Going to Court: Self-Represented Parties in Family Law Matters

NOVA SCOTIA

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Introduction

Going to court is serious business. The results of your court hearing are very dependent on how well you prepare. Simply filing an application and showing up for court is not enough. This workbook will help you prepare for this process.

Going to a hearing should usually be the last resort for solving a legal problem, especially if the legal problem involves parenting. Sometimes court is necessary if the situation involves issues like violence or high conflict, or if all other methods of fixing the dispute have been tried. Going to a hearing will allow a judge to make a decision. It is important to know that the decision has to be made using specific legal rules in a formal court setting.

When you go to court to have a judge make a decision in your case, you are giving someone else the power to make decisions that will impact your life, and perhaps your children's lives. The judge hearing your case does not know you or your children personally, and can only make a decision based on the evidence you present.

When possible, it is best if you and the other person involved in your case can reach an agreement that works for all concerned, especially when the situation involves parenting arrangements. The judge will make a decision that the judge believes is in your children's best interests, but sometimes neither person is happy with the decision. People who can work together to come up with solutions are often the best people to create plans for the parenting of their children, because they know their children best.

There are resources that can help you to develop your own agreements and parenting plans. Justice Canada publishes some excellent resources, including the "Parenting Plan Tool" and "Making Plans: A guide to parenting arrangements after separation or divorce—How to put your children first." You can find links to these resources at **www.nsfamilylaw.ca/children/parenting-plans.** You can also talk to staff at yourlocal court about ways you may be able to resolve your legal disputes without going to court, or visit www.nsfamilylaw.ca/family-dispute-resolution.

Terms and definitions

In this workbook, you will see some words in bold. You will find definitions for these words in the Glossary at the back of the book. For more definitions of other common legal words, visit **http://nsfamilylaw.ca/other/glossary.**

Going to court

A **hearing or trial** takes place when you and the other person involved in your court case, and your lawyers if you have them, go to court to have a judge make a decision.

Hearings and trials are the same thing. The meeting with a judge for a final child protection order or divorce is called a "trial," and everything else is called a "hearing." To keep things simple, the word "hearing" will be used in this workbook for any reference to a procedure in court.

There is a lot to know about going to a hearing. This book will help you.

Do not assume that you understand the law, the process, or the procedures involved. Just because a friend went through a situation that seems to be similar does not mean that yours will be dealt with the same way. Just because you have watched legal shows on TV does not mean that you will understand what to do in a real courtroom.

Going to court on your own, without a lawyer, is called representing yourself. You are expected to follow the rules of the court about how to present your case when you represent yourself. This can be confusing. People sometimes expect that court staff or the judge will look after everything for them. This is not how things work. There are things you can do to help yourself to prepare and present your case, and reading this workbook is a good place to start.

It is always a good idea to get advice from a lawyer before going to a hearing. If you don't have your own lawyer, you can book an appointment with **Summary Advice Counsel** near you. These are lawyers who can meet with you to help you understand matters and get ready for court. This is a free service provided by Nova Scotia Legal Aid and is for people who do not qualify for full-service legal aid and can't afford a private lawyer. Anyone who is representing themselves can ask for an appointment. Summary Advice Counsel will not go into court with you, but they will meet with you in an office at the courthouse and help you prepare for court. Ask court staff how you can get an appointment, or check the **Resources** section at the end of this book for phone numbers. You can meet with counsel more than once.

There is always a chance that you will not get the decision that you want when you go to a hearing. If you represent yourself and do not do a good job of presenting your case, or do not understand the law or legal procedures, the risk that you will not get the decision you want will be higher. Although some decisions can be appealed, you do not get to appeal a decision just because you are unhappy with the result. Appeals can only be made in certain situations—they are not a second chance to present your case.

The judge will need you and the other person to file certain forms and information with the court before the hearing, and to share these forms and information with each other, so that everyone knows what the application is about and the right amount of court time can be scheduled. This may mean going to court more than once. There can be delays if you or the other person do not take care of filing the forms and information when required or are not ready for court.

Remember that a judge does not act as a lawyer for you or for the other person, and the judge can't fill in the gaps of your case for you if you miss things. Self-represented people need to know the law and legal rules. People can help themselves by learning more about the law, the rules, and the procedures to follow. There is information in this workbook that can help you. You can also visit the Nova Scotia Family Law website at **www.nsfamilylaw.ca** for information.

What if English is not my first language, or if I am hearing impaired, and need help?
Please talk to court staff right away. For those facing a language barrier, **interpreters** can be hired by the court in most instances. Court staff will need to know what language is required and what dialect may be needed. Similar accommodations can be made for people who are hearing impaired. If the court arranges for an interpreter, then the court will usually pay the expense.

What is a "party" to a file?
Parties are the people on either side of a legal dispute. Parties are generally the person (or people) who started the court process, and the person (or people) who are responding. For example, you and your ex-partner, or the other parent of your child, are probably the "parties" on your file.

Who are "applicants" and "respondents"?
The **applicant** is the person who started the court process. The **respondent** is the person on the other side, who is responding to the **application**. There can be more than one applicant and more than one respondent in a case. For example, if two grandparents are applying for an order allowing them to visit their grandchildren, they are both applicants. The parents of the children would both be respondents.

Why do respondents get served with notice of the court case?
Receiving notice allows people to prepare and respond to a court case so that a judge can hear the case fairly. In some very special cases, notice times may be made shorter or delayed, but there are very few cases where no notice is given at all, usually when a problem is very urgent.

Why do I have to give copies of everything I file to the other person or their lawyer?
The rules of our court system say that parties to a court case have a right to be given information about the court case by the other party. This allows everyone to understand the details of the case and to give everyone a chance to prepare and respond.

Getting legal advice

Should I have a lawyer?

Any person going to a hearing should get **legal advice** from a lawyer. It is best if you can have a lawyer to work with you on your whole case. This is called having "**legal representation**." The law and the legal process are complicated. Lawyers have special training in knowing the law, the procedures, and how to present a case in court. Although lawyers can help you sort out whether you have a good case to take to court, and whether there are other ways to handle a situation instead of having a hearing, you do not have to have a lawyer. You can represent yourself.

The people involved in a court case are rarely the best people to decide how good their case is, because they are too emotionally involved. Lawyers can give you an independent view of what to expect.

What if I can't afford a lawyer?

There are many ways to get free or low-cost legal advice, and there are services to help you find a lawyer. These include the **Lawyer Referral Service**, as well as services covered by your **Employee Assistance Plan** (EAP), if you have one. Summary Advice Counsel is available in most courthouses in Nova Scotia, and you can just call the courthouse to book an appointment. Summary Advice Counsel is also available to provide advice if you are thinking of starting the court process. Also, you can apply to Legal Aid (**www.nslegalaid.ca**). If you do not qualify for full service legal aid (having a lawyer for your case), they will still try to help you with **legal information** and sometimes specific advice on your case.

See the **Resources** section at the back of this workbook for contact information for these services.

For more information, visit **www.nsfamilylaw.ca/services/getting-legal-advice-finding-lawyer**.

Sometimes lawyers can be hired to do certain parts of your case. This is called "**unbundled legal services**" or "**limited scope retainers**." This means that you could do some of the work yourself and pay the lawyer to do the rest or to review what you have done. Talk to a family law lawyer about what services they may be able to offer you.

Getting ready

Getting your case ready for court should start well before you get into the courtroom. To do the best job possible at presenting your case, you should be organized and alert —listen carefully and plan ahead:

- ask questions
- gather information
- do research
- talk to a lawyer
- observe a case in court, if that is possible in your area

It is really important that you write things down. Take notes when court staff give you information, when you get advice from a lawyer, and when you are in court. Don't rely on your memory. You will hear a lot of information, and it may be too hard to remember it all without writing things down. It is difficult to remember a lot of information when you are under pressure.

To prepare your case, you will need to understand

- the law and court procedures
    - see the **Resources** section at the back of this workbook for information about the family laws and court procedures used in Nova Scotia
- the information you need to prove your case
- how to get this information
- how to present your case in court

In the next sections of this workbook, you will find information about how to take these steps.

Proving your case

When you are asking for a **court order**, you have to explain to the judge why you should get the order you are asking for. This is called the "burden of proof." Sometimes the burden of proof is about the facts that support your case. Sometimes it is about meeting a test set out in the **legislation** or **case law**. For example:

> *Applications about parenting arrangements:* You will have to show that the order you are asking for is in the best interests of the children.
>
> *Applications about child support:* If you are asking for child support, you will have to show that the children mostly live with you and that the other person is a parent of the children.

If you are asking the court to change a previous order, you must show that there has been a "material change in circumstances"—that something important has changed since the last order, and the order needs to be updated because of this change.

> *Examples for applications to change child support:* You will have to show that your income changed (you lost your job or are earning more or less money than you were when the order was put in place), the other person's income changed, or the child is no longer dependent (they are grown, finished school, and living on their own, supporting themselves).
>
> *Examples for applications to change parenting arrangements:* You will have to show that something has changed affecting the child's care or availability (for example, the child is living with a different person now, or one of the parents has moved away, affecting the visitation arrangements).

Different applications and laws have different legal tests. It is very important that you speak to a lawyer to get information about the tests that may apply to your application or the other person's application.

Using information that is relevant

It is important that the information you give to the court is relevant to the issues in your case. This means giving information that directly relates to the issues you are talking about in court. For example, if you are in court to deal with child support, you will probably be talking about the children's needs and activities, and how much income you or the other party earns. Past behaviour, such as one party having carried on an affair while you were together, is not going to be relevant to an application about child support.

Depending on what issues you are dealing with, there are certain pieces of information you should provide to the court and certain facts that you must prove. Some examples are listed in the **Resources** section of this workbook. Not all of the information in these lists is likely to apply in your situation, and there may be things not listed here that would be good to provide to the court in your case. It is a good idea to get advice from a lawyer if you can about what information you should give the court in your situation.

Getting the information you need for your case

Court staff will not look after getting the information you need for your case. That is your responsibility. Court staff may be able to do things to help you get some of the information you need to deal with your case. Staff can't prepare your case for you or give you information that gives you an advantage over the other person. In some situations, staff can issue a notice to the other person to file information with the court. Speak with staff at the court near you to see what options might be available.

To prepare your case, start by thinking about

- What information do I know, or what have I seen that relates to the issues in my case?
- What information do other people know, or what have they seen that relates to the issues in my case?
- What information does the other person, or someone connected to that person, have that relates to the issues in my case?
- Who has documents or other **evidence** that relates to the issues in my case that I need the judge to see?

You will provide much of your information to the court in the forms you are asked to complete. The forms you are required to fill out depend on what issues you are dealing with. Usually, both the applicant (the person who started the court process) and the respondent (the person responding to the application) have forms to complete.

For example, if you are dealing with parenting arrangements, you will complete a 'Parenting Statement' asking you for information about your children (like their ages and where they go to school), what kinds of arrangements are in place now, and what arrangements you are asking for. If you are dealing with child support or **spousal support**, financial statements will be filed by one or both of you. These statements will include information about your income sources and how much **gross income** you earn every month. You will also have to attach documents to these statements, like paystubs or benefits stubs, and income tax documents. Visit https://www.nsfamilylaw.ca/videos for videos on completing these financial statements.

If you are going to court, you may be required to write an **affidavit**. Information about affidavits, including sample affidavits, can be found in the Resources section of this workbook. In an affidavit, you can generally only give information if it is something you know or have heard or seen yourself, not something you know because someone else has told you about it.

If the other person, or someone connected to the other person, has documents, business records, photographs, or audio or video recordings that you need for your case, you must be sure to ask for these ahead of time. There may be several ways to get this information. One of these ways is by using a **subpoena**, and this is discussed later on in this book. Lawyers can help people learn about how to do this. Court staff, in some situations, may also be able to ask for this information.

