

## **Glossary of Terms**

### **Access:**

In family law cases, access refers to the right of a parent (or another important person to a child, like a grandparent) who does not have custody of a child to spend time with the child/ren on a regular basis. Access usually includes the right to request and receive information on the child/ren's health, education and well-being. Types of access include reasonable access, specified access, and supervised access.

### **Reasonable Access:**

A type of access which allows the non-custodial parent (or other important person such as a grandparent) to visit with the child/ren at agreed upon times. Reasonable access gives parents the flexibility to make their own arrangements. Reasonable access works where the parents can agree upon what is reasonable.

### **Specified Access:**

A type of access which sets out certain times for the non-custodial parent (or another important person, like a grandparent) to be able to spend time with the child/ren.

### **Supervised Access:**

A type of access which allows the non-custodial parent (or another important person, like a grandparent) to spend time with the child/ren but only with another adult present. Usually, the supervising adult will be named in the order or agreement. Supervised access is generally ordered in situations where the Court believes it is necessary for the welfare or best interests of the child/ren.

### **Access Schedule:**

If parents can agree on a time and place for access, they can make the decisions surrounding this issue. However, if a decision can not be agreed upon, the Court will likely impose an "access schedule". It is a schedule which outlines when the child/ren will spend time with the parent (or other person who has access).

### **Act** [also called Law, Legislation, Statute]:

The laws of the country and provinces are called Acts. Acts are also referred to as statutes and legislation.

### **Adjournment** [also called Postponement]:

The temporary delay in a Court proceeding. A case might be adjourned for a few hours, a few days or for months.

**Adultery** : Sexual relations between a married person and someone other than his or her spouse.

### **Affidavit:**

A written statement or declaration of facts that is sworn or affirmed to be true. A party or witness may sometimes file an affidavit as a way of giving evidence in court.

**Affidavit of Service** [see also Proof of Service]:

An affidavit certifying that a document has been served on a party.

**Affirmation:**

A solemn declaration made by a person to tell the truth in court or in an affidavit.

**Age of Majority:**

The age of majority is 19 years in Newfoundland and Labrador. The age of majority is the age when a person is legally considered an adult for certain purposes. For example, generally when a person is 19, he/she is able to independently enter into contracts. As well, he/she is considered an adult for the purpose of child support which is generally paid until a person reaches 19 (although it is continued in special cases, such as when the person is pursuing post-secondary education). Please note that, under the criminal law, a person can be charged as an adult when they are 18.

**Alternative Dispute Resolution:**

Resolving conflict through means other than going to court. Examples include mediation or arbitration.

**Amicus Curiae:**

Latin for "friend of the court." A lawyer who assists the court during the course of a hearing, to represent a position or interest, usually at the court's request.

**Annulment:**

A declaration by a judge that a marriage is invalid. If a marriage is annulled, it is as if the marriage never legally occurred.

**Appeal:** After a judge has made a decision in a trial or hearing, if either party is not satisfied, they may be entitled to "appeal" the decision to a higher Court. This means asking a higher Court to review the decision. The person seeking to appeal must have proper grounds to appeal. This means there must be a legal reason to appeal (for example, the judge made a mistake when applying the law to the case).

**Appeal Period:**

The time limit within which an appeal can be made.

**Appellant:**

The party or person bringing an appeal.

**Applicant:**

A person who makes or starts an application in court.

**Application:**

1. The commencement of a proceeding in a court by way of filing the appropriate court form.
2. A request to a court for a ruling or decision.

**Application to Vary:**

An application to the Court to change an existing order.

**Best Interests of the Child:**

The test that a Court uses to make decisions about custody and access. The children's needs and well being are always the most important considerations. The Judge will consider many factors when deciding what is in the child's best interest. The Judge must decide what is best for the child, not what is best for either of the parents.

**Binding:**

1. Mandatory (required)
2. When applied to a court decision, required to be followed in cases with similar circumstances.

**Birth Certificate:**

A certificate issued by a government agency which proves that the person named on the certificate was born at a certain place, at a certain time and of certain parents. Possession of a birth certificate is a necessary first step to obtaining other documents such as passports.

**Breach:**

A violation or infraction of a law or obligation.

**Case:**

A matter brought before the court for a decision.

**Case Law:**

Judge-made law and legal decisions from previous cases that form precedents for future cases. Depending on what level of court, case law can be binding or just persuasive.

**Case Management:**

A process that gives parties in dispute scheduled opportunities to discuss the case in order to streamline proceedings.

**Case Management Meeting:**

An informal meeting between a judge and parties or their counsel to discuss and to potentially resolve issues related to the management of the issues and Court proceedings with a view to achieving the following purposes: (a) ensuring that maximum benefit is gained from each trial day; (b) making more efficient use of Court resources; (c)

ensuring adequate and accurate amounts of time are reserved for trial; and (d) providing for the public interest in access to justice in a timely and cost effective manner.

