



Public Legal Education
and Information Service
of New Brunswick

You & Your Lawyer



Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit organization. Its goal is to provide New Brunswickers with information on the law.

PLEIS-NB receives funding and in-kind support from the Department of Justice Canada, the New Brunswick Law Foundation and the New Brunswick Department of Justice and Consumer Affairs.

We gratefully acknowledge the cooperation of members of the Law Society of New Brunswick.

Published by:

**Public Legal Education and
Information Service of
New Brunswick**
P.O. Box 6000
Fredericton, N.B.
E3B 5H1

Tel: (506) 453-5369

Fax: (506) 462-5193

Email: pleisnb@web.ca

Updated: January 2007

ISBN: 1-55048-243-2

Introduction

Just about everyone needs legal advice at some time or other. The aim of this pamphlet is to help you know when you might need legal advice, how to choose a lawyer and what to expect in dealing with lawyers. It is intended to take the worry out of looking for - and meeting with - a lawyer.

The pamphlet will also encourage you to seek legal advice before your problems become complicated and expensive! Often a lawyer can help you avoid trouble and costly mistakes.

How do I know if I need a lawyer?

In some matters, such as arrest, most people realize that they should call a lawyer immediately. Indeed, it is their right!

Although the need for legal advice may not always be as obvious, at some point each of us will run into situations and problems that involve law. When you do, you must find out what the law is and how it affects you. You may need to know about your rights and responsibilities as a parent, a spouse, an employee, a consumer, a business partner, an accident victim and so on.

If you are faced with a simple legal problem, you can seek information or advice from a wide variety of sources, including government agencies, the police and public libraries. In many situations, however, you will need to rely on legal experts - lawyers - to advise you. Some questions may

pose serious legal problems involving a considerable amount of advice.

What can a lawyer do for me?

A lawyer can give you expert advice and service in legal matters. Any communication between you and your lawyer is confidential. A lawyer will make sure you know what the law is and how it affects your situation.

Your lawyer will explain options and help you make decisions and take actions which are in your best interests.

I feel nervous about going to a lawyer -- is that unusual?

No. Many people, even faced with serious legal difficulties, are reluctant or afraid to approach a lawyer. Some people fear being confused by legal words. Other people believe they will be intimidated by lawyers and law offices. Still others worry they will be charged more than they can afford.

Don't let fear of the unknown keep you from seeing a lawyer!

***In legal matters
it is important
to act early.***

What are some examples of situations where I might need legal advice?

Consider these situations:

- You took your car to a garage to have the starter fixed. You paid \$200. It was not done properly so you took it to another garage. They charged you another \$200. What would you do to get the \$200 back from the first garage?
- Your spouse walks out on you and the children. What would you do?
- You get a speeding ticket on which your licence number is incorrect. What would you do?
- You have written the words and music for a song that you are sure will be extremely popular. What would you do?
- Your teenager has been accused of shoplifting. What would you do?
- You are starting a business, making a will, buying a house, being sued or getting divorced. You need legal advice.

These are just a few examples of the many situations and areas of the law in which a lawyer can help you.

Choosing a Lawyer

Once you have identified your problem and decided that you need to have legal advice you will want to choose a lawyer.

How do I choose a lawyer?

If you want to talk to a lawyer but don't know any, ask your friends, neighbours, clergy member or anyone else you trust, to suggest a lawyer. Ask friends who have had a similar type of legal problem. It is important to choose the right lawyer for your legal problem. The best references generally are other people who have used that lawyer.

You can also look in the Yellow Pages of the telephone directory, under "Lawyers". Lawyers and law firms in your community are listed in alphabetical order.

Will I need to make an appointment?

A lawyer may be busy with another client if you just walk in off the street. You should telephone the lawyer's law office and arrange for an appointment with the lawyer. Often a receptionist or the lawyer's secretary will take a message from you when you make an appointment.

Do I have to hire the first lawyer I talk to?

No. You can see as many lawyers as you like before you actually hire one. Choosing a lawyer is a personal matter. You should always try to find a lawyer with whom you feel comfortable.

What should I do before I meet with a lawyer?

Being prepared before you see a lawyer will cut down on the time your lawyer will have to spend gathering information - and will save you some money.

Tips for getting organized

- Get all the papers together that relate to your problem - take them to your first meeting.
- If you are involved in a dispute, write down what happened in as much detail as possible. Put the events in the order that they happened.
- Write down the names, addresses and telephone numbers of any witnesses.
- Write down the questions you would like to ask your lawyer.
- Think about what you want the lawyer to do for you.

Visiting Your Lawyer

When you visit your lawyer you should expect to have a confidential lawyer-client interview.