There may be times when you will have to go to court or meet at the courthouse to make sure that a hearing is still needed and that both sides are ready. These appearances may be called **conferences** or **docket appearances**. You may also attend a **conciliation** or **court-based dispute resolution** meeting as part of your case. Use these meetings to collect information and ask questions. These meetings are usually good times to ask the other person to file information that is relevant to the case, but make sure you know what you are looking for. Take notes so that you do not forget to tell the judge. The judge may be able to require the other person to provide the information.

Do not wait until your case is already scheduled to ask for more information. It may be too late to get the information by that time.

In some cases, you may have to make a special application to the court to ask for the information. This process takes time and must be dealt with well before the day of your hearing. Some of these applications are complicated and are not often used by people representing themselves. They include **orders for production**, **discoveries**, and **interrogatories**. For more information about these things, visit **www.nsfamilylaw.ca/processes/gathering-evidence-your-case**.

You can also do your own legal research. For information about how to do this, see the Resources section at the end of this workbook.

Witnesses and subpoenas

At hearings, most evidence comes from documents or the things that people say.

The people who come to court to give evidence are called "**witnesses**." Witnesses may include anyone

- who knows something about your situation because they saw or heard something important, like a relative or neighbour
- who has special knowledge about your situation because they are an expert, like a doctor or therapist who has been dealing with you or someone important to the case
- who has documents or records that are important to the case, like a banker or employer

Witnesses can only talk about what they personally saw or heard, or about the records they keep. In most cases, witnesses, including the parties, can't give evidence about what someone else told them, unless the person who told it to them was one of the parties.

Most witnesses should not be present when the applicant or respondent or other witnesses give evidence. This is to make sure that they are not influenced by the information given by other people. The process of asking witnesses to leave the courtroom until they are called to give evidence is called "exclusion of witnesses." You may have to ask for this to happen.

You may have to provide the court with your witnesses' names before the hearing and explain why you want them to come to court to give evidence.

If you want someone to appear as a witness for your case, but you think they may not be willing to appear, you can have them subpoenaed to appear in court. A "subpoena" is a court document that requires a person to give evidence at a hearing. The subpoena tells a person that they must come to court for a certain date and time to give evidence. They may be required to give evidence by coming to court to answer questions, by providing the court with documents, or both.

How do I get a subpoena?
You must fill out a subpoena form. You can usually get these forms from the court, or find them online on the Courts of Nova Scotia website (**www.courts.ns.ca**).

When you have completed the form, take the original subpoena and three photocopies to the court. A court officer must sign the subpoena before it can make someone come to court.

Subpoenas must be personally served on the person that you are requiring to come to court. This means that you must arrange for someone, other than yourself, to hand-deliver the subpoena to the person. You can't fax the subpoena or send it by registered mail or a courier. The person who delivers the subpoena will have to sign a statement saying that they did in fact serve the person. This statement is called an "affidavit of service," the document signed by the person who did the serving, swearing or affirming under oath that they did serve the person.

You will need to bring a copy of the subpoena and affidavit of service to court with you in case the witness does not show up.

What is "personal service"?
Personal service means that a person who is over 19 and can read and write hands the subpoena and travel money (described below), to the person being subpoenaed.

It is best, whenever possible, that a **process server** be hired to serve court documents. Process servers are professionals who are trained to serve court documents. You will have to pay for this service. Every process server sets their own fees, and how much you will have to pay will depend on things like how far the server had to travel to serve the documents, and how many attempts at service they had to make (for example, how many times they had to go to the person's home to try to serve them). You can look in the Yellow Pages or online under "Process Servers" or "Bailiffs."

What is "travel money"?
"Travel money" used to be called "witness fees." It is an amount of money you must pay to the person you have subpoenaed to court. This money must be delivered with the subpoena, in cash. The amount to be paid is outlined in the Costs and Fees Act of Nova Scotia, and usually includes $5.10 per day in court plus 20 cents per mile (12 cents per kilometre), calculated one way from the witness's home to the court. This money is meant to help with travel expenses for the witness to come to court.

How long do I have to get a subpoena served?
Court rules usually do not have a specific time by which subpoenas must be served. It is best to have the subpoena served as soon as possible after it is issued by the court. If you do not give enough notice to the person being subpoenaed, you run the risk that the witness could be excused from attending court on that date, and your case may be delayed.

How long does a subpoena last?
A subpoena continues to be in effect until the end of the hearing, even if the hearing is delayed or adjourned (postponed to another date or time). A subpoena stops being in effect sooner if

- a judge excuses the witness from the subpoena
- the person who asked for the subpoena notifies the witness that attendance is no longer required
- the lawyer who obtained the subpoena notifies the witness that the issues are settled and the hearing will not go ahead

Can I be a witness in my own case?
Yes. If you wish to give evidence for your own case, you can do so.

Remember that the other person or the other person's lawyer will probably want to cross-examine you afterward, just like any other witness. You can be cross-examined on information contained in any affidavits you have filed, as well as the **testimony** you gave in court, or any other information or statements you have made. Cross-examination will be explained later in this workbook.

If you plan to be a witness, you should make a note of this on any witness lists you provide to the court before the hearing.

What happens with a witness list?
A **witness list** is usually required to be filed with the court and given to the other side within a certain timeframe. The court will usually say when this list must be filed. The court will usually also require "will-say" statements or affidavits from all proposed witnesses. If no direction has been given by the court about will-say statements or witness affidavits, you should ask the court about them.

What is a will-say statement?
A **will-say statement** is a summary of what a witness intends to say in court. Your witness list should consist of the names of the people who will be appearing as witnesses, with a will-say statement for each witness.

Do I have to call everyone on my witness list to testify?
You should call everyone on your witness list unless the other party has given notice, at the hearing or in writing, that they accept the evidence in the witness's affidavit without having that witness appear at the hearing.

What if I change my mind and don't want to call one of my witnesses?
When preparing your witness list, be careful to include only the people who will actually be called by you as witnesses. If someone on your witness list is not called to give evidence at the hearing, the other party might question why the person was not called. This may result in the other party calling that witness to court.

If you have changed your mind and do not want to call one of the witnesses on your list, notify the court and the other party well in advance of the hearing. Make sure you make your decision before you get that witness to complete an affidavit and file the affidavit with the court.

What if the other party has the same witness on her or his list?
If this happens, ask the court for directions relating to this witness. In addition to your direct examination of this witness, ask for the court's permission to cross-examine this witness on any information they give during their questioning by the other party.

Can I question the other side?
Yes. If you are representing yourself, you can cross-examine the other party on the evidence they have given in their affidavits or in their testimony in court. Remember to be respectful, and keep your emotions in check. You are expected to act like a professional at all times when you are in the courtroom, even when you may be questioning your former spouse or partner.

Expert witnesses

What is an expert witness?
An **expert witness** is a neutral person who assists the court. Experts include doctors, psychologists, social workers, teachers, or other professionals who have been dealing with you or someone important to the case. Expert witnesses can be called to court by a party or appointed by the court.

Is an expert allowed to give an opinion?
If a person is accepted by the judge as an expert, they can give an opinion if the judge thinks that an opinion is necessary to help the court. Even if an expert is allowed to give evidence, it is up to the judge to decide how much to rely, or decide not to rely, on the expert's opinion. This is called deciding how much "weight" to give the opinion.

What does it mean to "qualify" an expert witness?
Before an expert is allowed to testify at a hearing, he or she must be qualified as an expert in a particular field. The evidence that he or she gives must be relevant and necessary to assist the court. There are specific court rules relating to expert witnesses

and to the necessity of expert reports. There are rules about things that happen before the hearing, like the timelines for filing expert reports with the court and providing copies of expert reports to the other party or their lawyer. To qualify your expert witness, review these rules carefully. Ensure that the intended evidence from your expert is able to be heard and admitted into evidence.

What rules apply to expert witnesses?

Rule 55 of the Nova Scotia Civil Procedure Rules applies.

You can find the Family Court Rules and the Civil Procedure Rules on the Courts of Nova Scotia website (www.courts.ns.ca).

What do I need to do to get an expert witness?

If you plan to present expert evidence at the hearing, check with the expert and retain them before you notify the court and the other party. Before you retain the expert, make sure you tell them about the requirement to qualify them as an expert in their field, to have them file a report, and the timelines for doing this and giving a copy to the other side.

Ask the expert about the fees they will charge to prepare the report and appear in court. Witness fees and travel expenses get paid to witnesses under the Nova Scotia Costs and Fees Act. But an expert will require additional fees.

Find out when the expert witness is available before your hearing dates are set. The expert should be served with a subpoena requiring him or her to give evidence at the hearing, and to bring whatever information or files you require from them to court. This includes the expert's report.

Presenting your case in court

What do I wear when I go to court?

Going to court is a serious matter. Your clothing and appearance should reflect this. If you look like you are taking your case seriously enough to dress cleanly and neatly, then that is a good start. Wearing a hat is not allowed in a courtroom.

Note that all court buildings in Nova Scotia are scent-free.

Can I bring food or drinks into the courtroom?
No. Water is normally provided for the people involved and their lawyers at the counsel tables in the courtroom. No other drinks or food of any kind is normally allowed unless special permission is given, for example because of a medical condition. Chewing gum is not allowed.

Am I allowed to bring my cell phone or other electronic devices into the courtroom?
You can bring such devices in, but you have to turn off all cell phones and other electronic devices (iPods, laptop computers, etc.).

You are not allowed to use any kind of recording device in the courtroom. If your case is in a courtroom, then it will be recorded by court staff on special equipment. There are special rules about what electronic devices are allowed in the courtroom.

What about social media, like Facebook and Twitter?
The information contained in court documents and said out loud in court is only for the use of the parties and the professionals they are dealing with. It is best for everyone involved, especially children, if this information is not repeated outside of the court.

You can get into serious trouble if you use this information outside of court. For example, if you post information you heard in court on your Facebook page or Tweet about it, you may get into legal trouble for doing so.

Who can go into the courtroom with me?
You may be able to bring support persons with you. Support people usually have to sit at the back of the courtroom. If you are going to a hearing and you have witnesses, the witnesses usually will be asked to stay outside in the waiting room until they are called to give evidence in the courtroom.

Some family court cases are open to the public. However, it is always up to the judge to decide who is allowed in the courtroom.

Can I bring my children to court with me?
You should not bring your children to court with you. The court has no childcare services, and being in the court, especially to hear a case between their parents, can be extremely upsetting for children. You must make other arrangements.

Do I need to bring copies of documents with me to court?
Yes. You should have at least one copy of every document with you in court. It should be a copy with the court's stamp on it to show that it was filed with the court. It should also be a clean copy with no notes written on it, as you may have to make extra copies of it.

Will I have to wait to go into the courtroom?
That will depend on whether yours is the only case being dealt with and whether the court is running on time or not. Court staff and judges try to be on time. Sometimes there are special situations that delay cases or a proceeding takes longer than expected. However, sometimes cases are called to court early if a judge is ready sooner than expected.

In some courts, you may have to check in with court staff or a sheriff, or you may have to go through an electronic search procedure like at the airport. Be prepared to be searched and to have to wait in line if things are busy. Leave enough time for being searched when deciding how early to come to court.

How will I know when it's my turn to go into court?
That will depend on the courthouse you are in. Many courthouses have public announcement systems. Court reporters will announce the case and what courtroom to go to. If there is no public announcement system, then check with staff so that you will know their procedures.

Where do I go when I enter the courtroom?
If you are the applicant, you will sit at the table that is closest to the judge. If you are the respondent, you will sit at the second table. Sometimes there are more than two people, or there may be only one table, so that this procedure cannot always be followed. Ask court staff if you are not sure.

What do I call the judge or justice who is hearing my court case?

