



Advocates & the Legal System

Law Making

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Much of this material has been adapted from the websites and documents of the Legislature and Province of Nova Scotia, including the *Nova Scotia Notebook - How Our Government Works (2004)*.

Dalhousie Legal Aid Service gratefully acknowledges the above mentioned individuals and organizations for the use of their material as part of the Legal Education for Advocates Project.

Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

Laws change frequently. We will try our best to make sure the information contained in all of our documents, as well as any other information you receive from Dalhousie Legal Aid Service, is reliable. However, **we cannot guarantee that the information in this document is completely accurate and up-to-date.** By accessing information from Dalhousie Legal Aid Service you assume any risks that arise from doing so.

ABOUT THIS MATERIAL

For many people, the way governments and the legal systems work can be difficult to understand; for people within a crisis or stressful situation, it can be even worse. Laws are often written in language that is complex. It can be difficult to sort out procedures and policies if you are not trained in legal matters. Try not to become overwhelmed and intimidated. When you are advocating on your own behalf, or on behalf of others, you are using the justice system for the purpose it was intended.

This material is meant to give you some idea of how the government and law work, and where to find more information if you or the person you are advocating for has a legal issue.

Places to go for more information are provided because it is impossible to include everything you need to know. There are many organizations out there that are available to help. Be patient and be persistent. In today's world of limited resources, the caseloads and workloads can be very high, but remember that these organizations are there to help you and they *want* to help you.

Understanding Government Structure

The Constitution

The **Constitution** is called the supreme law of Canada because laws that violate the Constitution are said to be of “no force and effect.” This means when a court finds a law to be in violation of the Constitution, that law effectively no longer exists.

Before 1982, the main way a law could be found to be “unconstitutional” (in violation of the Constitution) was if it was passed by the wrong level of government. The *Constitution Act* sets out rules about which level of government was authorized to pass laws on to specific issues. If a provincial government, for example, passed a law creating a criminal offence, it would be unconstitutional, since only the federal government has the power (or jurisdiction).

As of 1982, the Constitution also includes the **Canadian Charter of Rights and Freedoms**, which allows the courts to find that laws passed by Canadian governments are unconstitutional because they violate rights and freedoms guaranteed by the Charter.

The **Canadian Charter of Rights and Freedoms** is also known as The Charter of Rights and Freedoms or simply the Charter. Examples of the rights and freedoms found in the Charter include freedom of speech, freedom from discrimination, and freedom of religion.

How Government Works

Canada's form of government is called a constitutional monarchy, with a political system called parliamentary democracy. This means that while the ultimate head of the country (called the head of state) is a king or queen, he/she has agreed to allow politicians that are democratically elected to pass laws that respect the wishes of the people. The kind of laws that can be passed and the way in which the government works are set out in the *Constitution Act, 1867*.

Currently, Canada's head of state is Queen Elizabeth II. In Canada, she is represented by a person holding the office of the Governor General (for the Government of Canada), and the office of Lieutenant-Governor (for each of the ten provincial governments). The persons holding these offices are appointed by the Queen, on the advice of the Prime Minister of Canada.

Canada's government is a federal system. This means that there is more than one level of government. The most senior level of government in Canada is referred to as the **federal government**. For official purposes, it is called the Government of Canada.

The federal government makes laws about national issues, like money, banks, national businesses, and military defence.

Each of Canada's ten provinces also has a government -- the second level of government in the country -- called the **provincial government**.

The provincial governments make provincial laws about local things, such as highways, businesses in the province, property, schools, and healthcare.

Municipal governments, the third level of government, make local laws, such as parking zones (called by-laws), within cities, counties, and towns. The laws they pass can be changed by provincial governments, and it is provincial governments that decide whether to create new municipal bodies, or get rid of existing ones. Since they are regulated by provincial governments, municipal governments cannot pass laws about matters that are within the jurisdiction of the federal government.

Finally, there are three **territorial governments** in Canada: the Yukon, Northwest, and Nunavut territories. They perform many of the functions as provincial governments, but do not enjoy all the powers the provinces have.

Federal Government

The Parliament of Canada is the law-making body of the federal government. It has a bicameral structure: the House of Commons and the Senate. The House of Commons is the body where most laws originate; its members are directly elected by Canadian citizens.

