Divorce In Newfoundland and Labrador

Public Legal Information Association of Newfoundland and Labrador

PUBLIC LEGAL INFORMATION
Association of NL

Public Legal Information Association of NL (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 goal of increasing access to justice in the province.

This publication provides readers with general information, is not an official source of law, nor constitutes or provides any legal advice. Any action undertaken by a person as a result of this publication is at their own discretion.

Public Legal Information Association of Newfoundland and Labrador
291-293 Water Street,
St. John's, Newfoundland and Labrador,
A1C 1B9

Publication not yet current.

TABLE OF CONTENTS

Definitions of Family Law Terms

Affidavit of Service: Sworn document stating that a person has served another person certain court documents on a particular date.

Applicant: The person making an application to court for a divorce.

Best Interests of the Child: The guiding principle in Family Law that court orders be made for the benefit of a child during and after separation. This is the only thing a court must consider when making orders for parenting time. The best interests of a child include many factors, including the child's needs, relationships with people in their lives, and their age.

Case Management Hearing: An informal court hearing whereby parties to a proceeding meet with a judge to discuss what matters must be handle and how to proceed. This is a first step before a trial will be considered.

Child of the Marriage: A child born to or adopted by both parties to a marriage.

Common Law Relationship: A relationship where people have not been legally married. Common law couples cannot be divorced, and the *Divorce Act* does not apply to common law relationships and.

Contact Order: A court order that allows someone other than a parent of a child to apply to a court for parenting time with a child.

Child Support: Money paid by one former partner to another former partner to help assist with the growth and development of a child of the marriage. This is often determined by the Federal Child Support Guidelines, and depends on previous year earnings, number of children, and province of residence.

Interim Application: An application to a court for relief against another party, either financial reasons or for sole parenting that is temporary until court matters are finalized.

Interim Orders: A temporary order given by a court until court proceedings are finalized. A final order may or may not be the same as an interim order.

Joint Originating Application: A court document that begins most court proceedings, including divorce and other family matters. This is made when parties are in agreement to what should be done with their legal matters.

Notice of Discontinuance: A court document filed when a party or parties to a proceeding agree to withdraw their court application and not to continue proceedings.

Originating Application: A court document that begins most court proceedings, including divorce and other family matters.

Parenting Time: A period of time whereby a parent, or someone who stands in place of a parent (a family member, guardian, etc.) with court permission, and has time to spend with a child of the marriage to foster their development and growth. Parenting is a right of the child and is held in the best interests of the child.

Respondent: The person who was served with an application for a divorce.

Response: A court document that must be filed in response to an originating application, whether you agree or disagree with the application served against you.

Request for Trial: A court form that requests a trial on a particular matter, or matters, to a family proceeding. A case management meeting must have already occurred before making a request for trial.

Service: Providing court documents to another party to a court proceeding. This is required for most court documents and is often done personally but may be done by mail or other means. Service can be done by another person, but they must file an "affidavit of service".

Spousal Support: A sum of money paid by one former partner to their former partner, either by court order or agreement, for either a fixed or indefinite period of time, to help the former partner become financially independent so as to not need support in the future.

Variation Application: An application made to court to change an existing court order, such as spousal or child support, or parenting time.

Frequently Asked Questions

What are the grounds for divorce?

To apply for a divorce, you must be able to show that there has been a permanent breakdown of your marriage. This occurs through one of the following ways:

- You have lived separate and apart for one year (this includes living under the same roof if you are living as though you are separate and apart);
- One spouse has committed adultery (cheated); or
- There is mental or physical cruelty that has made it impossible for you to continuing living together.

Please note: Divorce proceedings on adultery grounds are very complicated. In order to proceed with a divorce based on the ground of adultery, in most cases proof of adultery will need to be presented in court. Most divorces are based on living separate and apart for one year.

Where do I go to obtain a divorce?

You will need to go to the Supreme Court of Newfoundland and Labrador. Depending on where you live, it will either be General Division or Family Division.

Do I need a lawyer?

A lawyer is not needed to file the court paperwork to seek a divorce. However, it is always recommended that you consult with a lawyer to best inform yourself before making any legal decisions as this may impact you long term.

If you and your spouse have already settled and/or agreed upon all the issues in your marriage, including support, custody and division of matrimonial property (the family home) through written agreement(s), and/or court order(s), then you may apply for a *Joint Divorce Application* with or without the advice of a lawyer.

Lawyers are usually consulted before filing for a divorce to ensure all matters have been properly settled. A lawyer can help you understand your legal rights and obligations.

I can't afford a lawyer – what should I do?

If you cannot afford a lawyer, there are a couple of options you should consider. You can apply for Legal Aid. Legal Aid offers highly experienced lawyers who can represent you either at a substantially reduced rate or for free. Please be advised that you must submit a Legal Aid application, which can be found online here: https://www.legalaid.nl.ca/application.html

You can also contact Legal Aid to get an application at their various locations. For the closest Legal Aid office to you, please see pages 30-31 of this guide.

Please note that if you are receiving income support from the Department of Advanced Education and Skills you must fill out a consent form to allow Legal Aid to confirm your income status. You can get this consent form from a Legal Aid office, or online here: https://www.legalaid.nl.ca/Department_of_Advanced_Education_and_Skills_Consent_Form.doc

I was denied Legal Aid – now what should I do?

If you were denied Legal Aid then you can consider appealing denial through Legal Aid. You may qualify for Legal Aid on appeal and it is recommended that you do this immediately when you learn of your denial. Your appeal forms will be provided to you by Legal Aid in your official package provided to you.

My appeal for Legal Aid was denied – now what should I do?