In the Supreme Court, Family Division, the person who hears your case is called a justice. You would refer to the justice as "Your Lordship" or "My Lord" (for a malejustice) or as "Your Ladyship" or "My Lady" (for a female justice).

How loudly should I talk when I'm speaking in court?
Speak slowly and clearly, and loudly enough so that you can be heard. The microphones in the courtroom do not make your voice louder—they just record.

Do I sit or stand when I'm in court?
You must stand up when you speak to the judge, unless you are giving testimony as a witness from the witness stand. You must also stand when you are giving the opening or closing of your case, or when you are questioning a witness. You will stand at your table —it is not appropriate for you to walk around the courtroom or walk up to the witness. Some courtrooms may have a podium for you to use at your table.

If the judge enters the courtroom after you are there, then you must stand up. If the judge leaves the courtroom while you are still there, you must stand up. You stay standing until the judge or court reporter tells you that you can sit down.

Will there be a sheriff in the courtroom?
This depends on the courthouse, the number of courtrooms, and the number of sheriffs who work at the courthouse you are going to. Every courthouse will have sheriffs. They may be in and out of courtrooms, or may be in a courtroom for an entire hearing.

Let court staff know ahead of time if you need special arrangements to be made. For example, if you are afraid of the other person, the court may be able to assign a sheriff to be present during your arrival and your hearing or take other steps to ensure that people are safe in the courthouse. It is important that you tell court staff if there are any **Emergency Protection Orders** (EPOs), other court orders, **peace bonds**, or conditions in place that affect your ability to have contact with the other person, or their ability to have contact with you. Family court staff do not have access to records from criminal court and may not be aware that EPOs or other orders or conditions are in place unless you tell them.

What the hearing process is like

Here is some general information on how most cases proceed once the hearing starts. This is an outline of the process. It is meant to give you a sense of how things will work. Lawyers can be hired to present the case, or can help people develop their cases to present in court themselves.

It is always a good idea to get advice from a lawyer before going to a hearing. If you don't have your own lawyer, you can see about booking an appointment with the Summary Advice Counsel near you. Most courthouses have Summary Advice Counsel. These are lawyers who can meet with you to help you understand matters and get ready for court. This is a service provided by Nova Scotia Legal Aid and is for people who do not qualify for full-service legal aid and can't afford a private lawyer. Anyone who is representing themselves can ask for an appointment. Summary Advice Counsel will not go into court with you, but they will meet with you in an office at the courthouse and help you prepare for court. Ask court staff how you can get an appointment, or check the resource section at the end of this book for phone numbers. You can meet with counsel more than once.

Asking and answering questions in court

Giving oral evidence in court is called "**testifying**."

Here are the basics about what this process is like:

Each witness will be asked, in turn, to step into the **witness box**. The court reporter will get the witness to swear or affirm to tell the truth before they give evidence. A witness who chooses to swear to tell the truth will be asked to put his or her hand on the Bible or another recognized religious text.

The applicant presents his or her case first, whether the applicant has a lawyer or not. The applicant usually gives evidence first, and then each of the applicant's witnesses gives their evidence. The applicant will ask each of his or her witnesses questions to get the witnesses to tell the judge about the things that are important and relevant to the case. This is called a "**direct examination**."

After the applicant has asked his or her questions of a witness, the respondent will have the chance to ask questions to challenge the witness's truthfulness or the accuracy of his or her memory. This is called a "**cross-examination**." After the respondent has cross-examined a witness, the applicant can ask more questions of the witness, but only to clear up anything new that the witness said in answer to the respondent's questions. This is called a "**redirect**."

Once all of the applicant's witnesses are finished, the respondent will give his or her case. The respondent will often testify first, followed by each of the respondent's witnesses. For each witness, the respondent will ask questions in a direct examination; the applicant will ask questions in a cross-examination; and the respondent will have the chance to redirect.

Make sure you are prepared to ask questions and to do cross-examinations long before you go to court. Even experienced lawyers prepare for this well in advance of a hearing. Do not assume that you will be able to come up with all the questions you might ask during the hearing. Write down the questions you are going to ask, and think about the answers you expect to get.

Direct examination

Direct examination occurs when you take the witness stand to give testimony for your own case, or when you are asking questions of one of your witnesses. Direct examination also occurs when the other party gives testimony for their own case or questions their witnesses (if they do not have a lawyer), or when their lawyer questions them or their witnesses.

When you are self-represented and giving your own testimony, you do not have to ask the question and then answer it. You simply state the factual information you wish to provide to the judge. Give the judge all of the information that you know, specifically what you saw or heard firsthand that relates to the legal issues you are dealing with in court. When you are testifying for your own case, ask for the judge's permission if you wish to use notes to help you remember your testimony. It will be up to the judge as to whether or not you can do this.

When you give your own testimony, it may sound something like this:

> From July 12, 2012 to June 30, 2014, I stayed home with the children while the other parent was away with work. I took them to all of their appointments, and went to all the parent-teacher meetings by myself. And the other parent didn't attend any of their soccer games.

When you are self-represented, you will have to ask questions to your own witnesses when conducting a direct examination. When you are questioning your witnesses, use **open-ended questions**. Open-ended questions are ones that do not suggest their own answer. They allow the witness to give information in their own words.

For direct examination, it is generally not appropriate to ask questions that suggest the answer that you want. These are called **leading questions**. For example, you can say, "What was she wearing?" but not, "She didn't have a winter coat or boots, did she?"

Here are some tips for doing a direct examination:

- Think about what information you need from your witnesses—write your questions down ahead of time.
- Make sure that every question has a purpose, and that the information you are asking for relates to your legal issues.
- Ahead of time, tell your witnesses what questions you will be asking them, so that they may be prepared.
- Speak clearly, and take your time.
- Ask one question at a time, and give your witness enough time to answer the question.
- Be careful that you do not end up giving your own evidence in the process of asking your witness questions. The following questions give examples of this mistake; the person asking the questions is giving their own evidence and asking the witness to agree to it:
    - My son always arrives at daycare clean and in clean clothes when I drophim off, right?
    - My son always plays well with the other daycare kids, except on the days when he knows his other parent is going to pick him up, right?

Here are some more examples of open-ended questions—the correct sort of question, used in direct examinations when you question your own witnesses. Remember, these are questions that do not suggest their answer:

- How do the children fit in in your daycare class?
- How well prepared are they at the beginning of the day?
- How do they get along with you, the other teachers, and the other kids?
- What would you say about your dealings with me and also with my ex?

In general, open-ended questions require the witness to think about the question and give more than a one-word answer.

Some things to be careful about when you are asking questions to a witness during direct examination:

- Be careful not to ask for hearsay evidence. Ask only about what the witness has personally heard or observed.
- If you are calling people to testify as expert witnesses, you must show that they are experts in what you are going to ask them about. For example, if you are calling your child's counsellor as a witness, it is important that you ask the counsellor questions about their professional background and training, to show that they are an expert in that field. You must do this before you start asking the counsellor other questions.
- If your witness gives you an answer that you did not expect, or if they forget to say something because they were nervous, don't panic. Don't try to fill in the blanks yourself by asking leading questions. Instead, take the time to ask follow-up questions to draw out the correct truthful answer.

Cross-examination

Cross-examination occurs when the other person (if they are self-represented) or their lawyer asks you, or one of your witnesses, questions in court. Cross-examination also occurs when you ask the other party, or one of their witnesses, questions in court.

The general purpose of cross-examination is to point out any errors or inconsistencies in the other party's testimony, or in the testimony of any witnesses testifying for the other party, and to try to show the court that the witness should not be believed. It is not always necessary to cross-examine a witness, as for example when their testimony has not hurt your case. It may even be that you are happy with the evidence a witness has given because their testimony helped your case. In this situation, you may not want to cross-examine the witness, because you won't need to show that they got things wrong or were being untruthful. However, if they make a big point that you don't agree with, you should challenge them even if it is to simply say something like "You are aware that my sister and I disagree with you that you were always on time" or "You remember that I have sent you emails saying why you need to start being on time" or "I sent you an email about this issue only a couple of weeks ago, right?"

You and your witnesses can be cross-examined on what is said in court and on anything written in your affidavits, and on any other relevant information. You can cross-examine the other party and their witnesses on what is written in their affidavits or on their testimony in court.

You should start preparing your cross-examination of the other party or their witnesses once you see what they have written in any affidavits. Preparation is key. This begins with reviewing the affidavit and making notes about what is incorrect or what is misleading or not the full story. Before going to your hearing, write down the questions you intend to ask.

Cross-examination is not about getting the other person to suddenly admit that you are right. It is a chance for you to correct errors. It may also be a chance for you to clarify information that was wrongly emphasized in an affidavit. Focus on what is connected to the issue that the judge is being asked to decide upon. Think of cross-examination as damage control.

Unlike with direct examination, it is appropriate during cross-examination to ask "leading questions" that suggest the answer you want. For example, you may ask, "She didn't have a winter coat or boots, did she?" instead of "What was she wearing?"

Your job in cross-examination is not to have an argument with the witness. The witness should always have a chance to answer the question that is asked. Give the witness time to respond before moving on to the next question. The witness may ask you to repeat the question or indicate that they do not understand what you mean—in which case, ask your question in a different way.

Here are some tips for asking cross-examination questions:

- Make sure that you know what the person is likely to say in responding to your question. Otherwise, you risk the court getting information that is not helpful to your case and that may actually benefit the other side.
- Ask questions that are short and specific.
- Ask closed-ended questions—ones that can be answered with "yes" or "no." Avoid open-ended questions when doing a cross-examination. Giving the other party a chance to give a long explanation is usually not helpful.
- Ask clear questions, so that the witness knows exactly what you are asking.
- Do not string a bunch of questions together; break them up and ask them separately.
- Remember that judges may get as much of an impression of the person asking the question as they do of the person answering the question during this process.
- It is helpful to have an outline of how you want your questions to go, sorted into sections or by themes. This will help you cover each area and not jump around from topic to topic.

You must have a basis for asking a question. When you are trying to prove something is not true, you must build a foundation for the question you are asking. If you are asking about a statement made in an affidavit, refer the witness to the paragraph in the affidavit where that statement is found, before you ask questions about it.

Here are some more examples of leading questions—the type of question used during cross-examinations. Remember, leading questions are questions that do suggest their answer:

- You have two cars, don't you?
- You're a mechanic? You work for ABC Auto Repair?
- Isn't it true that last year you made more than $40,000?
- I made almost all of the children's doctors' appointments, didn't I?

Remember: leading questions can be answered with "yes" or "no," with a number, or with very few words.

Some things to be careful about when you are asking questions to a witness during cross-examination:

- Try to make your cross-examination appear professional. Put aside any feelings or emotions you have toward the person you're cross-examining. Treat the situation as if you were in a business relationship with that person and had no personal ties to them.
- Stay focused and on topic, even if you feel the witness is not being truthful.
- If you are challenging the witness on a response they have given, keep it respectful.
- If you are referring to an exhibit, make the exhibit available to the witness.
- Don't let the witness use his or her copy of an exhibit, as it may have notes on it.

Remember that witnesses are allowed to give evidence about facts, and about what they saw or heard. They are not allowed to give evidence about

- what they believe happened
- what they think might have happened
- their opinion about something
- their feelings about something
- what someone else told them

You will find two examples of affidavits in the **Resources** section at the back of this workbook. Each one comes with examples of good and bad cross-examination questions relating to the affidavit. Review these examples to get an idea of how to formulate your cross-examination questions.

Exhibits presented in court

You can ask that appropriate documents or materials be entered into evidence as "exhibits." This process must be done with each witness who has a written document, or documents, or other materials that are important to the case.

