



Advocates & the Legal System

Legal Services

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

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Much of the information contained in the *Hiring a Lawyer, Managing Legal Costs, and Mediation* portions of this document have been taken directly from the *Legal Issues for Seniors: A Training Manual* by the British Columbia Coalition to Eliminate Abuse of Seniors. Additional information within those sections has been taken from a document entitled *Advocacy*, by the British Columbia Division of the Multiple Sclerosis Society of Canada.

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.

Legal Information Society of Nova Scotia

The **Legal Information Society of Nova Scotia (LISNS)** is a registered non-profit charity that provides Nova Scotians with information and resources about the law. LISNS offers and supports many helpful legal programs for Nova Scotians, including:

Visit www.legalinfo.org.

- The Legal Information Line
- The Lawyer Referral Service
- Dial-A-Law
- Publications
- Speakers Bureau

The LISNS website has questions and answers on many legal topics, as well as other information and resources about the law and information on the Society and its programs.

Self-Representation

The courts of Nova Scotia allow for a person to act as an agent of another person in non-criminal legal proceedings. As an advocate, you may be able to represent persons living with mental illness in some circumstances.

There will be situations where persons living with mental illness may wish (or need) to represent themselves. Materials on self-representation may be useful. The Nova Scotia Department of Justice provides a number of resources and guides that will help people who choose, or have, to represent themselves in court.

Self-Help Information Guides

These materials aim to help Nova Scotians better understand court processes and how to access the services and programs offered at the courts. Guides are available for:

- Court of Appeal
- Supreme Court
- Supreme Court Family Division
- Family Court
- Provincial Court
- Probate Court
- Small Claims Court

To get a guide visit the **Department of Justice** website at: http://www.gov.ns.ca/just/srl/info_guides.asp

The Department of Justice also has a selection of videos on the website to help people prepare for their case, or appear in the Supreme Court Family Division.

The Nova Scotia Department of Justice can be reached by phone at (902) 424-4030.

Information Kit on Representing Yourself in the Courts

Includes the following information:

- the structure of the court system;
- legal words and definitions.

To get a kit visit the **Courts of Nova Scotia** website at: http://www.courts.ns.ca/self_rep/self_rep_kits.htm

- tips for preparing a civil case;
- pointers for self-represented litigants;
- courtroom procedures;
- suggested steps in legal research;
- library and internet research resource for self-represented litigants; and
- local Internet resources.

The **Nova Scotia Barrister' Society** has a brochure of online resources available on their website at:
<http://www.nsbs.org/archives/research/brochures/publicbrochure.pdf>

Mediation

What is mediation?

Mediation is a non-adversarial process where the mediator will try to help the parties avoid conflict as they work towards reaching an agreement. Mediators deal with every issue that needs to be resolved in order to deal with the parties' problems.

Mediation is a process where a neutral third party meets with the parties in a series of meetings to help to calm emotions and guide both parties through their legal issues.

This means that the parties, with the help of a mediator, will often make an agreement; however, sometimes an agreement is not possible. The mediator cannot order either party to do anything. The agreement that is reached must be acceptable to both parties.

Parties may ask their lawyers to attempt mediation as a first step. The decision to mediate should generally be **voluntary**; however, mediation is sometimes required by legislation or a judge may order it to see if the parties can resolve the problem before hearings or trials.

The mediator:

- Is neutral, unbiased, and unconnected to the parties, their lawyers, or the dispute.
- Meets with the parties and helps them to define the issues in dispute (brainstorming).
- Can provide a neutral and appropriate location for mediation sessions.
- Ensures a safe environment.
- Understands the emotional undercurrents.
- Manages the mediation sessions, facilitates discussion, and keeps discussion of the parties and their lawyers on track.
- Uses suggestions, questions, and other techniques to help the parties overcome a deadlock.

The **Nova Scotia Human Rights Commission** produced a *Guide to Mediation*. It is available online at:
http://humanrights.gov.ns.ca/sites/default/files/files/Mediation_E.pdf

The **Canadian Human Rights Commission** website also has information on mediation:
http://www.chrc-ccdp.ca/pdf/mediation_en.pdf

The mediation process:

There may be four to eight sessions.

The first meeting may include:

- finding out more about mediation;
- discovering the mediator's approach;
- learning the ground rules for future meetings; and

Examples of when mediation can be used:

- housing, rental, or condo problems;
- neighbour problems;
- estate problems;
- matrimonial, common law, and other relationship problems; and
- disputes over pets.

- clearly defining the issues to be solved through mediation.

Once the parties reach an agreement, they must each take the letter of agreement to a lawyer for independent legal advice. They should not use the same lawyer.

