



Guide to
Applying for a Review
of a Guardianship Order or
a Representation Order

How to Apply for a Review of a Guardianship Order or a Representation Order

This guide gives basic information on the process of applying to court to have a guardianship order or a representation order reviewed.

You may need to have a [guardianship order](#) or a representation order reviewed by the Nova Scotia supreme Court if any of the following are true:

If you have a guardian or representative:

- You have a guardian appointed to make decisions for you, but **you can make some or all decisions for yourself**.
- You have a representative appointed to make decisions for you, and there has been **a change in your ability** to make decisions for yourself.

If you were appointed as a guardian or representative:

- You were appointed as a guardian for an adult under the Incompetent Persons Act and believe that **the adult can make some or all of their own decisions**.
- You were appointed as a representative for an adult under the Adult Capacity and Decision-making Act and you believe there has been **a change in the adult's ability** to make decisions.
- You were appointed as a representative for an adult and were **ordered by the court to come back for a review**.

If you have concerns:

- You have **concerns** about a guardian, a representative, a guardianship order or representation order, or an adult under such an order and would like to have the court review the order.

Concerns about a representation or guardianship order?

Any person—including the adult—can contact the Office of the Public Trustee to make a complaint if they have concerns. For example, they may wish to make a complaint if they think a guardian or a representative is acting beyond the decision-making authority given to them in the court order or beyond what the adult actually needs, or if they think a guardian or representative is abusing the adult or otherwise acting inappropriately. Anyone with concerns may also apply to the court for a review of the guardianship order or representation order.



Read this entire guide carefully before you start working on your review application.

Overview:

If you are a **guardian or representative**, you can apply to the court for a review of an existing guardianship or representation order.

Your review application should include:

- An affidavit setting out why the review of the court order is necessary
- If you are asking for the order to be changed or continued, a recent capacity assessment
- If you are asking for the order to be changed or continued, a representation plan
- If you are responsible for the adult's financial matters, an account of transactions and financial activities since the order or most recent review
- If you are responsible for the adult's personal and health care decision-making, a report on these
- If you were required to report to the Office of the Public Trustee under an existing representation order, any accounts and reports or information submitted to that office since the last order or review
- Any other information the court wants

The person applying to the court for the review can prepare the review application or hire a lawyer to do it. To speak with or hire a lawyer, the Lawyer Referral Service operated by the Legal Information Society of Nova Scotia (LISNS) can be contacted. The Lawyer Referral Service will provide the names of several local lawyers interested in this area of practice. To contact the Lawyer Referral Service, visit legalinfo.org/how-lisns-can-help/i-need-a-lawyer.html You may also be eligible for legal help from a lawyer at Nova Scotia Legal Aid. To contact Nova Scotia Legal Aid, visit nslegalaid.ca

If you are an **adult** under a representation order or a guardianship order and you want the order reviewed, you can apply to the court. You will tell the court about your concerns and what you would like to happen in an affidavit. Your application package should also include a Notice of Application (in Chambers), a Brief and a draft Order. When the court considers your review application, it may require the existing guardian or representative to file any of the information listed above. You can get legal help from a lawyer at Nova Scotia Legal Aid. To contact Nova Scotia Legal Aid, visit nslegalaid.ca You can also make a complaint to the Office of the Public Trustee, by calling **902-424-7760**.

If you are **any other interested person** with concerns about a guardian, a representative, a guardianship order or representation order, or an adult under such an order and you would like the court to review the order, you can apply to the court. You will tell the court about your concerns and what you would like to happen in an affidavit. Your application package should also include a Notice of Application (in Chambers), a Brief and a draft Order. When the court considers your review application, it may require the existing guardian or representative to file any of the information listed above. Remember that you can prepare

the application yourself or you may hire a lawyer to do it. To speak with or hire a lawyer, the Lawyer Referral Service operated by the Legal Information Society of Nova Scotia (LISNS) can be contacted. The Lawyer Referral Service will provide the names of several local lawyers interested in this area of practice. To contact the Lawyer Referral Service, visit legalinfo.org/how-lisns-can-help/i-need-a-lawyer.html. You may be eligible for legal help from a lawyer at Nova Scotia Legal Aid. To contact Nova Scotia Legal Aid, visit nslegalaid.ca. You can also make a complaint to the Office of the Public Trustee, by calling 902-424-7760.