What is a lawyer-client interview?

An interview is usually the first step taken by a lawyer in handling any legal matter. It enables the lawyer to get a good overview of the facts and issues of your problem. It is also the beginning of a working relationship between you and your lawyer.

Where will the interview take place?

In some law offices, lawyers conduct interviews in a separate room set aside for the purpose (a conference room). In others, interviews will take place in the lawyer's office - across a desk or table which is also used by the lawyer for general work. Some law offices have a receptionist or secretary who will meet you in the reception area. This person may bring you to the lawyer's office or conference room.

What happens during an interview?

During an interview you do the talking. Tell your story in your own way. Explain what the problem is and what you feel is necessary. The lawyer will listen and take notes. Tell your lawyer everything that happened - good and bad! A lawyer needs to know all the facts to advise you properly. Mention if you have been to an organization

or government agency to get advice or make a complaint.

Never hold back the whole story from your lawyer!

Can my lawyer repeat the information to anyone?

No, not without your permission. Your lawyer has a professional duty to keep any discussion with you confidential. Nobody can force your lawyer to disclose what you have said to him/her. This protection is called **solicitor-client privilege**. It exists for your benefit. You can tell the whole truth to your lawyer in complete confidence.

What questions should I ask my lawyer?

You should discuss the following matters at your first meeting:

- **Ask your lawyer for an estimated cost of resolving your problem.** It is not always possible for your lawyer to tell in advance the exact amount of his/her fees. Ask your lawyer how you should pay his/her fees and disbursements and when you will be billed.
- **Ask how your lawyer will calculate the fee - whether on the basis of an hourly rate, a percentage of the value of the transaction, or any other basis.** The usual practice in the legal profession is for the client to pay a sum of money up front (a retainer). After this the lawyer starts work on the case. The money is

kept in the lawyer's trust account as a credit against the legal work to be done and disbursements.

- **Ask your lawyer who will be responsible for your case.** As a client, you have the right to know whether someone else in the law firm will be carrying out most of the work after the initial lawyer has conducted the first interview. If so, ask the name of the lawyer responsible for looking after your case on a day-to-day basis.

What kinds of questions will the lawyer ask me?

The lawyer will question you on details and to fill in gaps that have appeared from your telling of the story. The lawyer might read over any letter or other documents you might have brought with you. He/she will be trying to sort out the facts.

Expect your lawyer to ask you questions about the situation. The lawyer will want to find out the following information:

Personal information, such as:

- your full name and address
- telephone numbers at home and work
- marital status
- number of children and their ages
- job and work schedule

Other parties

- It will usually be necessary to find out the full names and addresses of other parties involved, so the lawyer can

write directly to them (if they have not yet hired a lawyer).

Witnesses

- The names and address of any witnesses.

What happens at the end of the interview?

Now that the lawyer has a good understanding of your problem and needs, he/she can give you advice on the legal aspects of your problem. Giving advice in the legal context involves giving a general statement of the law on the facts, applying that general picture to the circumstances of your case, and discussing with you the possible alternatives and what would be most desirable.

After the first interview, your lawyer may need to review the law as it relates to your situation and meet with you again to give you a legal opinion.

Will my lawyer tell me what to do?

After your lawyer has given you a legal opinion, he/she will ask you for instructions. To instruct a lawyer means to tell the lawyer what you want. You are important and will have an important part to play in helping the lawyer to settle the matter.

The lawyer will advise you on what the law says about your problem, and what your options are. However it is up to you, not the lawyer, to decide what you want. It is then up to the lawyer to try to achieve that result.

Lawyers' Fees

When you hire a lawyer, you are buying the lawyer's time and skills.

How do lawyers calculate their fees?

The method of calculating fees can vary. Fees are sometimes negotiable depending on the type of legal service.

Flat/fixed fee

A lawyer is usually able to quote a flat fee for wills, an uncontested divorce, real estate transactions, incorporation of a company. That fee will be the cost to you no matter how much time the lawyer spends on the file. The lawyer's out-of-pocket expenses (*disbursements*) will be extra, such as long distance telephone calls, court filing fees, photocopies, tax certificates, court forms. Ask your lawyer for an estimate of those expenses.

Hourly rate

Lawyers bill most matters on an hourly rate. Your lawyer's time on your case includes research, telephone calls, letters, meetings with you, and court appearances. A lawyer's hourly rate usually depends on the lawyer's years of experience.

Contingency fee

A contingency fee is a percentage of the money the lawyer recovers for you. Lawyers sometimes use this method in lawsuits where the client cannot pay up front. The percentage is open to negotiation between you and your lawyer.

