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Navigating the Civil Justice System

Going to the Supreme Court 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.nsrlope.com or
email: nsrlope@gmail.com

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Why Supreme Court?

There are many different courts you may go to for your particular dispute

- Small claims: claims for money damages under \$25,000
- Family Court: if you are asking for child support or parenting time and decision-making responsibility for example
- This manual provides some general information that would apply if you were in **Supreme Court of Nova Scotia**

If your matter involves damages above \$25,000 but you are willing to accept less you may consider going to Small Claims Court

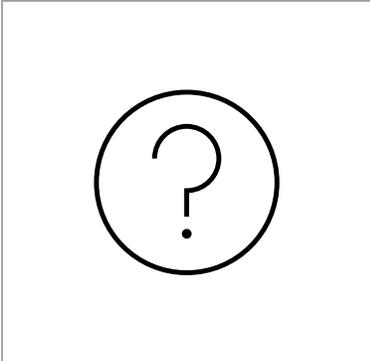
You should get legal advice if you think that Small Claims Court may be an option you are interested in (see pg. 11)

You may find yourself in Supreme Court because your matter:

- Involves Real Estate or Land
- Involves damages above \$25,000

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

Legal Information would include a definition of “intestate succession” – that’s what happens when someone dies without a will	Legal Advice would be if someone told you how much money you are entitled to if a member of your family dies without a will
Legal Information would be generally describing the procedures that someone may take in a lawsuit	Legal Advice is someone telling you what the best type of application for you to file in court for your situation
Legal Information would include general information about alternative dispute resolution processes like mediation	Legal advice is recommending you pursue mediation over another type of dispute resolution process such as going to court

Time Limits

What you need to know:

- There are time limits to bringing a claim in Nova Scotia's courts
- These time limits are set out in a Law called the *Limitation of Actions Act*
- It is always recommended to get at least some legal advice on whether you can still bring a claim under the *Limitation of Actions Act*
- Generally, you have **two years** to bring a claim from the time the wrong was committed or from the time you discovered or ought to have discovered the wrong was committed

E.g. You get your car fixed and two months later the wheels fall off. The limitation period usually wouldn't run from the time the car was fixed, but rather from the time the wheels fell off

Exceptions:

There are **many exceptions** to the 2-year limitation period that may mean you have much more or less than 2 years to bring a claim

- For example, if you are appealing a decision, the deadline is going to be much shorter – it can be as short as 2 weeks

It is VERY important to get some legal advice about the deadlines that apply to you! You can do this at the free legal clinic at Supreme Court

Before you go to Court

You may want to make sure if you are taking someone to court for a money judgment that there is going to be money there at the end of the day to get money on your judgment if you win.

For example:

- *Does the person you are seeking a judgment from have a job?*
- *Do they have a house or a car or a boat?*

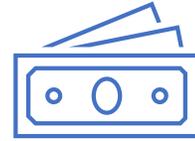
You may want to check if they have judgments against them already which may make it more difficult to collect money.

Searching for Judgments:

In Nova Scotia, you can search to find out if a person has judgments against them and if they have paid these judgments:

1. You can do this at the Personal Property Registry at Access Nova Scotia accessible online: <https://beta.novascotia.ca/search-personal-property-registry>
2. You could also go down to the courthouse and have a search done
3. You can search for judgements on land at your local land registry office

Costs



What are Costs?

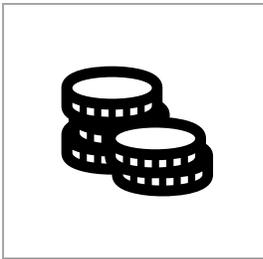
A cost award is a monetary award that may be made against the unsuccessful party at the end of litigation.

- The judge decides whether or not to award costs, and how much to award in your case.
- However, it is important to know that if you are unsuccessful in your case, you may have to pay costs.
- These costs can be significant, especially if the other party is represented by a lawyer.

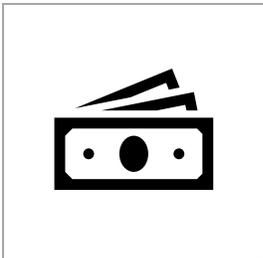
Costs



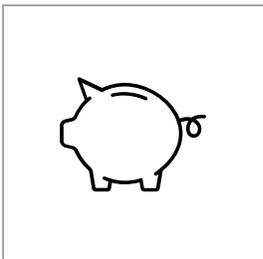
Bringing a matter in Supreme Court means that if you lose your case, you could be responsible for the other side's legal costs.



These can be substantial costs, so you may want to seek legal advice before starting a claim.



If you want to bring a case and don't think you can pay costs, you can ask for a costs waiver but there are specific criteria you would have to meet to in order to be allowed to not pay the other sides' costs if you lose.



If you are representing yourself, you can ask for some of your costs. For example, some of the costs that you incurred such as time away from work.