Advantages of mediation:

- It can save time and money - the cost is less than going to court.
- The process is private and confidential. Instead of airing personal and often painful subjects in the courtroom, the parties deal with them in the privacy and confidential setting of the mediator's office.
- The process encourages the parties to participate.
- The parties speak directly to each other, not to the mediator.
- The parties choose the mediator and control who will be present during the mediation.
- The parties, not the mediator, make decisions about the terms of their agreement and are better able to create solutions to meet their needs. They do not have to live with a decision made by someone else.
- The success rate can be 60% to 90% depending on the:
 - timing;
 - preparation of participants; and
 - type of dispute.

Remember, if mediation is not successful, the parties are still free to use other ways to solve the problem.

Barriers to a successful mediation:

- One of the parties does not speak or express their true needs and concerns, either because they are unwilling or unable.
- Unrealistic expectations:
 - The parties unrealistically expect the mediator to solve the problems, or the parties expect mediation to produce an immediate result.
 - Both parties do not assess their cases realistically.
 - Parties do not understand the role of the mediator.
- Anger may make mediation impossible.
- Lack of preparation by the parties or by the mediator.
 - For example, failures to consult an expert, investigate the true facts, or conduct a proper review of legal rights and appropriate remedies.
- Lack of disclosure of information.
 - Complete information is needed to make intelligent decisions. Failure or reluctance to exchange information freely creates a distrustful, uncooperative climate.
- Difficult people and/or behaviour.
- Cultural barriers.
- Power imbalances between the parties or where one party has abused the other.

When to avoid mediation:

- In extreme cases of power imbalance or mental, physical, or sexual abuse, mediation is generally not appropriate. Communicating directly with the perpetrator may further traumatize the victim and makes the chance of successful mediation unlikely.

- When information that is needed to evaluate the other side's case has not been provided to the person you are advocating for, mediation cannot be successful. Parties need to obtain and share the necessary information.

Finding a mediator:

- There are reputable, trained, and experienced mediators to choose from.
- The parties should carefully research and think about who to select as mediator.
- It is a good idea to seek a referral from someone you trust: a friend, a family member, a colleague, or a lawyer.
- Appropriate mediators should have no bias or preconceived ideas (i.e. no preference for a particular idea or view that may influence him or her).
- All the parties must feel comfortable with and have confidence in the mediator's style and abilities.

Advocacy Tip:

Before choosing a mediator, a person should be prepared to ask questions, such as:

1. Do you belong to any professional organizations for mediators?
2. What kind of training have you had in mediation?
3. Do you have experience in health law (especially mental health) mediation?
4. How long have you been a mediator?
5. What kinds of mediation do you handle?
6. How much will it cost?
7. How long will it take?

Family Mediation Nova Scotia (FMNS) is an organization that provides information about family mediation to the public and establishes standards of practice for family mediators. Visit their website at www.fmns.ca for a listing of registered members (practicing mediators). You can also look for a mediator in the phone book.

Legal Aid

For information on legal aid services please visit the Access to Legal Aid Services section of the LEAP website.

Hiring a Lawyer

Finding a Lawyer

The **LISNS Lawyer Referral Service** is a good way to find a lawyer in your area who might be able to help the person you are advocating for.

Individuals can also ask friends, family, and people they work with to refer a lawyer they know and/or use. The yellow pages have a section for lawyers, and many firms have websites that can be researched beforehand.

A person may meet a number of lawyers before finding one that he/ she wants to hire. The lawyer should be interviewed to determine whether he/ she is appropriate for the case. A person should hire a lawyer who makes

Advocacy Tip:

In addition to maintaining a list of practicing lawyers, the **Nova Scotia Barristers' Society (NSBS)** also maintains a list of French-speaking lawyers in the province. A person can call NSBS at (902) 422-1491.

him/ her feel comfortable, who understands his/ her particular legal issue, and who understands mental health issues. Some lawyers have specialties in one or two areas of law; others have a general practice in many areas. While a person should talk with as many lawyers as he/ she can, doing too much research can be confusing and overwhelming. A person should try to balance out the search.

If a person has a legal problem and has decided to hire a lawyer, there are a few questions that he or she should ask.

Questions to ask about the lawyer's expertise:

1. How long have you been practicing law?
2. What is your experience in this area of the law?
3. Have you handled any cases like this? What was the outcome?

Questions to ask about the case:

1. What are the possible outcomes of this case and what are the chances of success?
2. What are the procedures involved in this case and what is a rough time schedule for the case?
3. What are the likely costs for this case? Do you require a **retainer**?
4. What complications could arise in this case and could they result in additional fees? How much?

A **retainer** is a sum of money a client pays in advance to the lawyer as a deposit for the services the lawyer will perform and the expenses that the lawyer will have on the case (**disbursements** for such things as documents, photocopies, or court fees).