You can contact PLIAN's Lawyer Referral Service to receive some basic legal advice. This will allow you to speak to a lawyer for a one-time consultation at a one-time rate of 30 minutes for $40.00 (tax in).

Contact us either via e-mail at: info@publiclegalinfo.com ; a2j@publiclegalinfo.com; or via telephone at 709-722-2643, or toll-free at 1-888-660-7788 to arrange your referral today.

Please note: There is no obligation for you or for the lawyer to continue beyond the 30-minute consultation, and any additional services given by the lawyer to you is subject to agreement of fees, etc. between you and the lawyer.

Do I need to get a legal separation first before applying for divorce?

There is nothing required to make your separation "legal". Two people who are married to one other, but who are living separate and apart, are considered officially separated.

How long do I have to wait before I can file for divorce?

If you are seeking divorce based on time living separate and apart then you must wait one year before applying. Remember, you can be considered living separate and apart when applying for divorce even if you live in the same home, so long as you have been living separate lives.

You can also start the process of divorce by filing your application to court before the one year period is up. However, you cannot be legally granted a divorce until you have been separated for at least one year.

What happens if we get back together?

The Divorce Act allows for a period of 90 days where you can resume your relationship without affecting divorce proceedings. It does not matter how these 90 days are built up. You are allowed a total of 90 days, whether the 90 days were spread out over a year, or whether you resumed your relationship for 90 days straight.

If you resume your relationship for more than 90 days straight, or more than 90 days altogether in the past year, your separation period will restart. This means that you may have to wait an additional full year before applying for divorce.

My spouse and I are separated, but we still live under the same roof. Can we still file for divorce?

Yes! If you have been living separate and apart for one year, you may still file for divorce. So long as you are living separate lives you may be able to apply for divorce. Living separate lives can include sleeping in different rooms, not sharing meals or household chores, and living separate lives generally. As this can be a complicated application, it is recommended that you speak to a lawyer if you plan to divorce while still living together.

Am I guaranteed to be granted a divorce by the Court?

There is no guarantee that a judge will grant your divorce. A judge may refuse to grant a divorce if suitable arrangements have not been made for supporting any children you have, or if one party has lied or misled the court in their application. A judge may also deny a divorce if they are

not satisfied that all relevant matters have been properly handled, such as if parenting plans have not been sufficiently determined. For more resources on parenting plan, please see page 29 of this guide.

My spouse and I have been separated for six years. How long do we wait before the divorce is legal?

Divorce does not automatically happen, no matter how long you have been separated. To be legally divorced you must file an application for divorce with court and receive an order from the court stating you are divorced.

While you do not have to file any paperwork with the Court to be separated, you must do so to be legally divorced.

What happens if we are separated but not legally divorced?

If you do not legally divorce your spouse will be entitled to certain legal rights. For example, when you die your spouse may still have legal rights to your estate.

We've separated and won't be getting back together. Are we legally obligated to divorce or can we just stay separated and resolve our legal issues on our own?

You are not legally obligated to get a divorce after separation. It is your choice whether you file for divorce. You can resolve your legal issues through a Separation Agreement. These agreements can be useful to handle who will get what property, pay specific debts, and who parents the children, and on what schedule, among other things. If a couple separates on good terms, they may be able to work out many of these issues together.

However, even if spouses can draft their own Separation Agreement, it is strongly recommended that each party seek independent legal advice before signing it. Remember that when you are legally married, the only way to end your marriage in law is to get a divorce.

I've filled out all the necessary forms and submitted them to the Court. Am I officially divorced now?

Not yet! Submitting an Originating Application is just the first step. Just because you've started the divorce proceeding does not mean that you are divorced. You are not divorced until (1) a judge grants your divorce and (2) you have been issued an official Certificate of Divorce. You will NOT be officially divorced until this process is complete.

I married my spouse in another country. Can I apply for divorce in Newfoundland and Labrador?

You can apply for divorce in your current province of residence, no matter where you were married. In Newfoundland and Labrador, you can apply for divorce if you were legally married in another province or another country.

I married my spouse in another province or another country. What are the requirements to apply for divorce in Newfoundland and Labrador?

The requirements to apply for divorce in Newfoundland and Labrador are the same no matter where you were married. You or your spouse must have lived in Newfoundland and Labrador for at least 12 months immediately before applying for divorce. Depending on what country you come from, you may be required to have your marriage certificate translated or certified by a notary public, or someone with similar qualifications in your country. This is handled on a case by case basis by courts. If you are uncertain about whether you need to have your marriage certificate translated or certified you can ask the court registry before filing.

I just filed for divorce. Do I have to pay the other parent child support before there is a court order?

You do not have to pay child support to your spouse before a court orders you to do so. However, a court may order you pay "retroactive child support", and you will have to pay what you would have had to pay when you split up.

A court may also order "Interim Child Support" be paid. This can be higher than what the final order may be.

You should consider working out a child support plan with your ex-spouse to avoid additional delays and costs as a result of court applications.

How long will it take to get my Certificate of Divorce?

There is no guarantee of how long it can take to complete your divorce and receive your certificate. In "Joint Applications" where both parties agree to everything and submit for divorce together the process can be quite quick and take a matter of weeks. However, many factors can

affect this timeframe, including:

- How long it takes for you to serve your spouse;
- If you have correctly filed all of your court documents;
- Whether the judge believes they have enough information in submitted documents to grant a divorce;
- Court scheduling; and
- Whether a court hearing is necessary to clarify, settle, or determine a matter.

I just received my divorce certificate. Am I now free of all obligations to my ex?

