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# Community Legal Information Association of Prince Edward Island, Inc.

## You and your Lawyer

Laws affect every part of life— they help you own property, deal with relationships, take care of business, and deal with birth and death. Laws give you both rights and obligations.

Lawyers are persons trained to give legal advice and services, and to represent people in court. This pamphlet gives ideas about choosing a lawyer and preparing to visit a lawyer. It describes the lawyer and client relationship and suggests other resources to help you.

Some of the different types of everyday situations where you may need the help of a lawyer are:

- buying or selling your house
- making a will
- separation from your spouse
- starting a company
- suing someone or being sued
- being charged with an offence
- being injured in an accident
- signing a contract

### **Choosing a Lawyer**

There are many lawyers in PEI today — some concentrate on specific areas of law, but most handle many types of legal problems. Some law firms organize the lawyers in the office around different areas of law. This gives you many choices when looking for the right lawyer to help you.

Lawyers and law firms are listed in alphabetical order in the Yellow Pages of the telephone directory under "Lawyers". You can also find them listed on the Law Society of P.E.I.'s website at [www.lspei.ca](http://www.lspei.ca)

Personal recommendation is one way to find a lawyer. Talk to people who have had similar legal problems. Ask them which lawyer they dealt with, and whether they were satisfied with the legal services they received.

Another way to find a lawyer is through the Lawyer Referral Service run by Community Legal Information Association of P.E.I. (CLIA). You will be given the name of one lawyer who deals with your kind of problem. You may see the lawyer for a short consultation at a nominal cost. During the consultation, the lawyer will tell you what legal services you may need and give you an estimate of what it may cost to deal with your problem.

You can reach the Lawyer Referral Service by phoning 902-892-0853 or 1-800-240-9798 between 9:00 a.m. and 3:30 p.m. Monday to Thursday.

CLIA also operates a legal information inquiry line. If you want verbal or written information about a specific area of law, call CLIA at 902-892-0853 or 1-800-240-9798. Legal information is also available on the CLIA website at [www.cliapei.ca](http://www.cliapei.ca) or you can visit the CLIA office in Room 111 at 40 Enman Crescent in Charlottetown, C1E 1E6.

### **If You Cannot Afford a Lawyer**

If you are low-income and have a criminal or family problem, you can apply for legal aid. If you qualify, one of the staff lawyers will take your case, free of charge. To see if you qualify for criminal legal aid, telephone 902-368-6043 in Charlottetown, and 902-888-8219 in Summerside. To see if you qualify for family legal aid, call 902-368-6540 in Charlottetown and 902-888-8066 in Summerside.

### **The Lawyer-Client Relationship**

It may be helpful to know some things about the practice of law and the relationship between you and your lawyer.

Your lawyer cannot advise you properly without knowing all the facts. You need to tell your lawyer everything about the situation. Your lawyer **must** keep your information confidential. You are protected by "solicitor client privilege," which is there so you can tell the whole story to your lawyer in private.

### **Your Lawyer's Firm**

When you hire a lawyer, you are also hiring the firm the lawyer works for. If your lawyer is sick or away when something happens in your case, another lawyer from the firm may help you.

Your lawyer may review your case with other lawyers in the firm or ask them to help research your case. Another lawyer in the firm may do part of the case, especially if it involves more than one area of the law. Everyone who works for the law firm has duties of confidentiality toward you and your case.

### **Conflict of Interest**

Lawyers are expected to give you objective advice. Your lawyer cannot be involved personally nor represent someone who is against you in the case. A lawyer will not usually see both a husband and wife when they separate or represent both a buyer and seller in a land transaction. This is considered a conflict of interest. If there is no real or potential conflict, a lawyer may sometimes advise both sides, but only with the knowledge and agreement of both.

### **Instructing your Lawyer**

After discussing your problem with the lawyer and hearing your lawyer's advice, you have to tell your lawyer what you want done. The lawyer will try to get what you want within the law. Your lawyer cannot follow instructions from you that would break any law or conflict with the lawyer's duties to the court or to the legal profession.

### **Ethical Obligations**

The legal profession has high standards for lawyers. A Code of Professional Conduct outlines what is expected of a lawyer in dealing with clients, with other lawyers, with the profession itself and with the courts. If lawyers act unprofessionally or unethically, they can be disciplined by the Law Society.

### **Prepare For Your Visit to Your Lawyer**

Good planning will help you make the best use of your time with your lawyer. The more organized you are, the less time you will require and the smaller your lawyer's bill will be. Here are some tips for getting ready to see your lawyer:

- make an appointment
- gather information the lawyer will need
- take all important papers and documents with you
- write out the events as they happened
- make a list of the names, addresses, and telephone numbers of anyone involved
- make a list of questions or points to discuss with your lawyer so you don't forget them
- take a pen and paper with you to keep notes of what your lawyer tells you

### **Meeting With Your Lawyer**

When you meet with your lawyer, stick to the facts, but tell the lawyer everything important. Answer your lawyer's questions fully, even though you may not understand why the lawyer is asking the question.