When a person sees a lawyer for the first time, he/ she should:

- bring any papers or documents that have anything to do with the case;
- be prepared for many questions that help the lawyer understand the details of the case;
- be completely honest;
- know what he/ she wants to achieve so that the lawyer knows exactly how to direct his/her work;
- write down the answers to questions he/she has asked;
- discuss the costs and how the client will pay; and
- discuss the next steps if he/she decides to hire the lawyer.

What should clients expect from their lawyer?

Clients should expect:

- understanding and knowledge of their legal issue;
- sound legal advice;
- that the lawyer will follow the instructions given to him/her;
- respect and patience;
- to be told what their rights are;
- to be told what they can expect from the lawyer and the process they are involved in;
- an outline of the steps involved;
- an estimate of anticipated costs and timeframes;
- confidentiality; and
- regular reporting on the progress of your case.

It is impossible for a lawyer to predict exactly what will happen in the future, but he/she should be able to give an idea based on his/her experience and the law.

What should a lawyer expect from his/ her clients?

A lawyer should expect:

- cooperation;
- honesty; and
- a client's understanding that the lawyer is there to assist only with the legal case, not other important issues in the client's life.

Legal Fees and Expenses

Legal fees and expenses are not the same.

- The legal fee is the payment a person makes for the lawyer's time.
- Expenses (i.e. **disbursements**) are the various costs incurred for a case. These can be filing court fees for documents, photocopying, courier charges, doctor's reports, etc.

Often people are uncomfortable discussing fees when hiring a lawyer. It is very important to discuss fees with the lawyer right from the start so that a client understands how much it is likely going to cost. Although a lawyer cannot always predict what the costs of taking a case will be, he/she should be able to provide an estimate of the cost.

Unless a person asks for the cost of the lawyer's service, he/she will not know how much they can expect to pay. Some lawyers do "**pro bono**" work, which means they will provide their services for free. Generally, there are three common ways that lawyers charge for their services. They can charge a fixed fee, an hourly fee, or a contingency fee.

1. **Fixed fee:** A lawyer will charge a fixed fee for services. A fixed fee is commonly used for preparing mortgages, transferring a property title, a simple will, and/or a power of attorney.
2. **Hourly rate:** The lawyer charges for services on an hourly basis. The hourly rate can range from \$125.00 to \$350.00. The hourly rate can be higher for specialized services.

A person should ask the lawyer what his/her hourly rate is. A client is charged for every minute of the time the lawyer works for the client. This includes all of the time the lawyer spends on the phone with the client or with anyone else needed for the case. Writing letters, filling in documents, going to court, and waiting in court are all charged on an hourly basis.

3. **Contingency fee:** The lawyer acts for a client in return for a percentage of the money the client wins in a lawsuit. If a client gets no money from his/ her case, then the lawyer gets no fees. In most of these cases, however, the client must pay all **disbursements** regardless of the result of the case.

Disbursements are fees separate from what a lawyer charges for their services that covers expenses such as photocopies, medical reports, and court filing fees.

Contingency fee agreements are common in personal injury claims; this agreement should be in writing. A person should ask the lawyer for a copy of the contingency fee agreement; read it and should never sign it if he or she does not understand it.

The questions that need to be asked about legal fees are:

1. Is there a written retainer letter or agreement? A person should make sure he/she gets a written agreement specifying the fee arrangement and the work involved. This is the best way of making sure the client and their lawyer are clear on the costs involved.
2. Does the lawyer charge by the hour, by the case, or on a contingency basis?
3. Is free (pro-bono) or reduced-cost legal help available?
4. Will any junior lawyers, paralegals, or legal assistants be working on the case? Does the lawyer charge extra for their time?
5. What kind of disbursements will there be?
6. When will the bill be sent? A client can ask the lawyer to send a bill on a regular basis (e.g., monthly or quarterly billing). Then a client will know how much the fees are and can make regular payments if needed.

Advocacy Tip:

The **Nova Scotia Barristers' Society** has great information on hiring and using a lawyer at <http://www.nsbs.ns.ca/why.html>

Managing Legal Costs

Often people hire a lawyer and do not actively take part in their case. They think that just because they have a lawyer, they do not have to do anything. Because the lawyer ends up doing everything, the costs are higher. It is essential that the client be fully informed about his/her ongoing case. The client can be the major decision-maker on all major points in her/his case.

A client should discuss with his/her lawyer the ways that he/she can help on the case. The lawyer is the expert and he/she must be comfortable with the client helping out. Often the more a client can do things on his/her case, the more he/she can cut costs. For example, if the lawyer needs some records, the client may be able to write the letter to request them.

