian or another person involved in caring for the child.
- Is impaired by alcohol or drugs.
- Has not had very much contact with the child in the last twelve months or has said that he or she does not want to see the child at that time.

Child Support

Child support is money that one parent or guardian pays to another parent or guardian to help support their child 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 continue to support their child as best they can.

The money is meant to help with housing, clothing, feeding, educating, and caring for the child. All parents have to pay child support, not just those who have been legally married.: common law spouses and step-parents may also be required to pay child support in some circumstances.

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.

Most often, the parent with custody, or the parent who the child lives with most of the time, will receive the support payments. Child support is paid until the child turns 19 years old, but parents/guardians may be required to continue paying if the child is still dependent on his or her parents due to their education, illness, or disability.

How do I get Child Support?

If both parents agree on the amount of child support to be paid, then it can be put into a written agreement (such as a separation agreement). Once this agreement is signed and witnessed, it can be filed with the court. A judge will look at the amount to see if it is reasonable in comparison to **the Federal Child Support Guidelines** (these can be found at <http://laws.justice.gc.ca/eng/regulations/SOR-97-175/index.html>). These guidelines are used to determine how much support should be paid.

If both parents cannot agree on an amount for child support, but want to work out the issue outside of court, parents can contact Family Justice Services (FJS) for mediation.

If an agreement cannot be reached between the parents, an application can be made directly to court to have a judge decide the issue. This requires that you fill out an Originating Application with the correct court, claiming child support. See page 1 for more information on where to bring your claim.

What if I cannot afford the amount of Child Support in the Agreement/Order?

In some circumstances, you can change the amount of child support being paid or received. One way to do this is by making an **undue hardship** claim, which allows a parent who cannot afford to pay child support or who requires more than the normal amount to support the child to ask the Court to allow them to pay or receive a different amount of money than what they would normally have to pay based on the Child Support Guidelines.

What can I do if I stop receiving Child Support Payments?

If you stop receiving child support payments, you should contact the **Support Enforcement Division** as soon as possible. This service can be reached at (709) 637-2608.

Failure to give or receive payments **does not affect any other obligation between you and the other person in the order or agreement**. For example, you cannot prevent a person with access rights from seeing their child just because they have not paid child support.

Divorce

Divorce is the legal end of a marriage. However, a divorce does not release spouses from all duties they might have had during the marriage. Spouses must still provide support for any children of the marriage and, in some cases, for each other. It is important to know that separation is not the same as divorce, and **just because you live separately for over a year does not mean you are automatically divorced**. To get a divorce, you must apply to the Supreme Court for it.

How do I get a Divorce?

To get a divorce, you must show that there has been a “permanent breakdown” in the marriage. One way to do this is by proving that you and your spouse have been living separate and apart for over one year. The other is by showing that your spouse has committed adultery or has inflicted mental or physical harm on you. Note that if you are asking for a divorce because of adultery or mental/physical harm, you will need to show evidence to the Court about adultery or harm that has occurred.

Once you have done this, you must file an **Originating Application** in the correct court. **Divorces can only be requested from the Supreme Court Family Division** (on the Avalon Peninsula or on the west coast of the island) **or General Division** (in any other part of the province) – the Provincial Court does not handle divorce matters.

The Originating Application has 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. The court will need to be provided with other documents also, including the marriage certificate or separation agreement (if one exists). You can contact the court to determine what other documents 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 has six months to serve the other spouse (the respondent) the court forms, 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 person filing for divorce. The person who gives (or 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 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 straightforward procedure. PLIAN has a publication entitled “Uncontested Divorce: An Information Guide for Newfoundland and Labrador.” It is available on PLIAN’s website www.publiclegalinfo.com or by calling 1-888-660-7788 to request a free copy.

The responding spouse may decide to argue against the grounds for divorce or challenge any claim, including custody of any children, child or spousal support, division of property, or other issues. 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 any other issue has been brought up. 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.

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.

Spousal or Partner 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. Spousal support should help each spouse become economically independent within a reasonable amount of time, if possible.

A judge will consider various factors when deciding whether to order such support. These 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 are not all the possible factors: the judge may consider other facts in his or her decision.

How do I get Spousal or Partner Support?

One way to get spousal support is by agreeing to it in a **separation agreement**. This is a contract between you and your spouse stating each party's rights on family issues when you are no longer in a relationship. If an agreement cannot be reached between the spouses, an application can be made directly to court to have a judge decide the issue. This can be done by filing an originating application requesting spousal or partner support in the correct court. See page 1 for more information on where to bring your claim.