



CIVIL LITIGATION

A Guide For Survivors

This resource provides general information and answers some common questions about the civil litigation process in Newfoundland and Labrador.

This information is general in nature and does not constitute legal advice. Civil litigation, commonly referred to as suing someone, or filing a lawsuit, can sometimes be a legal option for survivors of sexual violence. If you have more questions or would like some support during this process, you are welcome and encouraged to contact a Legal Support Navigator at The Journey Project.

A Note on Language: Language is important. It holds a lot of power. You may identify with the word “survivor,” “victim,” both, or neither. The legal system may refer to you as a “victim,” “plaintiff,” or “witness,” even though you may not identify with any of these terms. This is the language used by the court and does not mean you or your reaction to the incident is being judged. In this guide, we use the term “survivor.” However, we know that not everyone who has experienced sexual violence will identify this way.

If you are thinking of starting a claim, sometimes called suing someone, it is important to note that a settlement can happen anytime. This includes before a lawsuit has even started, or before court proceedings begin. A settlement is an agreement between the parties involved (plaintiff(s) and defendant(s)). We suggest speaking with a lawyer if you are thinking about your legal options.

The Journey Project can connect you with a lawyer through the Journey Project Legal Support Service to receive free legal advice. This program is available to people of any age. To access this service, you must live in Newfoundland and Labrador, or have experienced intimate partner violence and/or sexual violence in Newfoundland and Labrador. We are available Monday to Friday 9:00 am – 4:00 pm

You can reach The Journey Project at:
TEL: 1-709-722-2805
TOLL-FREE/VRS: 1-833-722-2805
TEXT: 709-986-2801
EMAIL: support@journeyprojectnl.com

www.journeyproject.ca
Twitter: @JOURNEY_NL
Facebook: @THEJOURNEYPROJECTNL
Instagram: @JOURNEYPROJECTNL

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WHAT IS A CIVIL LAWSUIT?

A civil action or lawsuit happens when one person, group of people, or business sues another person, group of people, or business.

It is an area of private law that seeks a remedy for people who have been injured physically, mentally, or financially, or whose property has been damaged. In most cases, that remedy is money.

Sexual violence in civil law can fall under several branches of what legal professionals call tort law. Tort law refers to a set of laws that are designed to provide remedies for people who have been harmed. Unlike criminal law, tort law is not intended to punish people.

If someone sues a person or business, they are called the plaintiff in civil proceedings. The person or business being sued is called the defendant. If the plaintiff believes they are entitled to damages based on something that has been said or done to them by the defendant, they can file documents with the appropriate court to sue them.

WHAT IS THE DIFFERENCE BETWEEN CRIMINAL AND CIVIL MATTERS?

Civil matters are different from criminal ones. We have outlined some of the major differences between the two legal routes.

PURPOSE

The main purpose and intention of a civil lawsuit is to provide an individual remedy for the person who has been harmed. Criminal matters are different as they are considered crimes against society as a whole because they violate the *Criminal Code of Canada*. A person is found guilty of a crime in a criminal matter but not in a civil matter.

TIMEFRAME

Generally speaking, there is no time limit when reporting a crime of sexual violence to the police. However, there **is** a time limit to sue another person. A limitation period sets out the maximum amount of time that can pass since the incident(s) occurred and when a person can file a lawsuit. In Newfoundland and Labrador, that time limit is generally two years for matters related to harm or injury.

There are some situations where there can be a longer time limit, or none at all. This can include instances where a person is under the care of another person, organisation or agency and either financially, emotionally, physically, or in some other way dependent on them. Another situation where a longer time limit might apply is if the person who has been harmed is a beneficiary or in a fiduciary relationship (legal or ethical guidance/protection over another person).

Some examples include teacher and student, priest and lay person, coach and athlete, guardian and guarded.

Understanding the rules around limitation periods can be complicated. Because there are situations where the 2 year limitation period may not apply, we suggest speaking with a lawyer for legal advice

STANDARD OF PROOF

Unlike criminal matters, the standard of proof in civil law is significantly lower. The working standard is that of a 'balance of probabilities'. This means the plaintiff has the responsibility to prove it is more likely than not that the defendant's actions caused the harm they suffered.

In criminal matters the standard of proof is much higher. The Crown Attorney must prove 'beyond a reasonable doubt' that a crime was committed by the defendant, and either the judge or jury must believe with almost absolute certainty the defendant is guilty of that crime.

In a criminal matter, the accused is considered innocent until proven guilty.

LEGAL REPRESENTATION

In a civil lawsuit, both sides have the right to legal representation. This means that both the plaintiff and defendant can hire their own lawyer or they can represent themselves. In a criminal matter the survivor/victim is not entitled to legal representation in court, except in rare circumstances like special hearings.

DECISION-MAKING

In the criminal justice system, much of the decision-making is determined by the Crown, or the rules of the court. However, survivors may have more autonomy and control when making decisions pertaining to a civil lawsuit.

