

HOW TO FILE AN APPLICATION FOR A REPRESENTATION ORDER (ADULT) IN THE SUPREME COURT OF NOVA SCOTIA

1. Civil Procedure Rule 71.13 adds to the procedures to appoint a representative set out in the *Adult Capacity and Decision-Making Act [ACDMA]* and the *Regulations*. The *ACDMA* is for adults who cannot make some or all decisions for themselves.
[Note: Applications under the *Adult Protection Act* and a Guardian Order under that *Act* for an adult in need of protection are done at the Family Division of the Supreme Court. Information about Adult Protection Services can be found here: <https://www.nsfamilylaw.ca/other/adult-protection>.]
2. The person seeking appointment as representative under the *ACDMA* starts a proceeding by filing a Notice of Application in Chambers (Form 5.03) or Notice of Application in Court (Form 5.07). The filing fee is \$218.05.
3. An Applicant must file the documents listed in paragraph 4 in accordance with the timelines set by Civil Procedure Rule 5 for Applications. Refer to the Notice of Application in Chambers Instruction Sheet or the Notice of Application in Court Instruction Sheet that set out the timelines for filing these documents with the court.
4. An Applicant must file the following documents with the Court:
 - a) Notice of Application [in Chambers (Form 5.03) or in Court (Form 5.07) – please refer to applicable information sheets];
 - b) Affidavit in support of application (Form 39.08) that provides:
 1. the consent of each proposed representative and alternate to act as representative, and
 2. each of the following documents as exhibits to the affidavit in accordance with Civil Procedure Rule 71.13(1):
 - a. Capacity assessment report;
 - b. Vulnerable sector check;
 - c. Representation plan.

Please note: Further information on these listed documents is provided in the Guide to Adult Representation and the forms and guides found on the website of the 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;
 2. 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. the terms of representation plan, including the powers, limitations and obligations of the representative, in accordance with the *ACDMA*;
 6. 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 Application to appoint a representative must name the following persons as respondents:
- a) the adult who is the subject of the application;
 - 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 (subsections 5(4)(ca) and 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. Separate Information Sheets set out deadlines for personal service in accordance with Civil Procedure Rule 31 – Notice.

6. A copy of the Notice of Application to appoint a representative 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 application.

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.**

8. If you already have a Representation Order, or a Guardianship Order under the *Incompetent Persons Act*, and you are looking to apply for a review of that order, this is not the right information package for you. You can apply for a review by making a motion in the existing proceeding.

There is a separate information package for this: *How to File a Motion for Review of a Representation Order or a Guardian Order (Adult)*.

Further *ACDMA* information is available on the Public Trustee Website:
<https://novascotia.ca/just/pto/adult-capacity-decision.asp>