



Advocates & the Legal System

Advocacy

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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](#).

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What is Advocacy?

Advocacy means standing up for someone's rights or attempting to change something that is affecting someone negatively; it involves seeking justice for a person. The bottom line of advocacy is that everyone has certain basic rights which are, or should be enforceable. An advocate is a person that attempts to ensure that the individual, group, or cause they represent, receives fair treatment and that the rights they possess are respected. In many cases, advocacy aims to level power imbalances that exist in society.

Advocacy is:

- the active promotion of a cause or principle;
- an intervention that leads to a specific goal;
- an active intervention – personal, hands on service;
- protecting someone from injustice;
- taking a “rights” position and/or defending someone's rights;
- acting on the side of an individual and/or for collective human rights;
- standing up for the enforcement of existing rights to adequate services and decent treatment;
- ending assumptions and challenging biases and stereotypes;
- pressing for changes in policy, procedures, or laws to protect existing rights and to create new ones;
- gathering evidence to support the cause, issue, or case;
- using personal, agency, and institutional power to make the case;
- an adversarial process where people are challenging authority and the decisions of professionals;
- applied based on cultural expectations and practices; and
- an active follow-up as a watchdog for people's rights.

The Underlying Assumptions of Advocacy

Advocacy assumes that:

- services are limited, either by resources or politics, and do not serve everyone;
- everyone who qualifies will not get services because of the inequalities built into systems and institutions;
- rules are not always fair and not always fairly administered;
- power is unequally distributed in systems, institutions, and agencies - clients, patients, consumers are at the bottom end of that power; and
- change is possible.

Types of Advocacy

There are three main types of advocacy:

1. Self-Advocacy

2. Individual/One-to-One Advocacy
3. Social Action/Systemic Advocacy

Self-Advocacy

When you advocate on your own behalf, you are a self-advocate. This means you take the steps necessary towards change and achieve a goal. The goal may be to get information, obtain a service, or change a policy. You may not be acting alone, but you are taking a lead role.

Advocating for yourself is an important step in:

- educating others about your needs and your abilities; and
- furthering equality and protecting your human rights.

Self-advocacy helps people:

- regain control over their own lives;
- express their own needs; and
- represent their own interests.

Individual/One-to-One Advocacy

Individual or one-to-one advocates are people who assist others to get the information, service, or change they desired. Assistance may range from finding information for someone, going with a person to a meeting, or speaking to (i.e. lobbying) a government official on a person's behalf. Advocates help people help themselves and this includes supporting, empowering, or acting in some way on behalf of another individual. It means “going to bat” for a person.

Social Action/Systemic Advocacy

Systemic or community advocacy is sometimes referred to as social action. This is covered in *Section Two*. This kind of advocacy involves working on behalf of many people who want something to change. It means working to change the “systems” that people have to deal with.

An example would be groups working together to get the provincial government to increase disability benefits. Community advocacy or social action initiatives may be directed at changing legislation, policies, practices, opportunities or attitudes on a large scale. It almost always involves raising public awareness and consciousness about an issue, bringing individuals together for mutual support and action, and forming partnerships with the community to share information and action plans.

Who is an Advocate?

Many different individuals and groups of people advocate:

Lawyers

The traditional lawyer-client relationship, based on client instructions, utmost good faith and loyalty, and advocacy performed by the lawyer.

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|-----------------------------------|--|
| Boards | Advocacy by an institution (such as a community non-profit organization) on behalf of an individual or group. |
| Consumer groups | Individuals with present or former disabilities who form organizations in institutions or the community to advocate on behalf of individuals or groups. |
| Families | Informal advocacy by parents, children, spouses, or siblings on behalf of an individual. |
| Individuals | An individual acting on his/her own behalf. |
| Staff* | Informal advocacy by individuals on behalf of others in situations, where the advocate is not primarily employed to act as an advocate, but where he or she accepts the responsibilities of an advocate with respect to an individual. |
| Substitute Decision Makers | Individuals that have been appointed to act for a person, who is considered to be legally incompetent, and will advocate on his or her behalf. |

**Note: Staff members working within the health and social service sectors often speak up for an individual; some would say that they cannot be completely independent of the concerns of the service provider. This can sometimes lead to conflicts of interest and is a reason why advocates need to be independent to truly serve the individual without compromise.*

Styles of Advocacy

Honey or Vinegar: The old saying that you can get more bees with honey than with vinegar is a good place to start talking about advocacy styles.

The Co-operative (honey) style:

- The advocate takes the position that the system will co-operate and provide what is needed.
- The problem is a lack of information or a miscommunication.
- The representative of the system is seen as an ally or at least a potential ally.
- The solution will be as a result of mutual co-operation.
- If the representative of the system says no, the advocate will express disappointment and move to the next level of decision-making.

