



SEPTEMBER 2022

# Introduction to the Family Justice System & Resources

Representing yourself in the Supreme Court  
Family Division of Nova Scotia

National Self-Represented Litigants Project East

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This manual does not contain legal advice

For further resources visit [www.nsrlpe.com](http://www.nsrlpe.com) or  
email: [nsrlpe@gmail.com](mailto:nsrlpe@gmail.com)

# What is Unified Family Court?

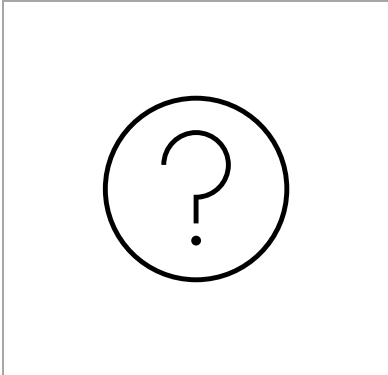


## Unified Family Court in Nova Scotia

- Recently in Nova Scotia, we have moved towards Unified Family Court
- This means that all family law matters are heard within one court including:
  - Property and pension
  - Parenting arrangements
  - Adoption
  - Divorce
  - Child protection and adult protection
  - Child support and spousal support
- All family law matters are dealt with under Rule 59 of the Nova Scotia Civil Procedure Rules, which can be found here: <https://qweri.lexum.com/w/nsc/cpr-en>
- This manual provides some general information about the family law amendments and Unified Family Court in Nova Scotia

# Legal Information vs. Legal Advice

## Legal Information



**Legal information** tells you something general about the law or the legal system. It is not tailored to your case or any specific case. For example, a court clerk can provide you with legal information.

## Legal Advice



**Legal Advice** takes general legal information and applies this information to the specific facts of your case. Only a lawyer can provide you with legal advice. It is illegal for anyone else to give you legal advice (this is the unauthorized practice of law).

### Examples: Legal Information vs. Legal Advice

<p><b>Legal Information</b> would include a definition of “parenting time” or “decision-making responsibility”</p>	<p><b>Legal Advice</b> would be if someone recommended which parenting arrangements you should ask the court for</p>
<p><b>Legal Information</b> would be generally describing the court process and procedures in family court</p>	<p><b>Legal Advice</b> is someone telling you what the best type of application for you to file in court for your situation is</p>
<p><b>Legal Information</b> would include general information about alternative dispute resolution processes like mediation</p>	<p><b>Legal advice</b> is recommending you pursue mediation over another type of dispute resolution process such as going to court</p>

## Which Act Applies?



When starting a family law application, you must determine which law(s) apply to your specific matter.

### **Divorce Act**

The *Divorce Act* applies to parents who are married and are seeking a divorce. The *Divorce Act* also deals with parenting arrangements and support.

### **Parenting and Support Act**

The *Parenting and Support Act* is available to all parents who are parenting apart, regardless of marital status. The Act deals with parenting arrangements, support, and exclusive possession of the home.

*To learn more about family law legislation see:*  
<https://www.nsfamilylaw.ca/other/family-law-legislation>

# General Overview of the Family Court Process

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## SAFETY FIRST: A Note on Family Violence

If you have safety concerns and do not want your contact information shared with the other party or do not feel safe to meet with the other party in person, note this clearly on your application and advise court staff.

If there is a matter that is an emergency, this could be heard by the court early but make sure to state this clearly in your application.

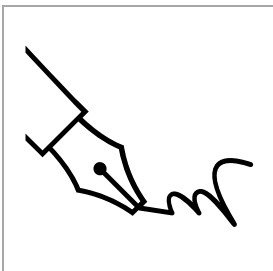
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1. **Application:** File an application (or respond/answer if the other party initiated the application)
2. **Service:** Serve the filed application or response on the other parent
3. **Attend the Court required Parenting Information Session:** This is an education session on the importance of sheltering the children from conflict and info about the court process. This is typically done individually online
4. **Attend Court Conciliation** (required if unrepresented)
5. **Attend Case Conference:** With a judge, go over issues that still require agreement, address deficiencies in documents and schedule future appearances (if agreement not yet reached)
6. **Decide whether to attend a Judicial Settlement Conference:** a separate judge may try to help you settle outstanding issues. This is optional but often recommended
7. **Pre-hearing Case Assignment Conference:** Judge encourages settlement and confirms hearing dates
8. **Hearing:** a trial of the remaining issues not yet agreed upon
9. **Variation Application** (if applicable)