If the adult wishes to meet with a lawyer to discuss their legal rights and options relating to a review application, or to have a lawyer represent them on the application, the adult can get legal support from Nova Scotia Legal Aid.

When you are applying to court for a review, the process has a number of steps:

Step 1 – Prepare to make an application to the court

- Get a capacity assessment, if needed
- Prepare an applicant's affidavit
- Prepare a Representation Plan, if needed
- Prepare a Notice of Application
- Put the court application package together

Step 2 – Apply to the court and attend a hearing

- File and serve the application — and prove you did it
- Be aware that your application may be opposed — if so, you will be served a copy
- Attend the court hearing

Step 3 – After a representation order is obtained

- Inform the represented adult about the representation order
- File another Representation Plan, if ordered by the court

Step 1 – Prepare to make an application to the court

Get a capacity assessment, if needed

If you are asking the court to change or continue the guardianship order or representation order as part of the review, the adult's ability to make decisions must be assessed by a professionally qualified capacity assessor. The assessor will prepare a capacity assessment report. The capacity assessment report includes the capacity assessor's determination whether the adult is unable to make decisions in one or more areas.

The capacity assessment report is presented to the court. The court will only give decision-making authority to the representative in areas where the adult is unable to make their own decisions.

Doctors and psychologists can carry out capacity assessments. Occupational therapists, registered nurses, and social workers certified to carry out capacity assessments are also able to do them. It is important that capacity assessments are done at times and in environments where the adult will be most comfortable and at ease. The adult should be asked if they want to be assessed and where they would like to be assessed, if possible.

Before conducting an assessment, a capacity assessor must ensure that the adult has been advised of the reasons for which the assessment was requested and their right to refuse to undergo or continue with the capacity assessment. If the adult does not appear capable of consenting to the assessment, the assessor may only conduct an assessment if there are reasonable grounds to believe the adult is incapable of making decisions about any matter to be assessed.

Capacity assessors often charge for their services in conducting the capacity assessment and completing the capacity assessment report. The full cost of the assessment should be discussed prior to the assessment taking place.

Prepare an applicant's affidavit

The applicant's affidavit is part of the evidence the court will use in its review. An affidavit is a sworn statement witnessed by a commissioner of oaths. The affidavit should include information that the court will need to consider in its review: information about the adult, why the review is necessary, whether the existing order should be changed or continued, and other matters.

Prepare a Representation Plan, if needed

If you are asking the court to change or continue the guardianship order or representation order as part of the review, the court may require the guardian or representative to prepare a Representation Plan. The Representation Plan is a form ([link here](#)) that outlines the major decisions the representative thinks will be required for the adult. The plan also asks how

the proposed representative will include the adult in the decision-making, how the adult will be informed of decisions when they are not able to participate, and how the proposed representative will encourage the adult to become able to care for himself or herself and to make decisions in matters under the representative's authority.

TIP

Keep all your documents and papers in a file as you work through the process. Type or print documents and ensure they are neat and legible.

Prepare a Notice of Application and put the application package together

The Notice of Application is a form that describes the order the court is being asked to make. The Notice of Application lists the evidence being provided to the court.

The Notice of Application lists the name(s) of the applicant(s) for the order, and the names of the respondents to the application. The adult who is the subject of the application must be named as a respondent. Any person, other than the applicant, who is proposed as a representative or alternate representative must also be named as a respondent.

The Notice of Application includes the date, time, and location where the application will be heard by the Court. Once the Notice is prepared, the applicant should contact the Nova Scotia Supreme Court for this information.