Those who are elected are called members of parliament, or MPs. Each MP represents one particular area in Canada, called their constituency (or riding). Most MPs elected to the House of Commons belong to political parties. These are private organizations that support particular ideas about how the country should be governed.

To find out who your local MP is and how to contact him/her, visit:
<http://www2.parl.gc.ca/Parlinfo/Compilations/HouseOfCommons/MemberByPostalCode.aspx?Menu=HOC> or call 1-800- O-Canada (1-800-622-6232).

After an election, the political party with the most members elected to the House of Commons will be asked by the Governor General to "form the government." This usually means that the leader of the party that has the most elected members will become the Prime Minister of Canada. He or she will then appoint MPs to be cabinet ministers, which means that they are each responsible for a department of the federal government (e.g. The Minister of Finance for the Department of Finance). The Cabinet and the Prime Minister are responsible for running the day-to-day business of the Government of Canada.

The Senate is often called the Upper House of Parliament. Its members are not elected; they are selected by the Prime Minister and then appointed by the Governor General (acting on behalf of the

Queen). The majority of senators are also members of political parties, and the “government” is represented in the Senate by senators that are of the same political party as the Prime Minister. There are usually 105 senators in the Senate, and 10 of them are from Nova Scotia.

For a new federal law to be made in Canada, three things have to happen: (1) a bill (a proposed law) has to be passed by a majority of the members of the House of Commons; (2) it has to be passed by a majority of the members of the Senate; and (3) it has to be signed by the Queen, or by the Governor General, in the name of the Queen.

Provincial Government

Provincial laws are made in the 10 provincial legislatures. Provincial legislatures are unicameral, meaning they have only one house. In Nova Scotia, the legislature is known as the House of Assembly. A law passed by the House only becomes a law when it is signed by the Queen or by the Lieutenant-Governor of Nova Scotia in the name of the Queen.

Voters in Nova Scotia currently elect 51 people to the House of Assembly, called members of the Legislative Assembly, or MLAs for short. Each MLA represents a different part of the province, called their constituency (or riding).

Usually, when members of a political party make up the majority of the MLAs in the House of Assembly, whomever they have selected as their leader becomes the Premier of Nova Scotia. The Premier then selects certain MLAs to be his/her Ministers, and puts them in charge of provincial departments and agencies (e.g., the Minister of Education, the Minister of Health, etc.). The Premier and the Ministers together are called the Cabinet (or the Executive Council) and together they are responsible for running the province on a day-to-day basis.

To find out who your Nova Scotia MLA is and how to contact him/her, visit:
<http://www.gov.ns.ca/legislature/members/directory/alpha.html>

For a new provincial law to be made in Nova Scotia, two things have to happen: (1) a bill has to be passed by a majority of the members of the Legislative Assembly; and (2) it has to be signed by the Queen, or by the Lieutenant-Governor of Nova Scotia in the name of the Queen.

Adapted from Nova Scotia Notebook. (2004). How Our Government Works.

Types of Law

Laws are rules that people in a given territory (such as a country or province) must follow. They set out the way in which people are expected to relate to each other.

When an MLA or MP proposes a new law, it is called a bill. When that bill passes (gets approved) by the legislative process of a provincial legislature or the federal Parliament, and is assented to (or approved) by the Queen or her representative, it is then called a **statute** (or legislation). A law does not come into effect until it is proclaimed (i.e. declared in force). This can take months or even years.

Regulations are written to give more detail on how a statute will be used in practice. Statutes usually contain a section allowing regulations to be made by a Minister, administrative body, or the “Lieutenant-Governor-in-Council” at the provincial level, or the “Governor General-in-Council” at the federal level. The term “council,” in this case, means either the provincial or federal cabinet. Regulations are made by the provincial or federal cabinet and then receive approval by the Queen’s representative.

Regulations are rules about how the law will operate. They have the same binding legal effect as statutes, but are made by persons or bodies to whom the Legislature has delegated its law-making power to. For example, the provincial *Assistance Appeal Regulations* set out how the appeal process works under the ESIA (e.g., the steps that are involved in requesting an appeal).

Certain government departments are given the responsibility of carrying out and implementing statutes and regulations. For example, the **Department of Community Services** is responsible for the *ESIA* and the **Department of Health** is responsible for the *Involuntary Psychiatric Treatment Act (IPTA)* in Nova Scotia.