## Deadlines



Deadlines in court are very important



You should always make sure you find out what deadlines apply to you and write them down

### Deadlines are Key:

- If you've been served with legal documents, the document should tell you the deadline for responding. If you are unsure, call the Court and ask for help
- **Don't ignore these deadlines** - if you do miss a document filing deadline or court appearance, the Court could make an order without hearing from you



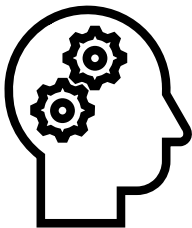
# Settlement

There are many benefits to settlement and in fact, most cases in family court settle before trial. In family court, they promote settlements and “family dispute resolution” (see below). Parents have a duty to protect their child from conflict and to try and resolve their cases outside of court.

There are many potential benefits to settling your matter and not going to trial:

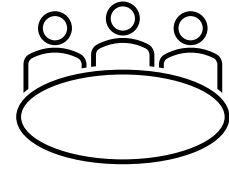
- It is better for the children and everyone involved to reduce conflict as much as possible;
- Trials can be stressful, contentious, lengthy and expensive even if you are not hiring a lawyer;
- You may have to take time off work and spend a lot of time preparing documents, researching the law and preparing to represent yourself at the hearing;
- You may be ordered to pay costs if you lose at a hearing, or if, during the process you refused to take required steps and follow rules of the Court;
- There may be unexpected fees leading up to trial. You need to produce documents, pay for photocopies and you may have to pay for expert witnesses or assessments.

## Settlement Smarts



1. The National Self-Represented Litigants Project (NSRLP) website [www.representingyourselfcanada.com](http://www.representingyourselfcanada.com) has very useful tips!
2. You should have legal advice first so you go in understanding your rights and obligations. You'll negotiate from a stronger position if you do
3. Everybody should consider making it a ground rule that any settlement you come to whether you're negotiating or mediating is conditional on both sides **having the opportunity to get legal advice**

# Conciliation



## What is Conciliation?

Conciliation is a process that may be required at the beginning of the family court process if you are representing yourself. Even if you are not representing yourself, you can request conciliation.

## What to Expect?

During conciliation you will meet with a conciliator (a court officer trained in family law and resolving disputes) to identify what issues you can agree on and what your next steps might need to be in order to address unresolved issues such as:

- Providing the other side with court forms and supporting documentation;
- Discussing opportunities to resolve issues through negotiation or mediation;
- A Conciliator may recommend whether or not a hearing before a judge is appropriate.

**Note:** If you come to a conciliator with an agreement in place, the conciliator can provide the agreement to a judge for approval. This can make it into a legally binding order.

If you agree to something in conciliation, you will have a “cool off” period where you can take the agreement to a lawyer and get independent legal advice. Wherever possible, it is highly recommended you do so. The Court can advise you of options for meeting with a lawyer and may even offer a free lawyer consult through the Court.

# Judicial Settlement Conference



What is a Judicial Settlement Conference?

A **Judicial Settlement Conference** is where you, the other party, your lawyers (if applicable) and an independent judge meet. It is another opportunity for settlement that will be offered to you by the court that may keep you from having to go to trial.

- Unlike a trial, the judge will not make the decision for you, rather, the judge will act like a mediator and try to help you agree to your outstanding issues in dispute.
- Unlike Conciliation, Judicial Settlement Conferences are not mandatory, but are typically recommended by the court.

**Note:** You do not have to settle all outstanding issues, however, it is encouraged to take advantage of settlement options provided to you in family court as this will narrow the issues for trial and helps to keep important decisions in your hands rather than the courts.

- Even if you are unable to settle all outstanding issues, this conference can help you focus the issues that are still in dispute and help prepare for trial.
- Judges may give you an indication of the strengths and weaknesses in your case.
- Judicial Settlement Conferences may take place in the courtroom or a boardroom in the courthouse. They are usually scheduled for 2 hours but could end sooner or last longer.
- The judicial settlement conference judge will not be the same judge as the trial judge and nothing you share at a settlement conference can be used against you at trial.