If you lose the case, you do not pay the lawyer any fee. However, you must still pay the disbursements. If you win, the lawyer gets the percentage agreed upon.

Percentage fee

In cases other than lawsuits, lawyers sometimes use a percentage fee. For example a lawyer may charge a percentage of the estate value to handle probate matters or a percentage of a debt to collect it.

What if I cannot afford a lawyer?

You may be eligible for legal aid which is provided by the New Brunswick Legal Aid Services Commission. Their mandate is to provide legal services to persons who qualify for legal aid for certain criminal offences and specific family law matters.

How do I get legal aid?

Criminal Legal Aid

For criminal cases, contact the Legal Aid office in your area to fill out an application. Check your telephone directory. Your eligibility for legal aid is based on your assets (income, savings, property), your expenses, and whether your problem falls within the scope of the legal services provided. Once you show that you meet these criteria, you will meet with the legal aid lawyer. In some instances, you may get a certificate to take to a lawyer in private practice who does legal aid work. Not all lawyers accept legal aid certificates.

Duty Counsel

Legal Aid also has a lawyer available at the courthouse to offer free advice and explain your rights and the court process if you do not have a lawyer. This lawyer is called “duty counsel”. He or she can talk to you on your first appearance or when you are sentenced but duty counsel will not help with trials. It is up to you to go early and take advantage of this informal advice.

Domestic Legal Aid

Domestic legal aid may be available for certain family law matters. You may be eligible for assistance if you are a victim of spousal abuse, you are a person entitled to support or a support payor, or the Department of Family and Community Services applies for custody or guardianship of your child(ren).

Initial intake and assessment of eligibility for domestic legal aid legal services is done by the court social workers located at the Court Services Division offices in each of the 8 judicial districts of the Court of Queen’s Bench of NB - Family Division. Legal Aid provides experienced family law lawyers to handle approved legal services to those who qualify. For more information, contact the Court of Queen’s Bench, Family Division nearest you. If the Department of Family and Community Services is applying for custody or guardianship of your children, contact the Legal Aid Office directly.

For further information, see the PLEIS-NB pamphlet entitled Domestic Legal Aid.

Complaints

Your lawyer will want you to feel satisfied with the service you received and the fee you were charged. If you are not satisfied, then you should do something about it.

What if I think the lawyer's bill is too high?

You should first discuss this matter with your lawyer. Ask for an itemized account if you do not already have one. Discuss each charge with your lawyer.

If you are not satisfied with your lawyer's explanation, you can apply to the Law Society of New Brunswick to have the bill **reviewed**. The reviewing officer has the authority to reduce the bill where appropriate. You can have your bill reviewed even if you already paid it. If you want your bill reviewed, you should contact the Law Society immediately. If you do not start the review process within 90 days of receiving your bill, you may not be able to have it reviewed. You must pay a deposit of \$150. The final charge will depend on the outcome of the review and how long it takes.

For more information contact:

Law Society

206-1133 Regent St.

Fredericton NB

E3B 3Z2

Telephone (506) 458-8540

<http://www.lawsociety-barreau.nb.ca>.

What if I am unhappy with the lawyer's service?

You should first discuss with your lawyer any complaint you have about the service you received. If your lawyer's explanation still does not satisfy you, you may wish to take action. If you think your lawyer handled your case in a negligent manner you may sue your lawyer. If you think your lawyer is guilty of misconduct you can make a written complaint to the Law Society of New Brunswick.

What is the Law Society of New Brunswick?

It is the governing body of the legal profession. It is responsible for determining who is qualified to practice law in New Brunswick. It is also responsible for setting standards of professional conduct and the disciplining of lawyers. Lawyers serve the public. They are concerned about standing up for the rights of their clients. The Law Society is responsible for making sure that they serve their clients properly.

The Complaints and Discipline Committees of the Law Society are concerned with personal and professional conduct of lawyers. It is the Society's duty to look into complaints against lawyers for improper or unethical conduct in handling a client's affairs. If there are grounds, a lawyer can be reprimanded, fined, suspended or disbarred, depending on the seriousness of the lawyer's misconduct.

Complaints about a lawyer's conduct must be made in writing to:

Registrar of Complaints

Law Society of New Brunswick
206-1133 Regent St.
Fredericton NB
E3B 3Z2

In most cases, a copy of the complaint is sent to the lawyer. An investigation may take place and may include a hearing, which you must attend.

Can I change my lawyer?

If you do not want the lawyer you have chosen to continue with your case, you can hire another one. You may hire another lawyer at any time. You should notify the first law firm, preferably in writing. You will probably have to pay your first lawyer's outstanding bill before the lawyer will transfer your file.