Although a divorce legally ends marriage and frees former partners from their obligations to each other under the marriage, a Court may still require one spouse to financially support the other. This is called "spousal support" and the amount of money owed, and for how long, will depend on each case.

Divorce also does not change the rights and obligations that parents have to children of the marriage. Parents are still obligated to support their children financially.

My partner and I have lived common law but were not legally married. Do we need to get a divorce once we separate?

If you were never legally married to each other, then divorce does not apply to you. No legal formalities are required to end the relationship. It is not a legal marriage and will not become one, no matter how many years you live together. However, this does not mean you will not have to apply to court to decide parenting arrangements, child support, or other matters.

Divorce for Newcomers, Immigrants, Refugees and Foreign Citizens

I'm not a Canadian citizen. Does this guide still apply to me?

Yes! You can still use this guide to for general legal information, but it is recommended to speak to a lawyer if you have concerns about your divorce as a non-citizen.

I don't have permanent residency. Does this guide still apply to me?

Yes! You can still use this guide to for general legal information, but it is recommended to speak to a lawyer if you have concerns about your divorce if you don't have permanent residency.

I'm not a Canadian citizen. Can I still apply for divorce in Newfoundland and Labrador?

You do not have to be a Canadian citizen to apply for divorce in Newfoundland and Labrador. However, either you or your spouse must have lived in Newfoundland and Labrador for at least 12 months immediately before making the application for divorce.

Does it matter that I married my spouse outside of Canada?

The requirements to apply for divorce in Newfoundland and Labrador are the same no matter where you married. You or your spouse must have lived in Newfoundland and Labrador for at least 12 months immediately before applying for divorce.

My spouse is my sponsor and they want a divorce. Will I have to leave Canada when we divorce?

Not necessarily. Your sponsor must sponsor you for three (3) full years. If your sponsor separates or divorces from you, they must still sponsor you for a total of three (3) years.

If you have permanent residency then you will not have to leave Canada.

I don't have my sponsorship completed yet and my spouse wants to divorce. Will I have to leave Canada when we divorce?

If you are a dependent of someone sponsoring you from within Canada, and if your application is still being processed, a divorce could result in you being denied sponsorship.

I made a claim for refugee status and my spouse wants a divorce. Will I have to leave Canada when we divorce?

If you and your spouse made a refugee status claim in Canada together then this could impact your application, and you may be denied refugee status. You may then have to leave Canada.

My work / visitor / study permit has expired but we haven't finished our divorce. Do I have to leave Canada?

If your work, visitor, or study permit expires you are at a risk of having to leave country regardless of divorce.

I have Permanent Residency and my partner is threatening to leave me to have me deported. What can I do?

If you have permanent residency your partner cannot deport you. Your relationship does not matter once you have permanent residency.

My partner is abusive and I don't have a permanent residency. What can I do?

If you experience family violence you can get a temporary residence status through a special application through the federal government. Contact the *Client Support Centre* at 1-888-242-2100 to start this application.

You will have to describe what is happening to you in your application. It is also recommended that you mark your application envelope with the letters "F V" to help the *Client Support Centre* handle your file.

My partner is threatening to keep our children in Canada and report me authorities. What can I do?

If you experience family violence you can get a temporary residence status through a special application through the federal government. Contact the *Client Support Centre* at 1-888-242-2100 to start this application. This will give you time to decide if you want to stay in Canada or not and allow you to keep your children with you.

You will have to describe what is happening to you in your application. It is also recommended that you mark your application envelope with the letters "F V" to help the *Client Support Centre* handle your file.

I don't have permanent residency and my partner is threatening divorce and to keep our children in Canada. Will I have to leave my children in Canada?

You may have to leave your children in Canada with your partner depending on the circumstances. For example, if your children do not have a passport or citizen status in another country they may have to stay in Canada.

Divorce in Newfoundland and Labrador

What is Divorce?

Divorce is the legal ending of a marriage. However, a divorce does not release spouses from all obligations related to the marriage. Spouses must continue to support any children of the marriage, and in some cases each other. Divorce does not deny a spouse the right to see their children. Divorce simply ends the legal relationship that was created when two people were married.

In every province, divorce is governed by the federal *Divorce Act*. The *Divorce Act* has recently gone through some significant changes that come into force on March 1st, 2021. This guide outlines the procedure for getting a divorce after these changes come into effect. As the new *Divorce Act* will apply to all divorceproceedings that have not been decided before the new changes come into effect, it is a good idea to consider both the old and new provisions for divorces that are commenced before March 1st, 2021.

The full *Divorce Act* can be accessed via the Department of Justice (Canada) website (http://canada.justice.ca)

What are the Grounds for Divorce?

Divorce can be granted when there is a "breakdown in the marriage." This is when one of the following occurs:

- Spouses have lived separate and apart for at least one year. This does not mean that they live in separate houses but that they have lived separate lives for at least a year. For example, if both spouses sleep in different rooms, don't eat together, and live separate lives.
    - If both parties resume their relationship for more than 90 cumulative (total) days but then decide to continue with the divorce, then the one-year separation period begins again after separating for a second time.
- The applicant spouse was subjected to mental or physical abuse by their ex-spouse that it is now impossible to keep living together.
- A spouse has committed adultery since they were married, which can be proven in court. More often nowadays, people wait for the one-year separation period instead of applying under adultery as the court process is not as complicated.

If spouses live separate and apart, an application for divorce can be filed immediately but the divorce will not be granted until either the spouses have been living separate lives for a year or have demonstrated one of the other grounds for divorce.

Who Can Apply for a Divorce?