Civil Procedure Rules

Another thing that can make a case in Supreme Court complicated is that there are strict rules that you have to follow. These are called the Civil Procedure Rules.

The Civil Procedure Rules are available online on the Courts of Nova Scotia Website:

https://www.courts.ns.ca/civil_procedure_rules/cpr_home.htm

These are strict rules that set out all the procedures you will have to follow in Supreme Court.

Which Court?

A claim in Supreme Court can be complicated and time consuming

- It can take many years for a case to go through Supreme Court
- You may be bringing your claim in Supreme Court because you can only bring claims under \$25,000 to Small Claims Court
- One thing you may consider in order to make this process easier and simpler is to bring your claim in Small Claims Court by asking for just less than \$25,000

Reasons to accept less and go to Small Claims Court:

1. There are simpler rules
2. Small Claims Court usually takes place at night so you may not have to miss work to make appearances or get childcare
3. You will not have to pay the other side's lawyer fees if you lose in Small Claims Court

You may want to get some legal advice on whether you should ask for \$25,000 and whether your claim can go to Small Claims Court

Settlement



Should you try to Settle?

There are four reasons to consider this:

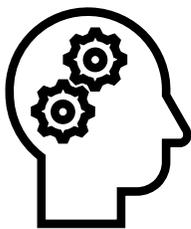
1. Court outcomes are uncertain.
2. A court case in Supreme Court is complicated and could cost you a lot of time, money and stress.
3. You avoid the risk of having to pay some of the other side's legal costs.
4. You avoid additional harm to your relationship with the other party.

The “Pros” of Settlement

- Most cases settle before trial
- Part of the reason for this is because cases can be lengthy and expensive processes even if you are not hiring a lawyer
- You may have to take time off work and spend a lot of time finding documents and questioning witnesses or even being questioned yourself (during discovery)
- If you lose you can be responsible for the other sides legal costs
- It may be very expensive to order court transcripts
- And you need to produce documents and get at least three copies of all the documents
- You may even have to pay for expert witnesses

At the end of the day, even if you settle for less than your case is worth you may have saved time and money in other ways (including potentially paying the cost of the other side’s legal fees)

Settlement Smarts

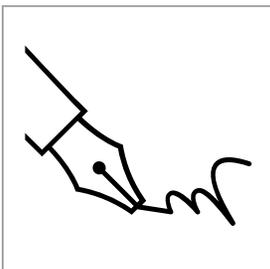


1. The National Self-Represented Litigants Project (NSRLP) website www.representingyourselfcanada.com has very useful tips!
2. You should have legal advice first so you go in understanding your rights and obligations. You'll negotiate from a stronger position if you do
3. Everybody should consider making 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**

Deadlines



Deadlines in court are very important



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



You may have a very good claim but you may lose the right to make that claim if you miss a deadline

Deadlines are Key:

- If you've been served with legal documents commencing a lawsuit against you, the document will tell you the deadline for responding
- **Don't ignore these documents** - if you miss the deadline to respond, the court can make an order against you without hearing from you

Mckenzie Friends

- You may want to bring an assistant with you to give you moral Support
- This is called a McKenzie Friend
- A Mckenzie Friend can help you take notes, help to organize documents, and quietly make suggestions to you
- You will want to explain to the judge that this person will not speak on your behalf but will just sit with you

Resources

The NSRLP have developed several resources if you are interested in learning more or considering bringing a McKenzie Friend to court. They cover what a McKenzie Friend is, how to ask the court for one and deciding whether you may want one:

1. [The McKenzie Friend: Bringing a Support Person with you to Court](#)
2. [Presentation Template](#)
3. [The McKenzie Friend Worksheet](#)

You can find these resources under the “SRL Resources” tab at www.representingyourselfcanada.com

Bringing or Responding to an Action

- Pay close attention to timelines
- 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
- An affidavit does not set out the law or your opinions
- There are excellent resources on the NSRLP website on affidavits: 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

Naming the Right Person in your Court Documents

- If you are going to sue a person you must make sure you have the correct person named in the forms.
- Sometimes you are going to want to name the person's company as opposed to the person themselves.

You should get some legal advice, including advice at the Free Legal Clinic at Supreme Court on whether you have named the correct person or company

Summary Judgment

- A Summary Judgment is a quick judgment you can ask for when there is no defence to the claim. This means on the facts of the case there is no legal point to be tried
- This can be a quick way to get a judgment when the facts of the case are very clear.

This can be complicated so it is recommended to seek legal advice. You should also seek legal advice if someone is seeking summary judgment against you

FACT:

Some research done by the National Self-Represented Litigants Project in Ontario, British Columbia and Alberta has shown that the majority of the time (95% of the time) if the other side has a lawyer and they ask for summary judgment against you, it is likely that they will win their case.

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 lawsuit you are going to have to trade these documents with the other side)
- You do not want to make notes on the documents – especially if these notes are your own commentary on the other side - they may be able to see these notes
- 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 – witnesses are people that can speak to important facts in your case

Evidence

Evidence is defined as 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.