For more information, see “Settlement Smarts” on Page 9

# Family Dispute Resolution



## What is Family Dispute Resolution?

**Family dispute resolution** is the term for the out of court processes that you may use to resolve your family law issues.

There are in-court dispute resolution processes (such as conciliation or judicial settlement conferences), but there are also out-of-court processes that you may decide to arrange for yourself.

Parties will be encouraged to use a family dispute resolution process *if it is safe and appropriate to do so*.

### Examples of family dispute resolution processes include:

- Mediation
- Negotiation
- Collaborative Law

For more information on mediation, negotiation and collaborative law, see the next page.

\*With these out-of-court processes, you may be able to come to a legally binding agreement and avoid a trial\*

# Family Dispute Resolution Options

**Mediation:** A neutral third party can help you come to an agreement in relation to your family law issues and can help you establish arrangements for parenting time, decision-making responsibility, dividing property, and child or spousal support.

Mediators are neutral and will not provide legal advice (meaning they do not represent either party). In some cases, you may prefer shuttle mediation where you and the other parent do not speak to one another directly.

**Note:** Mediation may be available through the court. Check with your local courthouse. If you are referred through the court, fees are typically determined on a sliding scale, based on income. If you have a low income, you may not have to pay a fee. You can also hire a private mediator, who will typically charge a fee.

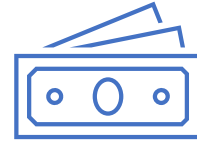
**Negotiation:** Unlike mediation, negotiation doesn't necessarily require a neutral third party to help you in the settlement process. You could negotiate directly with the other parent or with the assistance of a lawyer.

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***Note!** if you negotiate directly with the other party you will want to have a lawyer or the Court review your agreement to ensure that it follows the law and is fair and reasonable.*

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**Collaborative Law:** Collaborative law will be done with the assistance of your own personal representative (a lawyer) and in some cases with the assistance of other professionals, such as a psychologist or financial adviser. Your lawyer and the other party's lawyer will work together to come to an agreement and you both agree not to bring any court applications.



### What are Costs?

A cost award is a monetary award that may be made against a party who failed to undertake required steps ordered by the Court or who unnecessarily prolongs proceedings.

A judge may order costs against a party who takes an unreasonable position or who refuses to accept reasonable offers to settle.

The judge decides whether or not to award costs, and how much to award in your case.

## Parenting Plans

- A parenting plan is a document that sets out how children will be cared for post-separation, including setting out parenting time and decision-making responsibility.
- Justice Canada provides a **free online parenting plan tool** to help you create your own parenting plan. The tool can be accessed here: <https://www.justice.gc.ca/eng/fl-df/parent/ppt-ecppp/form/form.html>
- The parenting plan tool was developed for making parenting arrangements under the *Divorce Act*, although it may be used by parents who are not seeking a divorce.
- You can print off and present the results of the Parenting Plan tool to the other parent or a judge to explain your desired parenting arrangement

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*The NSRLPE has a [series of videos](#), which are a useful companion as you are filling out Justice Canada's free online Parenting Plan Tool. You may want to watch each video prior to filling out the corresponding section of the tool. You will also find a video summarizing some recent changes to terminology.*

*The videos do not contain legal advice but include general information about filling out the parenting plan tool.*

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## New Terminology

You may hear new terminology under the *Divorce Act* and the *Parenting and Support Act*:

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***Parenting Time*** – This is a specific legal term which refers to the time that each parent spends with their child.

***Decision-Making Responsibility*** – This term has been introduced to replace the term of “custody” Decision-making responsibility means who makes decisions about the child included health, education, religion and significant extra-curricular activities, not where the child spends their time.

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For more information watch our video on family law terminology:

<https://youtu.be/rOaJOSnukKA>



New Terminology  
Under the *Divorce  
Act and Parenting  
and Support Act*

NSRLP-E



# Best Interests of the Child



When you are putting together a plan for parenting time and decision-making responsibility, you want to stay focused on the best interests of the child.

This is because our family law system is centered around the best interests of the child rather than the parents' interests or opinion.