Departments create **policies** in order to carry out the rules that are set out in the statutes and regulations. Policies may, or may not, be made available to the public.

Policies outline how decisions should be made within an organization (such as a government department) so that rules are applied in a standard (i.e. the same) way and everyone who works within that organization understands the rules.

Bylaws, (sometimes called ordinances) are laws that are made at the municipal level. Municipal councils (the bodies that govern cities, counties, or towns) also pass resolutions that reflect their opinion on certain matters or that deal with how the municipality operates.

Case law is another way law is made in Canada; it is often called the **common law**. It is a written decision from a court that talks about a court’s interpretation of a particular law. This interpretation can be about what the law says (i.e. its meaning) or how it is applied. When a judge makes a decision he/she must follow precedent. This means that the judge must follow a decision or an interpretation of a particular law that was made by a higher court in a similar case. The development of case law is an ongoing process because decisions are made in courts all the time.

For more information on Canada's Court system visit <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/>

Statutes, Regulations & Bylaws

Creating Statutes in Nova Scotia

At both the federal and provincial level, a proposed law must undergo a process before it comes into force as a statute.

The provincial legislative process works in the following six steps:

The process at the federal level is similar, although the names and number of committees are different, and a bill must also be passed by the Senate of Canada before it can receive Royal Assent.

1. **An Idea:** The idea for a new statute can come from a variety of sources. It could be from the public, part of a political party's election platform, or from an MLA.

2. **First Reading:** To start the process, a member of the House of Assembly rises and asks the House for permission to introduce a bill. If all the proper procedures have been followed, a copy of the bill will then be distributed to all the members of the House of Assembly. The clerk of the House of Assembly gives the bill a number, and the bill is placed on the order paper (the schedule of events in the House) for a second reading at a later time.

3. **Second Reading:** The second reading of a bill is a debate on the general principle of the bill. This means that MLAs can give their opinion on the issues the bill addresses. The bill cannot be changed during the second reading. At the end of the debate there is a vote. If a majority of the members vote in favour of the bill, it will be referred to a standing committee of the House of Assembly.

4. **Committee:** A standing committee is a permanent committee, made up of a small number of MLAs, which examines a bill that has passed second reading. In most cases, it will be the Law Amendments Committee, a Standing Committee unique to Nova Scotia. This committee must carefully consider the bill, and hold public hearings to get input from Nova Scotians. A public hearing is an opportunity for individuals and groups to express their concerns about the bill before it becomes law.

Advocacy Tip:

The process of creating a new statute is a critical time to become involved in **systemic advocacy**. The legislative process, particularly at the public hearing stage of the committee process, is an excellent time to make the views of persons living with a mental illness known to politicians. To increase the impact, and to avoid duplication, it may be good idea to co-ordinate an appearance or presentation to the committee with others that share your views.

At the end of this process, the chair of the Committee will make recommendations to all the members of the House of Assembly on changes that the Committee feels should be made to the bill. The Committee of the Whole House on Bills (made up of all the MLAs) may then make changes to the bill recommended by the Committee, or introduce other changes it wishes to make.

5. **Third Reading:** The bill, with any changes, is then debated by all the members in a process similar to the second reading. No major changes may be made to the bill during this debate; however, a bill can be sent back to the Committee of the Whole House for further changes. At the end of third reading, there is a vote. If a majority of the MLAs vote in favour of the bill, then it only needs to receive Royal Assent to become a statute.

6. **Royal Assent:** Following the third reading, the Lieutenant-Governor of Nova Scotia is asked to approve the bill on behalf of the Queen. The copy of the bill presented will include all of the amendments passed by the House of Assembly. At this point, the bill may come into effect immediately, or it may be proclaimed (come into effect) at a later date. Once a bill is proclaimed, it may be enforced by the appropriate officials.

Section Three was adapted from a website prepared by the Office of the Legislative Counsel, available at <http://nslegislature.ca/legc/index.htm>.

How to Use Statutes, Regulations & Bylaws

As an advocate, it can be important to read statutes and regulations. In many cases, it will be a statute and/or its regulations that determine the services or treatments to which a person living with a mental illness is entitled to.

