

Settling Issues out of Court

The purpose of this series of fact sheets is to explain the different processes you might consider to settle your family law issues out of court. This particular fact sheet offers information about **how to negotiate an agreement with the help of a lawyer.**

Traditional Negotiation with Lawyers



There are several options for coming to an agreement and only a few of them involve the court system. Whether you need to settle custody and access, support, or division of marital property, the best way to deal with family law issues is typically outside of the courtroom.

If possible, start by talking about your issues and trying to work out your differences. Even if you can only agree on some issues, this will save you time and money if you do have to go to court.

Can we negotiate with a lawyer?

Yes, lawyers can help you negotiate an agreement that can keep you out of court.

Each party hires their own lawyer to advise them as they attempt to reach an agreement.

The lawyers negotiate a final agreement through letters and telephone calls. Sometimes meetings

occur with both clients and both lawyers present.

If a settlement is reached, a written agreement and/or divorce are finalized by the parties with their lawyers. If the parties fail to reach an agreement, their lawyers are able to represent them in court proceedings.

What if we can't come to an agreement on everything?

Even if you can agree on some or most of the issues, this will save you legal fees and time in court.

If you do not reach an agreement on everything, you can hire a lawyer to apply to court where a judge will decide on whatever issues remain. This should always be a last resort. You may not get what you are asking for at court and going to court is a time consuming, costly and stressful process.

The judge will look at the documents filed by both parties and hear any verbal evidence before making a final order. An order sets out for example, custody and access, and/or fixes the amount of child support or spousal support.



All family law matters are heard in the Court of Queen's Bench: Family Division – commonly referred to by the public as **Family Court.**

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Except in rare cases, the judge **must** follow the Child Support Guidelines when making an order on child support.

If a court file has been opened, your lawyer may request a **settlement conference**, where both parties, your lawyers and a neutral judge will meet and attempt to reach an agreement without a court hearing.

Parties who start a court action may be able to come to agreement at any time before their hearing by consent. A **Consent Order** is a written agreement used after one of you has opened a file with the court by filing an application or a motion. Once the court file is open, you may continue to try to negotiate an agreement, even on the day of your court hearing. Once you have reached an agreement, the judge will need to look it over and sign off on it. This will then become as enforceable as any other court order.

If you cannot afford a lawyer and do not qualify for legal aid, you might have to handle your own case.

Parties without a lawyer are called self-represented litigants. Check our website, www.familylawnb.ca for tips on going to court and handling your own case.

How do I find a lawyer?

Often, the best way to find a lawyer is to ask your friends or acquaintances who have had similar family law issues for recommendations. You can see as many lawyers as you like before you decide who to hire. You should choose a lawyer with whom you are comfortable.

You can look up the contact information for lawyers on the New Brunswick Law Society website at <http://lawsociety-barreau.nb.ca/en> by clicking on "Lawyer Search." The Law Society directory does not list the lawyers' areas of practice.

For more information on hiring a lawyer, see our pamphlet "You and Your Lawyer," also at www.familylawnb.ca.

You may find it helpful to consult the Yellow Pages under "Lawyers", where many lawyers typically advertise in which areas they are experienced.

If you cannot afford a lawyer, you can contact the **New Brunswick Legal Aid Services Commission** to see if your legal issue and financial situation qualify you for assistance from their office. See our pamphlet, "Legal Aid in New Brunswick" on our website, www.familylawnb.ca.



This is general information about the law and laws change from time to time. Anyone requiring advice on their specific situation should consult a lawyer. If you have questions on your options call the toll-free **Family Law Information Line** at:

1-888-236-2444

info@familylawnb.ca



**Public Legal Education
and Information Service
of New Brunswick**

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