**Certify a Copy:**

To formally acknowledge in writing that a copy is an accurate copy of the original document. The certification of a document acts as an assurance that the photocopy is a true and accurate copy of the original. This is useful where it is impractical to provide or show the original document.

**Certificate of Divorce:** The final document issued by the Court at the end of a divorce proceeding. Either party may apply for this certificate 31 days after the divorce has been granted for a fee. This document says that the divorce is final and means that the parties are free to remarry.

**Child Abuse:**

Any action or series of actions that results in harm, potential for harm, or threat of harm to a child. Abuse can include physical harm, sexual molestation or exploitation, or emotional or psychological harm.

**Child Support:**

The amount a parent pays, usually to the other parent, for the financial support of a child under a court order or agreement.

**Child Support Guidelines:**

The Child Support Guidelines are the rules and tables used to determine how much child support should be paid.

**Child, Youth and Family Services Act:**

This provincial law applies primarily to child protection proceedings such as those where the Director of Child, Youth and Family Services has taken a child into care and asks the Court to determine if the child should be returned to a parent or left in the custody of the Director either temporarily or permanently. It is the law that child protection social workers must operate under in Newfoundland & Labrador.

**Cohabitation Agreement:**

Agreement by two people who are not married to each other, but are living together as a couple or will be living together. The agreement normally outlines their rights and obligations to each other during the time they live together, or in the event they separate.

**Common Law Relationship:**

Two people are considered to be in a common law relationship when they live together in a conjugal (married-like) relationship without having been legally married.

**Consent:**

To give permission or agree to something.

**Consent Order:**

An order made by the court based upon the agreement of the parties.

**Contract:**

A written or oral agreement that is legally binding.

**Corollary Relief Judgment:**

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

**Costs:**

A money award made by a court for expenses in bringing or defending a legal proceeding or step in a proceeding. 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 step in the case.

**Counselling (Family Justice Services):**

For the purpose of Family Justice Services, counselling is provided to help parents and/or children who need help adjusting emotionally to separation.

**Court Officer:**

Court staff who work at the court. In the courtroom court officers open the court, announces the judge, announce cases, record the proceedings and administer oaths for witnesses. Court officers also have other duties outside their courtroom work.

**Custodial Parent:**

The parent who has legal custody of their child/ren.

**Custody (Child Support Guidelines):**

In the Child Support context, custody refers to the percentage of time a child spends in each parent's home. It has no meaning regarding parenting or decision making.

**Custody (Parenting):**

This describes the parenting arrangement made for the care of the children after parents separate. Custody refers to decision making and responsibility for the children. There are different types of custody arrangements.

**Declaration of Fatherhood:**

A decision of a judge as to who is the father of a child where this has been called into question. Sometimes referred to as declaration of paternity.

**Default:**

Default is the failure to do something. Examples are not obeying the terms of a Court order or not filing documents the Court needs.

**Default Judgment:**

A judgment obtained where the respondent fails to defend against the applicant's claim.

**Dispute Resolution:**

Ways to resolve conflict without going before a judge.

**Divorce:** The legal ending of a marriage.

**Divorce Judgment:** An order from the Court that says that two people are divorced. Normally the divorce judgment becomes effective on the 31<sup>st</sup> day after the date of the judgment.

**Docket:**

A list of the Court matters to be heard on a particular day in Court.

**Domestic Contract:**

In family law, a contract between people setting out their obligations towards and expectations of each other. Types of domestic agreements include: marriage contracts, cohabitation agreements and separation agreements.

**Domestic Violence:**

Any or all of the many different forms of abuse and mistreatment that people may experience in their intimate domestic relationships.

**Emergency Protection Order (EPO):**

An EPO is a court order that can be granted quickly in cases of family violence. To get an EPO the applicant needs to have lived in a conjugal relationship or had a child with the person who is being violent. This includes married, common law, and same sex couples. It can allow police to remove the alleged abuser from the home, take away any firearms or weapons, give you temporary custody of the home and the children, and any other conditions the court thinks necessary. The police can make an application for an EPO 24 hours a day. As well, an application for an EPO can be made by an individual, or a lawyer on his/her behalf.

**Enforcement:**

Where one party takes measures under the law or with permission of the court to compel the other party to obey a court order.

**Evidence:**

Statements, information, and things that are used in court to prove or disprove an alleged fact.

**Ex Parte Application:**

Latin term, meaning made in the absence of the opposing party. This is a type of Court application which is made on behalf of only one party, without notice to any other party.

**Examination:**

The questioning of a witness under oath or affirmation.