There are a number of special rules of evidence that apply to this process. Generally, the proposed exhibit has to be shown to the witness, who is asked to identify the exhibit by answering "who, what, when, where, and why" types of questions. A witness has to have personal knowledge of the item in question. For example, if you want to put a photograph into evidence, then you should ask a witness who took the photo, when the photo was taken, and what the photo is a picture of. They might also need to testify as to whether it had been altered in any way. Some documents, however, like bank statements, tax returns, or school report cards, just need to be identified by a witness who can confirm that the document is what it appears to be: "This is Alice's Grade Two report card, correct?"

Make sure you have four copies of each exhibit: one for yourself, one for the other party, one for the witness, and one for the judge. The court reporter will take the exhibit, mark it with a special stamp, and label it with a number to identify it. The original should be used in every case, whenever possible. You will leave the original exhibit with the court.

Normally, witnesses' affidavits have to go into evidence by this process too. You may do this by saying something like "I am showing you a document marked Exhibit C. Please look at it and the signature on the last page. Is that your signature? Is this your affidavit?"

Other important things to know

Always remember:

- Do not interrupt the judge, the lawyer, or the other person when they are speaking. You will get your turn to talk.
- Try not to get angry. Do not yell at people. Explain your case as calmly as you can.
- You can ask for clarification or ask questions if you are unsure about what is being said by the judge or lawyer. But do not argue with anyone in the courtroom, including the judge.
- Tell the truth. You must take an oath (swear on the Bible or other holy book) or make an affirmation (promise to tell the truth) when you give your evidence in court, and you must take your duty to tell the truth seriously. You could be held in contempt of court or be found guilty of perjury if you lie. Perjury is an offense in which someone who is giving evidence, either in an affidavit or in court, purposely doesn't tell the truth. And, note, if you lie once, the judge may not believe other things you say.
- The judge may ask questions for clarification at any time.

Taking notes

One of the hardest things about being a party in a hearing is taking notes of what is said. If you do not take notes, you run the risk of not remembering what was said. If you do not take notes, you will likely find it hard to think of questions for your cross-examination or redirect, and to make your argument at the end of the case.

Objections

An **objection** is a formal protest raised in court during a hearing. An objection can be raised when you believe that proper court process or a rule of evidence is not being followed. For more information about objections, including a list of commonly used objections, please see the worksheet at the back of this book.

At the end of the hearing

Summations

At the end of the hearing, the parties provide "**summations**." A summation is a legal argument that you make to the judge. In your summation, you will

- review the evidence
- tell the judge what you believe the evidence said about the facts of the case
- tell the judge whether a witness was being untruthful and why you believe the witness was being untruthful
- talk about the law that applied to the case
- apply the evidence to the legal principles and explain why the judge should make the order you think is appropriate

Do not just accuse the other party or their witnesses of lying. If you feel someone gave the wrong information, explain why the judge should see it your way instead. For example, if witnesses gave inconsistent information, or changed their testimony, or might be biased one way or the other, explain this to the judge.

Your summation is not the time to bring up new evidence—you cannot talk about things that were not discussed in the evidence part of the hearing! You should consider your summation before the hearing, and use it to develop the reasons behind your direct and cross-examination questions, to make sure you cover all of the important points of your case.

The respondent generally goes first to present their summation, if they presented evidence during the hearing. The applicant will normally go second. Then the respondent has a chance to make a further argument, called a "**rebuttal**." The rebuttal is

not meant to invite a rehashing of the respondent's argument, but to concentrate on the parts of the applicant's argument that the respondent did not have a chance to respond to because the respondent started the summation process.

If the respondent did not present evidence during the hearing, then the order gets reversed: the applicant gives summations first, and then the respondent. The applicant then has the opportunity to do a rebuttal, if necessary.

You must not interrupt the other person while he or she is speaking. You may have problems with something that the other person has said. If you do, keep notes while the other person is talking and talk about your concerns in your summation or rebuttal argument.

The judge may ask you questions when you give your summation or rebuttal argument. Do not argue with the judge. You can talk about the facts and the law to try to persuade the judge to see the case from your point of view. Judges sometimes ask questions so that they are sure they understand what you are trying to say. Do not assume that they are agreeing or disagreeing with you when they are doing this.

If the judge gives his or her decision in the courtroom at the end of the hearing, do not interrupt the judge. The time for you to speak about your case is over by this point in the hearing.

Legal briefs

In many cases, judges want people to exchange and file a written legal argument on a certain date before the case goes to court. The judge may also ask you to do this following the hearing. A written legal argument is called a "legal brief" or "brief." This brief sets out

- what you expect the facts to be (or what they were stated to be in court)
- what the issues are and the legal argument, including what laws, rules, or regulations you are referring to and any case law (previously decided cases that you are relying on to make your case)

How does the judge make a decision? Judges make decisions based on the evidence. Evidence can include things like

- information that witnesses and other people write in affidavits
- information that experts say in reports
- information that witnesses say in court
- documents, photographs, records, files, expert reports or other written papers presented in the court case

Judges have to follow certain special rules, called "**rules of evidence**." Self-represented people and lawyers have to follow the same rules. The rules say what evidence can be used in court and what can't, and they help judges to decide how much weight to give to each piece of evidence.

At the end of the case, the judge makes a decision about what the facts are. This can be very difficult, especially when two or more witnesses have described events differently. Once the judge has decided upon the facts, the judge must decide what law applies to the application. This might be a decision about the legislation, the case law, or the burden of proof. Then, the judge must apply the facts to the law to determine the result of the application.

After the hearing

When does the judge make a decision?
Judges will often give their decision at the end of the hearing by saying out loud what their decision is. This is called an "oral decision." Sometimes they will ask for the parties to come back on another date when they will give the decision. Sometimes the decision will be given in writing and mailed to the parties. This is called a "written decision." It can take a while for a decision to be made in some cases, especially if the case is complicated or took more than a few days to finish.

The judge's decision will explain his or her conclusions about the facts and the law, and about how the law applies to the facts, and it will describe the order the judge has made.

Who prepares the court order?
If one of the parties has a lawyer, the lawyer will usually prepare the court order. If no one has a lawyer, court staff usually prepare the order and will send it out in the mail.

If the situation is urgent or an emergency, then the judge may ask the parties to wait while the order is being prepared or to come back later to pick it up.

Does anyone besides the parties get a copy of the court order?
The court automatically sends a copy of any court order that deals with child support or spousal support to the **Maintenance Enforcement Program** (MEP) for registration. This is required by law.

What do I do if I need to change my order in the future?
You usually will need to file an application with the court to change your court order. This is called making a "**variation application**." You must be able to show that there has been a material change in circumstances since the order you want to change was made. It is up to you or the other party to start the process to change an order, if a change is necessary.

Where you file your application to change an order will depend on what issue you are applying to deal with, and where you, the other party, and perhaps the children live. It may also depend on whether or not you were divorced from the other party. It will help to get advice from a lawyer before starting a variation application.

Final orders about property, pensions, or debts usually cannot be changed. If you have an order for property, pensions, or debts that you want to try to have changed, you should speak to a lawyer for advice.

Appealing a decision

What is an "appeal"?
An appeal is the review of the hearing judge's decision by another judge, or by a panel of three or more judges. Appeals from the Supreme Court Family Divisionare heard by the Nova Scotia Court of Appeals in Halifax.

You can appeal the hearing judge's decision if you believe that the judge applied the wrong law, applied the right law but in the wrong way, or made a mistake in his or her decision about the facts of your case. You do not get to file an appeal just because you do not like the judge's decision. The judge must have made an error about the law or an error about the facts.

Appeals are not the same thing as applications to change an order. If your situation has changed since the time your last order was made and you want the court to change that order, this is called applying to "vary" your order.

Appeals are very difficult applications, and there are a lot of rules about the documents that must be filed, as well as the way you present an appeal in court. It is important to get advice from a lawyer before starting an appeal.

The Court of Appeal has a mediation program for people who have filed an appeal. It is a voluntary program and is available to those who have launched an appeal in a civil or family law dispute. In this program, people who can't afford a lawyer or who are representing themselves have access to the services of a lawyer free of charge. The Canadian Bar Association's Nova Scotia Branch keeps a list of lawyers who have volunteered to provide their services pro bono (free of charge), for this program. For more information about this program visit **http://courts.ns.ca/Appeal_Court/NSCA_mediation_program.htm**.

How do I start an appeal?
Appeals are started by filing a notice of appeal with the Nova Scotia Court of Appeals in Halifax. You do not file an appeal with the court that originally made the decision.

There are special documents that must be filed to start an appeal, and there are timelines in which this must be done. Most appeals must be filed within thirty days of the original decision. There are filing fees for starting an appeal.

Resources

The law and court procedures

"**Legislation**" refers to laws made by governments. Laws are also called "acts" and "statutes."

Legislation gives people rights and powers. Legislation also imposes duties and consequences.

Legislation gives a judge the authority to make orders. "Regulations" are a kind of legislation. These are more specific rules about how to use the particular legislation. Judges often interpret and apply legislation and regulations when they decide cases.

In Nova Scotia family law, there is federal legislation, like the Divorce Act, that applies everywhere in Canada, and provincial legislation, like the Parenting and Support Act, that applies only in the province of Nova Scotia. Below is a list of the legislation most often used in family law in Nova Scotia. For a more detailed list, visit **www.nsfamilylaw.ca/information/nova-scotia-family-law-legislation-new.**

- Parenting and Support Act: This Act is used if you do not want a divorce but are asking for an order relating to decision-making responsibility, parenting time, contact time, interaction, child support, spousal support, or the exclusive occupation of a residence.
  You can also use this act to ask the court to change an order about decision-making responsibility, parenting arrangements, contact time, interaction or support if you are not yetdivorced and if you have not started a divorce.
- Child Support Guidelines: This regulation applies under the Parenting and Support Act when you do not want a divorce, or have not been married, and are asking the court for an order relating to child support. The Child Support Guidelines set out the rules used to calculate how much child support people will have to pay.
- Divorce Act: this act is used when someone applies for a divorce. Orders about decision-making responsibility, parenting time, child support, and spousal support can be made under this act, as part of a divorce. This act is also used to ask the court to change a Divorce Act order relating to decision-making responsibility, parenting time, or support. Only people who are or were legally married to their partners can use this law.
- Federal Child Support Guidelines: This regulation applies under the Divorce Act when you want a divorce or are already divorced. It sets out the rules used to calculate how much child support people will have to pay.
- Matrimonial Property Act (MPA): This act is used when someone is asking for an order relating to property. Only people who are legally married or in a Registered Domestic Partnership can use this law.

- Children and Family Services Act (CFSA): The purpose of this act is to protect children from harm, support the family, and do what is in the best interests of children. The Minister of Community Services uses this act when it is felt that children are at risk and in need of services. The CFSA is a complicated law. In a CFSA proceeding, parents who cannot afford a lawyer can find help through Nova Scotia Legal Aid. Visit https://www.nsfamilylaw.ca/child-protection for links to the Child Protection booklet in English, French, and Mi'kmaq, and the Child Protection video in English and Mi'kmaq.

"**Case law**" refers to another kind of law. This law is made by judges as they decide each case. Case law might explain how a judge interpreted part of a law or a regulation, or how a judge applied a particular legal principle.

In Nova Scotia, all family law cases are dealt with by the Supreme Court Family Division. Collectively, the divisions are sometimes called "unified family courts" or the "Family Divisions." The Family Divisions deal with all family law issues, including divorce, adoptions, child protection, adult protection, property and pension issues, child decision-making responsibility and parenting time, and child and spousal support. The Family Divisions operate using the Nova Scotia Civil Procedure Rules.

The Civil Procedure Rules provide directions about things like forms, filing deadlines, and court processes. It is important that you understand howthe appropriate rules apply to your situation. A lawyer can explain how the rules apply
to your case.

WORKSHEET:

What laws and court procedures apply in my case?

What law or laws are being used in my case?

