
# Resource Material

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http://www.dal.ca/faculty/law/dlas/public-legal-education.html

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# Access to Legal Aid Services

## Contents

# Applying for Legal Aid

## Nova Scotia Legal Aid

The Nova Scotia Legal Aid Commission was established in 1977 by the *Legal Aid Act*: http://nslegislature.ca/legc/statutes/legalaid.htm

There are also regulations passed pursuant to the *Legal Aid Act:* http://www.novascotia.ca/just/regulations/regs/lagentar.htm

The Nova Scotia Legal Aid Commission is responsible for the provision of legal aid services across Nova Scotia. The Commission consists of 17 total members. Fifteen are appointed by the Provincial Government, and two non-voting members from the Public Service.

Legal aid services are provided by Staff Lawyers employed by the Commission, and by private bar lawyers who accept legal aid certificates.

Nova Scotia Legal Aid has offices located across the Province. A list of office locations can be found here: http://www.nslegalaid.ca/contact.php

## Making an Application

In order to apply for Nova Scotia Legal Aid someone must contact their local legal aid office. The office will guide the applicant through the application process.

There is an Application Form that must be completed, and an applicant's income and identification must be verified.

## Factors

There are three factors that will be considered when determining whether someone qualifies for legal aid:

1. Financial eligibility;
2. Area of law; and
3. Legal merit.

### Financial Eligibility

According to the *Legal Aid Act* an applicant will qualify for legal aid from a financial perspective if:

- They are in receipt of income assistance; or
- If retaining a private lawyer would reduce their income to the point that they would qualify for income assistance.

Applicants may also qualify for legal aid if retaining private counsel would mean they would suffer undue financial hardship such as incurring heavy indebtedness or having to dispose of necessary modest assets.

According to the *Legal Aid Act* it is still possible for applicants who do not meet the financial eligibility criteria to qualify for legal aid by agreeing to enter into an agreement whereby they agree to contribute to the costs of the legal services provided on their behalf.

Given that the legislation gives discretion with respect to the financial qualifying criteria for legal aid it is extremely important that anyone interested in applying for services from Nova Scotia Legal Aid contact their local office, and complete the application process.

## Area of Law

Nova Scotia Legal Aid provides representation in the following areas of law:

- Criminal law;
- Family law;
- Poverty law; and
- Other civil law.

### *Criminal Law*

Nova Scotia Legal Aid provides representation for the following criminal matters:

- Offences for which there is a reasonable likelihood that upon conviction there will be a sentence of custody or imprisonment;

- For Youth Court matters, representation for *Youth Criminal Justice Act, Criminal Code* and other Federal Legislation offences are provided regardless if there will be a sentence of custody or imprisonment;

- Proceedings pursuant to Part XX.1 of the *Criminal Code* (Mental Disorder) including representation before the Nova Scotia Review Board; and

- Such other matters under the *Criminal Code* or other Federal Legislation where counsel is deemed necessary by the Nova Scotia Legal Aid Commission.

### *Family Law*

Nova Scotia Legal Aid provides representation for the following family matters:

- Child protection proceedings under the *Children and Family Services Act*;
- Matters under the *Domestic Violence Intervention Act*; and
- Custody, access, maintenance/support, paternity, some divorces and division of property.

### *Poverty Law*

Nova Scotia Legal Aid provides summary advice, and possible representation, for the following poverty matters across the Province (full service representation is provided for poverty law matters in Halifax, Dartmouth and surrounding areas):

- Income assistance;
- Residential Tenancies;
- Employment Insurance;
- Canada Pension Plan Disability; and
- Debtor/Creditor.

### *Other Civil Law*

Nova Scotia Legal Aid also covers some other areas of civil (i.e. non criminal) law:

- Legal aid services may be provided for matters under the *Adult Protection Act*;
- Matters under the *Involuntary Psychiatric Treatment Act;* and;
- Subject to the availability of resources services may be provided for civil actions where the Staff Lawyer is of the opinion that there is merit and where failure to defend or prosecute the action will result in the loss of the applicant's sole place of residence or otherwise cause undue hardship to the applicant or the applicant's family.