One person usually files for divorce. The person that files for divorce is called the applicant. The other spouse is called the respondent. However, spouses can file together for divorce if they agree on all family law-related issues. This is called a "joint -application for divorce".

To file for divorce in Newfoundland and Labrador, the applicant must be a Canadian resident. As well, one of the spouses must have resided in the province for at least a year prior to the application for divorce.

If the other spouse lives in another province then the applicant can still file for divorce in Newfoundland and Labrador.

You must give a copy of the divorce application to your spouse within 180 days of filing it with a court in Newfoundland and Labrador. If you do not serve your spouse within 180 days, then you must refile your divorce application again.

What If We Live In Different Provinces When Applying For Divorce?

If one spouse filed for divorce first in their province, then the application for divorce will be heard in that province. If both spouses file for divorce on the same day and neither withdraws proceedings within 40 days, then the Federal Court will decide what province the divorce application will be heard in.

If an application for a Parenting Order is made, the Federal Court will give jurisdiction to the province where the child lives. If there is no application for a Parenting Order, the Federal Court will give jurisdiction to the province where the spouses previously lived together if one of the spouses still resides in that province.

If there is no application for a Parenting Order and neither of the spouses resides in the same province where they lived together then the Federal Court chooses what province is best suited to hear the application for divorce.

If a court approves an application for divorce when the other spouse lives in another province, then the application is sent to the designated authority of the province that the other spouse resides in. The designated authority then sends the application to the court with the authority to make a divorce order in that province. That court then serves the respondent with a copy of the application and a notice explaining how the former spouse can respond to the application for divorce and what documents the former spouse is obligated to provide.

Please Note:

Canadian courts can recognize divorces granted in foreign countries if one of the former spouses has lived in that foreign country for at least a year immediately before the divorce was granted.

Where do I go to Obtain a Divorce?

Applications for divorce are made to the Supreme Court of Newfoundland and Labrador, Family division in St. John's and most of Eastern Newfoundland, or in Corner Brook and most of Western Newfoundland, this application will be at Supreme Court, Family Division.

In other parts of the province, the application will be made to Supreme Court, General Division. Provincial Court does not handle divorce cases but may be able to hear some other types of family law cases in certain locations. If you are unsure whether your matter can be heard at a Provincial Court nearest to you, you may contact that court to get more information.

How to File for a Divorce?

When a spouse files for divorce alone (and not as joint applicants), they need to complete a form called an Originating Application.

Originating Applications have several sections that must be filled out. This includes what orders you are seeking and provides the court with information about yourself, your spouse, and any children from the relationship. This information will need to include their names, dates of birth, and place of residence. If you have safety concerns about providing information to the other person, you can provide alternate contact information on the form and then provide the Court with your actual contact information in a sealed envelope. This form must be filed with the court.

You will also need to provide other documents, including the marriage certificate or separation agreement (if one exists). If the marriage certificate is in a language other than English or French, then the court needs to be provided with a certified translation of the certificate. The court should be contacted to determine what other documents may be required.

There is a court filing fee when applying for divorce. Once you have paid this fee and submitted the documents correctly, your documents will be signed by the court clerk. You are then an Applicant and have 180 days to serve the other spouse (the Respondent) the originating application, including a response form for the respondent to complete. If you do not serve the other side within 180 days you will have to restart your application.

In some special cases, an application can be made to the court to extend the time for service. The documents must be given to the spouse personally, by someone other than the applicant. The person who gives (serves) these papers 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.

Both sides to a divorce proceeding must continue to act in the best interests of the children of their marriage. This means they must continue to protect their children from conflict from the divorce, where possible. This includes certain duties that both parties to a proceeding must perform, including:

- Continuing to apply with existing court orders (for example: interim access and support orders);
- Participation in non-court family dispute resolution programs (such as Family Justice Services); and
- Providing the other side with up to date information about court proceedings.

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. You can consider contacting Family Justice Services for support in resolving your parenting decisions. For more information about Family Justice Services please visit their website which can be found here: https://court.nl.ca/supreme/family/fjs.html

As mentioned earlier, another barrier to divorce is a reconciliation of over 90 days if a divorce is being sought due to separation. After separation, spouses can live together for up to 90 days before the court will consider the one-year separation period as interrupted. If the spouses have reconciled for longer than 90 cumulative (total) days over the course of a year, but then decide to continue with the divorce, the one-year separation period will reset.

Divorce and Parenting of a Child

If an application for custody and access during a divorce proceeding is made but the court has not made a decision before the new *Divorce Act* provisions come into force on March 1st, 2021, the application must follow procedures in the federal *Divorce Act* to apply for a parenting order. As of March 1st, 2021, the *Divorce Act* will make significant changes to determine the contents of a parenting order and a contact order. Terms such as custody and access will no longer be used after this date. Replacement terms, such as parenting, contact, and decision making are mentioned below.

A Parenting Order is a court order that determines when and who will have parenting time and who will make decisions about specific things (for example, schooling). It may also include orders about communication between a child and another spouse, parent, or grandparent. Parenting orders can be for a specific time or can be permanent.

Parenting Orders can include either parent, or someone who stands in place of the parent, such as a grandparent or guardian of the child. If it is someone other than one of the parties to a divorce, they must receive permission from the court before applying for a parenting order.

Parenting Time is the time a child of the marriage spends in the care of someone under a parenting order. Someone who has parenting time has the sole decision-making responsibility for day-to-day decision making of the child during their parenting time, unless a court order says otherwise.

