



Advocates & the Legal System

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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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Contents

Advocacy	1
What is Advocacy?.....	1
The Underlying Assumptions of Advocacy.....	1
Types of Advocacy.....	2
Self-Advocacy	2
Individual/One-to-One Advocacy	2
Social Action/Systemic Advocacy	2
Who is an Advocate?.....	3
Styles of Advocacy	3
What an Advocate Does	4
Understanding & Setting Boundaries.....	5
Understanding Barriers to Service.....	7
Diversity Awareness.....	7
Cultural Competence	8
Confidentiality.....	8
Protection of Personal Information.....	9
Identifying Advocacy Issues.....	9
Finding Solutions to the Issues	10
Systemic Advocacy	12
What is Systemic Advocacy?	12
Principles of Fundamental Justice	13
About Power	13
Types of Power	13
Identifying People with Power.....	14
Additional Considerations on Power.....	15
About Bureaucracies	15
Influencing Change.....	17
Influencing Politicians	17
Influencing the Bureaucracy	18
Influencing Public Opinion.....	19
Additional Tips for Effective Systemic Advocacy	19
Law Making	21
Understanding Government Structure	21
The Constitution.....	21

How Government Works	21
Federal Government.....	22
Provincial Government.....	23
Types of Law	23
Statutes, Regulations & Bylaws.....	25
Case Law	28
Legal Services.....	30
Legal Information Society of Nova Scotia.....	30
Self-Representation	30
Mediation	31
Legal Aid.....	33
Hiring a Lawyer	33
Finding a Lawyer.....	33
Legal Fees and Expenses.....	35
Managing Legal Costs.....	36
If a Client Disagrees with the Bill	37
Office of the Ombudsman.....	37
Process	38
References & Bibliography	39

Advocacy

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.
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.

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 independent:

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

Advocates must be accessible:

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 it 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.

Systemic Advocacy

What is Systemic Advocacy?

There are many systems in our society, for example, the mental health system, the education system, the criminal justice system, and the social service system. Each system is made up of a wide range of individuals, groups, programs, services, and structures that relate to each other in some way.

As a rule, the larger a system is the more complicated and difficult it will be to make sure all of its parts work well for the benefit of its users.

Sometimes the way systems are developed and managed makes it hard for people to get what they really need, even though this is not the intention of those who develop the system's policies and regulations. Sometimes standards, policies, or ways of operating exclude members of certain groups, such as people living with mental illness or disabilities.

Systemic advocacy involves working on behalf of many people who want something to change. It may be directed at changing legislation, policies, practices, opportunities, or attitudes on a very large scale.

Systemic advocacy means working to change the "systems" that people have to deal with. It is also referred to as community advocacy or social action.

It almost always involves:

- raising public awareness and consciousness about an issue;
- bringing individuals together for mutual support and action; and
- forming partnerships within the community for the mutual sharing of information and action plans.

An example of systemic advocacy would be lobbying the provincial government to increase disability benefits.

Systemic advocates work to change systemic factors that disadvantage and discriminate against people. These factors include:

- laws, regulations, and policies;
- power imbalances;
- work and management practices of organizations;
- structures and processes to ensure transparency and accountability;
- access of information;
- quantity, distribution, and quality of services; and
- attitudes towards people.

Principles of Fundamental Justice

In our Canadian democratic society, everyone has certain rights based on the following principles. Individuals have the right to:

- receive notice if their rights, property, or liberty will be affected by a decision;
- notice of a hearing, if one is to take place;
- know the issue being considered and to be given sufficient time to prepare a response;
- be heard - in writing, or in a hearing if one is held;
- call witnesses and to cross-examine witnesses, or give other evidence if there is a hearing;
- be informed of the facts on which a decision is based; and
- have decisions made without bias on the part of the person making the decision.

About Power

Often systemic advocacy focuses on restoring the balance of power between those who make decisions and those who are affected by them. It is useful for advocates to have an understanding of what power is, who the power actors are, and what power structures exist.

Power is the ability of a person or a group to make significant change, usually in people's lives, through his/her actions or the actions of others.

Power is always part of a relationship; it cannot exist by itself. People, either as individuals, or as part of a group must allow it to exist. When someone fails to exercise the power they possess, someone else will exercise it instead. Advocacy is about helping people get their power back or helping them to use the power they do not know they already have.

Types of Power

People have power for different reasons. In *Section Two*, those who have power will be referred to as 'leaders'; those who do not, will be referred to as 'followers'.

The following are some types of power and the basis of those powers:

Coercive power is based on real, or imagined force.

The followers fear being hurt, poorly treated, or dismissed by the leaders. This allows the leaders to rule over the followers.

Legitimate or positional power is based on the office or title of the leader.

