

Terms and Definitions

Used in family law in Nova Scotia



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Terms and Definitions

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The terms and definitions in this booklet have been written in plain language. In some cases, a definition of a word or phrase is worded differently from the definition contained in a statute to make it easier to understand.

Reading these terms and definitions will not replace getting legal advice from a lawyer.

For more information about representing yourself in court visit the Department of Justice website at <www.gov.ns.ca/just/repselmain.htm>. For more information about the Courts of Nova Scotia go to <www.courts.ns.ca>.

A

Access

Access refers to time a parent who does not live with her or his children visits or spends time with them. Access is described in the court order or **separation agreement**. Different types of access include reasonable access, specified access, and supervised access.

Reasonable Access: Allows the **non-custodial**/non-residential parent to visit with the children at times arranged with the **custodial**/residential parent. The times must be reasonable and appropriate for the situations. Reasonable access gives parents the flexibility to make their own arrangements.

Specified Access: Sets out certain times for the **non-custodial**/non-residential parent to be able to spend time with his or her children.

Supervised Access: Says that the **non-custodial**/non-residential parent may spend time with the children only with another adult present. Supervised access is generally ordered in situations where the court believes this is necessary for the welfare or **best interests** of the children.

Adjournment

A delay or postponement of a court hearing or **trial**.

Affidavit

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

Age of Majority

The age of majority is 19 years in Nova Scotia.

Alternative Dispute Resolution

Alternative dispute resolution (or ADR) refers to ways to settle disputes or differences without a court **trial**.

Answer

The formal response to a **Petition for Divorce** which states the **respondent's** position. An answer must be filed with the court and served upon the **petitioner** within a set number of days after **service** of the Petition for Divorce.

Appeal

A review by a higher court of a decision made by a lower court. There must be legal grounds or reasons to appeal, such as that the lower court has made an error. You can't appeal just because you disagree with or do not like the judge's decision.

Applicant

A person who starts an application in court.

Application

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

B

Best Interests

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

C

Certificate of Divorce

A Certificate of Divorce is the final document issued by the court at the end of a divorce proceeding. The court sends the **parties** a Certificate of Divorce 31 days after the **Divorce Judgment** has been issued, if the Divorce Judgment has not been appealed. A Certificate of Divorce says that the divorce is final; it means that the parties are free to remarry.

Chambers

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

Child Support

Money paid by one parent to the other parent to contribute to the children's living expenses. The amount is based on the **non-custodial**/non-residential parent's gross annual income and is usually paid every month. (See also **Child Support Guidelines**.)

Child Support Guidelines

The Child Support Guidelines are rules for calculating how much **child support** the non-custodial/non-residential parent will have to pay. The guidelines include support tables for each province and territory. There are also rules for calculating special or extraordinary expenses, claims of undue hardship, and child support amounts in cases of **split** or **shared** custody. The federal Child Support Guidelines are used when parents are divorcing or already divorced. The provincial Child Maintenance Guidelines are used in all other situations such as when parents were not married to each other, lived together in a common-law relationship, or are married and separated, but not divorcing.

Conciliator

Conciliation is a mandatory process that begins after one of the parties starts a proceeding in the Supreme Court (Family Division). A conciliator is a court officer who helps you sort out what to do about your situation and what the next steps might be. The conciliator will help

- identify the issues involved
- ensure proper information and documents are exchanged between the parties and given to the court
- clarify the positions of the parties
- reduce conflict between the parties
- facilitate negotiations between the parties
- determine the next step(s) appropriate in resolving the issues

Corollary Relief Judgment

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

Costs

A judge may choose to order costs at the end of a trial. "Costs" refers to money to be paid by one side if there is a contested **hearing** or trial between the parties. Costs are intended to help compensate the successful party for his/her legal expenses as a result of being in court. Costs may also be ordered against a person who fails to follow the court's directions or instructions before or during a trial.

Court Officer

Someone designated by the administration of the court and assigned duties under the *Court Officials Act*.