The Adversarial (vinegar) style:

- The advocate takes the position that the system will be uncooperative.
- Representatives of the system are seen as "enemies", or potential "enemies".
- The solution will be as a result of asserting a position and sticking to it.
- If the answer is no, the advocate will move to the next level of decision-making with no explanation.

Deciding which style would be most effective will depend on the situation. Advocates must decide which style might be more likely to get the results needed for the individual, while also respecting his/her wishes. Advocates also need to think about how often they work with the system and the people within it; it is important to maintain positive working relationships. At the same time, an advocate should not be passive, compliant, or avoid difficult issues. Advocates must be enthusiastic and committed.

What an Advocate Does

It is important to try to empower individuals to act on their own behalf as much as possible and to offer them only the amount of support and assistance they request and need. Sometimes people only need to be pointed in the right direction, but advocates must also be ready to do more if it is needed. What an advocate does will depend on the situation.

The following are examples of things that advocates may have to do:

- Make calls with, and for individuals when they are unable to do so.
- Provide and interpret information on the issue the individual is dealing with.
- Negotiate with the “system” to get people what they need.
- Work on behalf of vulnerable and marginalized people to defend their rights and obtain resources.
- Work with, and for people to help them through the system.
- Empower people to make changes by using their power to help and support them.
- Lead the way in systemic change.
- Stand with, and believe in marginalized and oppressed peoples.

Advocates should listen to the person they are advocating for.

Advocates should:

- be guided by the values and wishes of the individual;
- not substitute their own view of the “best interests” of the individual;
- remember they are primarily accountable to the individual;
- remember the relationship is voluntary and consensual or contractual; and
- respect the confidentiality of the people they are advocating for.

Sometimes there may be limits that affect an advocates willingness or ability to act, such as:

- if the instruction given by the person are illegal;
- if the instruction given or aspects of the situation are unethical;
- if the individual’s wishes are impossible to achieve; or
- if the individual is not able to give instruction.

Advocates must be independent:

- advocates must show loyalty to the individual and avoid **conflicts of interest**.

Advocates must be accessible:

A **Conflict of interest** is when you have a personal or professional interest, which limits or may appear to limit your ability to act in the best interests of the person you are advocating for.

Advocates must:

- be aware of barriers to communication and try to overcome them.
- be physically available.
- have access to the individual's information.
- protect the privacy (confidentiality) of communication
- not let others interfere in the communication or the relationship.

Advocates should use their skills, resources, and supports to support an individual's own self-advocacy skills and autonomy.

Advocates should:

- support the individual's ability to speak out for his or her own needs;
- protect the individual from threatening forces or events;
- compliment the individual's strengths in advancing his/her wishes;
- encourage the individual (or group of individuals) to be involved as much as possible; and
- help the individual assert his/her own autonomy.

Understanding & Setting Boundaries

The following are things to keep in mind when serving as an advocate:

- Set clear guidelines** for the person being advocated for. Be firm on what can and cannot be done for them and put it in writing. Be careful not to break the guidelines.
- Always keep in mind that **safety** is important. Never meet at home or give out a home address. Try to meet at an office location. If there is no such location, then meet in a public place that also offers some privacy (e.g., a booth in a restaurant). If someone is threatening then end the interview immediately. Trust your gut.
- If advocates find themselves making **judgments** about the people they are advocating for, or if they find yourself thinking, "this is the same old story," try a different approach. Many stories may sound similar but their details are what make them unique. Advocates will find it difficult to convince someone else that the person is entitled to something when they do not believe it themselves. If advocates are approaching all problems in the same way or finding themselves stumped if one solution doesn't work out, they need to try some different problem-solving techniques. Ask another advocate what they would do in that situation (keeping confidentiality in mind). Always try and have a number of options available.
- Advocates will experience **personal feelings**. Be aware of these feelings and be objective. If a situation makes an advocate angry then they should be sure to direct their anger at the situation, not the individual(s) involved. Be clear with the individuals about why you are so angry so they will not think you are angry with them. Many times they are confused and need your support.
- Advocates will likely be **overwhelmed** at times in advocacy work. It is important to develop ways for dealing with these feelings. Advocates must learn to manage those feelings so that they can continue to be helpful to the person they are working with.

- Having **clear reasons for accepting cases** will help advocates feel fair about the cases they take on and those you do not.

Some examples are:

- a. I will always be an advocate for people living with mental illness whose housing and/or income is threatened.
- b. If the person coming to me faces an emergency situation I will be an advocate for him/her.

It is best for advocates to tell individuals at the first meeting if there are specific reasons they will not advocate for them. Some examples of reasons to refuse are:

- a. I will not advocate for anyone who is committing fraud or other criminal offences.
- b. I will not advocate for anyone if I have found that he /she is not telling the truth.
- c. I will not advocate for someone who loses his/ her temper in a meeting.