For example, the president, director, dean, or chief executive officer can "call all the shots" in an organization and be assured that his/her orders will be followed; usually, the higher the status of the leader, the greater the expectation that his/her orders will be acted upon.

Expert power is based on the knowledge, talent, and skill of the leader.

These abilities must be coupled with followers' respect for that skill and the assumption that this expertise is valuable. Examples include medical doctors, professors, staff specialists, lawyers, or anyone else that has a specialized knowledge about a specific issue.

Reward power is based on the leader's ability to give recognition, promotions, money, or goods to followers.

Referent power is based on the leader's personal character.

Charm, charisma, sensitivity, and creativity are some examples of the personal characteristics of most leaders. These characteristics can help the leader gain respect and loyalty from followers.

Information power is based on the ability of the leader to get and give out information that is necessary for the organization to function well. Channelling and/or withholding information is a very effective way to control actions.

Connection power is based on "it's not what you know, but who you know". The leader's ability to network and build connections and coalitions are helpful to his or her personal goals or the goals of the organization. Usually, the more connections a leader has the more power he/ she will hold. An example would be someone who has lived in a community a long time and who has many social connections.

Understanding the type of power someone has will help you determine how that person might help or hinder the case of the person you are advocating for.

It is not only individuals who have power; groups or organizations can act as a unit in exercising social power. Examples might include unions, church congregations, ethnic and racial organizations, civic clubs, and similar organizations. There are many different groups that have considerable power in our society.

Power is always part of a relationship which means that that power actors do not act independently. Power structures are created by the interaction of people or groups who have power in a community. Power structures are often "fluid," meaning they will shift and change based upon the issue and circumstance.

Identifying People with Power

As an advocate, you will need to be able to identify the people or groups with power, or "power actors", in your community.

There are several ways to do this:

Positional Method – who holds positions in an organization?

In organizations that control resources and influence the community, power is centered in the important positions in the organization (e.g. the mayor and members of council, the president of a large business, president of the Chamber of Commerce etc.). You can identify the key organizations and the people within those organizations who have authority.

Another way of thinking about who has power is to look at authority and control of resources.

Authority -- A person has power because his/her position or job allows him/her to be in charge of making decisions.

Control of Resources -- A person who has control of the resources that are needed for making or carrying out decisions.

Do not overlook those who are not in formal positions of authority but are “behind the scenes.” People like administrative assistants or intake workers have a great deal of power over what people and information you can access.

Reputational Method – who has a reputation for having power?

Those who have and exercise power acquire a reputation for having power. People who are knowledgeable about the workings of a community know who the power actors are. Find out who the knowledgeable people in the community are and ask them who they would list as the power actors. If several people name the same person, then most likely he/she is a power actor. Be careful because sometimes social status may be mistaken for social power and newer actors may not yet have gained a reputation as a power actor.

Decisional Method – who makes the decisions?

The real indicator of power is actual participation in decision-making. Look at several key community decisions and determine who was involved in the decision-making process and what role they played in the decision-making process.

Social Participation Method – who is involved in voluntary organizations?

Power is acquired through participation in voluntary organizations. Make a list of community voluntary organizations and the people who have formal positions. Power actors would be those who hold the highest positions in the most organizations and/or the most prestigious positions.

Additional Considerations on Power

- Those who have positions of power may have a hard time considering that others, particularly others who are different (e.g., sex, age, racial, or mental differences), can share that power in any meaningful way.
- More people need to become involved in the decision-making process and to react to decisions that are made. They should be given help to increase their skills in using power and providing leadership in the community.
- Understanding the power structure can help citizens more effectively work to bring about change.

Adapted from Moore, E. (1990). Understanding Community Power Structures. Michigan State University Extension. Available online at <http://web1.msue.msu.edu/msue/imp/modii/ii719205.html>

About Bureaucracies

Most people think of government and red tape when they hear the word “bureaucracy.” It is often a negative impression; however, bureaucracies are so common in our world today that it is hard to imagine organizations being organized and managed in any other way.

The bureaucratic structure is generally used in large businesses or organizations such as governments, hospitals, courts, large non-governmental organizations, corporations, sports leagues, ministries, and academic institutions.

Smaller businesses, organizations, and self-managing co-operatives (a business organization owned and operated by a group of individuals for their benefit) are examples of other ways to organize work.

The key features of a bureaucracy are:

A **hierarchy** of people who work in the organization, with the boss(es) at the top, and workers at the bottom (i.e. a pyramid of authority). There is a clear chain of command and each level of worker has an associated level of authority. Some people are officially in positions of power over others; people from “above” give orders to those “below”.

A defined **division of labour**. Each unit or division is responsible for one aspect of the organization’s business. This means that different people do different parts of the work. This also means that there is a high degree of specialization so that people within each unit are highly trained in the tasks that they perform.

