

Guide to Adult Representation

Guide to Adult Representation

This guide gives basic information on the process of applying to court to become a decision-maker for someone under the Adult Capacity and Decision-making Act. It is not a substitute for legal advice. If you are considering adult representation, you may wish to consult with a lawyer.

Words used in this act:

representative: a person given responsibility for making decisions for an adult who is unable to make those decisions for themselves

represented adult: the person who would have the representative

representation order: an order of the Nova Scotia Supreme Court that appoints someone to be the **representative** for the adult who is unable to make decisions in some or all areas

For more information on adult representation, go to the Public Trustee Office's website at novascotia.ca/just/pto

Is representation the best option?

The decision to apply for a representation order can be a difficult choice for a family or close friend. Every situation is different. It may help to consider the following points when discussing a loved one's potential need for a representative:

- In what areas is the adult having trouble making decisions? The order will only give representation for decisions that the adult is not able to make for themselves.
- In what areas does the adult need decisions to be made? The order will only grant representation for decisions that actually have to be made.
- What alternatives are there? Is the adult able to make decisions with support? Could the adult manage their needs successfully with support or assistance rather than a court-appointed decision-maker?
- Have you spoken with the adult about the possibility of applying for a representation order? You need to have this discussion, unless the adult is simply not able to.

Points to discuss with the adult

- Does the adult want a representative in areas where they are having trouble making decisions? If so, has the adult identified who they would like to have as their representative and with what decisions they'd like the representative to help them?
- Does the adult want to discuss their rights and options with a lawyer? All adults for whom a representation application is being considered or prepared have a right to their own independent legal counsel. The adult can get legal support from Nova Scotia Legal Aid. They should be given any assistance they need in contacting Nova Scotia Legal Aid and making these arrangements. To contact Nova Scotia Legal Aid, visit nslegalaid.ca
- Has the adult already chosen who they would want to make decisions for them in an Enduring Power of Attorney? In a Personal Directive? The court cannot appoint a representative for any area which is covered by a current, valid Personal Directive or Enduring Power of Attorney.

Note: If a Personal Directive or Enduring Power of Attorney is being misused or abused, the court must terminate the Personal Directive or Enduring Power of Attorney before it can consider an application for a representation order.

About the representative's role

A representative's decision-making responsibilities are based on the needs of the adult. Each adult's needs and capabilities differ, and so do the responsibilities of each representative.

When an adult is able to make some of their own decisions, they will continue to do so.

The representative's role is to encourage the adult to participate in decision-making as much as they are able

- to make decisions for the adult only in areas where the court agrees they need that help
- to ensure they are making decisions based on what the adult wishes, values, and believes

Being a representative can be challenging work. The representative needs to be aware of the potential for disagreement with the adult or with other family members. But the role of a representative can also be fulfilling and rewarding—for both the representative and the represented adult.

When representation is the best option

If representation is the best option, then an application must be made to the Nova Scotia Supreme Court.

The adult for whom a representation application is being prepared has a right to receive legal support and is eligible to receive free legal support from legal aid at all stages of a proceeding under the Adult Capacity and Decision-making Act.

Nova Scotia Legal Aid: nslegalaid.ca

Getting legal help

The following provides basic information about the process of applying to court to become a decision-maker for someone under the Adult Capacity and Decision-making Act. It is not a substitute for legal advice.

If you are considering adult representation, you should check the court rules for additional requirements. You may also wish to speak with or hire a lawyer. To speak with or hire a lawyer, the Lawyer Referral Service can provide the names of several local lawyers interested in this area of practice:

Lawyer Referral Service

Legal Information Society of Nova Scotia (LISNS)
legalinfo.org/how-lisns-can-help/i-need-a-lawyer.html

You may also be eligible for legal aid.