### *Areas of Law Not Covered*

Nova Scotia Legal Aid **does not** provide representation in the following areas:

- Divorces involving the division of matrimonial property or pensions will not be undertaken where the Staff Lawyer is of the opinion that the applicant for service can otherwise obtain legal service by paying a fee from the proceeds of the property/pension division to a private lawyer;
- Real estate transactions (except as incidental to matrimonial property divisions);
- Estates and trusts;
- Legal services arising out of the operation of a business;
- Representation in bankruptcy, orderly payment of debts or debt collection;
- Civil non-family matters which, if the claim is successful, the applicant could pay legal fees out of the amount recovered from the action;
- Cases in Small Claims Court unless, in the opinion of a Staff Lawyer, service should be provided as being a civil action with merit and where failure to defend or prosecute the action will result in the loss of the applicant's sole place of residence or otherwise cause undue financial hardship;
- Matters under the *Federal Immigration Act* including Refugee Hearings; and
- Nova Scotia Legal Aid will not generally represent either the complainant or the defendant in private prosecution matters or for matters pursuant to provincial legislation such as the *Motor Vehicle Act*, *Liquor Control Act*, *Wildlife Act*, etc. Although full-service representation is not available for charges under provincial legislation, summary advice may be provided to youth facing such charges.

## Legal Merit

The final factor considered when determining whether an applicant qualifies for legal aid is whether their case has legal merit.

In order to qualify for legal aid services the Staff Lawyer assessing the application must be of the opinion that there is at least some possibility of success if legal aid services are provided.

If the Staff Lawyer assessing the application is of the opinion that there is no chance of success the application will be denied.

# Appeals

## Appealing a Legal Aid Decision

### Types of Decisions that can be Appealed

According to the *Legal Aid Act* the following actions can be appealed to the Legal Aid Commission:

- Refusal to grant legal aid;
- Refusal of a legal aid certificate;
- Refusal to amend a legal aid certificate;
- A decision that contributions are required by the applicant as a condition of the granting of legal aid or the issuing of a certificate;
- Suspension or withdrawal of legal aid; or
- Cancellation or amendment of a legal aid certificate.

### Appeal Procedure

#### *Making the Request*

An appeal request to the Legal Aid Commission **must** be made in writing.

Appeal requests should be sent to:

> Appeal Committee Nova Scotia Legal Aid Commission 102-137 Chain Lake Drive Halifax, Nova Scotia B3S 1B3 Phone: (902) 420-6578 or 1-877-420-6578 Fax: (902) 420-3471

An appeal request should outline the reason legal aid services were denied, and should also include why the appellant feels they are entitled to receive services. Other than being written there are no formal requirements regarding the form an appeal request must take.

If the denial for legal services was based on financial eligibility criteria the appellant will be required to provide further particulars, and verification, of their household income and expenses.

#### *After the Request is Made*

Once the appeal process is initiated the office from which the appellant was denied services will be contacted and asked to submit a copy of the denied Legal Aid Application form along with supporting documentation outlining the basis of the rejection for services.

Upon receipt of an appeal request an appeal will be scheduled for a meeting of the Appeal Committee of the Legal Aid Commission.

The appellant will receive a letter advising them of the date the appeal will be heard. The Appeal Committee normally meets on the 4th Thursday of each month.

In the event that an appellant is unable to appear before the Appeal Committee in person, they may arrange to participate via telephone conference.

### *Representation at the Appeal*

Appellants residing in Halifax, Dartmouth and surrounding areas can obtain legal representation for their appeal from the Dalhousie Legal Aid Service.

Dalhousie Legal Aid Service can be contacted at **(902) 423-8105.**

# Canada Pension Plan Disability

## Contents

# Introduction

## What is Canada Pension Plan Disability?

CPP Disability is a monthly pension paid to CPP contributors who are unable to work as a result of a **severe** and **prolonged** mental or physical disability.

The disability does not have to be work related.

CPP disability is governed by the *Canada Pension Plan*:
http://laws-lois.justice.gc.ca/eng/acts/C-8/

There are also *Canada Pension Plan Regulations:*
*http://laws-lois.justice.gc.ca/eng/regulations C.R.C., c. 385/*

## Who is Eligible for CPPD?

The basic eligibility criteria for CPP disability are as follows:

1. An applicant must be under the age of 65 at the time of their application. If an applicant is over the age of 65 they should apply for a CPP retirement pension;
2. An applicant must be suffering from a disability (or disabilities) that is both **severe** and **prolonged**; and
3. An applicant must have made sufficiently recent valid CPP contributions.

## How is Disability Defined?

For the purposes of the *Canada Pension Plan* disability is defined in section 42(2). That section contains the following definition:

- (a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

- (i) a disability is **severe** only if by reason thereof the person in respect of whom the determination is made is incapable of regularly of pursuing any substantially gainful occupation, and

- (ii) a disability is **prolonged** only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death;

## What is a 'severe' disability?

Advocates and their clients must understand that severe has a very specific meaning in the context of CPP Disability.

In a nutshell a severe disability is a mental or physical disability (or a combination thereof) that renders someone unable to perform **any** job on a regular basis (either full time or part time).
Someone is **not** suffering from a severe disability only if they are unable to do their former job. For example, if someone had a job that required heavy lifting that they can no longer do they are not necessarily suffering from a severe disability.