Other features of a bureaucracy include:

a clear system of rules and regulations that describe the duties and responsibilities of the workers and the organization as a whole;

rewarding workers for following rules and punishing workers for breaking the rules;

emphasis placed on keeping records; and

relationships among workers, which are generally impersonal and formal.

Certain aspects of bureaucracies are considered to be good because the principles are meant to create a certain degree of fairness; everyone is supposed to be treated the same way. Bureaucracies also have processes in place to make sure work gets done and hiring is based upon credentials and merit.

Some of the problems with bureaucracies include:

- The red tape that results from all the rules and the required “sign offs”. It may take a long time to try to get something changed or approved because there are often so many levels within the chain of command.
- The division of labour results in what people call “silos”, where one group of people or unit are not aware of what is going on in other areas of the organization. This leads to a lack of coordination within an organization.
- Workers are rewarded for following the rules, often reluctant to break or bend them, and rarely have the authority to do so.
- Workers may become bored or disinterested in their work because it is so specialized.
- Workers may have no idea how their work contributes to the organization as a whole. It is easy to lose sight of the reason they are doing their work.

Adapted from Martin, B., et al. (1997). Challenging Bureaucratic Elites. Schweik Action Wollongong. University of Wollongong. Australia.

Influencing Change

If you are helping an individual through personal advocacy, often your work will end when the person you are helping gets what he/she needs.

Sometimes the issue is a result of things that are wrong in the system. Many others may also face the same problems. This may require working towards change in the system. This is what systemic advocacy is all about.

If you decide to go ahead with systemic advocacy, there are a few ways you can try to bring about change or shift decision-making. These include influencing:

politicians;
the bureaucracy; and/or
public opinion.

Influencing Politicians

You can write letters.

- It is more effective to write to a specific person, rather than a general letter to all Members of the Legislative Assembly or the House of Commons. Use the correct title when addressing politicians and send it to the correct addresses.
- Keep copies of all letters, documents, and other communications.
- Ask others to write letters at the same time. Call the person you are sending the letters to so that he/she knows they are coming.
- Ask for a reply to the letter and give a deadline for a response. If you don't receive a reply within three weeks, telephone or write back.
- Point out that you have gone through all the appropriate channels already.
- Keep the letter short and simple; one or two pages are best.
- Focus on the issue and avoid discussing multiple issues in one letter. It is better to have two letters than one long one.
- Send the letter to others as appropriate.
- Ask for a meeting so that you can discuss your concerns.

You can ask for a personal meeting.

- Meet with your MLA or MP as a group, or one-on-one.
- If possible, someone who knows either the elected representative, or his/her staff person, should set up the appointment for you.
- When a date is set, follow up immediately with a letter confirming the date and stating the general purpose for your visit.
- Prepare a list of questions you want to ask or topics to discuss. Also take relevant correspondence, reports, and articles.
- Explain how the situation is impacting you and others.
- Do not get angry with the politician and do not make accusations that are unfounded.
- If you know exactly what action you want from the politician, ask for it.
- If you do not know what you want, but you know you need support, ask how the politician thinks he/she can help you.

- Try not to go over the appointment time.
- After the meeting, follow up with a thank you and a statement of your understanding of what was discussed.

You can participate in public hearings.

- Prepare a presentation for the meeting/hearing.
- Be sure to include all relevant information and facts about the issue and provide strong support for the change you are asking for.
- Give clear recommendations.

- You can prepare, circulate, and send a petition.
- Include on the petition a statement about the issue and a request for a specific change.
- Circulate it in all possible areas where those affected by the issue will see it.
- Use media to get public support.
- Deliver the petition in person to the appropriate official.

You can plan for and hold a demonstration or rally.

- Plan and organize your rally very carefully.
- Ask for advice from groups who have experience in organizing demonstrations.
- Be sure to invite media.
- Be conscious of potential opposition and any local requirements for demonstrations or protests.

You can monitor or review legislative activities

- Watch the media and legislative proceedings to keep track of the issues as they go through the political system. This is sometimes difficult to do, so if necessary, encourage others to assist you.

Influencing the Bureaucracy

Things to keep in mind when advocating for change within a bureaucracy:

- ⇒ Write to, or meet with, members of other political parties to inform them of the issues that you are advocating for. This may increase the amount of pressure placed on government to make the changes you are looking for.

- ⇒ Work hard to maintain on-going communication. Set up regular meetings with deputy ministers, directors, and staff persons. Send them frequent updates on your activities by letter or fax. Invite them to meetings, workshops, public forums, etc. where issues of common interest are discussed.