There is a list of factors that may help you to put together your application and explain to the court why your proposed parenting arrangements are in the best interests of the child:

- Child's needs given their age
- Child's relationship with each spouse, sibling, grandparent
- Who has cared for the child
- Child's views and preferences
- Cultural and religious upbringing
- Ability and willingness of parent to care for and meet the needs of the child
- Any family violence
- Any other court proceedings that are related to the safety, security and wellbeing of the child

## Family Law changes and Family Violence

Recent changes to family law have highlighted how family violence (including family or parental violence) affects the best interests of the child.

The *Divorce Act* includes a list of examples of which acts may be family violence:

- physical abuse
- sexual abuse
- threats
- harassment, including stalking;
- the failure to provide the necessities of life;
- psychological abuse;
- financial abuse;
- threats to kill or harm an animal or damage property
- killing or harming of an animal or the damaging of property

**NOTE:** If you've experienced family violence, **it is important to seek legal advice as soon as possible** to understand how to protect yourself including:

- How to keep your contact information confidential
- Avoiding contact in court or in conciliation and settlement sessions
- Making safe parenting orders (for example: specified or supervised parenting time, no joint decision-making)
- Safe rules regarding communication
- Prohibitions on travel and/or removing the child from the jurisdiction

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*For more information on family violence, visit the Department of Justice website on Family Violence at:*

<https://www.justice.gc.ca/eng/cj-jp/fv-vf/index.html>

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## Forms and Court Rules

All family law matters in Nova Scotia are now dealt with under Rule 59 of the Civil Procedure Rules

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*The Nova Scotia Family Law website provides a lot of helpful information about the family court process and guides for filling out family court applications:*

<https://www.nsfamilylaw.ca/court-forms/application-guides>

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These guides include:

- Applying for a Family Court Order
- Applying to Change an Order
- Getting a Divorce
- Registering a Separation Agreement
- Interjurisdictional Support Applications (i.e. getting support from someone living outside of Nova Scotia)

The Nova Scotia Family Law website also has a complete list of forms. They can be found here: <https://www.nsfamilylaw.ca/court-forms>

## Bringing or Responding to a Court Application

- Pay close attention to timelines
- If are getting divorced and you live in different counties and you want to use the court closest to you, you may want to start the application first
- You will need to talk to the Registrar or Prothonotary at the court and fill out the forms they provide you
- You may need to fill out an affidavit and get it signed
- An affidavit sets out the relevant facts of the case (who, what, when, where, why)
- An affidavit does **not** set out the law or your opinions
- There are excellent resources on the NSRLP website on affidavits: [www.representingyourselfcanada.com](http://www.representingyourselfcanada.com)

**Affidavits:** An affidavit is a form of giving written evidence, sworn under oath. See the NSRLP’s Primer on “What You Need to Know About Affidavits” under the “SRL Resources tab at: [www.representingyourselfcanada.com](http://www.representingyourselfcanada.com)

# Going to a Hearing



The Nova Scotia government has put together a “Going to Court Manual” with information about representing yourself during the family court process.

You can find the Going to Court Workbook at [www.nsfamilylaw.ca](http://www.nsfamilylaw.ca)



The workbook has lots of information on preparing for and going to a hearing, including:

- Witnesses
- Evidence
- Direct examination and cross-examination
- Appealing your decision

# Staying Organized



**It is extremely important to stay organized!**

## **Organization tips**

- Find out what deadlines apply to you and make sure to abide by them
- Get a large folder to keep all of your documents together (at some point in the proceedings you are going to have to trade these documents with the other side)
- You do not want to make notes on the original court documents directly - especially if these notes are your own commentary on the other side. They may be able to see these notes. Make notes on copies or a separate piece of paper.
- Make sure you jot down as much as possible about what happened in your case – you don't want to forget any facts
- Where there are new facts developing, make sure to continue to keep notes – jot them down right away so you don't forget
- Consider keeping a list of witnesses in case you go to trial - witnesses are people that can speak to important facts in your case

# Evidence



- Evidence is anything that is submitted to the court to prove the truth of the facts claimed by either party.
- During trial, the evidence is examined against the claims made by each side.
- There are three main types of evidence that the Court will accept: oral evidence, evidence by affidavit, and expert evidence.
- You will need to call witnesses for oral evidence and expert evidence