Custodial Parent

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

Custody

The term custody includes where the children live and also the person who is responsible for making the decisions involving the children. There are different types of custody:

- **Custody**: The children live with one parent and the other parent may have the right to visit with the children. The **custodial** or residential parent is responsible for making decisions about the children but the non-custodial or non-residential parent may be allowed to have some input. This type of custody is also referred to as sole custody.
- **Joint Custody**: The children live with one parent and the other parent has the right to visit with the children. However, the parents make major decisions about the children together.

- **Shared Custody:** Shared custody is defined by the **Child Support Guidelines** as being when either parent exercises the right of access to or has physical custody of a child for not less than 40 per cent of the time over the course of a year.
- **Split Custody:** Split custody is defined by the **Child Support Guidelines** as being when the parents have more than one child together and each parent has custody of one or more of those children.

Custody and Access Statement

A document used in the Family Court that sets out parenting arrangements. The parent requesting a court order for custody or access must complete this document. If the other parent disputes the claim regarding custody or access, then he or she must also complete a Custody and Access Statement.

D

Default

The failure to do something. Examples are not obeying the terms of a court order or not filing documents the court needs.

Divorce Judgment

An order from the court that says that two people are divorced. Unless the husband or wife appeals, the divorce judgment becomes effective on the 31st day after the date of the judgment (see also **Certificate of Divorce**).

Docket

A brief courtroom appearance in front of a judge, to review the status of the court application or any part of it.

E

Evidence

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

Exclusive Possession

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

Exhibit

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

H

Hearing

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

Home Study Assessment

An assessment conducted by a person who has the professional skill to investigate, assess, and report to the court on the needs of the children and the ability of the **parties** to meet those needs. A judge can order an assessment in cases involving **custody** or **access**.

I

Information

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

Interim Order

A temporary order dealing with some matters until the final decision of the court.

L

Leave of the Court

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

Litigation Guardian

A litigation guardian, or guardian *ad litem*, is an adult who appears in court to start or defend a legal proceeding on behalf of a person who is mentally incompetent or who is under the **age of majority**. Certain requirements must be met before a person can act as a litigation guardian, including the need to be represented by a lawyer.

Lying-in Expenses

Money the court orders a party to pay towards the expenses of a single woman during her pregnancy and the birth of her child.

M

Maintenance

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

Maintenance Enforcement Program (MEP)

A provincial government program through which all court orders for **maintenance** or **support** must be filed. The **payor** makes maintenance payments through the program. If the payor fails to make the payments required by the court order, the MEP may take action to enforce the order.

Matrimonial Assets

Property acquired by either or both married spouses before or during their marriage. Generally, the following are not matrimonial assets:

- gifts, inheritances, or trusts
- awards for settlement of damages

- insurance proceeds
- reasonable personal effects
- business assets
- property exempted under a marriage contract or **separation agreement**
- property acquired after **separation**.

Matrimonial Home

Where the married spouses lived before separation.

Mediation

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

N

Non-custodial Parent

The parent who does not live with or have custody of the children.

O

Organizational Pre-trial or Pre-hearing Conference

This is an appearance before a judge or court officer. It takes place before the trial or hearing. At this appearance there will be discussions about the number of witnesses each side is calling, who those witnesses will be, how long the trial will take, whether all the necessary information has been filed, whether further documents will be filed, and whether the trial is ready to proceed.

If you fail to attend an Organizational Pre-trial or Pre-hearing Conference which has been scheduled with a judge, the judge may make an order against you for one or more of the following:

- payment of **child support** or **maintenance**

- directing a third party to disclose information about your income, expenses, assets, debts, employment or residence
- striking your pleadings (court forms) from the court file
- finding you in contempt of court and requiring you to pay a fine or be imprisoned
- making you pay costs
- otherwise deciding all or parts of your case against you

If the Organizational Pre-trial or Pre-hearing Conference is held before a court officer, she or he may recommend to a judge that one or more of these orders be made against you.