- ⇒ Government departments are increasingly more likely to consult with communities. When invited to participate in a consultation, make sure you are fully prepared and knowledgeable about the issue. If you need it, ask for help in making your preparations.

- ⇒ Although you need to get to the person who has the power and authority to make the decisions or changes that you are seeking, you should still go through the proper channels and chain of command.

- ⇒ Anticipate the most common reasons bureaucrats give for why they cannot do anything about your case; this will prepare you to respond when they do. Some of these reasons are:
- It is not my responsibility; you will have to see Mr. or Ms. X.
 - I/we do not have the authority to do this; see Mr. or Ms. X.
 - There is no funding available or allocated (given) for this issue.
 - It is not possible at this time.
 - We will study this, set up a committee, get back to you later.
 - We do not see a problem with the way things are.
 - The existing policy already takes care of this problem.
 - Unspoken reason ... the “it is not invented here” attitude, which means your idea is not accepted because it did not originate in this department or agency.
 - This has been tried before and it didn’t work.

Remember that decisions are based not only on the regulations and policies related to the bureaucrat’s job, but also on his/her other personal and professional values.

Influencing Public Opinion

The media (e.g., radio, television, printed publications, and Internet) are excellent resources for getting a message out to a large number of people.

Advocating on a systemic level can include raising public awareness through forums and community meetings, educating through workshops and materials, and working with other organizations.

From McNiven, J. (1994). Action Through Advocacy: A Guidebook on Advocacy for Senior's Organizations. Canadian Pensioners Concerned, Nova Scotia.

Additional Tips for Effective Systemic Advocacy

- Get to know how the political system works. Learn who makes policy decisions and who carries them out.
- Identify the persons who have the power to make decisions or changes that you are asking for; target your activities and words to them. Remember that this may not always be the elected officials. Bureaucrats have a lot of control and authority within government systems.
- Develop contacts inside the bureaucracy and political system. This will help you identify the right person to contact.
- Be practical and realistic. Have alternative solutions or suggestions ready.
- Criticize policies and programs, not people. Do not antagonize (i.e. try to provoke or upset) the people you are trying to influence.
- Timing is important; it is best to advocate for an issue before it becomes a crisis. Be aware of political timetables. Right after an election or right after a budget is passed is a difficult time to

Advocates & the Legal System: Systemic Advocacy | 20

effect change. A good time to try to influence change is the time leading up to an election, but be prepared to advocate for a well-planned policy or program change.

- Know both sides of an issue. This will help you prepare for the resistance you will face in advocating for change.
- Always act ethically and professionally.

Law Making

ABOUT THIS MATERIAL

For many people, the way governments and the legal systems work can be difficult to understand; for people within a crisis or stressful situation, it can be even worse. Laws are often written in language that is complex. It can be difficult to sort out procedures and policies if you are not trained in legal matters. Try not to become overwhelmed and intimidated. When you are advocating on your own behalf, or on behalf of others, you are using the justice system for the purpose it was intended.

This material is meant to give you some idea of how the government and law work, and where to find more information if you or the person you are advocating for has a legal issue.

Places to go for more information are provided because it is impossible to include everything you need to know. There are many organizations out there that are available to help. Be patient and be persistent. In today's world of limited resources, the caseloads and workloads can be very high, but remember that these organizations are there to help you and they *want* to help you.

Understanding Government Structure

The Constitution

The **Constitution** is called the supreme law of Canada because laws that violate the Constitution are said to be of “no force and effect.” This means when a court finds a law to be in violation of the Constitution, that law effectively no longer exists.

Before 1982, the main way a law could be found to be “unconstitutional” (in violation of the Constitution) was if it was passed by the wrong level of government. The *Constitution Act* sets out rules about which level of government was authorized to pass laws on to specific issues. If a provincial government, for example, passed a law creating a criminal offence, it would be unconstitutional, since only the federal government has the power (or jurisdiction).

As of 1982, the Constitution also includes the **Canadian Charter of Rights and Freedoms**, which allows the courts to find that laws passed by Canadian governments are unconstitutional because they violate rights and freedoms guaranteed by the Charter.

How Government Works

Canada's form of government is called a constitutional monarchy, with a political system called parliamentary democracy. This means that while the ultimate head of the country (called the head of state) is a king or

The **Canadian Charter of Rights and Freedoms** is also known as The Charter of Rights and Freedoms or simply the Charter. Examples of the rights and freedoms found in the Charter include freedom of speech, freedom from discrimination, and freedom of religion.

queen, he/she has agreed to allow politicians that are democratically elected to pass laws that respect the wishes of the people. The kind of laws that can be passed and the way in which the government works are set out in the *Constitution Act, 1867*.