**Direct Examination:**

The questioning of a witness in a trial or other proceeding, conducted by the party who called the witness to testify.

**Cross Examination:**

The examination of a witness by an opposing party to develop or test the truth of evidence given by the witness during direct examination.

**Exhibit:**

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

**Expert:**

A person who has developed skill and knowledge on a subject and is accepted by a court as being able to form opinions on evidence presented to assist the judge.

**Family Law:**

The laws that deal with family-related issues such as divorce, custody and access, division of property, support, etc.

**Fees:**

1. A charge for services.
2. Court fees payable in various proceedings as set out by regulation.

**File (verb):**

To formally submit a document to the court.

**Financial Statement:**

Document that sets out a person's income, expenses, property, debts and liabilities.

**Garnishee:**

A third party who owes money to a debtor, but must instead pay it to the court or a government agency, to the benefit of a creditor.

**Garnishment:**

A process whereby a person who has a court order for payment can demand money owed to a debtor by someone else. Most often, people garnish wages or bank accounts.

**Hearing:**

Generic [general] label to describe a court proceeding.

**Imputed Income:**

In family law, when a judge finds that the amount of income a parent discloses is not accurate, the judge may attribute additional income to that person for purposes of calculating child support. A judge can also impute income when no income information is provided.

**In Camera:**

Private/closed; said of hearings that are not open to the public or the media.

**Income Support:**

Financial benefits paid by the Provincial government to adults in the province to meet their daily living expenses.

**Interim / Interlocutory Order:**

An order that is valid for a specified period of time or until there is a final order. It does not finally dispose of the case or claim before the Court.

**Interjurisdictional Support Orders Act:**

The *Interjurisdictional Support Orders Act* and the Regulations made under it apply where either the person who is seeking a support order or the person who is being asked to pay support lives outside the Province of Newfoundland and Labrador. It can be used to obtain a new order for child, spousal or partner support or to vary an existing order. It cannot be used to apply for or to vary an order with respect to custody of or access to a child.

**Joint Custody:**

A parenting arrangement where parents make major decisions about the children together. The day-to-day decisions for the children are made by the parents whom the children are with. The children may reside with one parent the majority of the time or they may spend equal amounts of time with both parents.

**Leave of the Court:**

Permission of the judge or court.

**Legal Aid:**

Legal services mainly funded by government to assist those who are financially unable to retain a lawyer privately. The Newfoundland and Labrador Legal Aid Commission administers NL's legal aid program, which includes legal aid offices, duty counsel, and certificates for private lawyers.

**Legislation [also called Act, Law, Statute]:**

See Act.

**Limitation Period:**

The statutory time limit for commencing a legal proceeding. Statutory means set out in law.

**Litigation:**

Legal proceedings before a court.

**Marriage Contract:**

A contract entered into by two persons who are married to each other, or who intend to marry each other, in which they agree on their respective rights and obligations during the marriage, or in case of separation, divorce, annulment or death.

**Matrimonial Home:**

The matrimonial home is the home and land that spouses shared together as a family. It could include a house, trailer, mobile home, and condominium.

Under the *Family Law Act*, both spouses have an equal share of the matrimonial home, regardless of whether it was previously owned by one spouse, how and when it was acquired, or if it was purchased in only one name. This right can be varied by Court order or contract.

**Matrimonial Property:** A term defined by the *Family Law Act*. Matrimonial property includes all property acquired by either or both spouses during the marriage with some exceptions. The exceptions include: gifts, inheritances, trusts, settlements, personal injury awards, personal effects, business assets, property exempted under a marriage contract or separation agreement, family heirlooms and property acquired after separation. Other exemptions may apply.

**Mediation:**

Mediation is a process for working out disagreements with the help of a trained, impartial person (a mediator). Mediation allows disputes to be settled outside of court. Mediators do not judge who is wrong or right. They encourage people to focus on common interests and work towards a mutually acceptable solution.

**Oath:**

A solemn declaration, followed by a swearing to God or an honoured deity, whereby the person promises to tell the truth.

**Parent Information Session:**

Family Justice Services provides Parent Information Sessions for parents who no longer live together. These sessions cover a number of topics including: The emotional, physical and economic impacts of separation and divorce, general legal information, children's needs following separation and developing communication skills.

**Parenting Plan:**

A plan developed by parents which sets out their arrangements for the care of their children after separation. The plan can be informal or can be contained in a separation agreement or court order.

**Party:**

1. A person by or against whom a legal action is brought.
2. The people who make promises to each other in a contract.

**Paternity:**

In law, the question of who is the father of a child.

**Payee:**

The person who is owed money under a court order or agreement. Also called a recipient.

**Payor:**

A person who is required to pay money to another person under a court order or agreement.

**Provisional Order:**

A child support order that is made in one province but has no legal effect until it is confirmed in another province.

