

Glossary of Legal Terms

Civil Litigation and the Supreme Court of Nova Scotia

A

Act – also known as *statute*, an act is a law passed by Parliament or a provincial legislature. In many instances (but not always), an act will be the source of law that tells a person whether he or she has a cause of action.

Action – a traditional lawsuit between two or more parties. The parties to an action are called *plaintiff(s)* and *defendant(s)*. An action begins when a plaintiff files Forms 4.02A and 4.02B (Notice of Action and Statement of Claim respectively) with the court. When the parties to an action cannot reach an agreement or find a solution to their problem early in the lawsuit, an action leads to a *trial*. Actions take months and sometimes years before concluding at *trial*. Because an action is a court process, all parties involved need to follow the rules of the court (also known as the *Civil Procedure Rules*) | read CPRs 3; 4; 6.

Adjudicate – means to determine or to settle. When judges adjudicate a matter, they are determining what party is in the right.

Administrative Tribunal – a person or body (for example, a board or a committee) that has the authority to make decisions on a specific area of law. The source of authority for these decision-making bodies is a *statute*. Sometimes a party may need to deal with an administrative tribunal before being able to apply to the NSSC.ⁱ

Tip: When dealing with Administrative Tribunals it may benefit a *SRL* or a litigant in general to read the *act* that gives the Tribunal its powers.

Adversarial System – in Canada's adversarial system each party involved in a court process has the responsibility of putting forward evidence and arguments that will help their case. After listening to the arguments of each side, a judge gives a decision based on the information presented at *trial* or *hearing*.

Affiant – also known as the *deponent*, the affiant is the person who provides a statement in the form of an *affidavit* and swears to its truth and accuracy.

Affidavit – a written and sworn statement that is relevant to the proceedings. The person who provides the statement, or *affiant*, may be subjected to *cross-examination*. Affidavits serve as a substitute to *direct examination*. They are most frequently used in *applications* and *motions* | read CPR 39.

Alternative Dispute Resolution or ADR – ways to resolve a legal or non-legal problem outside the court system. Negotiation, mediation, *arbitration* are examples of alternative processes.

Appeal – after a judge or *administrative tribunal* has ruled on a case, a party has the right to appeal the decision made against him or her to a higher court | read CPR 90.

Application – a legal process similar to a lawsuit but that concludes in a *hearing* “in Chambers” or “in court.” This process is preferred when there is little to no disagreement between the parties about the events/facts that led to a claim. The person with a claim is the “applicant” and the “respondent” defends or responds to the claim | read CPRs 3; 5; 6.

Arbitration – a method of dispute resolution involving one or more neutral third parties called adjudicators. The adjudicator receives evidence and arguments from both parties and has the authority to make a *binding decision* to resolve the dispute.

B

Balance of Probabilities – the *burden of proof* at a *civil trial*. In civil cases, to prove a claim on a balance of probabilities means that a party must satisfy a judge or a jury that his or her claim is more likely than not to be true based on the evidence presented at *trial*. This burden is not the same as proving something *beyond a reasonable doubt*.

Beyond a Reasonable Doubt – the *burden of proof* at a criminal trial. This burden is on the Crown prosecutor to prove each element of the offence so that any reasonable doubts as to the guilt of the accused are erased from the mind of the judge and, or jury.

Binding decision – made by judges or arbitrators, these decisions are obligatory for the parties to follow except in cases when an *appeal* is granted.

Brief – a memorandum written for a judge that sets out the legal arguments made by either the *plaintiff* or the *defendant*. Briefs may be filed on *motions*, *applications* or *actions* | read CPR 40.

Burden of Proof – it is the obligation a party has to prove his or her claim.

C

Case Law – previous decisions by judges that relate to a particular area of law. When researching case law to make a legal argument or otherwise, it is important to notice what court made the previous decision. Case law from higher courts (for example, Supreme Court of Canada) are followed by lower courts (for example, Small Claims Court). Therefore, the Supreme Court of Nova Scotia follows decisions made by the Court of Appeal and the Supreme Court of Canada. Case law is also known as *jurisprudence*.

Case Management Conference – meeting between the judge and the parties (or the parties’ lawyers) where everyone involved tries to make sure that steps are followed to save the time and resources of everyone involved. These conferences may help parties discuss and reach a settlement or decide how to do *discoveries* and exchange documents before *trial* | read CPR 26.