Currently, Canada's head of state is Queen Elizabeth II. In Canada, she is represented by a person holding the office of the Governor General (for the Government of Canada), and the office of Lieutenant-Governor (for each of the ten provincial governments). The persons holding these offices are appointed by the Queen, on the advice of the Prime Minister of Canada.

Canada's government is a federal system. This means that there is more than one level of government. The most senior level of government in Canada is referred to as the **federal government**. For official purposes, it is called the Government of Canada.

The federal government makes laws about national issues, like money, banks, national businesses, and military defence.

Each of Canada's ten provinces also has a government -- the second level of government in the country -- called the **provincial government**.

The provincial governments make provincial laws about local things, such as highways, businesses in the province, property, schools, and healthcare.

Municipal governments, the third level of government, make local laws, such as parking zones (called by-laws), within cities, counties, and towns. The laws they pass can be changed by provincial governments, and it is provincial governments that decide whether to create new municipal bodies, or get rid of existing ones. Since they are regulated by provincial governments, municipal governments cannot pass laws about matters that are within the jurisdiction of the federal government.

Finally, there are three **territorial governments** in Canada: the Yukon, Northwest, and Nunavut territories. They perform many of the functions as provincial governments, but do not enjoy all the powers the provinces have.

Federal Government

The Parliament of Canada is the law-making body of the federal government. It has a bicameral structure: the House of Commons and the Senate. The House of Commons is the body where most laws originate; its members are directly elected by Canadian citizens.

Those who are elected are called members of parliament, or MPs. Each MP represents one particular area in Canada, called their constituency (or riding). Most MPs elected to the House of Commons belong to political parties. These are private organizations that support particular ideas about how the country should be governed.

To find out who your local MP is and how to contact him/her, visit:
<http://www2.parl.gc.ca/Parlinfo/Compilations/HouseOfCommons/MemberByPostalCode.aspx?Menu=HOC> or call 1-800- O-Canada (1-800-622-6232).

After an election, the political party with the most members elected to the House of Commons will be asked by the Governor General to "form the government." This usually means that the leader of the party that has the most elected members will become the Prime Minister of Canada. He or she will then appoint MPs to be cabinet ministers, which means that they are each responsible for a department of the federal government (e.g.

The Minister of Finance for the Department of Finance). The Cabinet and the Prime Minister are responsible for running the day-to-day business of the Government of Canada.

The Senate is often called the Upper House of Parliament. Its members are not elected; they are selected by the Prime Minister and then appointed by the Governor General (acting on behalf of the Queen). The majority of senators are also members of political parties, and the “government” is represented in the Senate by senators that are of the same political party as the Prime Minister. There are usually 105 senators in the Senate, and 10 of them are from Nova Scotia.

For a new federal law to be made in Canada, three things have to happen: (1) a bill (a proposed law) has to be passed by a majority of the members of the House of Commons; (2) it has to be passed by a majority of the members of the Senate; and (3) it has to be signed by the Queen, or by the Governor General, in the name of the Queen.

Provincial Government

Provincial laws are made in the 10 provincial legislatures. Provincial legislatures are unicameral, meaning they have only one house. In Nova Scotia, the legislature is known as the House of Assembly. A law passed by the House only becomes a law when it is signed by the Queen or by the Lieutenant-Governor of Nova Scotia in the name of the Queen.

Voters in Nova Scotia currently elect 51 people to the House of Assembly, called members of the Legislative Assembly, or MLAs for short. Each MLA represents a different part of the province, called their constituency (or riding).

Usually, when members of a political party make up the majority of the MLAs in the House of Assembly, whomever they have selected as their leader becomes the Premier of Nova Scotia. The Premier then selects certain MLAs to be his/her Ministers, and puts them in charge of provincial departments and agencies (e.g., the Minister of Education, the Minister of Health, etc.). The Premier and the Ministers together are called the Cabinet (or the Executive Council) and together they are responsible for running the province on a day-to-day basis.

To find out who your Nova Scotia MLA is and how to contact him/her, visit:
<http://www.gov.ns.ca/legislature/members/directory/alpha.html>

For a new provincial law to be made in Nova Scotia, two things have to happen: (1) a bill has to be passed by a majority of the members of the Legislative Assembly; and (2) it has to be signed by the Queen, or by the Lieutenant-Governor of Nova Scotia in the name of the Queen.

Adapted from Nova Scotia Notebook. (2004). How Our Government Works.

Types of Law

Laws are rules that people in a given territory (such as a country or province) must follow. They set out the way in which people are expected to relate to each other.

When an MLA or MP proposes a new law, it is called a bill. When that bill passes (gets approved) by the legislative process of a provincial legislature or the federal Parliament, and is assented to (or approved)

by the Queen or her representative, it is then called a **statute** (or legislation). A law does not come into effect until it is proclaimed (i.e. declared in force). This can take months or even years.