_____

_____

_____

What information do I need to provide?

These checklists may help you figure out what information to give the court about your situation.

When dealing with parenting arrangements (decision-making responsibility, parenting time,contact time, and interaction), provide, as appropriate:

- the children's names, birth dates, and ages
- where the children go to school and what grade each is in
- any important health or educational concerns
- the occupation of each parent and each parent's usual work schedule
- how the parents shared the parenting of the children while they were together
- who was responsible for arranging things like visits to the doctor and dentist
- who was responsible for looking after school issues, like parent-teacher meetings and making sure homework was done
- how the parents have shared the parenting of the children since they separated
- the quality of the parents' ability to talk to each other and cooperatively make decisions about the children after separation
- a description of any actual problems with a parent's capacity to care for the children

If you are dealing with changing a previous order, you will also want to talk about what has changed in the child's needs or circumstances since the last order was made, and how this change has affected the children.

When dealing with child support, provide, as appropriate:

- the children's names, birth dates, and ages
- how the children's time is divided between the parents
- whether some or all of the children are receiving child support from another person
- the nature of each parent's employment
- each parent's income, from employment and from any other source
- details of any of the children's special expenses that are being claimed

If you are dealing with changing a previous order, you will also want to talk about what has changed since the last order was made, and how this change would cause a different amount of support to be paid under the Child Support Guidelines.

When dealing with spousal support, provide, as appropriate:

- the date the parties began to live together and the date they married (if applicable)
- the date of separation
- the parties' ages
- each party's present health
- any factors limiting a party's ability to obtain employment
- the parties' present employment circumstances
- the parties' employment history during the relationship, including any periods of unemployment
- each party's present income and the sources of that income
- a description of each party's living expenses after separation
- any career sacrifices made during the relationship
- the parties' education and training history, prior to and during the relationship
- a description of any education and training taken after separation, especially any education geared to finding employment
- the ages and school status of the children at the date of separation
- the arrangements that have been made for the care and control of any children

If you are dealing with changing a previous order, you will also want to talk about what has changed since the last order was made, and how this change affects your ability to pay spousal support or your need for support.

* The examples listed here are taken from the wikibook, JP Boyd on Family Law, with permission from the founding author. This wikibook can be found online at **http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law**

WORKSHEET:

What issues are being addressed in my case?

- ☐ decision-making responsibility
- ☐ parenting time
- ☐ contact time, or interactionchild
- ☐ support
- ☐ spousal support
- ☐ property division or debts
- ☐ who gets to live in the home right now (exclusive possession or exclusive occupation)

What information do I need to give the court about the issues in my case?

Doing legal research

"Legal research" involves finding out the law that applies to the issues in your case, and it usually refers to the case law that applies to your case. You may be able to do some of your own legal research. If possible, ask a lawyer to review your research to make sure that what you have is accurate, up-to-date, and applies to your situation.

"Case law" is law made by judges as they decide each case. Case law might explain how a judge interpreted legislation or a regulation, or how a judge applied a particular legal principle.

The case law is constantly changing. For example, you may have found a case from five years ago that closely matches your situation and the order you want, but there may have been other cases since then in which a judge made different orders.

There are online resources that may be helpful to you in looking up legislation and case law, such as the Canadian Legal Information Institute's website, at **www.canlii.org.**

When you are looking up case law, remember that in general the newer the case and the higher the level of court, the more weight that particular case will be given by a judge. For example, if you can find a recent decision from the Supreme Court of Canada that relates to your case, that will probably carry more weight than an older case or one from a lower level of court.

Be very careful about what you find online—there is some good information out there but a lot of bad or inaccurate information too. Some useful sites are the Nova Scotia Family Law website at **www.nsfamilylaw.ca**, the Justice Canada website at **www.justice.gc.ca,** and the Legal Information Society of Nova Scotia's website at **www.legalinfo.org.**

There may also be a library near you that can help you with some legal research:

Sir James Dunn Law Library, Dalhousie University, **http://libraries.dal.ca/locations_services/locations/sir_james_dunn_lawlibrary.html**

- located in the Weldon Law Building, University Avenue, Halifax
- (902) 494-2124

Nova Scotia Legislative Library, www.nslegislature.ca/index.php/library/

- located in Province House, 1726 Hollis Street, Halifax
- (902) 424-5932

Nova Scotia Barristers' Library, **www.nsbs.org/for_the_public/legal_resources**

- located on the 7th floor of the Law Courts, 1815 Upper Water Street, Halifax
- (902) 425-2665, **nsbslib@nsbs.org**

Be sure to contact these libraries in advance to check what hours they are open to the

public. The public regional libraries may also have useful legal resources. For their information, go to **www.librariesns.ca/.**

Remember that the law works differently in different places. American law is very different from Canadian law, and certain laws are different between each province and territory in Canada.

Affidavits and exhibits

Visit https://www.nsfamilylaw.ca/videos for the 'Affidavits' video.

What is an affidavit?

An "affidavit" is a person's sworn written statement. It can be used in court as a way of giving evidence as if the person were making the statement orally, as a witness. For example, if you are applying to vary (change) a court order, you will file an affidavit to explain what has changed about your situation and why you are asking for a new court order.

Affidavits may include documents, in addition to the person's statement. These are called exhibits.

Affidavits are sworn or affirmed as being true. The person making the statement has to take the affidavit to a lawyer or Commissioner of Oaths (or in some cases, a notary public) to have that person witness their signature on the affidavit. You can usually have an affidavit sworn at the courthouse.

Why do I need an affidavit?

For many proceedings, the rules of court require evidence to be given by affidavit. Also, affidavits are usually required for any matter going to court for a hearing. Court time is limited, and a well-written affidavit can help to move the hearing process along more quickly.

What should my affidavit look like?

Affidavits are meant to give facts, not your personal views or opinions on something, not your feelings about something that has happened. Affidavits should provide information about "who, what, when, and where." Affidavits are about things that you have done, seen, or heard. You should avoid talking about things you know from other people but did not see or hear yourself. This kind of information is called "hearsay".

The rules of court say what an affidavit should look like and how it should be written. You can get a copy of the affidavit form from your local court, or you can find the form

online at the Courts of Nova Scotia website. Different courts may use different versions of this form—check with your court to make sure you have the right one.

It is best that your affidavit be typed on a computer, but you can fill it out by hand, if necessary. If you fill it out by hand, you should use a blue pen and make sure your writing is neat. If it is difficult to read or it is very messy, the filing office may not accept it.

Write on only one side of each page.

Your whole affidavit, whether handwritten or typed, must be on plain, white, letter-sized (8.5" x 11"), unlined paper. Do not use looseleaf, legal-sized paper, stationery with pictures or logos, coloured paper, or paper with lines on it. You should number each page.

Break your affidavit up by sentences, and number each sentence in order. This will help to keep your affidavit neat and organized. It is best to leave a space between each numbered sentence, so that the affidavit is easy to read. Do not write your affidavit in bullet-points—you should write in full, numbered sentences.

Other important things to know about writing your affidavit:

- Do not sling mud in your affidavit. For example, do not include material that has nothing to do with the legal issue just to try to make the other person look bad, call them names, or say something just for shock value. Saying something like "Pat is a useless, washed-up drunk!" is not appropriate. Not only are you saying something to make the other person look bad, but you are drawing a conclusion.

  If Pat's drinking relates to the legal issue, for example because he or she drinks when looking after the children, giving factual information about Pat's drinking is appropriate. For example, you could say "Pat drank a six-pack of beer 5 nights a week, when looking after the children."

- If your affidavit is long or talks about many issues, using headings can be helpful. Headings can identify the sections where you are talking about different issues. For example, you may have headings like "Decision-making Responsibility," "Child Support," and "Passportsand travel with the children."
- You do not have to use complicated language or legal jargon in your affidavit. Use your own words.
- Do not cross-reference paragraphs. For example, do not say, "In response to the Applicant's affidavit in paragraph 10, this is not true." Instead, let the judge know exactly what is in paragraph 10 and address the issue. This avoids making the judge flip through the other affidavit to find the information.

  For example: "In paragraph 10, Jamie states that I quit my job in April 2012. This is not true. I was laid off from my job because the work I had been hired to do was finished."

- Do not exaggerate. Unless it is absolutely true, do not use words like "always" or "never." It is often better to use words like "rarely" and "most times."
- Refer to yourself in the first person, using "I," "me," or "my." You don't have to state your full name every time you refer to yourself.
- When you mention another person in your affidavit, make sure you state the person's full name the first time you talk about them, and explain who they are. For example, "This incident took place in front of Bob Smith, my work colleague, and Jane Brown, my boss."

If I have finished my affidavit and made a mistake, what do I do?

If you are changing something in your affidavit before you have signed it, neatly cross out the mistake, write what you meant to say, and put your initials beside the change. If you have made a big mistake or need to remove an entire section, you may need to rewrite or reprint the affidavit, or at least the page concerned.

If you need to make changes to an affidavit that has already been sworn or affirmed, you may correct it by crossing out the mistake and writing what you meant to say, but you will have to reswear or reaffirm the affidavit. You cannot change the affidavit without having it resworn or reaffirmed. It will often be best to correct the mistake by making a new affidavit that explains the mistake and gives the correct information.

What do I say in my affidavit?

You should only write about the facts that directly relate to the family law issue(s) you are dealing with in court. Make sure that you include the important information about the issues. Do not leave important facts out of your affidavit because you assume that the judge already knows them or that someone will state them in court.

Do not write information in your affidavit that does not relate to the family law issue(s) you are dealing with. An affidavit is not a chance for you to vent your personal feelings. The judge will ignore any information that does not relate to your court case or legal issue.

The contents of your affidavit will depend on your situation and the issues you are addressing with the court. Only a lawyer can give you specific advice about what you should or should not say in your affidavit. In general, you will use your affidavit to tell your story and explain the things that have happened and why the judge should—or shouldn't —make the order he or she is being asked to make.

Review the lists in the worksheet called What information do I need to provide? for an idea of the things you might want to include in an affidavit. You may have already included some of this information in your required court forms, but that is okay.

In the back of this workbook, you will find example affidavits for a parenting application and an application to change child support. These examples will show you what an

affidavit should look like and give you an idea of the information you may include in an affidavit concerning these issues.

If you are the person asking for the order, be sure to describe what order you are applying for the court to make. For example, if you are applying for a court order concerning the decision-making responsibility or time with your child, make sure you explain what kind of parenting arrangement you are asking for (with whom the child will live, who will make decisions about the child),
and what visiting arrangements you want in place (for instance, every second weekend, etc.). If you are applying for child support, specify the amount you are looking for,
such as the table amount, or special expenses for child care, etc.

If you are the person on the other side, you can say that the judge should not make the order the application is asking for, or you can describe the sort of order that you might be happy with. However, if you want to ask for an order that is very different from the order the applicant is asking for, or an order on a different subject, you may want to speak to a lawyer about whether you should make an application of your own.

If you are asking the court to change an older order, you should also talk about

- the orders that are currently in place between you and the other party, especially about the order you are looking to change
- the change in circumstances and why this change has caused you to ask for a change to the old order

The child support affidavit at the back of this workbook is an example of how to write an affidavit for changing a previous order.

If you regard your situation as urgent, you may also want to explain

- the facts that make you believe the situation is urgent, perhaps even an emergency
- the situation leading up to your filing an application
- why you are asking to have a court hearing by a certain date

What is an exhibit?

An **exhibit** is any paper, document, or object that is given to the court at a hearing or as part of an affidavit. Exhibits can include photographs, charts, and diagrams, as well as documents like income tax returns and bank statements. But any relevant thing might be used as an exhibit.

How do I refer to an exhibit in my affidavit?