Cause of Action – a cause of action is the necessary set of facts that together give a person a legal right to sue. A particular set of facts, or cause of action, may give rise to one or more legal claims for the plaintiff to use against the defendant.

Example 1: “the man was texting while driving right before he hit John at the crosswalk,” illustrates a cause of action in negligence.

Example 2: “the neighbour’s construction damaged John’s property.” In this case John may have the opportunity to sue his neighbour on *torts* of negligence and nuisance.

Remember that without a cause of action there is no basis to start a legal process.

Chambers – refers to the time dedicated by judges to hear *motions* and shorter *applications*. *Evidence* is presented in the form of *affidavits*. Lawyers and judges do not wear robes | read CPR 23.

Civil Litigation – a court case that involves a *plaintiff* and a *defendant*. The parties involved may be trying to resolve a private dispute or enforce, redress, or protect civil rights.

Civil Procedure Rules or CPRs – court rules written by judges that everyone must follow whether they have a lawyer or not. In Nova Scotia there are 95 Rules and they include blank forms used to go to court. Go to <http://nslaw.nsbs.org/nslaw/> to see a version of the rules with case *law* interpreting the application of the rules.

Contempt – an act of disobedience against the court that interferes with the administration of justice. A person found in contempt of the court could be fined or imprisoned | read CPR 89.

Contingency Fee Agreement – an agreement between the *plaintiff* and a lawyer that says that the lawyer’s fees will be paid depending on success at trial. This means that if the plaintiff is not successful the lawyer may not receive compensation for the work done. A judge must approve this agreement | read CPR 36.15; 77.14.

Costs – the money spent to sue or defend a lawsuit and which parties are allowed to recover. Costs are different from *damages*. Tariffs (found in the *Costs and Fees Act*) help judges determine the amount of money the losing party owes to the winning party’s legal fees | read CPR 77.

Counterclaim – when a *defendant* to an *action* sues the *plaintiff*. It is an independent action that the *defendant* brings to the court’s attention and can be tried at the same time as the *plaintiff’s* initial claim. The counterclaim serves as the defendant’s *statement of claim* against the plaintiff | CPR 4.

Court Officials –people who work at the courthouse or Justice Centre. These include the prothonotary (head clerk), clerks (administrative staff), sheriff and deputy sheriffs, summary advice lawyers (for Supreme Court Family Division) and judges.

Crossclaim – when a *defendant* to an *action* sues another defendant to the *plaintiff’s* original claim | read CPR 4.

Cross-examination – when the opposing party asks your witness questions. These questions help the person asking the questions to weaken a witness's testimony, discredit the witness and draw evidence in favour of their (the cross-examining) party.

D

Damages – an amount of money claimed by the *plaintiff* to compensate for loss or injury caused by the *defendant*. This monetary remedy is the most common *legal remedy*.

Tip: Even when the court awards damages to the plaintiff, the plaintiff may not get the money if the defendant is bankrupt or has no assets. Before asking the court for damages a claimant may avoid unnecessary legal battles by researching whether a defendant has the capacity to pay.

Default Judgment – a court decision in favour of the *plaintiff* that happens if the *defendant* fails to provide a *defence* within the time period shown in the *Notice of Action* that the defendant was served. The consequence of a default judgment is that the *plaintiff* may get what he or she asked for without having to prove it in court. Under specific circumstances, a *defendant* may get a judge to set aside the default judgment made against him or her | read CPR 8.

Defence – to defend an *action* a person needs to respond to the *plaintiff's* claim by filing Forms 4.05A and 4.05B (Notice of Defence and Statement of Defence respectively) with the court. Defences may also be filed in response to a *counterclaim*, *crossclaim*, or a *third party proceeding* | read CPR 4.

Defendant – person who is being sued.

Demand for Notice – a *defendant* may file Form 4.06 (Demand for Notice) with the court in cases where the defendant does not have a defence to the claim made or does not want to defend against the plaintiff's charges. Filing this form will allow the *defendant* to receive updates of events in the proceeding | read CPR 4.06.

Demand for Particulars – when a party wants more *material facts* from what the opposing party provided in his or her original *pleadings* | read CPR 38.08 to 38.10.

Tip: a party that thinks that the opposing party's *pleadings* are too broad or general may ask for particulars to understand better what a *plaintiff's* claim or *defendant's* defence is all about.