Remember, these are only examples; you will know what your reasons are.

- **Know what your limitations are.** Do not take on tasks that are too big. Know when to refer the person to another resource, for example, a legal aid office or mental health group in the area. If an advocate is constantly feeling panicked by their workload, they need to review their policy for taking on cases or how they are carrying out your work. Taking on too much work may not only harm the advocate, but the person they are advocating for.
- **Develop a support network.** There are many individuals and organizations out there doing mental health advocacy. They will be a valuable resource to you in being aware of developments in mental health law and advocacy. Advocates need to be able to share their experiences, good and bad, with others who understand the work they do.
- **Understand the limits that may affect willingness or ability to act,** such as:
 - if the instruction given is illegal, or aspects of the situation are unethical;
 - if the individual is not telling the truth;
 - if the individual's wishes are impossible to achieve; or
 - if the individual is not competent.

There will never be a shortage of people who need advocacy services. That's why advocates must set their boundaries and stick to them.

Understanding Barriers to Service

Many people find it difficult or impossible to find the resources they need. Understanding the barriers to accessing services will help determine what kind of support is needed. Here are some examples of barriers. There may be other barriers depending on the issue the individual is dealing with.

Barriers include:

- a complicated service system that is not always coordinated;
- difficulty understanding and/or negotiating through the policies and procedures of agencies;

- a receptionist or agency personnel who do not have time or the patience to listen, do not know their job, or lack resources available within an agency;
- a receptionist or agency personnel who fail to extend themselves in order to determine the nature of the person's call;
- a receptionist or agency personnel who may be discouraged from assisting the person because of their job description (inter-agency policies put it outside of their job description);
- the services may not exist or may not be culturally relevant;
- the services may be limited by government cutbacks and lack of funding;
- there may be no means to coordinate services when specialized or multiple needs exist;
- physical and social isolation;
- lack of transportation required to access information and/or services;
- physical inaccessibility for those with disabilities that affect their mobility;
- waiting lists in order to access services;
- busy telephone lines;
- computerized information systems that have no human being to talk to (i.e. automated phone response systems) or involve delays; and
- poorly trained or prejudiced attitude of staff.

Forms and documents may also be a barrier to service. People may have difficulty completing the necessary forms and documents because:

- they are not familiar with the language used or they lack literacy skills;
- the print is of poor quality or size;
- there are complicated instructions;
- they feel the information required in the form intrudes on their privacy;
- the forms require them to provide the same information over and over again;
- there are barriers to communication (e.g., a hearing or speech impairment results in an inability to put thoughts into words); and
- there are cultural differences.

Diversity Awareness

Diversity is about differences – the human qualities that make us different from everyone else. It includes gender, ethnicity, race, sexual orientation, and age. It also includes other personal characteristics that identify us as individuals—things like our upbringing, education, abilities, disabilities, religion, and experiences.

The way we experience the world is shaped by these things. We are all different, but for some, their differences may mean they face isolation and exclusion. The risk of discrimination can lead to lowered self-esteem and confidence, decreased trust, lack of opportunity to fully participate in key areas of life, and ongoing effects on physical and mental health.

Cultural Competence

Cultural competence is a process with an emphasis on adapting your attitudes, behaviours, knowledge, and skills so that you can, in meaningful and appropriate ways, respond to the unique needs and issues of culturally diverse people with mental illness.

As an advocate, you must be aware of and critically examine your own beliefs, values, and biases; you must be open to differences and willing to learn.

You should not assume that you will know everything about the person you are working with, based on his/her mental illness.

You should not presume to understand the norms, values, and beliefs others have based upon the language they speak, the colour of their skin, or their country of origin. To do so can lead to stereotyping and inappropriate actions that do not respect and are not based on the individual's unique needs and realities.

Cultural competence involves being aware of and re-examining our values; it is the influence of these values on our beliefs, which affect our attitudes and actions.

It is also important to understand the difference between equality and equity. Equality means being equal; equity means fairness. When we treat people *equally*, we ignore differences. When we treat people *equitably*, we recognize and respect differences.

Be Culturally Aware.

- Develop an awareness of the issues and needs of people from different cultural, ethnic, or religious backgrounds.
- Learn about their values, beliefs, traditions, and strategies for problem solving.
- Establish and maintain strong working relationships with social and community service organizations that serve diverse groups/communities. Some of these groups are listed in "Additional Resources" of this Section.

Cultural Competence:

- improves equality in service;
- addresses inequities in access to care and services based on cultural diversity;
- requires an understanding of the communities being served, as well as the cultural influences on an individual's beliefs and behaviours; and
- responds to diversity by being able to communicate, learn, and change.