In the main part of your affidavit, talk about what it is you are attaching. You should explain what it is and why you are attaching it—what the exhibit shows or how it backs up what you have said in your affidavit. For example, if you have said that your child's grades and behaviour in school have improved recently, you can attach report cards or letters from the school to try to prove this fact.

The proper way to refer to an exhibit is to write either of the following:

- Attached to this affidavit and marked as Exhibit [letter] is [describe document or object].
- Attached to this affidavit and marked as Exhibit [letter] is a true copy of [describe document or object].

Exhibits are usually labeled with letters, and so your first exhibit would be Exhibit A, your second exhibit would be Exhibit B, and so on. When you describe the document or object you are attaching, you can also say why you are attaching it. For example, if you want to lower an order about child support, you might say this:

> Attached to this affidavit and marked as Exhibit A is a true copy of my 2013 income tax return, showing that my income was $40,000. Attached to this affidavit and marked as Exhibit B is a true copy of my 2014 income tax return, showing that my income was $20,000.

When you are referring to an exhibit, you must attach the document or object, or preferably a copy of it, to your affidavit. If you talk about an exhibit in your affidavit but don't attach the relevant document or object, the judge will likely ignore your reference to it.

How do I attach an exhibit to my affidavit?

Your exhibits will be stapled to the back of your affidavit, and should go in the order that you have referred to them in your affidavit. Generally, you should not attach original documents as exhibits—clear, easy-to-read photocopies are fine. Keep the originals for yourself, and bring them to court in case you need to show them to the judge. If you file an original document or object as an exhibit with the court, it becomes part of the court file, and you cannot get it back.

If you are attaching a photograph as an exhibit, make sure the copy is clear. It sometimes helps to attach colour photocopies.

The person taking your oath or affirmation will put a special stamp on the first page of each exhibit. He or she will sign and date each exhibit after you have given your oath or affirmation that what you have said in your affidavit is true. The stamp will usually look like this:

> 20 No.
>
> This is Exhibit" "referred to
> in the affidavit of
> [sworn/affirmed] before me
> on 20 ,
>
> _____
> Signature

The stamp must be on the first page of every exhibit and must not cover up any information in the exhibit. It should be placed in a blank space on the page. If there is no space for the stamp on the page, you or the person taking your oath or affirmation must fold up the bottom right-hand corner of the page and place the stamp there. When you are photocopying or printing the exhibit, you must make two copies of any first page on which there is no space for the stamp—one will have the corner down so that you can see everything on the page, and the other will have the corner flipped up so that you can see the exhibit stamp.

Affidavit checklist

- ☐ Did I review the example affidavits provided in this workbook?
- ☐ Have I included all of the information in my affidavit that the judge needs to know?
- ☐ If I am the applicant, did I explain what order I am looking for the judge to make?
    - ☐ If I am applying to change a previous order, did I explain the change in circumstances?
- ☐ Is my affidavit typed or neatly handwritten, with numbered sentences?
- ☐ Is my affidavit printed on plain, white, letter-sized paper?
- ☐ Did I refer to any exhibits in my affidavit? If I did, did I explain what they are and why I am using them?
    - ☐ Are my exhibits referred to as Exhibit A, Exhibit B, and so on, in my affidavit?
    - ☐ Are my exhibits attached in the correct order to the back of my affidavit?

WORKSHEET:
Do I need to call any witnesses for my case?

☐ no / only myself

☐ yes—there are other people who know or have seen or heard information that is important for the judge to hear in my case

Who?

_____

_____

√ Will these people come to court if I ask them?
Will I need to get subpoenas?

√ Have I given the court a list of my witnesses?

☐ I need to call expert witnesses

Who?

_____

_____

√ Have I spoken to the person I want to call as an expert witness to make sure that

- he or she can provide the information I need the court to hear for my case?
- I get his or her schedule?
- he or she knows they will have to provide an expert report, and by what date?
- I know how much money he or she will charge for being an expert witness?

√ If I have any experts, I will need to make sure that all expert reports are filed with the court by this date: _____

√ I have to make sure that the other side gets a copy of any expert reports

Objections

An objection is a formal protest raised in court during a hearing. An objection can be raised when you believe that proper court process or a rule of evidence is not being followed. Objections can be raised when

- a witness is asked an improper question
- a witness is giving improper testimony
- an exhibit is being improperly entered into evidence

When you raise an objection, you are asking the judge to make a ruling on whether or not to allow the question being asked or the exhibit to be entered, or whether or not to allow the witness to continue giving the evidence being objected to.

It is best to raise an objection as soon as you notice that an improper question is being asked or the rules are not being correctly followed. If you are objecting to the question being asked to a witness, it is best to object before the witness starts answering the question.

When you are objecting, you must stand up and say, "Object," and give the reason for your objection. It is not enough just to say you are objecting, without explaining why.

The judge will decide whether the objection is "sustained" or "overruled." If the judge sustains the objection, this means that they agree with the objection and are not going to allow the question, testimony, or evidence objected to. If the judge overrules the objection, this means they disagree with the objection, and the question can be asked, or the witness can continue giving the testimony they were giving, or the exhibit can be entered into evidence.

If the objection was to a question being asked of a witness, the judge may allow the person asking the question to rephrase it. This means they can try asking it again in a way that follows the court's rules and procedures.

In some cases, a judge will raise an objection and not allow certain evidence because these rules are not being followed.

Objections can be called for many reasons. Be careful to raise objections only when necessary. If you call objections for a bad reason (for example, "just because"), doing so can be disruptive to your own case and can cause delays.

An objection might be raised because something is

- **irrelevant**

  Questions, testimony, or exhibits that do not relate to the legal issue the court is dealing with are usually "irrelevant."

For example, if you are dealing with the table amount of child support, it is likely irrelevant to ask about the other parent's new partner and how long they have been dating.

- **hearsay**

  In general, witnesses can only testify or be asked about things they know, saw, or heard firsthand; anything they heard from a source is "hearsay."

  For example, "My friend Mary lives two doors down from the Smiths, and she told me that she saw Mr. Smith going into the house on December 1st."

  - This is hearsay, as the witness heard this information from a third party, Mary.
  - In this case, Mary should be the one testifying about what she saw, because it is her firsthand information.

- **a leading question**

  A leading question is one that suggests its own answer.

  It is not appropriate to ask a leading question when you are questioning your own witness, or when the other party or their lawyer is questioning one of their witnesses.

  Leading questions are only appropriate during cross-examination.

  - For example, these are leading questions: "Isn't it true that she returned from work at 10:30 that night?" and "They work for the same company, right?"
  - The proper way to ask questions in a direct examination would be to say something like, "What time did she return from work that night?" or "Do they work for the same company?"

- **a compound question**

  A compound question is actually two or more questions. A witness should only be asked one distinct question at a time.

  A witness should not be asked, "What did you see her doing that afternoon, and how many people was she with?" This is asking two questions at the same time.
  Instead, the witness should be asked, "What did you see her doing that afternoon?" Once the witness answers this question, he or she can then be asked, "How many people was she with?"

- **repetitive**

  A question that has already been "asked and answered" may be objected to as "repetitive."

  It is not appropriate to ask a witness the same question more than once, even if the question is worded differently.

  - For example, if you have already asked, "How much alcohol did Pat drink that night?" and the witness has answered that Pat drank 3 bottles of beer, it is not appropriate to then ask, "So how many bottles of beer did Pat drink?"

  If the witness has answered the question, you must move on to another question, even if you did not get the answer you wanted.

- **opinion or calls for a conclusion**

  An opinion may be objected to when it comes from a non-expert, because an opinion is subjective and not based, or not sufficiently based, on fact. A question to a witness that calls for a conclusion asks for an answer that is based on an opinion, and therefore an objection may be raised against it.

  Only the judge can draw conclusions or make a decision about the legal issues being addressed in a hearing. It is not appropriate for a witness to draw a conclusion or give their opinion about the legal issue being addressed. It is also not appropriate to ask witnesses for opinions or to draw conclusions about matters they are not qualified to address.

  In general, only people qualified as experts can give opinions in court.

  Non-expert witnesses may be able to give some opinion, like estimating someone's age or height, but their ability to give opinions is limited.

  - For example, a witness must not be asked what decision the judge should order, or to give their opinion on what the judge should do.
  - Likewise, a non-expert witness must not be asked something like, "In your opinion, is Dale a good parent?" or, "Do you think Sandy has a mental health problem?"

- **making an assumption ("assumes facts not in evidence")**

  A claim cannot be assumed to be true or factual, when the claim has not been proven.

  For example, a witness cannot be asked something like, "Where were you standing when you saw Joe punch Brian?" when it has not been proven that Joe ever punched Brian.

- **speculation**

  Speculation is the same as guessing. An intelligent or clever piece of speculation is still essentially a guess.

  A question calls for speculation when a witness is asked for information that he or she cannot possibly know. In such a case, the witness is essentially asked to guess an answer. Questions should try to discover facts, not guesses about facts.

  - For example, if a witness is testifying that he or she saw someone drinking alcohol, it is not appropriate to ask that witness to guess what the person's specific blood alcohol level was. Only someone with proper testing equipment could know that answer. Without such equipment, only an expert could give an opinion about the likely range of blood alcohol level. In such a case, even the expert would need to know some essential facts.

In addition to the reasons given above for objections, there are times when other, less specific, objections may be raised.

- For example, an objection might be made against a witness's answer, or against a question, when it is

  confusing / ambiguous / vague / unintelligible:

  - the witness is jumping all over the place with their evidence
  - the person asking the question is not making sense or not being clear

- For example, an objection might be made when the other party or their lawyer misstates evidence or misquotes the witness.

  - For example, Jerome testified that he was laid off from his job as a result of company cutbacks. But the other party's lawyer says that Jerome quit his job because Jerome thought that cutbacks were going to take place. The lawyer has misstated what Jerome said.

Example affidavit #1

Applying to address parenting arrangements (decision-making responsibility, parenting time, contact time)

Form 39.08

No. SFHPSA-12345

Supreme Court of Nova Scotia
(Family Division)

BETWEEN:

Jamie Patrick Doe

Applicant

- and -

Mary Rose Smith

Respondent

Affidavit of Mary Rose Smith

I make oath/affirm and give evidence as follows:

1. I am Mary Rose Smith, the respondent in the current proceeding.
2. I have personal knowledge of the evidence sworn to/affirmed in this affidavit except where otherwise stated to be based on information and belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. I am the ex-common-law partner of the respondent, Jamie Patrick Doe.
5. Jamie and I began dating in October 2004.
6. We began living together on June 1, 2005.
7. Jamie and I were never married.
8. We have two dependent children: John Patrick Doe (born March 12, 2006) who is now 9 years old, and Julia Jane Doe (born July 3, 2009) who is now 5 years old.
9. Jamie and I separated on January 10, 2014.
10. I moved in with my sister, Stephanie Smith, at 45 Tash Road, Dartmouth, after Jamie and I separated.
11. Both children remained in the home with Jamie, at 123A Main Street, in Dartmouth.
12. I have had visits with the children since the separation.

Parenting arrangements

13. Since the separation I have had visits with the children 3 nights a week and for an overnight visit one Saturday a month.
14. I agree with Jamie having physical care of the children, but would like more visits with them.
15. I do not feel that having only weeknight visits and one overnight visit a month with the children is enough time for me to spend with them.
16. I enjoy my time with both children and they seem to enjoy their time with me.
17. Both John and Julia love to go swimming. There is an open swim at the community pool near my home every Saturday evening that I would like to take the children to.
18. John plays hockey through the school year and I still attend all of his games; however, I would like the opportunity to take him to some of his weekend games and help him dress for the games.
19. As some of John's games are very early on Sunday mornings, I feel overnight Saturday visits would allow me to get him ready for these early games and get him to the games quite easily.
20. I am living with my sister, Stephanie, and her daughter, Simone, who is 6 years old.
21. The house we live in has 4 bedrooms, and there is an extra bed in Simone's room for Julia to sleep.
22. John has his own room to stay in while he is with me.
23. John and Julia get along well with Simone and all three children seem to enjoy spending time together.