Regulations are written to give more detail on how a statute will be used in practice. Statutes usually contain a section allowing regulations to be made by a Minister, administrative body, or the “Lieutenant-Governor-in-Council” at the provincial level, or the “Governor General-in-Council” at the federal level. The term “council,” in this case, means either the provincial or federal cabinet. Regulations are made by the provincial or federal cabinet and then receive approval by the Queen’s representative.

Regulations are rules about how the law will operate. They have the same binding legal effect as statutes, but are made by persons or bodies to whom the Legislature has delegated its law-making power to. For example, the provincial *Assistance Appeal Regulations* set out how the appeal process works under the ESIA (e.g., the steps that are involved in requesting an appeal).

Certain government departments are given the responsibility of carrying out and implementing statutes and regulations. For example, the **Department of Community Services** is responsible for the **ESIA** and the **Department of Health** is responsible for the ***Involuntary Psychiatric Treatment Act (IPTA)*** in Nova Scotia.

Departments create **policies** in order to carry out the rules that are set out in the statutes and regulations. Policies may, or may not, be made available to the public.

Policies outline how decisions should be made within an organization (such as a government department) so that rules are applied in a standard (i.e. the same) way and everyone who works within that organization understands the rules.

Bylaws, (sometimes called ordinances) are laws that are made at the municipal level. Municipal councils (the bodies that govern cities, counties, or towns) also pass resolutions that reflect their opinion on certain matters or that deal with how the municipality operates.

Case law is another way law is made in Canada; it is often called the **common law**. It is a written decision from a court that talks about a court’s interpretation of a particular law. This interpretation can be about what the law says (i.e. its meaning) or how it is applied. When a judge makes a decision he/she must follow precedent. This means that the judge must follow a decision or an interpretation of a particular law that was made by a higher court in a similar case. The development of case law is an ongoing process because decisions are made in courts all the time.

For more information on Canada's Court system visit <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/>

Statutes, Regulations & Bylaws

Creating Statutes in Nova Scotia

At both the federal and provincial level, a proposed law must undergo a process before it comes into force as a statute.

The process at the federal level is similar, although the names and number of committees are different, and a bill must also be passed by the Senate of Canada before it can receive Royal Assent.

The provincial legislative process works in the following six steps:

1. **An Idea:** The idea for a new statute can come from a variety of sources. It could be from the public, part of a political party's election platform, or from an MLA.
 2. **First Reading:** To start the process, a member of the House of Assembly rises and asks the House for permission to introduce a bill. If all the proper procedures have been followed, a copy of the bill will then be distributed to all the members of the House of Assembly. The clerk of the House of Assembly gives the bill a number, and the bill is placed on the order paper (the schedule of events in the House) for a second reading at a later time.
 3. **Second Reading:** The second reading of a bill is a debate on the general principle of the bill. This means that MLAs can give their opinion on the issues the bill addresses. The bill cannot be changed during the second reading. At the end of the debate there is a vote. If a majority of the members vote in favour of the bill, it will be referred to a standing committee of the House of Assembly.
 4. **Committee:** A standing committee is a permanent committee, made up of a small number of MLAs, which examines a bill that has passed second reading. In most cases, it will be the Law Amendments Committee, a Standing Committee unique to Nova Scotia. This committee must carefully consider the bill, and hold public hearings to get input from Nova Scotians. A public hearing is an opportunity for individuals and groups to express their concerns about the bill before it becomes law.
- At the end of this process, the chair of the Committee will make recommendations to all the members of the House of Assembly on changes that the Committee feels should be made to the bill. The Committee of the Whole House on Bills (made up of all the MLAs) may then make changes to the bill recommended by the Committee, or introduce other changes it wishes to make.
5. **Third Reading:** The bill, with any changes, is then debated by all the members in a process similar to the second reading. No major changes may be made to the bill during this debate; however, a bill can be sent back to the Committee of the Whole House for further changes. At the end of third reading, there is a vote. If a majority of the MLAs vote in favour of the bill, then it only needs to receive Royal Assent to become a statute.

Advocacy Tip:

The process of creating a new statute is a critical time to become involved in **systemic advocacy**. The legislative process, particularly at the public hearing stage of the committee process, is an excellent time to make the views of persons living with a mental illness known to politicians. To increase the impact, and to avoid duplication, it may be good idea to co-ordinate an appearance or presentation to the committee with others that share your views.

6. **Royal Assent:** Following the third reading, the Lieutenant-Governor of Nova Scotia is asked to approve the bill on behalf of the Queen. The copy of the bill presented will include all of the amendments passed by the House of Assembly. At this point, the bill may come into effect immediately, or it may be proclaimed (come into effect) at a later date. Once a bill is proclaimed, it may be enforced by the appropriate officials.