Contact Nova Scotia Legal Aid: nslegalaid.ca

Overview of the process

The process has a number of steps:

Step 1 – Prepare to make an application to the court

- Get a capacity assessment
- Prepare an applicant's affidavit
- Prepare a Representation Plan
- Get a vulnerable sector check
- Prepare a Notice of Application
- Prepare a draft Representation Order
- Put the court application package together

Step 2 – Apply to the court and attend a hearing

- File the application package with the court
- Personally serve, or have someone else serve, a copy of the application package on the adult and each respondent by the deadline – and prove you did it
- Provide a copy of the Notice of Application by mail to each person with a right to be notified – and prove you did it
- Be aware that your application may be opposed – if so, you will be served a copy
- Attend the court hearing

Step 3 – Meet the conditions set out in the representation order

- File a bond with the court
- Inform the represented adult about the representation order
- File an updated Representation Plan, if ordered by the court
- Return to court for review of order, if ordered by the court
- Report on activities, if ordered by the court

Step 1 – Prepare to make an application to the court

- **Get a capacity assessment**
- **Prepare an applicant’s affidavit**
- **Prepare a Representation Plan**
- **Get a vulnerable sector check**
- **Prepare a Notice of Application**
- **Prepare a draft Representation Order**
- **Put the court application package together**

An application for representation must be made to the Nova Scotia Supreme Court. The application presents evidence to the court. The court uses this evidence to decide:

- whether the adult does not have capacity to make certain decisions
- whether the adult needs or will need to make those decisions
- whether less intrusive and less restrictive measures are available
- in what areas the adult needs representation
- who should be appointed as the adult’s representative
- whether the order should be reviewed, and if so, when
- whether the representative should be required to report on their activities, and if so, to whom

The application to the court must include the following:

- Notice of Application
- Applicant’s Affidavit (sworn statement witnessed by a commissioner of oaths)
- Capacity Assessment Report ([form](#)) (prepared by a qualified medical assessor)
- Representation Plan ([form](#))
- Vulnerable Sector Check (from the local police)
- Draft Representation Order (legal document for the judge’s signature)

The person seeking to be appointed as the representative may prepare the application themselves or hire a lawyer to do it. You may also be eligible for legal aid. To contact Nova Scotia Legal Aid, visit nslegalaid.ca.

The adult for whom a representation application is being prepared has a right to receive legal support and is eligible to receive free legal support from legal aid at all stages of a proceeding under the Adult Capacity and Decision-making Act. The adult may wish to meet with a legal aid lawyer to discuss their legal rights and options or to have a lawyer represent them on the application. To contact Nova Scotia Legal Aid, visit nslegalaid.ca.

Get a capacity assessment

An adult's ability to make decisions must be assessed by a professionally qualified capacity assessor. The assessor prepares a capacity assessment report. The capacity assessment report includes the capacity assessor's determination whether the adult is unable to make decisions in one or more areas.

The capacity assessment report is presented to the court. The court grants decision-making authority to the representative only in areas where the adult is unable to make their own decisions.

About capacity assessments

Capacity assessments should be done at times and in environments where the adult is most comfortable and at ease. The adult should be asked if they want to be assessed and where they would like to be assessed, if possible.

Who can carry out capacity assessments:

- medical doctors
- psychologists
- occupational therapists certified to carry out capacity assessments (with training)
- registered nurses certified to carry out capacity assessments (with training)
- social workers certified to carry out capacity assessments (with training)

Duties of capacity assessors

Before conducting an assessment, a capacity assessor must ensure that the adult has been advised of

- the reasons for which the assessment was requested
- their right to refuse to undergo or continue with the capacity assessment

About consent

If the adult does not appear capable of consenting to the assessment, the assessor may only conduct an assessment if there are reasonable grounds to believe the adult is incapable of making decisions about any matter to be assessed.

About fees

Capacity assessors often charge for their services. They may charge for both conducting the capacity assessment and completing the capacity assessment report. The full cost of the assessment should be discussed before the assessment takes place.

Getting financial assistance for fees

A person applying for a representation order may be eligible for financial assistance to help pay for some or all of the costs of a capacity assessment. To qualify, they must show that it would be a financial hardship for the adult or themselves to pay for it.

Eligible applicants may be reimbursed

- up to \$500 for an assessment of either personal care or financial matters
- up to \$700 for an assessment of both personal care and financial matters

For more information, contact the Public Trustee Office: novascotia.ca/just/PTO

Prepare an Applicant's Affidavit

The Applicant's Affidavit is part of the evidence the court uses to decide the application for a representation order. It takes the form of a sworn statement made by the applicant.

The affidavit includes information about the adult, the proposed representative, the adult's family

- the facts that led to the application being made
- the areas of decision-making authority sought and supporting reasons
- what less restrictive and less intrusive options and supports were tried or considered
- other matters that could help the judge understand the adult's circumstances

The affidavit needs to be sworn or affirmed as true by the applicant in the presence of a barrister or a commissioner of oaths.