For more information on Evidence: See the NSRLP's Evidence Primer under the "SRL Resources" tab at: www.representingyourselfcanada.com

The Primer includes information on:

- o Pleadings
- o Arguments
- o Types of Evidence
- o Rules of Evidence
- o 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.

Witnesses

- You prove facts in your case by calling witnesses or by giving evidence yourself
- You can prove a fact by asking questions of the other side or their witnesses
- You can introduce documents. This includes everything from photographs, plans, diagrams etc.
- You want to think about, “What do I need to prove?”
- You want to consider whether a fact is likely to be contested or disputed by the other side. If it is, then think about ways you can corroborate the fact

Example: You may want an expert like a car mechanic, to give an estimate on the cost of fixing your car if that is an issue in the case

Disclosure

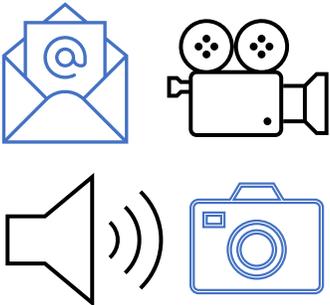
Disclosure: *In civil cases, both sides are required to disclose all relevant information, including electronic information, about the case with a few exceptions*

- Each side has to “disclose” or show the other side all the relevant documents before trial with some exceptions (such as privileged information as between lawyer and client)
- **Relevance** is a complicated concept but it essentially means that it will speak to an issue that the judge has to decide in court
- This can be a very time-consuming process

Disclosing “Documents”

When lawyers talk about documents, this is very broad and can include all relevant:

- **Emails**
- **Text messages**
- **Photographs**
- **Diagrams**
- **Phone records**
- **Sound recording**
- **Videos**



Discovery

***Discovery:** Discovery is when you interview someone, or they interview you, as part of the process of disclosing all relevant information*

- Discovery may mean that you can question witnesses including the other side, or you can be questioned before the trial
- Even if you don't agree to discovery, you could find yourself being ordered to submit to questioning by the other side or their lawyers before trial
- This might happen in a lawyer's boardroom for example with both sides questioning one another about relevant information
- You can seek legal advice on how discovery works and what you have to disclose on discovery

Watch a Trial



Tip: Go to the Supreme Court and watch a Trial

- It is important to understand courtroom etiquette (i.e., what to call the judge, when to speak and how to speak in court)
- It is a good idea to watch a case so you can see how this works
- The [Department of Justice](#) has some tips on representing yourself in court
- The [Legal Information Society of Nova Scotia](#) also has helpful information on representing yourself in court
- You can also hire a lawyer for a couple of hours to answer your questions on how to do any of these things

Direct Examination

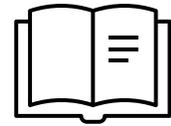
Direct Examination of your witness

- When the witness is your witness that you are bringing to court, you ask them open-ended questions
- This means that you can't suggest the answer
- You want to ask open-ended questions like:
 - Did you see anything? If yes, what did you see?
 - What did you do?
- You want to let them talk, don't direct them to answer

Cross-Examination

- The other side can cross-examine your witnesses
- You can also cross-examine their witnesses
- But you also have to decide whether or not you want to cross-examine a witness. There are two reasons to cross-examine a witness:
 - 1. If they've said something you don't agree with and you want to challenge it
 - 2. You may agree with everything they said but they know additional things about the case that are helpful to your side you want to bring them out
- If neither of these reasons apply – don't cross-examine.
- There's an old saying - never ask a question in cross-examination if you don't already know the answer
- These questions are different from questions on direct examination. They are not open-ended, they are very focused questions that require typically yes/no answers

Legal Research



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

www.representingyourselfcanada.com

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.

An Important Case: *Pintea v. Johns*

As an SRL, it's important to familiarize yourself with the *Pintea v Johns* case.

For an in-depth discussion about the *Pintea* decision, visit the “*Critical Judicial Decisions for Self-Represented Litigants Primer*” under the “SRL Resources” tab at www.representingyourselfcanada.com

This case is especially important if the other side files a “motion to strike” your case because of mistakes you made, or if the judge orders you to pay costs for your mistake. Mistakes might include:

- Filing late
- Filing “too much”
- Missing pieces of evidence
- Missing a hearing

Why would you Reference *Pintea v Johns*?

If you make an easily fixable technical mistake, *Pintea v Johns* argues that the court should be lenient with you as an SRL, and further, that the court should not penalize you with costs, as it might when it's the lawyer who's made the same mistake.

You would want to raise this case as precedent for the fact that the Court is required to be lenient with you as a Self-Represented Litigant

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 whether to go to Small Claims Court
 - Legal advice on time limits
 - Legal advice on disclosure and discovery
 - Legal advice on direct and cross examination
 - Legal advice on how to enforce your judgements if you are successful
- 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

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

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