Section Three was adapted from a website prepared by the Office of the Legislative Counsel, available at <http://nslegislature.ca/legc/index.htm>.

How to Use Statutes, Regulations & Bylaws

As an advocate, it can be important to read statutes and regulations. In many cases, it will be a statute and/or its regulations that determine the services or treatments to which a person living with a mental illness is entitled to.

All actions taken by officials against someone must have a basis in law; in most cases, it will be a statute that gives a government official his/her authority to make decisions. When an official goes beyond what the statute permits, he/she is said to have “exceeded her/his authority.” This means that the action taken by the official must be changed or reversed.

As with government officials, government policies that go beyond what is permitted by the law cannot be enforced. Before a hearing begins, it is useful to find out which statutes govern the process and what the statutes say about the situation you are advocating for. During a hearing or similar process, it is very important to tell the adjudicator, or decision-maker, whether you feel that a policy or official has broken a statute or regulation.

Advocacy Tip:

Statutes are complex documents, and in some cases, a professional legal opinion may be required in order to interpret the statute.

Before appearing before a formal court setting, it would be good to get advice from a lawyer.

For information on hiring a lawyer and obtaining professional legal advice, please see the end of *Section Three*.

Finding Statute Materials

Most government organizations keep records of statutes and regulations on their websites, and paper copies of statutes and regulations are available in the community from a variety of sources. Copies of statutes, regulations, and bylaws that are available on websites are not official documents, but are usually available online for reference purposes.

Paper Resources:

Paper copies of statutes are available to the public at several places. In Nova Scotia the three most important locations are the Sir James Dunn Law Library at Dalhousie University’s Schulich School of

Sir James Dunn Law Library

Dalhousie University Schulich School of Law, Weldon Law Building 6061 University Avenue, Halifax, Nova Scotia B3H 4H9
Telephone: (902) 494-2640 Fax: (902) 494-6669
Website: <http://www.library.dal.ca/law/>

Nova Scotia Legislative Library

2nd Floor, Province House
1726 Hollis Street Halifax, Nova Scotia, B3J 2P8
Phone: (902) 424-5932 Fax: (902) 424-0220
E-mail: leglib@gov.ns.ca
Website: nslegislature.ca/index.php/library/

Law, the Nova Scotia Barristers' Library, and the Provincial Legislative Library.

All of these libraries allow members of the public to access their collections. They are private libraries and primarily serve law students, lawyers, and MLAs, respectively. It would be a good idea to contact them to confirm the hours of operation, availability, and if necessary, to make an appointment. If you want to get copies, libraries usually charge fees to photocopy documents.

Outside of the Halifax area, some of the "county bars" of the Nova Scotia Barristers society also maintain libraries. Since they are relatively small, and have limited staffing, these may not be available to the general public. For more information, contact the Nova Scotia Barristers' Library.

Nova Scotia Barristers' Library

The Law Courts 1815 Upper Water Street
Halifax, Nova Scotia B3J 1S7
Telephone: (902) 425-2665 Fax: (902) 422-1697
Website: http://nsbs.org/library_services

Public libraries may also have information on statute law, particularly frequently used statutes like the ***Criminal Code of Canada***. Also, materials in the Legislative Library's collection can be borrowed by the general public through interlibrary loans.

Finally, the office of the clerk in a municipality should be able to provide copies of all the bylaws that exist in that jurisdiction; however, there is likely a fee associated. You should contact the appropriate municipality to ask for more information and whether there is a fee for getting copies.

For other municipalities within Nova Scotia visit <http://www.gov.ns.ca/snsmr/muns/contact/> to find the appropriate municipality website.

On-Line Resources

Federal: The consolidated statutes and regulations of the Government of Canada are available online at the website of the federal **Department of Justice**. You can search for statutes and regulations by name or subject matter. Often there is a link on the main page to commonly used statutes like the *Criminal Code of Canada*. There are also links to provincial statute law websites.

For federal on-line resources visit <http://laws.justice.gc.ca>

Provincial: The consolidated statutes and regulations of Nova Scotia are available on the website of the **Legislative Council at the House of Assembly**. There are links to current bills, statutes, and regulations, as well as links to federal government resources.

For provincial on-line resources visit <http://nslegislature.ca/legc/acts.htm>

Municipal: Many municipalities maintain websites that provide comprehensive lists of their bylaws. For example, you can find the Halifax Regional Municipality (HRM) bylaws at <http://www.halifax.ca/legislation/> and the Cape Breton Regional Municipality bylaws at <http://www.cbrm.ns.ca/bylaws.html>.