Decision-Making Responsibility is the responsibility of a party to make significant decisions about a child's well-being. This includes, but is not limited to, their health; education; culture; language; religion; spirituality; or participation in significant extra-curricular activities. This responsibility may be allocated only for one parent, shared between parents, or for someone standing in the place of a parent. A court may give some responsibilities to one parent and others to the other parent.

Contact Orders allow for contact between an applicant, such as a grandparent, and a child of divorced spouses when it is not possible for that person to spend time with the child during parenting time. There must be a Parenting Order before a contact order can be sought. If an applicant is not one of the spouses, then they must apply to the court for permission before submitting an application.

During a court hearing, the judge will hear information about the situation and decide in the best interests of the child. The judge will consider all factors related to the child's circumstances, but the primary consideration is the child's emotional and psychological safety, security, and well-being. To determine this, some factors considered are:

- The child's needs given their age and development, including their need for stability
- The nature and strength of a child's relationship with each spouse, the child's siblings, and the child's grandparents, and any other important persons in a child's life
- Each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse
- The history and care of the child
- Depending on a child's age and maturity, what they want
- The child's cultural, linguistic, religious and spiritual upbringing and heritage, notably Indigenous heritage and upbringing
- Any current or proposed childcare plans
- The ability and willingness of each person to care for and meet the needs of the child
- The ability and willingness of each person involved in proceedings to communicate and cooperate with other parties, especially regarding matters affecting the child

- Any criminal or civil proceeding, order or condition, or measure that is relevant to the safety, security, and well-being of the child

The Divorce Act also requires a judge to consider the impact of any family violence that is present in the relationship. Family violence is any violent, threatening, or coercive or controlling behaviour conducted by a spouse, former spouse, or a dating partner of a former spouse who participates in household activities that causes a family member to fear for their safety or the safety of another person.

Examples of family violence include:

- Physical abuse, but not reasonable force used to defend yourself or another person
- Sexual abuse
- Threats to cause bodily harm or kill any person
- Harassment, including stalking
- Failure to provide the necessaries of life
- Psychological abuse
- Financial abuse
- Threating, harming, or killing an animal
- Threatening or actually damaging a person's property

When assessing the impact of any family violence the judge has to consider:

- the nature, seriousness, and frequency of the violence and when it occurred
- any patterns of controlling and coercive behaviour relating to a family member
- if the family violence is directed at the child or if the child is directly or indirectly exposed to the violence
- any physical, emotional, or psychological harm to the child or the risks of such harms to the child
- any compromise to the safety of a child or a family member
- if the family violence causes the child or family member to fear for their safety of that of another person
- any steps by the aggressor to prevent future family violence from occurring and to improve their ability to care for the needs of the child
- any other relevant factor(s)

A judge cannot consider the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making reasonability, or contact with a child under a parenting order.

A Support Order is an order for either Child Support or Spousal Support. If there are applications for both Child Support and Spousal Support, the court has to give the application for Child Support priority. To get an idea of what appropriate Child Support may be, please visit the Federal Government website on Child Support Guidelines here: https://www.justice.gc.ca/eng/fl-df/child-enfant/2017/look-rech.asp.

Child Support is a court order requiring a spouse to pay the other spouse for the support of any or all children of the marriage. It is most often for children under 19 years of age but can be ordered for children over 19 years of age if they are in school, or unable to work, or need special care. Child support orders can be either a lump sum, for an interim period, an indefinite period, or until a specific event occurs. To determine how much child support will be paid, courts use the Federal Child Support Guidelines. These guidelines help to provide consistency for child support orders in Canada, but judges may still go above or below guideline amounts.

When applying for a Child Support order, the applicant must provide:

- Every personal income tax return they filed for the past three tax years
- A copy of every notice of assessment and reassessment issued to the spouse for the past three tax years
- If the spouse is an employee, their most recent statement of earnings indicating their total earnings in the year to date including overtime. If that is impossible, a letter from the spouse's employer setting out that information including their annual salary or renumeration
- If the spouse is self-employed, their financial statements for their business or professional practice and a statement showing a breakdown of all salaries, wages, management fees, or other benefits paid to or on behalf of persons or corporations with whom the spouse deals with directly for the past three years
- If the spouse is a partner in a partnership, confirmation of their income and draw from, and capital in, the partnership for the three most recent tax years
- If the spouse controls a corporation, the financial statements of the corporation and any subsidies, and a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to or on behalf of persons or corporations with whom the corporation and related corporations deals with directly for the past three years
- If the spouse is a beneficiary to a trust a copy of the trust settlement agreement and copies of the trust's three most recent financial statements
- If the spouse receives income from employment insurance, social assistance, pension, workers compensation, disability payments or other sources, the most recent statement of income indicating the income from those sources during the current year or a letter from the appropriate authority stating that information

The other spouse must also provide copies of the information mentioned above. They must provide this information within 30 days after the application for child support is served if they live in Canada or the United States and within 60 days if they live elsewhere. If they fail to provide this information, you can apply to the court to have the application for child support be set down for a hearing or move for judgement or to obtain an order requiring the other spouse to provide the required documents to the court. The court also has the authority to require the other spouse to pay part of if not all your legal costs in this situation.

The amount of Child Support is calculated based on the income formula within the Guidelines. Income is based on a spouse's "Total Income" as stated in their T1 General Form issued by the Canada Revenue Agency. A court can look at the last three years of a spouse's total income if using the previous year's total income would not be the fairest determination of a spouse's income due to changes in patterns of income.