The case law surrounding what a severe disability is has added some nuance to the definition described in the previous slide. Specifically the case law has determined that the issue of whether a disability is severe must be considered in a 'real world context'.

This means that when determining whether someone is suffering from a 'severe' disability factors such as age, education, language proficiency and past work and life experience must be considered when assessing hypothetical occupations that an applicant could engage in. For example, the scope of hypothetical occupations a middle aged person with an elementary school education and limited English or French language skills would not include a doctor or an engineer.

## What is a 'prolonged' disability?

The definition of 'prolonged' is much more simple than that of 'severe' in the CPP Disability context.

A 'prolonged' disability is one for which the long term prognosis is that it will not improve or will worsen over time.

CPP Disability is **not** designed to provide benefits for people suffering from 'closed periods' of disability. For example, if an applicant for CPP Disability is given a prognosis that treatment will resolve their disability in 10 months from the date of their application (and that proves to be the case) their disability will not be considered 'prolonged'.

# Minimum Qualifying Period

## Canada Pension Plan Contributions & the Minimum Qualifying Period

Regardless of how severe and prolonged an applicant's disability is they will **not** qualify for CPP Disability unless they meet certain financial contribution criteria.

1. The first concept to understand is that of a 'valid' CPP contribution.

   In order to be valid a CPP contribution for the purposes of CPP disability the contribution must be made on a certain minimum annual level of income (referred to as the Year's Basic Exemption or YBE). The YBE for 2013 was $5,100.00. This means that any CPP contributions made on an annual income of less than $5,100.00 in 2013 would not count as a 'valid' contribution for the purposes of qualifying for CPP disability.

2. The second concept is what is referred to as the 'minimum qualifying period' (MQP).

   The *Canada Pension Plan* states that in order to qualify for CPP Disability an applicant **must** have made 'valid' contributions in 4 out of the previous 6 years prior to their application. **If** an applicant does not meet the 4 out of 6 test they may still be able to qualify for CPP Disability via the 'late applicant provision'. According to this provision it is permissible to look back in time to when the applicant last met their minimum qualifying period. Provided that the applicant was then and has continued to suffer from a severe and prolonged disability they are deemed to meet the MQP even without valid contributions in 4 out of the last 6 years. An applicant can also qualify if they have valid contributions in three of the last six years, and have contributed for a period of 25 years.

The MQP will be calculated upon application for CPP Disability. It will be expressed as a date - usually December 31st of the last year in which the applicant met the MQP criteria outlined on the previous slides.

### Importance of the Minimum Qualifying Period

The importance of the MQP cannot be overstated. An applicant **must** meet the definition of disability reviewed earlier prior to the end of their MQP. Effectively an applicant is frozen in time as of the date of their MQP. For example, if an applicant's MQP is December 31st, 2012 they must have been suffering from a severe and prolonged disability no later than that date. They will not qualify for CPP Disability if their disability only became severe and prolonged as of January 1st, 2013.

### Additional Factors to Consider

There are two final factors that should not be overlooked when determining an applicant's MQP:

i. The credit splitting provision allows lower earning ex-spouses to split their CPP credits with their former spouses accumulated during their relationship; and
ii. Canada has social security agreements with some countries that allow pension contributions made in those countries to be counted when determining someone's eligibility for a CPP Disability benefit.

Upon application, if applicable, a credit splitting application will be sent to applicants who indicate they are separated or divorced.

Finally, the Federal Government calculates an applicant's MQP using a document entitled the 'Record of Earnings'. This document shows an applicant's annual CPP contributions. If an applicant thinks that their MQP has been incorrectly calculated this document can be obtained by contacting Service Canada at **1-800-277-9914** or online via the My Service Canada Account.

# Applications & Appeals

## Applying for Canada Pension Plan Disability

An application kit for CPP Disability can be obtained by contacting Service Canada at **1-800-277-9914** office or found online at:

http://www.hrsdc.gc.ca/cgi-bin/search/eforms/index.cgi?app=profile&form=isp1151&lang=eng

This stage of the application process is purely paperwork, and it is likely that you will only meet with an applicant after their initial application has been denied.

At the initial application stage three documents are usually given the most consideration: the Application for Disability Benefits, the Questionnaire for Disability Benefits and the Medical Report.

## Reconsideration

If an applicant's initial application for CPP Disability is denied they may request that that decision be reconsidered. A request for reconsideration must be made in writing **within 90 days** of the receipt of the letter indicating that the application was denied. The reconsideration stage is again an entirely paper process.

The initial denial letter will contain **extremely important** information. It will provide the applicant's MQP date as well as a brief explanation of why their application was denied. This letter should serve as your guide to the deficiencies of the applicant's initial application.

