

LEGAL AID IN NEW BRUNSWICK



Providing legal help for
people with low incomes

NEW BRUNSWICK LEGAL AID
SERVICES COMMISSION



COMMISSION DES SERVICES
D'AIDE JURIDIQUE
DU NOUVEAU-BRUNSWICK

www.legalaid.nb.ca

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This publication was produced collaboratively by Public Legal Education and Information Service of New Brunswick (PLEIS-NB) and the New Brunswick Legal Aid Services Commission (NBLASC). It provides an overview of legal aid services and should not be considered a complete list of what is, and is not, covered.

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 Office of the Attorney General of New Brunswick.

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History

In 1971, the New Brunswick Legal Aid plan was legislated to help low income individuals to obtain the services of a lawyer at no cost or at a minimal cost. Over the next 30 years, the New Brunswick Law Society provided legal aid services, thanks in large part to the legal community who accepted certificates from legal aid clients at reduced rates.

In December, 2005, the **New Brunswick Legal Aid Services Commission (NBLASC)** (referred to as 'Legal Aid' in this booklet) was created to oversee the development and delivery of criminal defence services and family legal services. Legal Aid is funded by the Province of New Brunswick, the Government of Canada, the New Brunswick Law Foundation and fees from clients. Though mostly publicly funded, Legal Aid operates at arm's length from government. Legal Aid provides legal services through staff lawyers and private lawyers who accept certificates and duty counsel. The scope of legal aid services may vary from time to time. There are similar services across Canada. In 2012, the Office of the Public Trustee was transferred from the Department of Justice to the New Brunswick Legal Aid Services Commission.



This booklet provides a brief overview of the criminal and family law legal services offered by Legal Aid, as well as a description of Public Trustee Services. It is not a complete list of what is, and is not, covered, so be sure to talk to your local Legal Aid Office about your specific situation or where appropriate, the Public Trustee.

What is legal aid?

Legal aid is a service that helps people with limited financial means to get the legal help they need for certain **criminal** and **family law** matters. Legal Aid also administers Public Trustee services which are intended to protect the financial and personal interests of the elderly, those who are mentally incompetent, children, and missing or deceased persons, when there is no one else able and willing to do so.

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What criminal and family legal services does Legal Aid cover?

Legal Aid provides free telephone access to a lawyer for individuals detained by the police, as well as Duty Counsel at the court house for certain matters. For individuals who are financially eligible, Legal Aid may also be able to provide a lawyer to represent you in certain criminal and family law matters. Legal Aid does not handle all criminal or family matters, nor does it cover other kinds of legal problems such as real estate transactions, wills and estates, adoption, immigration law, or civil suits such as people suing one another.

Criminal Matters

From the Police Station When Detained: Every person that the police or RMCP detain has the right under the *Canadian Charter of Rights and Freedoms* to contact a lawyer. Legal Aid offers a free 24 hour telephone service for persons in police custody. This service allows persons accused of an offence to consult with a **lawyer** on short notice.

From Court: For certain criminal matters, you may be able to get advice from Duty Counsel at the court house. Duty Counsel can explain the court process and give you informal advice about making a plea, asking for an adjournment, and appearing at a bail hearing or at sentencing. The Duty Counsel lawyer may appear with the accused to enter a plea but will not represent the accused or appear with them at trial. Duty Counsel may represent individuals who have been found unfit to stand trial and who appear periodically before a Mental Health Review Board.

Duty Counsel is a lawyer that Legal Aid makes available free of charge to consult with people who do not have a lawyer at their first court hearing.

At Trial: If you have been charged with a criminal offence and you cannot afford a lawyer, you may apply for legal aid. Generally, if there is a likelihood that conviction for this offence would result in jail time, and you meet the financial eligibility criteria, Legal Aid will provide a lawyer (general counsel) to handle your case.



Criminal offences NOT covered by Legal Aid include, for example:

- Default hearings
- Bail reviews
- Provincial offences
- Firearms applications

Family Matters

Legal Aid also helps low income individuals deal with family law matters. This is referred to as “**family legal aid**”. Legal Aid gives priority to screening those cases that are urgent or can directly benefit children. The following family legal aid services may be available:

Family Duty Counsel: If you are a respondent who is appearing at a first hearing in family court for an application or variation of custody, access and/or support, you can talk to family duty counsel before the hearing. The other party must be represented by a legal aid lawyer. Duty Counsel can also advise you in cases of judicial enforcement or child protection matters made by the Minister of Social Development. Duty Counsel lawyers have a limited role such as explaining your rights. They do not become your lawyer or represent you in further court proceedings.