A court can also factor the following items in determining a spouse's income:

- If the spouse is intentionally underemployed
- If the spouse is exempt from paying federal or provincial income tax
- If the spouse lives in a country with significantly lower income tax rates than Canada
- If it appears that income was diverted or paid elsewhere such that it would affect the level of child support
- The spouse is not reasonably utilizing their property to generate income
- The spouse has failed to provide information that they are legally obligated to provide
- The spouse is unreasonably deducting expenses from income
- A significant portion of the spouse's income comes sources such as capital gains, dividends or other sources that are taxed at a lower rate than employment or business income
- The spouse is a beneficiary of a trust or will receive benefits from a trust

However, a child of the marriage over the age of 19 can receive an amount that the court deems appropriate if the court deems the amount in the Guidelines to be inappropriate due to their condition, means, needs, or other circumstances.

A court can depart from the tables within the Child Support Guidelines if that amount would impose an undue hardship on either the spouse or the child and they would have a lower standard of living than the other spouse. Circumstances which could cause undue hardship include:

- The spouse has incurred an unusually high level of debt caused to support the spouse and their child prior to separation or to earn a living
- The spouse has high expenses relating to exercising access to the child
- The spouse has a legal judgement, order or written separation agreement to support any person
- The spouse has to support a child who is not a child of the marriage that is under 19 or over 19 but cannot obtain the necessaries of life due to illness, disability or other reasons
- The spouse has a legal duty to support a person who cannot obtain the necessities of life due to illness or disability.

If the court makes an order for Child Support departing from the Child Support Guidelines due to undue hardship, they are required to record their reasons for doing so.

A spouse can also request that a Child Support Order encompass reasonable or necessary Special or Extraordinary Expenses. These expenses include things such as:

- Child Care expenses caused as a result of a parent with parenting time's employment, illness, education or training programs
- The portion of medical and dental insurance premiums attributable to the child
- Health related expenses exceeding insurance reimbursements by at least $100 annually
- Expenses for educational programs during primary or secondary school that meet the child's needs
- Post-secondary education expenses
- Extracurricular activities.

To determine if a Special or Extraordinary Expense is reasonable or necessary courts will look at:

- The amount of the expense versus the income of the spouse making the request
- The nature and number of educational programs and extracurricular activities.
- The child's special needs or special talents
- The overall cost of the program
- Other similar factors the court considers relevant

Any Special or Extraordinary expenses will be shared by the couple in proportion of their respective incomes after deducting an expense. The court must also consider any subsidies, benefits or income tax deductions, credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense. However, the court cannot consider the Canada Child Benefit regarding Special or Extraordinary expenses. Courts can also order that medical or dental insurance coverage offered through a spouse's employer be acquired or extended to a child of the marriage.

Spousal Support is an order issued by a court requiring a spouse to pay the other spouse a lump and/or periodic sum for the maintenance of the other spouse. The purposes of Spousal Support Orders are to:

- Recognize any economic advantages or disadvantages from the marriage or its breakdown,
- Divide between the spouses any financial consequences from the care of any children from the marriage beyond any obligation for child support
- Relive any economic hardship of the spouses arising from the breakdown of the marriage,
- And to promote the economic self-sufficiency of both spouses within a reasonable period of time if possible.

A Spousal Support order can either be interim or for an indefinite or definite period or until some condition is met. A court is required to look at these factors below to determine what the needs of a spouse are. This may include:

- How long the spouses cohabitated.
- The functions performed by each spouse during cohabitation
- Any orders, agreements, or arrangements relating to the support of either spouse.

A court cannot consider any misconduct committed by a spouse during the marriage when making an order for spousal support. If a court has to provide a lower amount of Spousal Support due to giving Child Support priority, the court is required to record its reasons for this decision.

Varying Support Orders, Parenting Orders and Contact Orders

Courts can change, suspend, or remove a support, parenting or contact order. To apply to the court to change a finalized Parenting Order or Support Order, the applicant has to show that there was a material change in circumstances from when the original order was issued and either 180 days have elapsed from the day the order was issued or they obtained permission from a judge. An application to change a finalized Parenting or Support Order must name the person making the claim and the person or persons whom the claim is against.

The Application if a claim is in dispute must include:

- Where both parties reside,
- The applicant's residential address
- The office address, e-mail address, and telephone and fax numbers of the party's lawyer if they are being represented by a lawyer in this proceeding
- The e-mail address, telephone number and fax number of the party if they do not have legal representation
- The name, date of birth, and place of residence of any child of the parties regardless of the child's age or if any relief is being claimed in relation to them
- The party's martial status
- Any details of the current parenting arrangement if applicable
- Any details of the current support arrangements including any unpaid support
- Details explaining why you are asking for the order to be varied and why those changes should be justified
- For an application to vary a final order for support, if the support was assigned to be paid to someone else and any details known to the party asking for the variation
- Copies of any existing agreements dealing with parenting or support
- Copies of any existing order that is not already part of the court file

If the party who is applying to vary the finalized order believes that disclosing where they reside, or their residential address would pose a risk of harm to themselves or a child then they cannot provide the information if they are being represented by a lawyer. If they are self-represented, then they must designate an alternate person to receive service on their behalf who must provide their contact information and the applicant must provide their contact information in a separate envelope marked confidential.

A spouse can apply to the court to change the order while someone other than a spouse needs the permission of the court before applying to the court.

A spouse or someone who either stands in the place of a parent or intends to stand in the place of a parent can apply to a court to change, suspend or remove a Parenting Order. If the applicant is not currently a subject of the parenting order, then they are required to obtain leave from the court before applying. Before a court varies a Parenting Order, the court must be satisfied that there has been a change in the child's circumstances since either the order was issued or the last time that the order was varied. Furthermore, a spouse suffering a serious illness or a critical condition or the relocation of a spouse shall be considered a change in the circumstances of a child.