Once you have created the Notice of Application, you can put the court application package together, including the:

- Notice of Application
- Applicant's Affidavit (sworn statement witnessed by a commissioner of oaths)
- Capacity Assessment Report, if needed (form) (prepared by a qualified medical assessor)
- Representation Plan, if needed (form)

Information the representative may be required to provide

On a review of a guardianship order or a representation order, the guardian or representative may be asked by the court to provide certain information. If you are the guardian or the representative, be prepared to provide:

- an account of transactions and financial activities since the order or most recent review (if you are responsible for the adult's financial matters)
- a report on the adult's personal and health care decision-making (if you are responsible for personal and health care decisions)
- any accounts and reports or information submitted to the Office of the Public Trustee since the last order or review (if you were required to report to the Office of the Public Trustee under an existing representation order)

Step 2 – Application Process

File and serve the application

The review application package must be filed with the court. Copies of the review application package must then be **delivered in person** (served) to:

- The adult
- The guardian or representative (if different from the applicant)
- Any person named as a respondent on the Notice of Application

The Notice of Application must also be **sent** to the following people:

- The adult's spouse, parents, children over 19, and siblings over 19
- A guardian for the adult appointed under the Incompetent Persons Act
- An attorney for the adult appointed by a power of attorney
- A delegate for the adult appointed by a personal directive
- If the adult lives in a care facility (e.g., a nursing home) the director of the facility

If the applicant is concerned that one or more of the people on the above list should not be given notice of the application ahead of time, the court can permit the applicant not to send notice to that person. A request for permission not to notify someone on the list should be made to the court with the application.

Deadline: The application package must be personally delivered to the respondents, and the Notice of Application must be sent to the other people on the above list, no later than **25 days** before the date when the application is to be heard by the court. This does not include the day when the documents are delivered or sent, or the day of the hearing. It also does not include Saturdays, Sundays or holidays.

Once the review application package has been personally delivered to the adult, the guardian or representative, and any person named as a respondent, and the Notice of Application has been sent to the others on the list, the court will require an affidavit of service. The affidavit of service states how the required documents were delivered or sent to the required persons, and when.

TIP

You can fill out the Notice of Application, Applicant's Affidavit, Representation Plan (Form 2), and Affidavit of Service online and then print them off, if you wish. If you fill the forms out on the computer, be sure to save each document needed for the application process and print two copies of each document. As these are legal documents that will be reviewed by the court, it is important to ensure the documents appear tidy and professional.

In very special circumstances, such as where an order is urgently needed, the court can grant a temporary representation order without requiring all of the normal application information, or all of the documents to be delivered or sent to the required persons by the deadline. A lawyer can assist with this process.

Be aware that your application may be opposed – if so, you will be served a copy of the Notice of Contest

The adult, any other named respondent on the application, a person who is entitled to get notice of the application, or any other interested person with the permission of the court, may file a notice of contest to bring other information or concerns about the application to the court's attention. [A person who files a notice of contest is entitled to receive a copy of any document filed with the court in the proceeding and notice of all further steps in the proceeding.

Attend the court hearing

The hearing is where the court reviews the evidence presented and considers whether it will grant the order.

The applicant, and any other person who received the Notice of Application and who wishes to present evidence or make their views known to the court should proceed to the court on the hearing date. Check with the clerk to find out the courtroom where the application will be heard. Arrive at least 15 minutes early to ensure your materials are organized and that you are prepared to speak to the judge. The judge in Supreme Court is referred to as "My Lord" or "My Lady."

When the court announces the review application, the applicant should introduce him or herself. The applicant should tell the judge if there are other people present who wish to present evidence or make their views known to the court, including the adult. The applicant should be prepared to describe why the review is necessary and the order that is being requested.

The judge may ask to hear from the adult and any other people who have attended. The judge may ask questions. The judge may ask for more information or documentation. The judge may require the representative to make changes to the representation plan or to file an updated representation plan. The judge may grant the order at the hearing, or may do so later, after the judge has had time to consider the information presented. Alternatively, the judge may refuse to grant the order.

Step 3 – After a review application has been heard

Inform the adult about the review

If the adult did not participate in the review application, it is a duty of the representative to inform the adult about what happened and whether any change has been made to the guardianship order or representation order as soon as possible and in a manner that the adult is likely to best understand.

If the court orders a follow-up on the Representation Plan

If incomplete information was available to the representative at the time the review application was being prepared, the court may ask the representative to file an updated Representation Plan with the court within a specified time period.

For more information on adult representation, please go to the Office of the Public Trustee's website at novascotia.ca/just/pto