Deponent – see *affiant*.

Disclosure – parties are required to disclose, or share with the other party, all *relevant* documents to the lawsuit that are not *privileged*. Documents may be in print (letters, expense reports, etc.) or in electronic format (emails, blogs, facebook messages, etc.) | read CPRs 14; 15; 16; 17.

Discontinuance – by filing a Notice of Discontinuance the plaintiff ends the lawsuit. Sometimes the plaintiff must obtain permission of a judge before he or she is able to discontinue the *action*.

Discovery/Discoveries – also known as *oral discovery*, it is the oral examination of parties and witnesses (if any) by the other party. The questions are meant to lead to *relevant* information about the case. Answers to the questions are recorded and they become sworn evidence that may, depending on the circumstances, be used as *evidence* during *trial*. Discovery takes place before *trial*, during the *discovery stage*. It takes place outside the court in a location chosen by the parties | read CPRs 14; 19.

Discovery Stage – throughout the legal process of a lawsuit, it is the time between the close of *pleadings* and the beginning of *trial*. *Disclosure* and *discoveries* take place at this time. During this stage parties collect information which allows them to determine whether to try to settle or continue to *trial*.

Docket – a document in the courthouse that lists the cases that will be heard in court on that particular day.

Tip: If you have a *hearing* or a *trial* set for the day you are in court, your appointment will be listed in the docket.

E

Evidence – documents, statements, objects and information presented to the court to prove facts that are necessary and relevant to a particular claim.

Ex parte – literally means “by or for one party.” In practice, *ex parte applications* and *motions* are made by one party without giving *notice* to the other party. During an *ex parte hearing* only one party presents information to the judge.

Exhibit – A document, record, or object admitted as evidence in court or before a tribunal. A document attached to and made a part of an affidavit.

F

Federal Court – this court has jurisdiction over all matters involving federal laws and tribunals. It has its own rules of procedure that are different from Nova Scotia’s *CPRs*.

Filing documents – the act of taking forms and submitting them to the court registry. Documents need to follow the *CPRs* to be accepted. Once accepted the forms will be stamped. There are filing fees (for example, \$218.05, plus \$25 + HST to file a Notice of Action) that need to be paid. The office of the prothonotary has information for people who do not need to pay filing fees.

G

General damages – an amount of money that is not specified; this amount is determined by the judge during trial or at a hearing.

Tip: Unlike an assessment of a broken door, “pain and suffering” don’t have a restricted number assigned to them. The dollar amount a plaintiff may get will depend on the circumstances of the case.

H

Hearing – the final stage in the *application* process. Hearings have more relaxed standards than *trials* for parties to present evidence and follow procedure.

Hearsay – when a witness tells what another person said during *testimony*. The law of evidence.

I

Injunction – injunctions are court orders that can prohibit or force a party to do something.

Interlocutory Application – See *motions*. Under the old *CPRs* (pre-2009) motions were known as interlocutory applications.

Interlocutory Judgment – it determines an issue within an ongoing case but does not affect the final result of the case.

Interlocutory Order or Interim Order – an order that makes a party involved in a case do something before the trial; these orders are not the final outcome of the case.

Interrogatories – written questions sent by one party to the other party or party witnesses. Questions tend to be straightforward. Interrogatories are not a substitute to *oral discovery*. Answers to interrogatories must be sworn and may be used as evidence at *trial* | read CPR 19.

J

Jurisprudence – See *case law*. It may also mean the science or philosophy of law.

Judicial Review – similar to an *appeal*, when a party gets a decision against them from an *administrative tribunal* he or she may apply to the *NSSC* to ask that the decision be overturned (changed).

Jurisdiction – the court’s power or authority to hear and determine an issue; the scope of authority a tribunal, court, or decision-making body has. Not all courts have the same jurisdiction or capacity to *adjudicate*. In Canada some courts are statute-based and others have inherent jurisdiction. Statute-based courts, like small claims court, only have authority on matters outlined in the *statute* that creates them. Courts of inherent jurisdiction, like the *NSSC* and the Supreme Court of Canada, get their authority from their very nature as supreme courts.

Tip: Before filing documents with any court, a person should determine whether the court that he or she wants to use has jurisdiction to hear the claim.ⁱⁱ If a court has no jurisdiction, then it cannot do anything for the person with a legal problem. This can happen when the parties involved live out of province. A good place to

start to determine whether the Supreme Court of Nova Scotia has jurisdiction is the *Court Jurisdiction and Proceedings Transfer Act*.

