

How to Make a Motion for State Appointed Counsel in a Child Protection Appeal

This guide explains how to apply to the court for state appointed counsel if you cannot get Legal Aid.

BEFORE you make this motion, you NEED to do these things:

1. File a Notice of Appeal with the Nova Scotia Court of Appeal.
2. Apply for Legal Aid through Nova Scotia Legal Aid.
3. If you are denied Legal Aid, you **MUST** appeal that decision to the Legal Aid Appeal Committee.

Attached to this guide are:

- 1) A Notice of Motion
- 2) An Affidavit

You need to fill these out based on the instructions in this guide.

A “motion” is the legal word for “a request”. When you make a motion, you are asking a judge to do something. In this case, you are asking a judge of the Nova Scotia Court of Appeal to order the Nova Scotia Government to hire and pay for a lawyer for you. If the judge says yes, the “motion is granted”.

“State Appointed Counsel” are either private or Legal Aid lawyers. If your motion is granted, you will have the help and support of a lawyer, at no cost to you.

Why are you making this motion?

For child protection appeals, you can ask the Nova Scotia Court of Appeal to have the Province appoint a lawyer to help you. This can only happen if the Court thinks it is **necessary**. This type of motion is not common and requires a lot of information from you.

When you are making this motion, the Court will rely on past cases setting out the law. Some important decisions are:

- [New Brunswick \(Minister of Health and Community Services\) v. G. \(J.\), \[1999\] 3 SCR 46](#)
- [P.B. v. Nova Scotia \(Minister of Community Services\), 2014 NSCA 113](#)
- [L.F. v. Children’s Aid Society of Halifax, 2005 NSCA 49](#)
- [D.B. v A.B., 2016 NSCA 43](#)

You can find these cases at a law library, such as the Nova Scotia Barristers’ Society Library located on the 7th floor of the Law Courts in Halifax. You can also find them online at www.canlii.org.

Take the time to look through these cases and think about how they apply to your case.

When you make the motion, you have to PROVE these three things:

- (i) You cannot have a fair hearing if you do not have a lawyer (for example, by showing how serious the case is, how complicated the case is, and your ability to represent yourself and participate in the hearing);
- (ii) You do not have enough money to get a lawyer and have been denied Legal Aid; and,
- (iii) Your appeal has merit and is not a waste of court time.

To prove this, you will write an Affidavit (see the attached sample form for a template). This is a court document that lets you provide all the necessary and relevant evidence to the court. Once you have completed your affidavit, you must have it sworn or affirmed to be true before a lawyer or commissioner of oaths. This can be done at any Courthouse.

Examples of useful information to include in your Affidavit could be:

- Your level of education
- Your work or business background
- Your reading and writing skills
- Your communication skills
- Your English language skills, if English is not your first language
- Any help you can get from friends or family
- Whether you have represented yourself in court before and how familiar you are with the court process
- How well you understand your appeal and its legal issues

You will also be asked to explain to the court:

- The mistake(s) you say the trial judge made
- Why you need a lawyer to help you appeal
- Why you think your appeal should succeed
- Why you cannot afford a lawyer
- Any information about how you have tried to retain a lawyer privately or through Legal Aid

With your Affidavit, provide documents showing how much money you make (income tax returns, pay stubs, benefit stubs, etc.)

You must also fill out the Notice of Motion form (see the attached sample form for a template). This is a fill-in-the-blank document. You must include the court file number, the names of the parties as they appear in your Notice of Appeal, and the date you have chosen for your chambers hearing. This can be any Thursday at 10:00 a.m. Choose a Thursday that is at least four clear business days away and put that date in the form. Holidays and weekends are not counted when counting “clear” days. (for example, if there are no holidays that week, four clear days means the Thursday before the Thursday you have chosen). Once the form is completed, you must sign and date the form.

The Courts of Nova Scotia website offers a [video tutorial](#) and other useful resources for filing an appeal. There are also form filling clinics provided by [ReachABILITY](#) and the [Windsor office of Legal Aid](#). If you need help, they may be able to assist you with filling out the necessary paperwork.

File your forms

After filling out the Notice of Motion and Affidavit, you must file these with the Court of Appeal Registrar. Make five copies of each and send them to:

Registrar of the Court of Appeal
The Law Courts
1815 Upper Water Street,
Halifax, NS, B3J 1S7

You can make an appointment with the Registrar to file these documents and four copies stamped by the Registrar will be returned to you. Call (902)424-8962 to make an appointment. If you do not make an appointment, you can drop off or mail the documents to the Registrar and they will be mailed back to you.

You NEED to notify the other parties of your motion

After filing the Affidavit and a Notice of Motion, you **MUST** send copies to the other parties. This is to give them “notice” of the motion. They can participate in the motion, but do not have to take part.

A “party” is anyone involved as a named litigant in the proceeding for example: another parent or guardian of the child, the child’s grandparents, and the Minister of Community Services.

You **MUST** also notify the Attorney General and Legal Aid in this type of motion. Send the copies for the Attorney General to:

Nova Scotia Department of Justice
1690 Hollis Street, 8th floor, PO Box 7
Halifax, NS
B3J 2L6

Send the copies for Legal Aid to:

Nova Scotia Legal Aid Commission
Suite 710 – 1701 Hollis Street
Halifax, NS
B3J 3M8

You **MUST** send the documents to notify the other parties at least **FOUR** clear business days before the Chambers hearing. Make sure you have enough time to do this. Remember, holidays and weekends are not counted when counting “clear” days.

It is in Chambers that your motion will be heard by a judge of the Court of Appeal. Your case will be heard along with the other matters set for the day. A lawyer from the Department of Justice (Attorney General) will take part in the motion. This is because, if your motion is granted, it is the Nova Scotia Government that will be paying for your lawyer. A lawyer for Legal Aid may also be there.

Appearing in Court

Arrive a few minutes before your scheduled Chambers appearance. Make sure you have all your documents, some paper, and a pen. Be prepared to explain your situation to the judge and to answer any questions that might arise from the materials you filed.

The other parties have the right to file evidence, like Affidavits. They also have the right to cross-examine you on your Affidavit. Be prepared for this by re-reading your Affidavit and other materials filed prior to the hearing.