Child Protection Proceedings: If the Minister of Social Development is asking the court for a supervisory order, custody or permanent guardianship of your child, you can apply for legal aid. If you meet the financial eligibility criteria you may receive a certificate to have a lawyer represent you.

Child and Spousal Support: If you meet the financial eligibility criteria, the Family Solicitor can help you to obtain child and/or spousal support. They may also be able to help you change (vary) a child support order if it was made under the *Family Services Act*. As well, the Family Solicitor can help a parent receiving child support respond to a motion by the other party to change it.

Custody and Access: If you are eligible, the Family Solicitor may be able to handle your application for custody or access of the children.



Family Advice Lawyer: Family Advice Lawyers are available to provide free general legal information for up to two hours on family law matters. They can explain what to expect from the court process and help you understand court forms. To find out if there are Family Advice Lawyers in your area, call toll-free 1-855-266-0266. If you live in the Saint John region, you can book an appointment by calling 658-2261.

Family law matters NOT covered by Legal Aid include, for example:

- Any proceedings under the *Divorce Act*
- Variation of any order made under the *Divorce Act* (including child support)
- Division of marital property
- Variation of spousal support

Public Trustee Services

The Public Trustee of New Brunswick can be appointed to protect the financial and/or personal interests of the elderly who have become mentally incompetent or incapable of managing their affairs due to infirmity. They can also be appointed to oversee children's settlement funds obtained by a court order, or protect the interests of missing or deceased persons when there is no one else able and willing to do so.

For more information on the various services available, check out the Public Trustee section of the Legal Aid website at: http://legalaid.nb.ca/en/public_trustee_services.



How does someone qualify for Public Trustee Services?

Any individual can make a referral to the Public Trustee. Referrals for Public Trustee Services must be made in writing through the completion of an Application for Services. The Public Trustee charges a reasonable fee to clients using their services based on the specific service used plus reimbursements for related costs. The Public Trustee will discuss services and fees with individuals, families or representatives of clients and may collect any fees from the assets of the client they represent.

You can get the necessary forms on the Legal Aid website:

- *Application to Appoint Public Trustee as POA or Executor (Form 01)
- *Application of Referral to Administer an Estate (Form 02)
- *Application for Services - Adult Services (Form 03)



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How do I get criminal or family Legal Aid?

That depends on your situation. You can access Duty Counsel for certain criminal and family law matters right at the court house. Be sure to go early. If you have been detained or arrested by the police, the police must allow you to call your lawyer or the legal aid lawyer as soon as possible and in complete privacy.

If you wish to apply for criminal or family legal aid, the first step is to contact your local Legal Aid Office for an appointment (See **List of Offices at back of booklet**). If your legal problem is a covered service, the intake worker will continue the application process. Youth (12 to 17 years) charged with a criminal offence are automatically eligible for free legal representation in court.

How does Legal Aid decide who is eligible for legal representation in a criminal or family matter?

Legal Aid decides who is eligible for representation based on a number of criteria.

Scope of Service: Legal representation is available in criminal cases to individuals in financial need who have been charged with an offence that would likely result in jail time if convicted. See page 3 for a list of criminal proceedings not covered by Legal Aid. In the case of family matters, Legal Aid offers representation to eligible clients applying for custody, access and child/spousal support under the *Family Services Act*. Legal representation is also provided to custodial parents in child protection proceedings relating to supervisory orders, custody or permanent guardianship of their child.



Financial Assessment: Legal representation is intended to assist individuals who cannot afford a lawyer to represent them in certain criminal or family law matters. Financial eligibility is based on your gross family income, the number of dependant children, and so on. There is a sliding scale for client contribution. **Click here for a printable version of the Eligibility and Income grid.**



If the Legal Aid intake worker finds that you have the ability to contribute to a covered service, you may be required to make a monetary contribution. If you own property and are unable to make the contribution, Legal Aid may agree to register a lien on your property. Generally, people with low income, those on social assistance and youth would qualify for free representation.

Merit of each case: Legal Aid will assess the legal merit of each case when you first come in and on a continuous basis to be sure that there is a reasonable likelihood of achieving the desired result.

Other Criteria: In family law matters, the lawyer representing you may require that you register and take the parenting after separation course, called **For the Sake of the Children**, as a condition to continuing their legal representation.