All actions taken by officials against someone must have a basis in law; in most cases, it will be a statute that gives a government official his/her authority to make decisions. When an official goes beyond what the statute permits, he/she is said to have “exceeded her/his authority.” This means that the action taken by the official must be changed or reversed.

As with government officials, government policies that go beyond what is permitted by the law cannot be enforced. Before a hearing begins, it is useful to find out which statutes govern the process and what the statutes say about the situation you are advocating for. During a hearing or similar process, it is very important to tell the adjudicator, or decision-maker, whether you feel that a policy or official has broken a statute or regulation.

Advocacy Tip:

Statutes are complex documents, and in some cases, a professional legal opinion may be required in order to interpret the statute.

Before appearing before a formal court setting, it would be good to get advice from a lawyer.

For information on hiring a lawyer and obtaining professional legal advice, please see the end of *Section Three*.

Finding Statute Materials

Most government organizations keep records of statutes and regulations on their websites, and paper copies of statutes and regulations are available in the community from a variety of sources. Copies of statutes, regulations, and bylaws that are available on websites are not official documents, but are usually available online for reference purposes.

Sir James Dunn Law Library

Dalhousie University Schulich School of Law, Weldon Law Building 6061 University Avenue, Halifax, Nova Scotia B3H 4H9

Telephone: (902) 494-2640 Fax: (902) 494-6669

Website: <http://www.library.dal.ca/law/>

Paper Resources:

Paper copies of statutes are available to the public at several places. In Nova Scotia the three most important locations are the Sir James Dunn Law Library at Dalhousie University’s Schulich School of Law, the Nova Scotia Barristers’ Library, and the Provincial Legislative Library.

All of these libraries allow members of the public to access their collections. They are private libraries and primarily serve law students, lawyers, and MLAs, respectively.

It would be a good idea to contact them to confirm the hours of operation, availability, and if necessary, to make an appointment. If you want to get copies, libraries usually charge fees to photocopy documents.

Nova Scotia Legislative Library

2nd Floor, Province House

1726 Hollis Street Halifax, Nova Scotia, B3J 2P8

Phone: (902) 424-5932 Fax: (902) 424-0220

E-mail: leglib@gov.ns.ca

Website: nslegislature.ca/index.php/library/

Outside of the Halifax area, some of the “county bars” of the Nova Scotia Barristers society also maintain libraries. Since they are relatively small, and have limited staffing, these may not be available to the general public. For more information, contact the Nova Scotia Barristers’ Library.

Nova Scotia Barristers' Library

The Law Courts 1815 Upper Water Street
Halifax, Nova Scotia B3J 1S7
Telephone: (902) 425-2665 Fax: (902) 422-1697
Website: http://nsbs.org/library_services

Public libraries may also have information on statute law, particularly frequently used statutes like the **Criminal Code of Canada**. Also, materials in the Legislative Library’s collection can be borrowed by the general public through interlibrary loans.

Finally, the office of the clerk in a municipality should be able to provide copies of all the bylaws that exist in that jurisdiction; however, there is likely a fee associated. You should contact the appropriate municipality to ask for more information and whether there is a fee for getting copies.

For other municipalities within Nova Scotia visit <http://www.gov.ns.ca/snsmr/muns/contact/> to find the appropriate municipality website.

On-Line Resources

Federal: The consolidated statutes and regulations of the Government of Canada are available online at the website of the federal **Department of Justice**. You can search for statutes and regulations by name or subject matter. Often there is a link on the main page to commonly used statutes like the *Criminal Code of Canada*. There are also links to provincial statute law websites.

For federal on-line resources visit <http://laws.justice.gc.ca>

Provincial: The consolidated statutes and regulations of Nova Scotia are available on the website of the **Legislative Counsel at the House of Assembly**. There are links to current bills, statutes, and regulations, as well as links to federal government resources.

For provincial on-line resources visit <http://nslegislature.ca/legc/acts.htm>

Municipal: Many municipalities maintain websites that provide comprehensive lists of their bylaws. For example, you can find the Halifax Regional Municipality (HRM) bylaws at <http://www.halifax.ca/legislation/> and the Cape Breton Regional Municipality bylaws at <http://www.cbrm.ns.ca/bylaws.html>.

Advocacy Tip:

Remember that because both the Halifax and Cape Breton regional municipalities were created by amalgamating (joining together) pre-existing cities and towns, older bylaws made by the previous cities or towns may still be in place, depending on a resident’s location.