**Publication Ban:**

A court order or law that prohibits the publication of information that might identify a complainant, offender, child, or witness, or prohibits the publication of a report of the hearing or trial or a specified part of the hearing or trial.

**Quash:**

To terminate or void something.

**Recalculation:**

This is a process which allows the parties to update child support based on their incomes without going back to court. The service automatically recalculates the amount of child support paid based on annual tax information in cases where a court order or domestic agreement (which has been filed with the court) contains a recalculation clause.

**Recipient:**

In family law cases, a person who is entitled to receive support under an order or agreement. Also called a payee.

**Reciprocating Jurisdiction:**

In family law cases, another province, territory or country that has entered into an agreement with NL for the enforcement of support orders and the making or changing of

support orders. Reciprocating jurisdictions are listed in a regulation under the *Interjurisdictional Support Orders Act*.

**Rescind:**

To cancel.

**Reserved Judgment:**

When the judge postpones making a decision to research, study the law, or review the evidence presented during the proceeding.

**Respondent:**

A person against whom a claim is made in an application, answer or appeal.

**Response:**

The formal answer or reply to a Court application. It should address the claims made by the Applicant and state clearly the reason the Respondent is defending the action.

**Rules of Court:**

The written procedures which govern the proceedings in the Court and which are to be followed by the parties.

**Separation:**

In family law cases, where spouses are living separate and apart and one or both of them has the intention of ending the relationship.

**Separation Agreement:**

Agreement by two people, who cohabited and have separated, in their respective rights and obligations.

**Service:**

The formal delivery of a legal document to the required person in accordance with the rules of court.

**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.

**Shared Custody:**

According to the Child Support Guidelines, shared custody is when the children live at least 40% of the time with each parent. Note: the only place where this term is found in legislation is in the Child Support Guidelines. It is defined in the context of the amount of time a child lives with each parent.

**Sole Custody (Child Support Context):**

The child lives mainly with the person receiving child support.

**Sole Custody (Parenting Context):**

In a sole custody arrangement the children live primarily with one parent who has decision making responsibility. The other parent usually has the right to have the children spend time with him or her and request and receive information about the children.

**Solemnization of Marriage Act:**

In Newfoundland and Labrador, the legal requirements for getting married can be found in the *Solemnization of Marriage Act*.

**Split Custody (Child Support Context):**

According to the Child Support Guidelines, split custody is when the parents have more than one child and each parent has sole custody (as defined by the Child Support Guidelines) of one child. In other words, one or more children live mainly with one parent and one or more children live mainly with the other parent.

**Spousal Support:**

Money paid by one spouse to another to contribute to the other spouse living expenses.

**Standard of Proof:**

The amount of proof needed in order for one side of a dispute to prove their case in court.  
Balance of Probabilities: This is the standard of proof used in civil and family matters.  
Beyond a Reasonable Doubt: This is the standard of proof used in criminal matters. This higher standard of proof reflects the potentially serious consequences (loss of liberty) in criminal cases.

**Standing:**

A party's right to make a legal claim or seek judicial redress.

**Statement of Financial Information:**

See Financial Statement.

**Subpoena (Witness):**

A document that compels a person to attend proceedings as a witness in order to give testimony.

**Substituted Service:**

When the required person can not be served in accordance with the regular rules, an application to serve the documents in a different way can be made.

**Summons:**

A document issued by a Court, agency, board or commission, or another person, requiring a person to attend and to produce documents or other things.

**Support:**

Monetary assistance that a person provides for his or her dependant(s), for example, child support or spousal support.

**Support Enforcement Program:**

The Support Enforcement Program (SEP) is a service provided by the Support Enforcement Division of the provincial Department of Justice. It is a program designed to make the exchange of spousal and/or child support payments run as smoothly as possible.

**Testimony:**

The evidence given by a witness.

**Transcript:**

The record of oral testimony in a legal proceeding that was taken by a court reporter.

**Uncontested:**

A case, or a step in a case, which is not contested by the responding party.

**Undue Hardship:**

In child support cases, a judge may order an amount different than the Child Support Guideline amount when the judge is convinced that ordering that amount would cause excessive financial difficulty to one of the parties involved. In order to convince the court that there is undue hardship, the person claiming it must be able to show that he/she has a good reason to claim undue hardship (the court will only accept a limited number of reasons) and the person must show that his or her household is at a lower standard of living than the other parent's.

**Unjust Enrichment:**

A benefit obtained by one person at the expense of another, without a legal justification for it.

**Variance / Variation:**

Change to an existing order.

**Vary:**

To change.

**Waive:**

To abandon a right or to refrain from insisting on a right or a formality.

**Witness:**

One who, in the course of judicial processes, provides evidence to assist a party or the court in a trial.