These orders can be made in your absence and without hearing from you further. It is important to attend all scheduled Organizational Pre-trial and Pre-hearing Conferences.

P

Parent Information Program

A program developed to assist parents to help their children deal with issues relating to the separation/divorce of their parents.

Parenting Plan

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

Parenting Statement

A document used in the Supreme Court (Family Division) that sets out parenting arrangements. The parent requesting a court order for **custody** or **access** must complete this document. If the other parent disputes the claim regarding custody or access, then he or she must also complete a Parenting Statement.

Parties

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

Payor

The person who pays child or spousal **maintenance** or **support**.

Peace Bond

A formal signed promise to the court not to contact a person or go to a place. If a peace bond is broken, the person who signed it may have to pay a fine or go to jail.

Petition for Divorce

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

Petitioner

A person who starts a divorce proceeding.

Planning Conference

This is an appearance before a judge other than the judge who will hear the case. It takes place before a hearing or trial. At this appearance the parties will discuss the issues and prepare for the hearing or trial.

Possible Father

This word is sometimes used in applications under the Maintenance and Custody Act. A possible father is one or more people who could be the father of a child born to a single woman. All possible fathers can be ordered to pay **maintenance** for the child until the court decides who is not a possible father.

R

Recipient

The person who receives child or spousal **maintenance** or **support**.

Recognizance

An agreement made with the court that includes the following promises:

- to return to court on a certain date
- to stop specific behaviour
- not to have contact with certain people or places.

Respondent

A person against whom an **application** or a **petition for divorce** has been started.

Response

A court document used when responding to an application, an interim application or a variation application. This document is filed by the respondent and may include a counter-application, but does not include an answer and counter-notation.

Rules of Court

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

S

Separation

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

Separation Agreement/Minutes of Settlement

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

Service

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

Settlement Conference

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

Spousal Support

Money paid by one spouse to another to contribute to the other’s living expenses. The support can be paid either by a set amount every month or one lump sum.

Standing

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

Statement of Expenses

A document used in the Supreme Court (Family Division) that sets out all expenses. This document must be completed by both parties, when a party is seeking one or more of the following:

- **child support** in an amount other than the table amount
- child support which includes special or extraordinary expenses

- **spousal support**
- a division of property

Statement of Financial Information

A document used in Family Court and Supreme Court (other than the Family Division) that sets out all sources of gross income and sometimes includes estimates of monthly expenses. If **child support** is being addressed, the statement of financial information must also include the information required by the **Child Support Guidelines**.

Statement of Income

A document used in the Supreme Court (Family Division) that sets all sources of gross income. It is required when you are seeking one or more of the following:

- **child support**
- **spousal support**
- a division of property

If you are only seeking the table amount of child support, then only the parent paying support must provide this statement. You must provide a number of records, such as pay stubs and income tax returns, when completing this document.

Statement of Property

Anyone asking the Supreme Court (Family Division) to decide a question dealing with property or spousal support or both must file a statement of property. Anyone asking the Supreme Court to decide a question dealing with property must file a statement of property. A statement of property sets out what assets a person owns and the debts they owe.

Statement of Special or Extraordinary Expenses

A document used in the Supreme Court (Family Division) that sets out the specific amounts requested as child support for special or extraordinary expenses. These expenses are described in section 7 of the Federal **Child Support Guidelines** and section 7 of the Nova Scotia Child Maintenance Guidelines. The person asking for the support is required to complete this document.

Statement of Undue Hardship Circumstances

A document used in the Supreme Court (Family Division) that sets out the reasons a parent is claiming undue hardship regarding **child support** and provides income information for all members of that parent's household.

Subpoena

A document that requires a person to give **evidence** at a court proceeding.

Support

See **child support** or **spousal support**.

Swear—Affirm

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

V

Variation Application

A variation application is an **application** to change an existing court order. A variation application states what changes the person wants made to the order.

W

Warrant

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

Witnesses

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