Either former spouse can apply to change, suspend or vary a Support Order. However, if a court is considering an application to vary both Child Support and Spousal Support, the court is required to prioritize the application for Child Support. The factors a court looks at in determining if an order for Spousal Support should be varied is if there are any changes in the condition, means, needs or other circumstances of either former spouse since the granting of the spousal support order or since the previous time the order was varied. Likewise, for a variation of a Child Support Order, the court looks at if there has been a change of circumstances which would result in a different award under the tables within the Child Support Guidelines. If the Child Support Order was issued outside of the tables then the court will look for any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support.

Any person to whom a Contact Order applies to can apply to change, suspend or vary that order. If a court decides to vary a Parenting Order, they can also vary a Contact Order based on the variations to the Parenting Order.

Canadian courts generally recognize foreign orders issued by a foreign court with the authority to vary, suspend, or rescind a parenting or contact order. However, Canadian courts will not recognize these orders in these circumstances

- If the child concerned is not habitually resident of the other country where the order was issued or if that authority would not have had the authority to issue that order
- The decision was made in the foreign country without the child having a chance to be heard unless in an urgent case
- The decision is about the exercise of parenting time or decision-making authority and the person affected did not have a chance to be heard
- Recognition of the decision would not be in the best interests of the child or be contrary to public policy
- The decision is incompatible with a later decision

Varying Child Support Orders: The Recalculation Office

The Recalculation Office can recalculate support yearly where a court order contains a "recalculation clause". This allows the office to determine if support should be increased or decreased each year depending on the changes in circumstances (such as changes in either party's career, earnings, or residences). You do not have to go back to court to change the support order but can use the Recalculation Office instead. This is a free to use service.

However, the Recalculation Office cannot recalculate special or extraordinary expenses; child support in shared parenting arrangements, or child support which is not based on the Federal Child Support Guidelines. More information about the Recalculation Office can be found on page 28 of this guide.

Support Orders when your Spouse Lives Outside of the Province

If your former spouse lives in another Canadian province., or outside of Canada but in a "Designated Jurisdiction" then there is a process under the Interjurisdictional Support Orders Act to obtain a Support Order.

*Designated Jurisdiction*s are countries, or parts of a country that have an agreement with Newfoundland and Labrador to enforce orders of support issued in Newfoundland and Labrador. If the spouse lives in another province or a designated jurisdiction, then you should start your claim in Newfoundland and Labrador by completing a support application and submitting it to the Director of Support Enforcement. The Director of Support Enforcement then reviews the application and, if it is complete, sends it to the authority where the applicant believes their former spouse resides.

Getting and enforcing support orders is handled on a case by case basis. There are numerous factors that will influence how a court in or outside of Newfoundland and Labrador can handle these applications. This includes who will be paying and receiving support; whether there are children (and if so how many); where children live (if applicable); what part of Newfoundland and Labrador you live in; what court you are applying to (Provincial Court or Supreme Court); among other factors. This can all be further complicated depending on what the other jurisdiction is, and what type of laws they have.

Because getting and enforcing support orders can be a very complicated process it is recommended that you get some form of legal advice, or representation if possible, to help handle these applications. There is no guarantee that an order can be received or enforced depending on some of these factors.

Relocation and Divorce

If one parent (or another person with parenting time or decision-making responsibility for a child) wants to change their place of residence, then the *Divorce Act* provides a procedure to apply to change the child's place of residence.

A person with parenting time or decision making responsibly for a child of the marriage who plans to relocate has to provide written notice to anyone else with parenting time, decision-making responsibility or contact with the child.

This applies even if they are not moving with the child. If the relocation would not significantly impact the child's relationship with the other parent or guardian then the notice must provide the date of the move and their new address and contact information. If the relocation would significantly impact the child's relationship with the relocating party then the notice has to be provided at least 60 days before the proposed move and contain a proposal outlining how contact can be exercised as well as the address and contact information of the relocating party.

The other spouse or someone with parenting time or decision-making responsibility with the child can object to this request. If they object, they must file an application within 30 days of receiving notice of the relocation.

When a judge authorizes the relocation of a child, they must make this decision in the best interests of the child. This includes determining:

- Reasons for relocating a child
- Impacts of relocation on a child
- The time and involvement of each person who is involved in the relocation has with the child
- If the relocating party has properly notified the other party per any law or agreement between the parties
- The existence of an order, award, or agreement specifying the where the child should live
- If the party seeking the order for relocation comply with future obligations
- Reasonableness of a relocation proposal

A judge cannot consider if a party can relocate without the child if the court does not grant an order allowing the child to relocate with the parent.

If the parties have an equal amount of time with a child, then whoever requests relocation must prove that relocation is in the child's best interests.

If the party requesting relocation has most of the time with a child, then they do not have to prove it is in the best interests of the child.

If the party who objecting relocation does not have most of the time with a child, then they must prove that it is not in the best interests of the child to move.

When a judge authorizes the relocation of a child, they may also require that the person relocating the child pay some travel costs to the party who is not relocating to ensure both parties can have parenting time.

Additional Resources

Below is a list of additional resources that you may find useful both during and after your divorce proceedings. Please be advised that the contact information for some of these additional resources may change and may not be current.

Family Form Builder

The Public Legal Information Association of Newfoundland and Labrador operates a free to use "Family Form Builder" program online. This program asks registered users a series of questions related to their family law matter and will fill in the appropriate court forms. The information can be saved and users can finish their forms at a later date. These forms can then be printed and filed at court or filed electronically.

To access the Family Form Builder, please visit: https://publiclegalinfo.com/family-law-form-builder/.