**For more information on Evidence: See the NSRLP’s Evidence Primer under the “SRL Resources” tab at: [www.representingyourselfcanada.com](http://www.representingyourselfcanada.com)**

The Primer includes information on:

- Pleadings
- Arguments
- Types of Evidence
- Rules of Evidence
- Exhibits

## **Importance of Compiling all Documents and Witnesses**

**As a self-represented litigant, you have to bring all the evidence to court yourself. It is important to note that the judge will not go ahead and do their own investigation. The only evidence they will consider is the evidence that you and the other side bring, so that will be the entire case.**

## Parenting Assessments

- A Parenting Capacity Assessment is a potential piece of evidence that will provide the court with information about meeting the best interests of the child
- If you believe an assessment may help the court understand your family's needs better, you can speak to a court officer or a lawyer to understand how to ask the judge to order an assessment
- The assessor will meet with the parents and potentially any family members or teachers if appropriate. The assessor may also meet with the child
- This report will be prepared by a professional and will look at each parent's ability to parent and what parenting arrangements may best meet the child's needs
- There may be a fee, however it is often based on your income and you may not have to pay the whole cost
- The assessor's focus is on what is in the best interests of the child.

**For more information on Parenting Assessments, see the following links:**

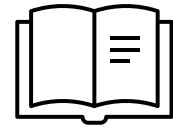
- [https://www.courts.ns.ca/Supreme Court Family/NSSCFD services assessments.htm](https://www.courts.ns.ca/Supreme_Court_Family/NSSCFD_services_assessments.htm)
- <https://novascotia.ca/just/srl/guides/docs/ParentingAssessments.pdf>



## Voice of the Child Report

- Another piece of evidence you may request is a **Voice of the Child Report**.
- These reports are usually reserved for determining parenting arrangements for older children.
- You may want to ask the judge for a Voice of the Child Report if:
  - You and other parent have significant disagreements on the parenting arrangements and what is in the best interests of the child AND,
  - Your child is a pre-teen or teen and can speak to their best interests.
- A Voice of the Child Report comes at a cost to the parents, but this is often on a sliding scale.
- The child does not go on the stand and testify. The child meets with a professional who then writes a report for the court about the child's preferences around parenting issues.
- The child does not make decisions about parenting, but the report may be used as one piece to inform decisions about parenting.

## Legal Research



There are excellent resources on the [NSRLP website](#) that will provide you with the steps to doing your own legal research.

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[www.representingyourselfcanada.com](http://www.representingyourselfcanada.com)

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The NSRLP website includes a [manual](#) that will give you step by step instructions to finding cases on the free CANLII service available to everyone online.

You can also visit your local law library (at law schools and law societies) to ask for assistance on how to conduct legal research.

## Unbundled Legal Services

- Unbundled legal services means a lawyer helps you with a part of your case for a certain amount of hours, but not all of your case
- Not all lawyers provide unbundled legal services
- You can always call any lawyer and ask if they can assist you with one discrete part of your case such as:
  - Legal advice on whether to settle
  - Legal advice on time limits
  - Legal advice on disclosure
  - Legal advice on direct and cross examination
  - Legal advice on how to enforce or vary a parenting order
- The lawyer may want you to sign a Limited Scope Retainer indicating that you understand they are not your lawyer for the full case

*See our directory at:  
<https://representingyourselfcanada.com/directory/> for a list  
of lawyers and other professionals in your area who may offer  
unbundled legal services.*

## Get the Most out of your Legal Time

- If you can afford it, it's always recommended to use a lawyer
- Lawyers know the rules. A lawyer can also keep the emotions out of it - this may be very important especially when it comes to settlement
- Don't use your lawyer appointment to get legal information, consult our website or contact us to find free legal information and free legal advice services
- Make sure you have specific targeted questions for the lawyer. That's the way to maximize summary advice
- Consider unbundled legal services or limited scope retainers
- See the 10 Cost-Effective Tips for working with a lawyer on our website: [www.nsrlpe.com](http://www.nsrlpe.com)