Your lawyer will tell you the law about your situation. Your lawyer will explain your options to you, and may give you recommendations about possible solutions to your legal problem. Your lawyer may give advice on how to protect your

interests and avoid further problems. The lawyer will usually explain the risks and costs involved.

If something is not clear, ask to have it explained. Sometimes your lawyer may need to do legal research before giving advice. The law changes often and your lawyer may need to check laws or court decisions.

### **Hiring a Lawyer**

You decide whether to hire a lawyer to do legal work for you. Ask some questions to help you decide whether to hire the lawyer or not. You can ask:

- What needs to be done?
- What are my options?
- How long is it likely to take?
- What are my chances of success?
- What are the risks?
- Who will be responsible for my case?
- How much will it cost and what are the payment options?
- What can I do to speed things up?
- What can I do to keep costs down?
- How will I be kept informed about my case?

### **Paying for your Lawyer's Services**

When you hire a lawyer, you are buying the lawyer's time and skill. It is a good idea to have a discussion about the estimated cost and the method of payment. Your lawyer may be flexible about payment arrangements. You could be sent monthly bills or billed when some event takes place in your case. Sometimes the lawyer will bill you only when the case is over or you can arrange to make monthly payments over time.

Often a lawyer will ask for a "retainer" at the beginning of a case. When a client pays money as a retainer before the lawyer starts to work on the file, this money is kept in the lawyer's trust account as a credit for the legal work to be done. As the case proceeds, the lawyer will deduct the amount of your bill from the retainer. If the retainer is not completely used, you will get a refund. If your bill is more than the retainer, you must pay the difference.

### **Lawyer's Fees**

Lawyers have different ways to calculate fees, depending on the type of services required and the firm's billing practices. The following are the usual methods:

1. An hourly rate is the usual way of billing, especially for a court case. The lawyer does not know how long the trial may take or whether it may settle out of court. A lawyer's hourly rate depends on experience and expertise. The lawyer bills for all the time spent on your case including telephone calls, letters, meetings and court appearances

2. Sometimes a flat fee or fixed rate is charged for legal services. This may be used when it is an uncomplicated will, an uncontested divorce, a problem-free home purchase, or the incorporation of a new company. One rate is charged, no matter how much time it takes.
3. Sometimes a "contingency" fee is used. This may happen in personal injury cases. This means the lawyer receives no fee unless he or she gets money for you, perhaps after a settlement with an insurance company or after a trial. Then you pay the lawyer an agreed percentage of the amount you receive. You also pay the lawyer's expenses and other expenses of the case. The contingency fee agreement between you and your lawyer must follow rules set by the courts. It must be in writing and filed at court with an official called the Prothonotary. The Prothonotary also deals with any problems that may arise as a result of the agreement.
4. In some other types of cases, a percentage fee is used. A lawyer may charge a percentage of the value of an estate to take it through probate procedures or a percentage of a debt in order to collect it.

No matter which type of fee arrangement is in place, you must pay for your lawyer's expenses, called disbursements. These may be the costs for filing and serving documents, or for long distance calls, photocopying, subpoena fees or other reports.

Unless you have a contingency fee arrangement, you pay the lawyer whether you win or lose in court. The losing side in a court case may have to pay the court costs of the winning side if the judge orders it. This is part of the risk involved in going to court that you should discuss with your lawyer at the beginning of your case.

### **If You Have Problems with a Lawyer**

Occasionally, a lawyer and client will disagree. It may be over how to conduct the case, the fees charged, or what you believe is improper conduct by the lawyer. You may try to resolve the problem by having an open discussion with your lawyer. A discussion gives your lawyer a chance to explain things to you and gives you a chance to explain why you are unhappy.

If you're uncertain about something your lawyer says or does, you can always get a second opinion. You will have to pay a second lawyer for this.

If you are unhappy, you may hire another lawyer or ask to have your case transferred to another lawyer in the firm. If you change firms, you will have to pay your old lawyer for the services provided to you. Your new lawyer can handle this for you and get your file when the bill is paid.

You may complain to the Law Society if you think that your lawyer has acted unprofessionally or unethically. The Law Society has the power to discipline a lawyer for unprofessional conduct. For more information about the complaints procedure, contact the Law Society office at 902-566-1666.

If you think your lawyer has made an error or was negligent in handling your case, you may be able to sue your lawyer. You should consult another lawyer to see if you have a claim against your lawyer for the mistake. In order to practice law, lawyers must carry professional liability insurance to cover errors and omissions.

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