Joint decision-making responsibility

24. I would also like joint decision-making responsibility, so that Jamie and I make decisions together aboutthe children's medical and dental care, education, and religious upbringing.
25. I want to make sure that I have access to the children's medical and dental information, and their school information and report cards.
26. John is currently in grade 3 at Lakeside Elementary.
27. Julia began school at Lakeside Elementary in September 2014.

Moving

28. I also request that the children not be moved outside of the Halifax Regional Municipality without my permission.

Relief sought

29. I am seeking an order for decision-making responsibility and parenting time as follows:

> Physical care to the applicant, Jamie Doe, with joint decision-making responsibility for us to make major decisions together about the children's schooling, medical and dental care, and religious upbringing
>
> Visitation: 3 nights a week, with overnights every weekend from 5pm Saturday to 5pm Sunday
>
> Other terms: for both parents to have access to the children's medical, dental and school records, and for the children not to be removed from the Halifax Regional Municipality without the permission of both parents

Sworn to/Affirmed before me)
On June 3, 2015 at Halifax,)
Nova Scotia)
)
)

_____ _____

Signature of Authority Mary Rose Smith

Print Name:

Official Capacity:

Examples of cross-examination questions for parenting affidavit

1. In paragraphs 18 and 19 you speak about John's hockey games and your wish to help him dress for the games. Does John play on a co-ed team?
2. Are you aware of any other mothers who help their sons in the locker room?
3. Are you aware whether or not the league has a policy about having women in the locker room?

   NOTE: You should know the answer to this, given your relationship with the child. If the answer given is not what you think is right, you can ask a follow-up question, such as, "Isn't it true that if mothers are helping their sons get ready, they do so in a separate dressing room?"

4. You also mention in paragraph 19 that you would like to take John to some of his games. Do you have a vehicle?

   NOTE: You should know the answer to this.

   NOTE: One wrong way to ask this question would be to say, "Then how are you going to get John to his games?" This is an open-ended question, and you want to avoid open-ended questions when doing a cross-examination.

5. Does your sister have a vehicle?

   NOTE: You should know the answer to this, given your previous relationship.

6. In paragraph 28, you indicate that you do not wish the children to be moved outside of the Halifax Regional Municipality without your permission. Is that correct?
7. You are aware that I work a job that involves being transferred approximately every five years if I am to advance in my employment?
8. When we were a couple, didn't we move on three different occasions, including the most recent move to the Halifax Regional Municipality?
9. You are aware that I work from Monday through Friday?
10. You are aware that my extended family—parents, siblings, and their children—all reside in Cape Breton?
11. As a family, we resided in Cape Breton until September 2013, isn't that right?
12. When we resided in Cape Breton, the children were very close with my family, correct?
13. Since we moved, prior to separation, isn't it true that we traveled to Cape Breton at least once a month to visit with my family?
14. In your proposal in paragraph 29 you seek to have the children one night every weekend, right?
15. Would this not cut off much of the visitation with my extended family unless I was prepared to subject the children to ten hours of driving between the time I got off work on Friday and the time their access began with you on Saturday evenings?

Example affidavit #2

Changing child support

File FATPSA-12345

IN THE SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

BETWEEN

John William Doe

APPLICANT

– and –

Jane Rebecca Doe

RESPONDENT

AFFIDAVIT

I, John William Doe of 456 School Road, in the County of Antigonish, Province of Nova Scotia, make oath and say as follows:

1. I have personal knowledge of the matters sworn to in this Affidavit except where otherwise stated to be based on information and belief, and in all cases the matters contained herein are true and complete to the best of my knowledge, information and belief.
2. The respondent, Jane Doe, and I separated on June 13, 2008.
3. At the time of our separation, we had three dependent children: James Patrick Doe (born September 10, 1992), Amber Denise Doe (born August 26, 1998), and Robert Alan Doe (born December 22, 2000).
4. At the time of our separation, all three children lived full-time with Jane, and I paid child support in the amount of $863 per month.
5. In September 2010, James began attending St. Frances Xavier University full-time.
6. Our Consent Order from October 2008 was varied in August 2010 to reflect this change.
7. Under the varied order, I paid the table amount of support for the two younger children, Amber and Robert, and for half of James's tuition and school fees.

8. The table amount for the two younger children was set at $709 a month, based on my income at that time of $49,600.
9. My half of James's tuition and fees was set at $3,400 per year, or $283.33 per month, so my total child support payment per month was $992.33.
10. James has now finished his university education, graduating with his undergraduate Business degree in May 2015.
11. James has accepted a position with ABC Consultants Ltd., and begins working for them full-time in July 2015.
12. Attached as Exhibit "A" is a copy of James's offer of work with ABC Consultants Ltd.
13. As James is no longer dependent on Jane and me, I am requesting that the $283.33 per month that I was paying toward his tuition and school fees be terminated as of July 1, 2015.
14. As my income has decreased since the August 2010 order, I am also asking that my child support for Amber and Robert be adjusted.
15. My gross yearly income is now $40,100.
16. Attached as Exhibit "B" is my 2014 Notice of Assessment, and attached as Exhibits "C" and "D" are my two most recent paystubs, from May 15, 2015 and May 29, 2015.

Relief sought

17. I am seeking an order for child support as follows:

    To end support payments for James Patrick Doe as of July 1, 2015

    To set support amounts for the two remaining dependent children, Amber and Robert, at $571 as of July 1, 2015, based on my yearly income of $40,100

SWORN to at Pictou, in the County of Pictou
and Province of Nova Scotia this 24th day of
June, 2015.

_____ _____

A Commissioner, etc. Signature

Examples of cross-examination questions for changing child support affidavit

1. In paragraph 4, didn't you say you paid child support at the time of our separation?
2. What month did you start paying?
3. Wasn't the first payment in November 2008, after I made an interim child support application?

   NOTE: One wrong way to address this matter would be to say something like "You didn't start paying me child support until I took you back to court in 2008." This is a statement, not a question.
4. But we had separated five months before, and there was no child support over this five-month period?
5. In paragraph 15, you indicate that you are now earning $40,100 per year, is that correct?
6. If you would look at exhibit D, your most recent paystub. Could you please go to the fifth line down where it says overtime. How much does it state you have earned in overtime this year?
7. Would you say this is a change from previous years?

   NOTE: You should know the answer to this, given your previous relationship and the paystubs the other party filed as evidence in the August 2010 variation.
8. Your job allows you to accept or decline overtime, does it not?

   NOTE: You would ask this if you know the answer, given your previous relationship.

Useful contacts

For a detailed list of community agencies and resources in Nova Scotia, visit **http://nsfamilylaw.ca/services/community-agencies**

Nova Scotia 211 — community and social services listings

http://ns.211.ca/homepage

Phone: 211 Toll-free: 1-855-466-4994
TTY available: 1-888-692-1382

Nova Scotia Legal Aid

http://www.nslegalaid.ca/

Amherst	55 Church Street Phone: (902) 667-7544 Toll-free: 1-866-999-7544
Annapolis Royal	PO Box 188, 56 St. Anthony Street Phone: (902) 532-2311 Toll-free: 1-866-532-2311
Antigonish	70 West Street, Suite 2 Phone: (902) 863-3350 Toll-free: 1-866-439-1544
Bridgewater	202-141 High Street Phone: (902) 543-4658 Toll-free: 1-866-543-4658 Liverpool Sub-Office Phone: 902-354-3215 Toll-free: 1-866-543-4658
Dartmouth	(Criminal) 300-99 Wyse Road Phone: (902) 420-8815 Toll-free: 1-877-420-8818 (Family) 1210-99 Wyse Road Phone: (902) 420-7921 Toll-free: 1-855-420-7921
Halifax	(Adult Criminal) 400-5475 Spring Garden Road Phone: (902) 420-6583 Toll-free: 1-877-777-6583 (Family) 2830 Agricola Street Phone: (902) 420-3450 Toll-free: 1-866-420-3450 (HRM Youth and Duty Counsel) 401-5475 Spring Garden Road Phone: (902) 420-7800

Kentville	325 Main Street, Salon B Phone: (902) 679-6110 Toll-free: 1-866-679-6110
New Glasgow	116 George Street Phone: (902) 755-7020 Toll-free: 1-877-755-7020
Port Hawkesbury	302-15 Kennedy Street Phone: (902) 625-4047 Toll-free: 1-888-817-0116
Sydney	401-15 Dorchester Street Phone: (902) 563-2295 Toll-free: 1-877-563-2295
	(Sydney Duty Counsel) 402-15 Dorchester Street Phone: (902) 539-7026
	(Conflict Office) 338 Charlotte Street, Main Level Phone: (902) 563-2770
Truro	102-523 Prince Street Phone: (902) 893-5920 Toll-free: 1-877-777-5920
Windsor	PO Box 760, 151 Wentworth Road, Suite 2 Phone: (902) 798-8397 Toll-free: 1-866-798-8397
Yarmouth	204-164 Main Street Phone: (902) 742-7827 Toll-free: 1-866-742-3300

Nova Scotia Legal Aid Summary Advice Counsel Offices

Amherst	(902) 667-2256	Pictou	(902) 485-7350
Annapolis	(902) 742-0500	Port Hawkesbury	(902) 625-2665
Antigonish	(902) 863-7312	Sydney	(902) 563-2085
Bridgewater	(902) 543-4679	Truro	(902) 893-5840
Halifax	(902) 424-5616	Windsor	(902) 679-6075
Kentville	(902) 679-6075	Yarmouth	(902) 742-0500

Department of Justice Canada—Supporting Families

http://www.justice.gc.ca/eng/fl-df/

Federal Child Support Guidelines
Toll-free: 1-888-373-2222

Family Law Information Program (FLIP)

Nova Scotia Family Law website: **www.nsfamilylaw.ca**
FLIP Centres: **http://nsfamilylaw.ca/services/court/family-law-information-centre**

Supreme Court (Family Division)
Lower Level
3380 Devonshire Avenue, Halifax, NS
(902) 424-5232

Supreme Court (Family Division)
Harbour Place, Main Level
136 Charlotte Street, Sydney, NS
(902) 563-5761

Law Libraries

Sir James Dunn Law Library, Dalhousie University
Weldon Law Building,
University Avenue,
Halifax, NS
(902) 494-2124

Nova Scotia Legislative Library
Province House, 1726 Hollis Street, Halifax, NS
(902) 424-5932

Nova Scotia Barristers' Library
The Law Courts, 1815 Upper Water Street, 7th floor, Halifax, NS
(902) 425-2665

* Be sure to call these libraries in advance to confirm what hours they are open to the public. The public regional libraries may also have useful legal resources.