Public Legal Information Info Line and Lawyer Referral Service

The Public Legal Information Association of Newfoundland and Labrador operates a free to use legal information line for general legal questions. This line can be contacted Monday to Friday 8:30 – 1:30 to receive general legal information. You can call this line at (709) 722-2643, or toll-free at 1-888-660-7788.

You can also ask for a lawyer referral to receive basic legal advice. Lawyers across Newfoundland and Labrador have registered with The Public Legal Information Association of Newfoundland and Labrador to provide basic legal advice at a preferred rate of a one--time 30-minute consultation for $40.00 (tax included). This fee is paid to the lawyer, and not The Public

Legal Information Association of Newfoundland and Labrador. Please call (709) 722-2643, or toll-free at 1-888-660-7788 to receive a referral.

You can also e-mail info@pubiclegalinfo.com to ask your legal questions or receive a referral.

"Create A Parenting Plan" by Justice Canada

Justice Canada maintains a parenting plan tool online that parties may use to help develop a parenting plan. This includes a guide to making a parenting plan, as well as a parenting plan checklist. To access this resource, please visit the following link:

https://www.justice.gc.ca/eng/fl-df/parent/plan.html.

Support Enforcement Program

The Support Enforcement Program is a government of Newfoundland and Labrador program responsible for registering support orders, receiving and disbursing court-ordered support payments, and enforcing court support orders, among other items. The support enforcement program has numerous powers to enforce support payments, including wage, pension, and bank garnishments, denying government licenses (driving licenses, passports, and hunting licenses), and can even seize and sell items to satisfy court orders. The Support Enforcement Program can also help assist individuals looking to pay their support. To contact the Support Enforcement Program, please see the below contact information:

Email: Seps@gov.nl.ca
Toll free: 1-855-637-2608
Local: (709) 637-2608
Fax: (709) 634-9518

Child Support Recalculation Office

The Recalculation Office can recalculate support yearly where a court order contains a "recalculation clause". If this clause is present in your order, the Court will provide the Recalculation Office with the Child Support Order. This clause allows the office to determine if support should be increased or decreased each year depending on the changes in circumstances (such as changes in either party's career, earnings, or residences). You do not have to go back to court to change the support order but can use the Recalculation Office instead. This is a free to use service.

Child Support will not be automatically recalculated every year. It is up to the parties involved to update the Recalculation Office of any change in circumstances. The parents involved must provide the office with satisfactory income information. If this is not done then the office can add an additional 10% or 20% of the registered income to an order that must be paid to the other parent. Both parents must notify the office of changes to their contact information, including address, phone numbers, e-mails, or other means of communication.

However, please note that the Recalculation Office cannot recalculate special or extraordinary expenses; child support in shared parenting arrangements, or child support which is not based on the Federal Child Support Guidelines. To contact the Recalculation Office, please see the below contact information:

Child Support Recalculation Office:

9th Floor, Sir Richard Squires Building
P.O. Box 2006
Corner Brook, NL
A2H 6J8

Telephone: (709) 634-4172
Fax: (709) 634-4155
E-mail: recalculation@gov.nl.ca

Federal Child Support Guidelines

The Federal Child Support Guidelines are designed to provide a fair standard of support for children; to improve legal court systems efficiencies; and to ensure a consistent treatment of all children in similar situations. The Guidelines vary from province to province and are based on (1) the income of the paying parent; and (2) the residence of the paying parent. Courts do not have to follow these guidelines to a tee, but rarely deviate from them.

To determine what someone may have to pay in child support, please visit the following link: https://laws.justice.gc.ca/eng/regulations/SOR-97-175/page-1.html.

LEGAL AID OFFICES

Carbonear

P.O. Box 340
21 Industrial Crescent
Carbonear, NL
A1Y 1B7
Tel: (709) 596-7835 / (709) 786-6003
Fax: (709) 596-1301
Toll Free: 1-844-596-7835

Clarenville

50B Manitoba Drive, Park Place
Clarenville, NL
A5A 1K5
Tel: (709) 466-7138
Fax: (709) 466-7024
Toll Free: 1-844-260-7138

Corner Brook

19 Union Street
Corner Brook, NL
A2H 5P9
Tel: (709) 639-9226
Fax: (709) 634-3760
Toll Free: 1-844-639-9226

Gander

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

Grand Falls-Windsor

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

Happy Valley-Goose Bay

2-4 Hillcrest Road
P.O. Box 442, Stn B
Happy Valley-Goose Bay, NL
A0P 1E0
Tel: (709) 896-5323
Fax: (709) 896-4444
Toll Free: 1-833-896-5323

Labrador West

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

Marystown

P.O. Box 474
4 Industrial Park
Marystown, NL
A0E 2M0
Tel: (709) 279-3068
Fax: (709) 279-4249
Toll Free: 1-844-340-3068

Stephenville

157 Minnesota Drive
P.O. Box 570
Stephenville, NL
A2N 3Y3
Tel: (709) 643-5263
Fax: (709) 643-2798
Toll Free: 1-844-304-5263

St. John's

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

Please Note:

Public Legal Information Association of Newfoundland and Labrador is not associated with Legal Aid Newfoundland and Labrador and cannot file forms for Legal Aid on your behalf or contact Legal Aid for you.

Public Legal Information Association of Newfoundland and Labrador
291-293 Water Street,
St. John's, Newfoundland and Labrador,
A1C 1B9

1-709-722-2643
1-800-660-7788
info@publiclegalinfo.com

Publication not yet current.

PUBLIC LEGAL INFORMATION
Association of NL