Here are a few tips to help keep costs down:

1. **A client should be organized** so the lawyer's time is not wasted. He/she should prepare for the meetings with the lawyer by thinking about the legal problem, gathering information the lawyer will need, and writing down the facts of the case with all the addresses and phone numbers of the people involved.

He/she should bring the lawyer any relevant documents such as letters, court papers, or other information.

2. **A client should keep copies of all the original documents** and papers given to the lawyer. A person should not depend on the lawyer's filing system for these records and documents.

Advocacy Tip:

Help the person you are advocating for to develop a system to organize the documents before taking them to the lawyer (i.e. arrange documents in date order, numerical order, or alphabetical order).

3. **Be realistic.** A person should not spend \$2,500 on lawyer's fees to recover \$500. Clients should assess how much money they want to spend to fight their case. They have to decide if it is worthwhile to resolve a legal problem, keeping in mind all the costs involved.
4. **Keep communication with the lawyer to the point.** Do not discuss unrelated matters. A client pays for every minute he/she spends with a lawyer. A client should limit the phone calls and meetings to the business of the case.
5. **Ask if a junior colleague can do some of the routine work on the case.** If the staff at the lawyer's office can assist, a person may contact them instead of contacting the lawyer.
6. **Ask the lawyer to send a bill on a regular basis,** once a month or once every two months depending on the case. A person should keep track of the bills and how much the case is costing, so that there are no surprises at the end of the case.

If a Client Disagrees with the Bill

If a client disagrees with the amount of the bill, or does not understand some of the items on the bill, he/she should discuss it with the lawyer. The details of the bill should be examined and the client should have the lawyer explain why a particular charge was made. If the client and lawyer are unable to resolve their differences, the client can ask Small Claims Court to review the bill. In some circumstances Small Claims Court has the authority to reduce the bill. The addresses of the Small Claims Court in Nova Scotia can be found at: www.courts.ns.ca. The client should also talk to the lawyer if he/she needs to make arrangements to pay by instalments.

Office of the Ombudsman

The **Nova Scotia Office of the Ombudsman** handles complaints against provincial or municipal government departments, agencies, boards, and commissions. Its purpose is to improve the delivery of government services provided to Nova Scotians.

It is a neutral (i.e. not aligned with any particular political party) agency and operates as an independent agency. All complaints filed with the office are confidential and cannot be accessed by freedom of information requests.

The Ombudsman considers and investigates complaints from people who believe they have been treated unfairly when using government services or when they believe a policy or procedure has not been followed correctly or is unfair.

An important objective for the Ombudsman is to explain why and how a complaint can be seen as an opportunity to improve services provided by government. Even when a complaint is not successful, it provides an opportunity to review policies and procedures to ensure the highest standard of service delivery.

The Office of the Ombudsman does not handle complaints involving:

- decisions of the cabinet of Nova Scotia;

For more information on the **Office of the Ombudsman**, call (902) 424-6780 or toll free at 1-800-670-1111 or visit their website at <http://www.gov.ns.ca/ombu/>

- the courts or judges;
- federal government departments or agencies (e.g., Human Resources and Skill Development Canada - HRSDC) or Canada Customs and Revenue Agency - CCRA);
- private individuals and corporations;
- elected provincial or municipal officials;
- an individual whose complaint is represented by a union; and
- a legislative option of appeal (e.g., where option for an appeal board or tribunal exists).

Investigations

Investigations involve:

- Providing complaint summary to the government body.
- Review of legislation, regulations, policies and procedures
- Interviewing sources
- Written reports
- Sometimes a legal opinion is required

Based on the investigation, the Ombudsman will reach a determination on whether the actions of the government body were:

- Unreasonable/unjust;
- Discriminatory;
- Based on a mistake of fact (meaning the circumstances were misunderstood);
- Based on a mistake of law (meaning the circumstances were properly understood, but the law wasn't properly applied);
- Not explained properly.

Process

If a person has tried unsuccessfully to resolve his/her concern(s), he/she can contact the Ombudsman Office and they will assess the situation. To help complete their assessment, they may ask the person for the following information:

- the name, address, and phone number where the person can be contacted during the day;
- the name of the department, agency, board, commission, or municipality involved.
- a detailed summary of the concern;
- the name and phone number of any individual the person has been in contact with regarding the concern; and
- copies of relevant information and any actions the person has taken to resolve the situation;

Many concerns are resolved quickly without the need for a formal investigation; however, some issues may require a more in-depth investigation.

Outcome and Follow up

At the end of the process, the Office of the Ombudsman may require the government body to:

- review the way it deals with complaints;
- change its policies or procedures;
- improve its communications policy in terms of how it communicates with the public and other government bodies

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