Legal Information Society of Nova Scotia

www.legalinfo.org

phone: (902) 454-2198
Dial-A-Law (recorded services 24 hrs/day): (902) 420-1888
Infoline and Lawyer Referral Service: (902) 455-3135
Toll-free: 1-800-665-9779

Nova Scotia Family and Civil Courts

www.courts.ns.ca

Amherst Justice Centre
16 Church Street, 3rd floor,
Amherst, NS B4H 3A6
Phone: (902) 667-2256
Fax: (902) 667-1108

Antigonish Justice Centre
11 James Street,
Antigonish, NS B2G 1R6
Phone: (902) 863-3676
Fax: (902) 863-7479

Antigonish Family Court Office
Phone: (902) 863-7312
Fax: (902) 863-7479

Bridgewater Justice Centre
141 High Street,
Bridgewater, NS B4V 1W2
Phone: (902) 543-4679
Fax: (902) 543-0678

Bridgewater Family Court Office
141 High Street,
Bridgewater, NS B4V 1W2
Phone: (902) 543-4679
Fax: (902) 543-0678

Digby/Annapolis Justice Centre
119 Queen Street, P.O. Box 1089, Digby, NS B0V 1A0
Phone: (902) 245-4567
Fax: (902) 245-6722

Halifax Family Division
3380 Devonshire Avenue,
Halifax, NS B3K 5R5
Phone: (902) 424-3990
Fax: (902) 424-0562

Kentville Justice Centre
87 Cornwallis Street,
Kentville, NS B4N 2E5
Phone: (902) 679-6070
Fax: (902) 679-6178

Kentville Family Court Office
136 Exhibition Street,
Kentville, NS B4N 4E5
Phone: (902) 679-6075
Fax: (902) 679-6081

Pictou Justice Centre (also serving New Glasgow)
PO Box 1750, 69 Water Street, Pictou, NS B0K 1H0
Phone: (902) 485-7350
Fax: (902) 485-8934
(Family Court)
Fax: (902) 485-6737
(Supreme Court)

Port Hawkesbury Justice Centre
15 Kennedy Street, Suite 201, Port Hawkesbury, NS B9A 2Y1
Phone: (902) 625-4218
Family Division:
(902) 625-2665
Fax: (902) 625-4084

Sydney Justice Centre
136 Charlotte Street,
Sydney, NS B1P 1C3
Phone: (902) 563-3550
Family Division: (902) 563-2200
Fax: (902) 563-2224

Truro Justice Centre
540 Prince Street, Truro, NS B2N 1G1
Phone: (902) 893-5840
Fax: (902) 893-6261

Truro Supreme Court
1 Church Street, Truro, NS B2N 3Z5
Phone: (902) 893-3953
Fax: (902) 893-6114

Yarmouth Justice Centre
164 Main Street, Yarmouth, NS B5A 1C2
Phone: (902) 742-0500
Fax: (902) 742-0678

Yarmouth Family Court Office
164 Main Street, Yarmouth, NS B5A 1C2
Phone: (902) 742-0550
Fax: (902) 742-0678

Glossary

Access: an old term that is no longer used in either the Parenting and Support Act (provincial) or the Divorce Act (federal). Terms like 'parenting time' 'contact' and 'interaction' are used instead. You may still see the term 'access' used in older court orders and agreements. An agreement or court order that uses 'custody' or 'access' to describe the parenting arrangements will continue until it is varied/changed with a new agreement or court order. You do not need a new agreement or court order just because the language of parenting has changed.

Affidavit: a person's sworn or affirmed written statement. It can be used in court as a way of giving evidence as if the person were making the statement orally, as a witness. Affidavits may include documents, in addition to the person's statement. These documents are called exhibits.

Affirm: a way to take an oath to tell the truth without swearing on a Bible or other holy book. It has the same effect as swearing an oath on the Bible.

Applicant: the person who started the court process

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 looking for (what issues they want to deal with). Applications are generally started when the applicant completes and files required documents with the court.

Case law: law made by judges as they decide each case. Case law might explain how a judge interpreted legislation or a regulation, or how a judge applied a particular legal principle.

Child support: money paid by one parent to the other parent to contribute to the children's living expenses. It is usually paid monthly and based on the paying parent's yearly income.

Civil Procedure Rules: the rules used by the Supreme Court and Supreme Court Family Division that determine court process and forms

Conciliation/court-based dispute resolution: a process where both parties, either in separate meetings or together, meet with a trained court officer who will help the parties to focus on their situation and consider the appropriate options available to them in their court case. Conciliation is mandatory in some courts for certain types of applications. The conciliator helps the parties to sort out what issues need to be resolved, makes sure both parties filed the necessary court documents, helps to reduce conflict, and helps the parties to negotiate a settlement of their issues without going to court.

Conferences: a meeting between everyone involved in a court case - the parties, their lawyers (if any), and the judge. The meeting is to get the case ready for a hearing. The conference helps to make sure that everyone is ready with the right information when the hearing happens.

Contact time: the time a child spends with someone other than a parent or guardian, under a court order or agreement. This may include a grandparent or other family member.

Court order: a formal, typed document that is issued by the court – this means it is approved and signed or initialed by a judge, and then signed, dated and issued by a court officer. A court order contains sections called 'clauses' that set out what you or the other person(s) involved in your situation are required to do by law as a result of a judge making a decision in your court case, or, the parties reaching an agreement in a court case.

Cross-examination: when the other person (if they are self-represented) or their lawyer asks you, or one of your witnesses, questions in court. Cross-examination also occurs when you or your lawyer asks the other party, or one of their witnesses, questions in court. This is sometimes just called 'cross.' The general purpose of cross-examination is to point out any errors or inconsistencies in the other party's testimony, or in the testimony of any witnesses testifying on behalf of the other party, and to try to show the court that the witness should not be believed.

Custody: an old term that is no longer used to describe who has the responsibility for decisions about a child. The term 'decision-making responsibility' is used instead. You may still see the term 'custody' used in older court orders and agreements. An agreement or court order that uses 'custody' to describe the parenting arrangements will continue until it is varied/changed with a new agreement or court order. You do not need a new agreement or court order just because the language of parenting has changed.

Date assignment conference: a short appearance (usually 30 minutes) before the trial judge in a divorce matter, to get the file ready for trial. The date assignment conference has 3 main purposes: to ensure all required disclosure has been filed, to determine if any witnesses will be called at trial, and to determine how much time is necessary for trial.

Direct examination: when you take the witness stand to give testimony for your own case, or when you are asking questions of one of your witnesses. Direct examination also occurs when the other party gives testimony for their own case or questions their witnesses (if they do not have a lawyer), or when their lawyer questions them or their witnesses. Direct examination is sometimes just called 'direct.'

Discoveries: parties sometimes hold Examinations for Discovery (Discoveries) where the parties are given an opportunity to question each other or each other's witnesses, under oath, before a trial. The discovery allows the parties to narrow the issues and focus their trial on contested matters (those that the parties do not agree on). In family law, discoveries are normally only held in divorce cases, unless a judge orders otherwise.

Docket appearances: a brief courtroom appearance in front of a judge in the Family Court

Emergency Protection Orders (EPOs): Emergency Protection Orders are short term, temporary orders to help protect victims of domestic violence made under the Domestic Violence Intervention Act (DVIA) of Nova Scotia

Employee Assistance Plans (EAP): EAPs provide services to employees, and sometimes this will include a free or discounted meeting with a lawyer. Check with your Human Resource Department or a supervisor or manager to see if you have an EAP.

Evidence: information given to the court by a party or witness, either orally or in writing (for example, in an affidavit), which the judge uses to make their decision

Exhibit: any paper, document, or object that is given to the court at a hearing or as part of an affidavit. Exhibits can include photographs, charts, and diagrams, as well as documents like income tax returns and bank statements. Any relevant thing might be used as an exhibit.

Expert witness: a neutral person who assists the court. Experts include doctors, psychologists, social workers, teachers, or other professionals who have been dealing with you or someone important to the case. Expert witnesses can be called to court by a party or appointed by the court.

Gross income: the total money you earn before taxes or other deductions are taken out.

Hearing or trial: takes place when you and the other person involved in your court case, and your lawyersif you have them, go to court to have a judge make a decision

Interaction: direct or indirect association with a child, outside of parenting time or contact time. Interaction includes communications with a child other than 'in person' time – like, for example:
- phone calls, emails, or letters
- sending gifts or cards
- attending the child's school activities or extracurricular activities
- receiving copies of report cards or school photos
- Skyping with the child

Interpreters: professionals who assist in court matters by repeating what is said in court to a participant in the participant's own language. The interpreter also repeats, in English, what the participant says for others in the court to understand.

Interrogatories: parties sometimes use a special form of written questions, called interrogatories, instead of discoveries, to help them find out information that the other party has about a trial

Lawyer Referral Service: the Legal Information Society of Nova Scotia (LISNS) is a non-profit organization that provides legal information and resources, and operates the Lawyer Referral Service. You can contact the Lawyer Referral Service to get the name and contact information for a lawyer in your area. You then contact the lawyer to arrange for a 30 minute appointment. This appointment is $20 + tax. Call (902) 455-3135 or toll-free at 1-800-665-9779.

Leading questions: questions that suggest their own answer. Leading questions can usually be answered with 'yes' or 'no.' For example, "She wasn't wearing a coat or boots, was she?" or "You had to take a cab home that evening, didn't you?"

Legal advice: specific information about your legal issue, and what you should or shouldn't do to address the issue. Only lawyers are qualified to give legal advice.

Legal information: legal information is general information about the law, or the court process. Legal information can include information on how to resolve a dispute without going to court (for example, using mediation), the different ways to start a court application, how to find a lawyer, or about what different legal terms mean. Court staff and other legal information providers can give legal information, but not advice.

Legal representation: having a lawyer to work with you on your whole case

Legislation: a law passed by a federal or provincial government

Limited scope retainers: when a lawyer is hired to do only certain parts of your case

Maintenance Enforcement Program (MEP): a provincial government program through which all court orders for child support or spousal support must be filed (registered). When a support order is issued anywhere in Nova Scotia, a copy of the order is automatically sent to MEP.

Objection: a formal protest raised in court during a hearing, when it appears that proper court process or a rule of evidence is not being followed.

Open-ended questions: questions that do not suggest their own answer. They allow the witness to give information in their own words. For example, "What was she wearing?" or "How did you get home that

evening?"

Orders for production: often used to obtain relevant information or records held by someone else, usually a professional, like a doctor or psychiatrist. To get an Order for Production, an application must be made, requesting that a judge require a non-party to file copies of certain information or produce a file that is relevant to your case.

Parenting time: the time a child spends with a parent or guardian, under a court order or agreement. Each parent's or guardian's time with the children is called 'parenting time', even when the child lives most of the time with one parent. It is helpful to have a parenting schedule in place.

Parties: the people on either side of a legal dispute

Peace bond: a court order that you may apply for when someone has threatened or harmed you. This can be a partner or spouse, or another person.

Personal service: a way of giving notice of a court proceeding to a person, where someone hand-delivers a package of documents directly to that person. Personal service cannot be done by mailing documents to someone, or using a courier, fax, or registered mail. If the person being served has a lawyer, that lawyer may accept service for their client.

Proceedings: the steps taken in a court case

Process servers: professionals who are trained to serve court documents. May also be called 'Bailiffs.'

Rebuttal: a chance for one of the parties (or their lawyer) to make a further argument after hearing the other side's summations

Redirect: an opportunity given to a party (or their lawyer) immediately following cross-examination of their witness, to ask further questions of that witness about new information brought up during the cross-examination

Respondent: the person responding to a court application

Rules of evidence: rules that say what evidence can be used in court and what can't. Rules of evidence help judges to decide how much weight to give to each piece of evidence.

Spousal support: money paid by one spouse to another to contribute to the other's living expenses

Subpoena: a court document that requires a person to give evidence at a hearing

Summary Advice Counsel: lawyers who can meet with you to help you understand matters and get ready for court. This is a free service provided by Nova Scotia Legal Aid and is for people who do not qualify for full-service legal aid and can't afford a private lawyer. Anyone who is representing themselves can ask for an appointment.

Summations: a legal argument that you make to the judge in court at the end of the hearing

Testifying: the process of giving oral evidence in court

Testimony: the evidence given by a witness in court

Unbundled legal services: see 'Limited scope retainers'

Variation application: an application made to the court to change something in a previous order or

registered agreement

Will-say statement: a summary of what a witness intends to say in court

Witnesses: people who come to court to give evidence

Witness box: the place in the courtroom where a witness sits when giving their testimony

Witness list: a written list of the people who are going to testify for your case in court. If you are giving your own testimony, your name would likely be included on your witness list.

NOVA SCOTIA