# Resources for Self-Represented Litigants

NOVA SCOTIA	
<b>The Courts of Nova Scotia:</b> <a href="http://courts.ns.ca/">http://courts.ns.ca/</a>	
<p>Provides information for people who are representing themselves in court and on the various courts.</p> <p>You can also find the Civil Procedure Rules of Nova Scotia which govern proceedings in Nova Scotia and court forms.</p>	<p><a href="#">Representing Yourself in Court</a></p> <p><a href="#">Free Legal Clinics offered in Halifax, Yarmouth and Sydney, Cape Breton</a></p> <p><a href="#">Costs and Fees in the Courts</a></p> <p><a href="#">The Civil Procedure Rules of Nova Scotia</a></p> <p><a href="#">Court Forms</a></p>
<b>National Self-Represented Litigants Project East (NSRLP-E):</b> <a href="https://nsrlpe.com">https://nsrlpe.com</a>	
<p>The National Self-Represented Litigants Project – East (NSRLP-E) researches the challenges facing self-represented litigants and creates resources for self-represented litigants.</p>	<p><a href="#">Navigating the Civil Justice System in Nova Scotia Videos</a></p> <p><a href="#">Navigating the Civil Justice System</a> (also available in French)</p> <p><a href="#">How to Collect Money on Your Court Order in Nova Scotia</a></p> <p><a href="#">10 Tips for a Cost-Effective Lawyer-Client Relationship</a> (also available in French)</p>
<b>Legal Aid:</b> <a href="https://www.nslegalaid.ca">https://www.nslegalaid.ca</a>	
<p>Provides legal information, legal advice to all Nova Scotians (no financial qualification) and legal representation for those who meet certain qualifications.</p>	<p><a href="#">Legal Aid Offices in Nova Scotia</a></p>

NATIONAL RESOURCES	
CanLII: <a href="https://www.canlii.org/en/">https://www.canlii.org/en/</a>	
Database of Canadian case law and legislation in both French and English	<a href="#">CanLII database</a>  <a href="#">The Canadian Legal Research and Writing Guide</a>
<b>National Self-Represented Litigants Project (NSRLP):</b> <a href="https://representingyourselfcanada.com">https://representingyourselfcanada.com</a>	
The National Self-Represented Litigants Project (NSRLP) researches the challenges facing self-represented litigants and creates resources for self-represented litigants.	<a href="#">So, You're Representing Yourself</a>  <a href="#">Starter Checklist</a>  <a href="#">Coping with the Courtroom</a>  <a href="#">Settlement Smarts</a>  <a href="#">The McKenzie Friend</a>  <a href="#">How to Order a Court Transcript</a>  <a href="#">Critical Judicial Decisions</a>  <a href="#">Reading and Understanding Case Reports</a>  <a href="#">Working with Opposing Counsel</a>  <a href="#">Considering Mindfulness</a>  <a href="#">The CanLII Primer</a> (also available in French)  <a href="#">A Guide for SRLs with Disabilities</a>  <a href="#">Child Protection Primer</a>  <a href="#">The Evidence Primer</a>  <a href="#">What You Need to Know About Affidavits</a>

**The Canadian Judicial Council:** <https://cjc-ccm.ca/en>

Provides guides to the judicial system and explains the role of judges

[Statement of Principles on Self-Represented Litigants and Accused Persons](#)

[Criminal Law Handbook](#)

[Civil Law Handbook](#)

[Family Law Handbook](#)

**The Federal Court Website:** <https://www.fct-cf.gc.ca/en/home>

The deadlines calculator can help calculate the due date for service and filing of documents

[Deadlines Calculator](#)

## About Us

**The National Self-Represented Litigants Project East (NSRLP-E) is committed to advancing understanding of the challenges and hard choices facing the very large numbers of Atlantic Canadians who now come to court without counsel.**

## Contact Us

Access to Justice & Law Reform Institute  
6061 University Avenue, PO Box 15000  
Halifax, NS B3H 4R2

**Email: [nsrlpe@gmail.com](mailto:nsrlpe@gmail.com)**

**Web: [nsrple.com](http://nsrple.com)**



**National Self-Represented Litigants Project East**  
Access to Justice & Law Reform Institute  
6061 University Avenue, PO Box 15000  
Halifax, NS B3H 4R2