CLASS ACTION LAWSUITS

A class action lawsuit is when more than one person files as a group. This type of lawsuit is used when multiple people have been harmed by the defendant in a similar manner. Class action lawsuits are becoming increasingly common, especially in matters related to sexual abuse. The Canadian Bar Association maintains a Class Action Database, however the list is voluntary and only shows the result of lawsuits that have been submitted by lawyers.





TRIAL

Most civil matters settle before ever going to trial. In fact both parties can agree to settle at any point before, during, or even after a trial. This can sometimes be done between the plaintiff and the defendant, their lawyers, or through Settlement Conferences where a judge will give a brief opinion on how they think the case could be resolved.

In a civil trial the plaintiff must prove that the defendant is likely liable. Liable means someone is found to be legally responsible. The trial procedure in a civil matter is similar to a criminal trial. Both parties may call evidence and have an opportunity to cross-examine the other side. A judge will reach a verdict based on what is most probable, or most likely.

If the defendant is found not-liable, the case will be dismissed. However, if the defendant is found liable, a judge or jury will consider damages or other forms of compensation for the plaintiff.

DAMAGES

Damages refers to an award of money ordered by the court to compensate a person for injury, loss, or damage suffered because of another's act. The purpose of damages is to help put the plaintiff back in the position they would have been in had the harm not occurred.

There are several types of damages

NON-PECUNIARY DAMAGES

Damages that are not easily calculated (for example, pain and suffering).

PUNITIVE DAMAGES

Damages given as a means of punishment, not compensation, by a court for a wrongful action. Although rare, these punitive damages can be awarded to a plaintiff for the wrong committed by a defendant.

SPECIAL DAMAGES

Easily calculated loss, for example loss of income as a result of taking time off due to an injury.

AGGRAVATED DAMAGES

Awarded for tangible injuries, such as humiliation and suffering caused by an action.





HOW ARE DAMAGES CALCULATED?

Some aspects will be easier to calculate than others. This can include things like the cost of professional counselling or loss of income. These types of damages are usually easier to prove in court because the plaintiff might have, for example, medical bills or receipts for counselling.

Other aspects may be harder to calculate. These can include loss of enjoyment of life, mental suffering, distress, pain and suffering. The plaintiff might speak to these factors in court. The court may also look to previous decisions in similar cases to come up with numbers.

In trials related to sexual violence, things like the plaintiffs age or vulnerability may be included when assessing damages. Circumstances of the assault including frequency of incidents, degree of violence used, injuries sustained, and lasting impacts may also be included when assessing damages.

COMMON QUESTIONS

DO I HAVE TO GO TO COURT?

No. You can settle at any point during this process.

WHAT IF THE PERSON WHO HARMED ME HAS DIED?

Even if the offender has died, it is sometimes possible to collect damages against their Estate, insurers of the offender, or against other persons or institutions that enabled them. An example of this is suing the Catholic Church if an offending Priest has died.

WHAT WILL THIS COST ME?

Every case is different - it depends on the time involved, the evidence needed, if you use a lawyer, and if or when the lawyer charges you a fee for their services.

If a plaintiff is successful and wins their case, they may receive some or all of their legal fees. However, if a plaintiff loses their case, they may end up having to pay a portion of the defendant's legal fees.

You can receive four hours of free legal advice from a lawyer by contacting the Journey Project.

HOW LONG DOES IT TAKE?

Again, every case is different. Some matters are settled quickly, while other cases can take years to resolve.





The Journey Project exists to strengthen justice supports for survivors of sexual violence and/or intimate partner violence. It was established in 2017 as a collaborative initiative of Public Legal Information Association of NL (PLIAN) & the NL Sexual Assault Crisis and Prevention Centre (NLSACPC).

www.journeyproject.ca

PLIAN is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. PLIAN provides public legal education and information services with the intent of increasing access to justice.

Contact PLIAN's Legal Information Line by calling toll-free/VRS **1-888-660-7788** or e-mail

info@publiclegalinfo.com

To reach the St. John's office call **709-722-2643**

To reach the Happy Valley-Goose Bay office call **709-896-5235**

www.publiclegalinfo.com

The **NLSACPC** is a non-profit, community-based, charitable organization that exists to support individuals of all genders who have been impacted by sexual violence.

To contact the St. John's office call **709-747-7757**

To reach the Happy Valley-Goose Bay office call **709-896-6758**

The NLSACPC operates a 24-hour Support and Information Phone Line that can be reached at **1-800-726-2743**

You can also text/chat with the **NLSACPC** Monday 2pm-8pm, Wednesday 2pm-8pm, and Friday 12pm-8pm by texting 1-800-726-2743 from your mobile phone, or using the "Get Support Now" button on the NLSACPC website,

www.endsexualviolence.com

