

**HOW TO FILE A MOTION FOR REVIEW OF
A REPRESENTATION ORDER (ADULT) OR A GUARDIANSHIP ORDER (CHILD)
IN THE SUPREME COURT OF NOVA SCOTIA**

1. Civil Procedure Rule 71.13 adds to the procedures set out in the *Adult Capacity and Decision-Making Act* [ACDMA] and the *Regulations* to review:
 - a representation order made under the *ACDMA* and *Regulations*, or
 - a guardianship order made under the *Incompetent Persons Act*.
2. The person seeking to have an order reviewed under the *ACDMA* must start the proceeding by filing a Notice of Motion (Form 23.03.). The filing fee is **\$66.00**.
3. An Applicant who is the representative for the adult must file the documents listed in paragraph 4 in accordance with the timelines set by Civil Procedure Rule 23 for Motions. A separate *Motion on Notice Information Sheet* sets out the timelines for filing these documents with the court.
4. An Applicant who is the representative for the adult must file the following documents:
 - a) Notice of Motion (Form 23.03);
 - b) Affidavit in support of application (Form 39.08) that, under the *ACDMA* and *Regulations*, provides each of the following documents as exhibits to the affidavit in accordance with Civil Procedure Rule 71.13(1):
 1. if the applicant is the representative or guardian under the order:
 - a. if applicant is responsible for any financial matters, accounts of any transactions and financial activities taken on behalf of the adult since the last order or review;
 - b. to the extent of the representative's authority, a report on the adult's personal care and health care since the last order or review;
 - c. any accounts, reports and information as ordered by the court since the last order or review;
 2. Recent Capacity Assessment Report respecting the adult if the capacity of the adult is at issue;
 3. Representation Plan where the applicant requests that the order be continued or varied, a representation plan;

Please note: Further information on these listed documents is provided in the Guide to Applying for a Review of a Guardianship Order or a Representation Order and the forms and guides found on the website of the Nova Scotia Public Trustee:
<https://novascotia.ca/just/pto/adult-capacity-decision.asp>
 - c) Draft Representation Order (Form 78.05) - no less than 4 copies of draft, providing the following:
 1. appointment of the representative for the named adult or a rescinding of the previous order;
 2. if a representative is appointed, the filing of a bond in compliance with the *ACDMA*, or a statement dispensing of the requirement of the bond in accordance with the *Act*;
 3. if the bond is being filed, the order must provide for the amount of the bond, calculated at 1.25 X the value of the property to be administered by the representative, excluding real property; and a deadline for the filing of the bond (typically 30 days after the date of the order);
 4. the requirement to inform the adult if the adult did not participate in the proceeding;

5. if a representative is appointed, the terms of representation plan, including the powers, limitations and obligations of the representative, in accordance with the *ACDMA*; and
 6. if a representative is appointed, the date by which the representative is to apply for the review of the order or a statement dispensing of the requirement of a review in accordance with the *Act*;
- d) Brief of Law (2 copies).

5. The Notice of Motion to review an order must name the following as respondents:

- a) the adult who is the subject of the application, unless the adult is the applicant;
- b) any proposed representative or proposed alternate representative other than the applicant;
- c) any existing representative or existing alternative representative other than the applicant;
- d) the Public Trustee (subsection 66(7) of the *Act*);
- e) any other person likely to be directly affected by the representation order, if granted;
- f) any other person as directed by the judge.

Copies of the Notice and all other materials listed in paragraph 3 above must be personally served to each of these people in accordance with Civil Procedure Rule 31 – Notice. A separate *Motion on Notice Information Sheet* sets out deadlines for personal service in accordance with Civil Procedure Rule 31 – Notice.

6. A copy of the Notice of Motion to review an order must be mailed to each of the following persons in accordance with the *ACDMA*, unless a judge otherwise orders:

- a) all members of the adult's immediate family including: spouse, parent, and any child or sibling who has reached the age of majority;
- b) any guardians for the adult appointed under the *Incompetent Persons Act*;
- c) any delegates appointed by a personal directive made by the adult;
- d) any lawyer appointed by an enduring power of attorney made by the adult;
- e) where the adult resides in a care facility, the director of the facility;
- f) any other person to whom the court directs the applicant to send a copy of the notice of motion.

Under the *ACDMA*, each copy of the Notice must be mailed no less than 25 days before the hearing date. The *ACDMA* does not require the applicant to mail a copy to any person whose mailing address cannot be found through reasonable diligence.

7. An Affidavit proving the documents were either personally served or mailed as required in paragraphs 4 and 5 above must also be filed in advance of the hearing.

Please Note: when an Order appointing a representative for any financial matter or property of the adult provides for the filing of a bond, this bond may be executed by either a recognized surety company or the Applicant personally with two sureties.

When the Applicant's bond is required,

- it must be supported by two sureties, and
- the sureties must provide affidavits of justification showing that the sureties personally have unencumbered (debt free) assets, worth at least the amount of the bond, available for realization on a judgment.

Further information is available on the Public Trustee Website:

<https://novascotia.ca/just/pto/adult-capacity-decision.asp>