Emergency situations: Legal Aid may prioritize cases such as when a victim of spousal abuse needs a family court order on an urgent basis.

NOTE: Even if Legal Aid is handling your case some kinds of expenses may not be covered, such as assessments, expert witnesses, DNA testing, and so on. You would be responsible to pay for those services.

What do I need to bring with me to my appointment?

If your legal problem is a covered service, the intake staff will need to figure out if you meet the financial eligibility criteria. You should take as much information as possible to show your household income. For example, bring the following:

- Identification (e.g. Social insurance card, driver's license, or medicare card)
- Existing orders relating to your case – (court orders, separation agreements, etc.)
- Proof of current income relating to salary, wages, commissions, other income, pension, allowances, and any other benefits received (e.g. recent pay stubs, income assistance stubs or Employment Insurance statements)
- Bank statements or bank books



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If my spouse/partner has applied for family legal aid first, can I still apply?

Yes, you may apply for family legal aid even if your spouse has already applied. If both of you meet the eligibility requirements, then one of you would probably be represented by the Family Solicitor and the other may get a certificate to have a family law lawyer in private practice represent him or her. This is done to avoid any conflicts.

How long does it usually take to get legal aid?

After you make an application for representation in a criminal matter, Legal Aid will usually tell you their decision in 1-2 weeks and schedule a meeting with your lawyer. In a family matter, it may take 1 - 3 months to be screened in and have your first meeting with the lawyer who will represent you. Non urgent matters may take longer.

Can I appeal a decision if I have been denied legal aid?

Yes. If Legal Aid denies you a covered service, they will send you a form which you can fill out and return to start the appeal process.

What if I have a complaint about Legal Aid?

If you have a complaint about Legal Aid, you should put your concerns in writing and send the letter to: **NBLASC, Attention: Executive Director, 412 Queen Street, Suite 210 Fredericton, NB E3B 1B6**



Other Law-information Resources

Legal Aid can tell you about local legal advice clinics or special services, if available in your area. Or direct you to the law information resources available from **Public Legal Education and Information Service of New Brunswick (PLEIS-NB)**. Some of the PLEIS-NB booklets and guides that may be helpful include:

Criminal Law

- Defending Yourself in Provincial Court
- The Law, the Police and You: Your Rights When Questioned, Detained or Arrested
- Accused of a crime? Mental Health and the Criminal Justice Process
- In Trouble with the Law: Youth Rights
- Consequences of a Youth Record

Family Law (visit www.familylawnb.ca or call 1-888-236-2444)

- Doing Your Own Divorce in New Brunswick
- New Brunswick Child Support Variation Kit
- Income and Financial Information
- When Couples Separate
- Family Law Matters for Immigrants
- Applying for Custody, Access and Support
- Family Law Workshops for Self-Represented Litigants
- Other family law brochures and forms

For the Sake of the Children

This is a free 6 hour “parenting after separation” course offered by the New Brunswick Department of Justice. The course helps parents to understand the legal issues involved in separation, minimize the negative impact on children, and communicate in a way that reduces conflict and stress.

For more information, or to order these publications, visit the PLEIS-NB websites at www.legal-info-legale.nb.ca or go to Family Law NB at www.familylawnb.ca.



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Legal Aid Offices

Bathurst

275 Main St., Suite 215
Bathurst, NB E2A 1A9
506-546-5010

Campbellton

19 Aberdeen St., Suite 201
Campbellton, NB E3N 2J6
506-753-6453

Edmundston

121 rue de l'Église., Suite 209
Edmundston, NB E3V 1J9
506-735-4213

Fredericton

412 Queen Street, Suite 210
Fredericton, NB E3B 1B6
506-444-2777

Miramichi

673 King George Hwy, suite 103
Miramichi Law Courts
Miramichi, NB E1V 1N6
506-622-1061

Moncton

860 Main St., Suite 402
Moncton, NB E1C 1G2
506-853-7300

Saint John

15 Market Square, 15th floor
Saint John, NB E2L 1E8
506-633-6030

Woodstock

633 Main St., Unit 122
Woodstock, NB E7M 2C6
506-328-8127

Tracadie-Sheila

3512 Principale St., Suite 1
Tracadie-Sheila, NB E1X 1C9
506-395-1507

To Contact the Public Trustee:

500 Beaverbrook Court, Suite 501
Fredericton NB E3B 5X4
(506) 444-3500

For more information, visit Legal Aid's website at www.legalaid.nb.ca