Confidentiality

Confidentiality is an essential part of any helping relationship. People want assurance that the information they are sharing is kept confidential; this is crucial in building trust between the advocate and the individual. If the advocate is not trusted, they will not be effective.

The person may be providing very personal information. Disclosing information without the person's consent may create a threat to his/her safety, or it may be perceived as a threat to his/her safety. An advocate must be trusted to keep all personal information confidential and only share information if the person gives his/ her consent.

The individual has the right to confidentiality. Advocates must keep this in mind when they are acting on his/her behalf and are:

- in discussions with the advocacy program, agency, or organization;
- speaking casually with friends, family, and other advocates; and
- meeting with people outside the advocacy situation.

Advocates should always keep private information in a secure place and should not share it with anyone who has not been authorized by the person they are advocating for. If the advocates does not have anywhere safe to keep papers then they should give them back to the person at the end of each meeting with them.

Limitations on confidentiality

Advocates must be very clear about the limitations of confidentiality they can offer the person they are helping. Advocates should assure the person that they will keep everything they tell them confidential, but within the limits of the law.

If required by law, advocates must share any information given to them by the person they are helping, including any written records. These records can be subpoenaed (demanded by the other side), for example, if the case goes to court. In such cases, it may be necessary for advocates to get professional legal advice.

Protection of Personal Information

There is a federal law that sets out rules to protect personal information. This is called the ***Personal Information Protection and Electronic Documents Act*** (also referred to as PIPEDA). The Act gives certain rights to individuals, and imposes specific obligations on organizations. For example, the Act requires organizations to obtain a person's consent to collect, use, or release information about him/her.

It is important for advocates and the people they are assisting to understand the rights he or she has under this legislation.

Identifying Advocacy Issues

People usually come to an advocate with a complex story of problems that are causing concern. In order to properly identify the advocacy issues advocates must be good listeners, establish clear communication, and know something about the systems and services affecting people.

Clear Communication

Let the person tell his/her story.

- If the person has a hard time sticking to the issues, gently but firmly remind them of the reason for the meeting. Ask specific questions to try and keep them on track.
- Set time limits.
- If the person is having a hard time telling their story, ask them exactly what they would like to see happen. They may not need an advocate, but need a chance to clarify their problem. They may also need more time to get their information together. If so, offer to make another appointment.
- If people leave and then phone to ask questions on issues that were already explained, or they are not following through on "to do" lists, ask them to state what they are going to do when they leave. Ask if they feel satisfied that they will get solutions; write it down for them and follow-up to make sure they understand.

Advocates will need to clearly identify the issue for themselves and the person they are advocating for. It is best to define the issue in ways that are as specific, clear, and simple as possible.

Consider these questions:

- What does the person see as the issue?
- Are there any other issues involved the person may not see?
- Why is the issue important and why is it important to the individual?
- What has the person already done about the problem?
- What is the individual's goal (e.g., what does he/ she want or think should be done about the issue)?

Finding Solutions to the Issues

In order to find a solution to the case advocates must be able to identify the system or service to be contacted and the person with the power to remedy the situation.

Sometimes the solution to the case will be obvious.

- The individual's instruction is clear.
- The route to achieving the individual's end is direct, commonly used, and short-term.

In other situations, the solution will be more difficult, and advocates will have to consider a range of factors such as the:

- social context
 - of the individual and his/ her family and community supports; and
 - of the problem.
- legal context
 - How did the problem arise and what are its legal issues?
 - What range of solutions could actually be considered?

The particular situation will also affect what solutions are possible.

Things to consider include:

- the individual's own emotional, cognitive, and material status;
- the availability of services;
- the clarity of, and support for, the advocacy role ;
- the expectations the person has placed on the advocate and how these expectations compare with the advocates of your role;
- the kind of person being advocated for (e.g., an individual or a group);
- whether the problem is systemic (i.e. based in government policy or practice) and whether it should be approached at a systemic level;
- whether the advocate effectively fights the desire to maintain the status quo and the hierarchy; and
- whether the advocate acts alone or there other advocates or alliances to assist in efforts on behalf of an individual.

Advocates must also consider what information and facts are available in the case. Things to consider include:

- how advocates can establish the facts for their position on behalf of the individual; and
- the availability of:
 - records;
 - independent experts;
 - witnesses who can support the facts (called corroborative witnesses); and
 - interpretative aids for medical, scientific, regulatory, or other complex; material.

Sometimes, there may be more than one way of dealing with an issue. Things to consider include:

- whether advocates try multiple remedies at the same time or try them one by one; and
- whether a diagram or flow chart, identifying the problem and potential options, may help advocates make choices.

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