Jury Trial – in civil court, a person may choose trial by jury as of right under the *Judicature Act*. A civil jury consists of seven persons. Civil juries do not need to reach a unanimous decision; a majority of five out of seven jurors will conclude deliberations.

L

Legal advice – a recommendation, opinion, or strategy made by a lawyer to a person with a legal problem. Legal advice addresses a person's particular legal problem and is tailored to the person's needs and options. Only lawyers can give legal advice. Other service providers including court staff and legal information services may help you access *legal information*, but cannot provide legal advice.

Legal Aid – a program to assist people who need a lawyer but are not able to afford one. To use this service a person needs to fill a form to prove that he or she qualifies for the service. For more information visit www.nslegalaid.ca.

Legal information – speaks to general aspects and options a person may choose about her or his particular legal problem. Legal information, unlike *legal advice*, is not tailored to a person's particular situation. Legal information may include definitions, explanations, general information and referrals to resources to help a person deal with a legal problem. Legal information is not an opinion of what a person should do but looks to provide a person with a legal problem meaningful information so that the person can choose what course of action is best for the person to follow.

Legal Remedy – solutions or outcomes available to right a wrong, prevent a wrong, or compensate for a wrong. For example, *damages* and *injunctions* are legal remedies.

Limitation Period– the time a *plaintiff* has to start a lawsuit. If a person waits too long and the limitation period runs out the plaintiff risks losing his or her right to have a court hear a claim. Limitation periods depend on the *cause of action* the plaintiff has.

Tip: Many limitation periods in Nova Scotia are contained in the *Statute of Limitations*. This may be a good place to start looking whether a claim is within their limitation period or not.

Liquidated Damages – a claim where the amount sued for can easily be determined by referring to documents or other evidence.

Litigation – the process of a lawsuit. A person may be involved in litigation as a *plaintiff* or as a *defendant*.

M

Mediation – a non-binding process in which a neutral third party with no decision-making authority attempts to facilitate a settlement between disputing parties. Mediation is usually private. Parties choose mediation voluntarily to reach a solution to their problem.

Tip: Even when a court process has begun, parties can rely on mediation services to solve their dispute and avoid going to trial.

Motion – a step taken by one party against the other in the middle of litigation. A party filing for a motion is asking the court to direct the other party to do something according to the *CPRs*. “Moving party” is the name of the party making a motion. “Responding party” is the opposing party or the party against the motion.

To file a motion the moving party will need to prepare and file: 1) Notice of Motion, 2) Affidavit(s), 3) Draft Order (what the party wants) 4) Brief | read *CPRs* 22 to 30.ⁱⁱⁱ

N

Notice of Action – the form used to start an action in Nova Scotia. It is Form 4.02A under the *CPRs*. With this form a party informs the court and the *defendant* that the *plaintiff* has a claim and has started a legal action.

Notice of Application – the first document in the *application* process. This notice informs the court and the respondent that the applicant wants the court to make an order against the respondent.

Notice of Contest – this is the response to a *Notice of Application*. In an *application*, this is the equivalent to filing a defence.

O

Oral Discovery – see *discovery*.

Order – a court document that records the decision of the court at the end of a *hearing*, *motion*, or *trial*. The document tells parties what they should do. Most common orders tell the *defendant/respondent* to pay the *plaintiff/applicant* or an order dismissing the *plaintiff/applicant's* claim | read *CPR* 78.

Originating Documents – the documents or forms that start or are the “origin” of a legal process. In an *action* these documents are the *Notice of Action* and the *Statement of Claim*. In an *application* these documents is a *Notice of Application*.^{iv}

P

Particulars – see *demand for particulars*.

Plaintiff – the person, institution (for example government) or corporation that claims to have been wronged. The *plaintiff* will have to prove the claim against the *defendant* at *trial* unless the parties resolve the dispute earlier in the process.

Pleadings – a term for all the documents in an *action* for the parties to express their claims and defences | read CPRs 4; 38.^v

Prothonotary – the person that who receives all civil litigation documents for filing with the court. Under the *CPRs* prothonotaries also have the authority to issue specific *orders*.^{vi}

Privilege – refers to a rule of evidence where the exchanges between a person and his or her lawyer, or another individual, do not need to be disclosed to the other party during the *discovery stage* or at trial | read CPR 14.05.