For web links to other municipalities in Nova Scotia, please see <http://www.gov.ns.ca/snsmr/muns/contact/>.

Advocacy Tip:

Remember that because both the Halifax and Cape Breton regional municipalities were created by amalgamating (joining together) pre-existing cities and towns, older bylaws made by the previous cities or towns may still be in place, depending on a resident's location.

General: The **Canada Law Information Institute (CanLII)** is a not-for-profit organization that provides statute law from all Canadian provincial jurisdictions. They can be found at <http://www.canlii.org>.

Case Law

How to Use Case Law

Case law refers to the body of recorded decisions made by judges. Together, all of these decisions form a set of legal rules that are called the **common law**.

Before attending a hearing or other procedure, it can be useful to research relevant matters that were heard at the Nova Scotia **Provincial Court**, the Nova Scotia **Supreme Court**, the Nova Scotia **Court of Appeal** or even the **Supreme Court of Canada**. The decisions from these courts are useful guides on how judges and adjudicators view certain situations and interpret the legislation. Case law can be used at the hearing to persuade the decision-maker that he/ she is making a decision that is consistent with those of other superior courts. In some cases, the judge or adjudicator may even be bound by (required to follow) the decisions made by these courts.

You will be trying to convince the decision-maker that your situation is similar to that of the person in the case you are referring. As a result, you are requesting that the decision-maker follow the same legal principle or interpretation of the Act that the judge did in the previous case.

Advocacy Tip:

If you use case law at your hearing, be sure to bring at least three copies of the case, as you would with any other document. Before reading from the cases, distribute a copy to the adjudicator and the opposing side.

On the other hand, if someone on the other side presents case law that does not favour your position you will want to *distinguish* that case from your own. Do this by emphasizing the *differences* between their case law and your situation.

Finding Case Law

Since case law develops as judges decide cases, it is not published by the government in the same way as statutes. Although official records of written decisions are kept in court files, in many cases, a judge's decision will be published in printed volumes called case reporters. The most recent Nova Scotia cases can be found in a reporter called Nova Scotia Reports (2nd series). Each province usually has a case reporter that contains most of the key decisions that have been decided by the courts of that province. The Federal Courts and the Supreme Court of Canada have their own case reporters.

Paper Resources:

Paper copies of legal materials, like case reporters, are available for reading by the public, for free, at several places. The two most important locations are the Sir James Dunn Law Library at Dalhousie University's Schulich School of Law and the libraries of the Nova Scotia Barristers' Society. Please see "Finding Statute Materials" within *Section Three* for contact information for these libraries. In addition, some

Advocacy Tip:

For more information on legal research, please refer to the 'Tips' link in the self-representation section of the Nova Scotia Department of Justice's website, found at http://www.gov.ns.ca/just/srl/tips/tips_EN.asp.

public libraries may have reference materials on case law, although this will generally be quite limited.

On-line Resources:

Increasingly, most case law can be found through electronic resources. Although some electronic internet-based services are not freely available to the general public, many are accessible. Some of the principal electronic resources are listed here.

The Courts of Nova Scotia (Decisions):

The official website for the court system in Nova Scotia has a database of court decisions in the province. It includes most decisions since 2003, and even some dating from before 2003. The database allows you to search case names, key words, or phrases. If you were dealing with a Residential Tenancies issue you may choose key words and phrases such as 'landlord and tenant' and 'residential tenancies'.

The database of Nova Scotia court decisions can be found at <http://decisions.courts.ns.ca/>.

Nova Scotia Law News Online:

Law News Online is a service provided by the Nova Scotia Barristers' Society. It provides digests (brief reports) of Nova Scotia Supreme Court and Court of Appeal decisions dating back to 1997, and the full text of decisions from 1999 onwards. Older decisions may also be available as they are loaded on to the system as resources allow. Again, you can search using keywords as well as case names. Be sure to click on "submit query" at the bottom of the screen to complete the search.

Law News Online can be found at <http://nsbs.org/law-news-online>.

Canada Law Information Institute (CanLII):

The Canada Law Information Institute is a not-for-profit organization that provides court decisions as well as statute materials from across Canada. It has case law from each province divided according to the level of court. You can search using keywords. Be sure to search both the Nova Scotia Supreme Court and Court of Appeal. Records are incomplete before 1999; however, many key cases are reported from before this period.

Access to CanLII can be found at <http://www.canlii.org>

Legal Services

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:

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

Visit www.legalinfo.org.

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

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

Includes the following information:

- the structure of the court system;
- legal words and definitions.
- 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
- clearly defining the issues to be solved through mediation.

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.

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 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.

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.

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

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

must pay all **disbursements** regardless of the result of the case.

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:

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/>

- decisions of the cabinet of Nova Scotia;
- 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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