The areas of decision-making that the court may be asked to grant to the representative include:

- where the represented adult is to live, and with whom
- with whom the represented adult may spend time (this authority, if granted, may only be used to prevent an adult from associating with an individual if it could seriously jeopardize the adult's health and safety)
- social and recreational activities
- employment
- any education or training opportunities
- licenses and permits
- litigation
- personal care and healthcare
- financial matters
- any other matter specified by the court

Prepare a Representation Plan

The Representation Plan is set out in a [form](#).

The Representation Plan outlines the major decisions that the proposed representative thinks will be required for the adult. For example, if the court is being asked to grant authority over the adult's finances and property, the Representation Plan must describe the adult's assets, debts, income, and expenses, and how those will be managed. If the court is being asked to grant authority over the adult's living arrangements, the Representation Plan must describe the adult's current living arrangements, anticipated future needs, the adult's expressed wishes, and the proposed plan in the short term (1 year) and long term (5 years).

The plan must also set out

- whether the adult already has a guardian appointed under the Incompetent Persons Act
- whether the adult has an enduring power of attorney or personal directive
- how the proposed representative will include the adult in the decision-making
- how the adult will be informed of decisions when they are not able to participate

Sharing the duties of representative

If there is to be more than one representative, the Representation Plan must describe how the representatives will share or divide decision-making responsibilities between them.

Including an alternate representative

The person applying for representation should consider whether there should be an alternate representative appointed. An alternate representative can step in when the representative is not able to act. If the appointed representative is not able to act for any reason, an alternate representative can take over those areas of decision-making authority on behalf of the adult. An alternative representative should be identified at the time of application for a representation order. When there is no alternate representative, a new representation application has to be made. If the person applying for representation is asking the court to appoint an alternate, that must be indicated in the Representation Plan.

Updating the plan

Sometimes it is not possible to obtain full information about the adult's property or healthcare before an order is made. The Representation Plan must be filled out with the best information available, after diligently seeking the required information. If the court makes the requested representation order, the court may ask that an updated Representation Plan be filed with the court.

Tip

Keep all your documents and papers in a file as you work through the process. Type or print documents and ensure they are neat and legible.

Get a vulnerable sector check

A vulnerable sector check is needed before a judge will grant an applicant authority to act for a vulnerable adult.

Request a vulnerable sector check through the local police service where the applicant lives. The police search the applicant's name in local and national databases. If the police find a potential match, they may request fingerprints to confirm identity.

Each proposed representative and alternate will need to do this.

Prepare a Notice of Application

The Notice of Application describes the order the court is being asked to grant. It includes who will be the representative. It includes the specific areas of authority that the proposed representative is seeking. It lists the evidence being provided to the court.

It lists the name or names of the applicant for the order and the names of the respondents to the application. The adult who is the subject of the application must be named as a respondent. Any person, other than the applicant, who is proposed as a representative or alternate representative must also be named as a respondent.

The Notice of Application must include the date, time, and location where the application will be heard by the Court. Once the Notice is prepared, the applicant or their lawyer should contact the Nova Scotia Supreme Court for this information.

Prepare a draft Representation Order for the judge's signature

The Representation Order is a legal document that grants the applicant the power of a representative. The application package should contain a draft Representation Order that is ready for the judge's signature. If the court accepts the application as proposed, the granting of representation can happen during the court appearance. If revisions are needed a new order will have to be prepared and sent to the court for approval.

Put the application package together

Once all of the required documents are prepared, the court application package can be put together. The package includes

- Notice of Application
- Applicant's Affidavit
- Capacity Assessment Report
- Representation Plan
- Vulnerable Sector Check
- Draft Representation Order
- Note that the applicant will need to submit evidence to the court that the necessary documents were served on the necessary people by the deadline.

Step 2 – Apply to the court and attend the hearing

- **File the application package with the court**
- **Personally serve, or have someone else serve, a copy of the application package on the adult and each respondent by the deadline – and prove you did it**
- **Provide a copy of the Notice of Application by mail to each person with a right to be notified – and prove you did it**
- **Be aware that your application may be opposed – if so, you will be served a copy**
- **Attend the court hearing**

File the application package with the court – and serve copies

Make sure enough copies of the whole application package are prepared. The court will file and keep one copy of the package. The court will stamp and return the rest to you so you can serve others that need to be served.