For web links to other municipalities in Nova Scotia, please see <http://www.gov.ns.ca/snsmr/muns/contact/>.

General: The **Canada Law Information Institute (CanLII)** is a not-for-profit organization that provides statute law from all Canadian provincial jurisdictions. They can be found at <http://www.canlii.org>.

Case Law

How to Use Case Law

Case law refers to the body of recorded decisions made by judges. Together, all of these decisions form a set of legal rules that are called the **common law**.

Before attending a hearing or other procedure, it can be useful to research relevant matters that were heard at the Nova Scotia **Provincial Court**, the Nova Scotia **Supreme Court**, the Nova Scotia **Court of Appeal** or even the **Supreme Court of Canada**. The decisions from these courts are useful guides on how judges and adjudicators view certain situations and interpret the legislation. Case law can be used at the hearing to persuade the decision-maker that he/ she is making a decision that is consistent with those of other superior courts. In some cases, the judge or adjudicator may even be bound by (required to follow) the decisions made by these courts.

You will be trying to convince the decision-maker that your situation is similar to that of the person in the case you are referring. As a result, you are requesting that the decision-maker follow the same legal principle or interpretation of the Act that the judge did in the previous case.

Advocacy Tip:

If you use case law at your hearing, be sure to bring at least three copies of the case, as you would with any other document. Before reading from the cases, distribute a copy to the adjudicator and the opposing side.

On the other hand, if someone on the other side presents case law that does not favour your position you will want to *distinguish* that case from your own. Do this by emphasizing the *differences* between their case law and your situation.

Finding Case Law

Since case law develops as judges decide cases, it is not published by the government in the same way as statutes. Although official records of written decisions are kept in court files, in many cases, a judge's decision will be published in printed volumes called case reporters. The most recent Nova Scotia cases can be found in a reporter called Nova Scotia Reports (2nd series). Each province usually has a case reporter that contains most of the key decisions that have been decided by the courts of that province. The Federal Courts and the Supreme Court of Canada have their own case reporters.

Paper Resources:

Paper copies of legal materials, like case reporters, are available for reading by the public, for free, at several places. The two most important locations are the Sir James Dunn Law Library at Dalhousie University's Schulich School of Law and the libraries of the Nova Scotia Barristers' Society. Please see "Finding Statute Materials" within *Section Three* for contact information for these libraries. In addition, some public libraries may have reference materials on case law, although this will generally be quite limited.

Advocacy Tip:

For more information on legal research, please refer to the 'Tips' link in the self-representation section of the Nova Scotia Department of Justice's website, found at http://www.gov.ns.ca/just/srl/tips/tips_EN.asp.

On-line Resources:

Increasingly, most case law can be found through electronic resources. Although some electronic internet-based services are not freely available to the general public, many are accessible. Some of the principal electronic resources are listed here.

The Courts of Nova Scotia (Decisions):

The official website for the court system in Nova Scotia has a database of court decisions in the province. It includes most decisions since 2003, and even some dating from before 2003. The database allows you to search case names, key words, or phrases. If you were dealing with a Residential Tenancies issue you may choose key words and phrases such as 'landlord and tenant' and 'residential tenancies'.

The database of Nova Scotia court decisions can be found at <http://decisions.courts.ns.ca/>.

Nova Scotia Law News Online:

Law News Online is a service provided by the Nova Scotia Barristers' Society. It provides digests (brief reports) of Nova Scotia Supreme Court and Court of Appeal decisions dating back to 1997, and the full text of decisions from 1999 onwards. Older decisions may also be available as they are loaded on to the system as resources allow. Again, you can search using keywords as well as case names. Be sure to click on "submit query" at the bottom of the screen to complete the search.

Law News Online can be found at <http://nsbs.org/law-news-online>.

Canada Law Information Institute (CanLII):

The Canada Law Information Institute is a not-for-profit organization that provides court decisions as well as statute materials from across Canada. It has case law from each province divided according to the level of court. You can search using keywords. Be sure to search both the Nova Scotia Supreme Court and Court of Appeal. Records are incomplete before 1999; however, many key cases are reported from before this period.

Access to CanLII can be found at <http://www.canlii.org>

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