R

Relevant – this term is specific to process and to the law of evidence. It refers to the information, facts and law that matter to an ongoing legal proceeding | read CPR 14.01.

Tip: A good question a person may ask herself or himself to determine relevance is – is this document, *testimony*, electronic file, or other object important for the judge or jury to reach a decision about the case?

S

Service – Service means delivering court documents directly to the other party to make sure they are notified about the court process. In most cases this means simply handing the documents, in-person, to the other party. The *plaintiff* cannot serve the *defendant*. You can ask a friend to serve the defendant or hire someone. “Process servers” or “Bailiffs” deliver court documents as their business, and will serve your documents for a fee. For more information about service visit <<http://www.nsfamilylaw.ca/processes/addresses-service-giving-other-person-notice-proceeding>>.

Self-represented Litigants or SRLs – a person who goes to court without relying on a lawyer. A company may be self-represented as well if the owners choose to proceed without legal representation. A SRL will be required to do legal research, collect and disclose documents to the court and to the other party involved in the *litigation*, understand and follow the rules of the court (*CPRs*), and make his or her own decisions.

Simplified Procedure – a less formal process under the *CPRs* that is for use for people claiming less than \$100,000 in damages | read CPR 57 and 58.

Special Damages – compensation claimed that may be quantified. For example, loss of income, medical bills, property damage.

Supreme Court of Nova Scotia or NSSC – is the highest trial court in the province Visit http://www.courts.ns.ca/Courthouse_Locations/Courthouse_Locations_Map.htm for court locations across NS. Or visit <http://www.courts.ns.ca/> and look for the “Contact A Court” link to find information about the closest court to you.

Statement of Claim – a form of *pleadings*. It is the second form necessary to start an action. It is form 4.02B under the *CPRs*.

Subpoena – a document authorized by a judge to compel or force a witness to testify at discovery or at trial.

T

Testimony – a form of evidence that is given by a witness. It can be written or spoken.

Trial – A trial is the final step in an *action*. At this point the parties will present their case to a judge alone or to a judge and a jury. A day in trial costs \$2000 on average | read CPR 52.

Examples:

ⁱ Some Administrative Tribunals in Nova Scotia are:

- Liquor Licensing Board
- Utility Review Board
- Unemployment Insurance Commission
- Municipal development appeal boards
- Residential Tenancies Board
- Administrative and Professional/Disciplinary Boards within the Health Industry

ⁱⁱ Examples of lack of jurisdiction:

- The Small Claims Court will not listen to claims that are over \$25,000 because that is the limit in the statute that gives the court its authority.
- The NSSC **might** not have the authority to *adjudicate* a contract dispute that arose in Ontario. **If** the defending party challenges the jurisdiction of the claim, the *plaintiff* would have to prove that the NSSC has jurisdiction according to the *Court Jurisdiction and Proceedings Transfer Act*.

ⁱⁱⁱ Examples of motions:

- motion to disclose documents
- motion for substitute service
- motion to amend the pleadings
- motion to extend time to file a defence

Depending on the motion a party wants to make, he or she will have to research the *case law* that informs the law around that motion.

For example: Peter sued Duke. They are now in the discovery stage but Duke does not want to show certain email exchanges he had with Debora. If Peter thinks that the emails are *relevant* to his claim then he has to file a motion for Duke to disclose the documents. Duke, in response may argue that the emails are not relevant, or privileged. **Each party** will have to persuade the judge that the *case law* supports their claim. For instance, Peter will have to research and argue about what other cases have said about relevance in decisions that deal with the disclosure of documents. If Peter is successful the the judge will issue an order that will direct Duke to show Peter the emails. If Duke defeats the motion, then he can keep the emails private.

^{iv} For a list of originating documents, or documents that trigger a process (hearing, lawsuit), see CPR 82.09(2).

^v Examples of pleadings (name of the document asked by the court):

Statement of Claim	Statement of Defence
Statement of Crossclaim	Statement of Defence to Crossclaim
Statement of Counterclaim	Statement of Defence to Counterclaim
Statement of Third Party Claim	Statement of Defence to Third Party Claim

^{vi} For example, according to *CPR* 9, a prothonotary may issue a *default judgment*.