You must ensure that the application package is **personally served** on

- The adult
- Each other person named as a respondent on the Notice of Application

You must also ensure that a copy of the Notice of Application is **sent** to other interested persons at least 25 days before the scheduled hearing:

The adult's spouse, parents, children over 19, and siblings over 19

- A guardian for the adult appointed under the Incompetent Persons Act
- An attorney for the adult appointed by a power of attorney
- A delegate for the adult appointed by a personal directive
- If the adult lives in a care facility (e.g., a nursing home), the director of the facility

Proof of service

You will be required to prove that the people who were required to be served were. This ought to be in the form of an Affidavit of Service. See Form 31.05 of the Civil Procedure Rules.

You will be required to prove that the notice was sent to the interested persons noted above.

You may decide to do this through registered mail, regular mail, affidavit of service.

Tip

Court forms like the Notice of Application, Applicant's Affidavit, and Affidavit of Service are all available on the Nova Scotia courts website: courts.ns.ca/Supreme_Court/NSSC_forms.htm#civil

Specific forms, including forms for the Representation Plan, Capacity Assessment Report, and Complaints, are available in a fillable form on the Public Trustee website: novascotia.ca/just/PTO

In special circumstances, such as where an order is urgently needed, the court can grant a temporary representation order without requiring all of the application information, or all of the documents to be delivered or sent to the required persons by the deadline. A lawyer can assist with this process.

Be aware that your application may be opposed

Others may decide to contest an Application for Representation by filing a Notice of Contest with the court — if so, you will be served a copy.

The adult, any other named respondent on the application, a person who is entitled to get notice of the application, or any other interested person with the permission of the court, may file a Notice of Contest to bring other information or concerns about the application to the court's attention.

A person who files a Notice of Contest is entitled to receive

- a copy of any document filed with the court in the proceeding
- notice of all further steps in the proceeding

Attend the court hearing

At the hearing, the court reviews the evidence presented and considers whether it will grant the order.

The applicant — and any other person who received the notice of application and who wishes to present evidence or make their views known to the court — should proceed to the court on the hearing date. Check with the clerk to find out the courtroom where the application will be heard. Arrive at least 15 minutes early to ensure your materials are organized and that you are prepared to speak to the judge. The judge in Supreme Court is referred to as “My Lord” or “My Lady.”

When the court announces the application, the applicant should introduce themselves

- tell the judge if there are other people present who wish to present evidence or make their views known to the court, including the adult
- be prepared to describe the order that is being requested, including the specific areas of authority that the court is being asked to grant
- be prepared to explain the reasons for the order, which less restrictive and less intrusive forms of support or assistance have been tried or considered, and why such other forms of support or assistance were not found to be effective to meet the adult's needs

The judge may ask to hear from the adult and any other people who have attended. The judge will want to know that the adult has been made aware of their rights under the legislation and their right to independent legal advice. The judge may ask other questions. The judge may ask for more information or documentation. The judge may require the proposed representative to make changes to the representation plan or to file an updated representation plan.

The judge may grant the order at the hearing

- grant the order later, after taking time to consider the information presented
- refuse to grant the order

Step 3 – Meet the conditions set out in the representation order

- **File a bond with the court**
- **Inform the represented adult about the representation order**
- **File an updated Representation Plan, if ordered by the court**
- **Return to court for review of order, if ordered by the court**
- **Report on activities, if ordered by the court**

File a bond with the court

If the court grants an order that gives the representative authority over finances and property, in most cases the representative must provide a bond or surety worth 1.25 times the value of the adult's personal property (excludes real property – land, house). This is like an insurance policy. It protects against loss to the adult's property caused by the representative's error or negligence. Proof that a bond or surety is in place must be filed with the court.

Inform the represented adult about the representation order

If the court grants the order and the adult did not participate in the application proceeding, then the representative has to inform the adult. It is a duty of the representative to inform the adult of both the representative's appointment and the extent of the representative's decision-making authority. This should be done as soon as possible and in a manner that the adult is likely to best understand.

File an updated Representation Plan, if ordered by the court

The court may ask a representative to file an updated Representation Plan with the court within a specified time period.

Return to court for review of order, if ordered by the court

The court may ask the representative to return to court for review of the presentation order within a specified time.

Report on activities, if ordered by the court

The court may order the representative to report on activities they are given decision-making authority over – to the court, the Public Trustee, or an interested party, such as a sibling.