## Appeals to the Social Security Tribunal

If an applicant's request for reconsideration is denied they have another chance to appeal to the new Social Security Tribunal (SST). The SST is composed of a general and appeal division. Within the general division there is an Income Security Section which will hear CPP Disability appeals.

The SST began hearing CPP Disability appeals as of April 1st, 2013. It replaced the Review Tribunal and the Pension Appeals Board which previously heard CPP Disability appeals.

All appeals before the SST General and Appeal Divisions will be heard by one member panels.

While the Social Security Tribunal is a new body it is still subject to the previous case law surrounding CPP Disability.

### Procedure

Like at the Reconsideration stage an applicant has **90 days** from the receipt of the letter indicating that their reconsideration was denied to request an appeal to the Social Security Tribunal General Division.

Instructions on how to appeal a CPP disability denial, along with the required forms, can be found at the SST's website:

http://www.canada.gc.ca/sst-tss/hta-cij/cppgendiv-divgenrpc-eng.html

After an appeal is filed the government must provide the SST a package of documents which will include the initial application for CPP Disability and the government's response, the appellant's request for reconsideration and the government's response as well as any documents relevant to the government's decision on reconsideration, however it will only provide **one** copy. Therefore it is extremely important that you retain the copy of the documentation you receive from the SST.

Do not bind or tab any submissions to the SST, the tribunal will do this for you.

If at any point after receiving an appeal the SST determines that it has no reasonable chance for success they must summarily dismiss it. Before summarily dismissing an appeal the SST must give written notice to the appellant, and offer the appellant a reasonable period of time during which to make submissions to the SST.

Assuming summary dismissal is not an issue an appellant has 365 days, from the time they submitted their appeal, to submit further documentation or submissions in support of their appeal. At any time during the 365 day period the appellant may notify the SST that they have no further documentation or submissions to submit.

After the expiry of the 365 days, or the receipt of a notice that there is no further documentation being submitted, the SST must decide whether to make a decision based on the documentation before it or to hold a hearing.

### Hearings

Hearings can either be in the form of written questions and answers or oral. Oral hearings can be via teleconference, videoconference or in person. If you want to have an oral hearing (which is the most desirable form of hearing) you **must** request an oral hearing from the time of filing your Notice of Appeal to the SST.

The SST will provide interpretive services as required.

If you intend on calling witnesses at your hearing you should advise the SST as early in the appeal process as possible. This is extremely important as having more witnesses will weigh in favour of having an oral hearing.

One adjournment will be granted without reasons, however any subsequent adjournments will require exceptional circumstances.

## Social Security Tribunal Appeal Division

An appellant may appeal a decision of the SST to the appeal division **within 90 days** of the date the decision is communicated to them by the SST general division.

## Leave to Appeal

Unlike at the SST general division an appellant must be granted 'leave to appeal' to the SST appeal division. Leave will only be granted in the following circumstances:

i. the General Division failed to observe a principle of natural justice (i.e. the right to a fair hearing) or otherwise acted beyond or refused to exercise its jurisdiction;
ii. the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
iii. the General Division based its decision on an erroneous finding of fact that it made in an arbitrary manner or without taking into account the evidence before it.
iv. The application for leave to appeal form to the SST Appeal Division can be found here: http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATATTAD.pdf

The one exception to the requirement to obtain 'leave to appeal' is a decision by the SST general division to summarily dismiss an appeal.

## Procedure

Clients who wish to appeal to the SST Appeal Division should consult with a lawyer.

Any submissions in support of an appeal **must** be made within 45 days of leave to appeal being granted.

With certain exceptions, decisions of the SST appeal division can be judicially reviewed by the Federal Court of Appeal. Should a client wish to seek a judicial review they **should** consult a lawyer. Applications for judicial review **must** be made within **30 days** of the decision being communicated to the appellant.

# Helpful Tips

## Initial Application

If you have the opportunity to meet with a client prior to the submission of their application for CPP Disability you should focus on two areas of the Application:

i. First, focus on assisting them in completing the Questionnaire for Disability Benefits. This is an applicant's opportunity to provide detailed information about how their disabling condition(s) affects their daily lives, as well as information about their most recent employment amongst other things.

ii. Second, if a medical report has not already been drafted, this is a good time to draft a specifically-worded medical report request that will drive home to the doctor the information you're looking for. This report is usually prepared by the applicant's family doctor, but can be prepared by a specialist.

## Reconsideration

Reconsideration should be seen as a free 'second kick at the can'. It provides a second chance to submit any further objective medical information that was either not submitted with the initial application or has been obtained post application, such as: Reports from specialists, MRI results, physiotherapy assessments, etc.

The initial denial letter should be used as a guide as to what further medical evidence is required. However, in 99.9% of cases you will be trying to prove that the applicant had a severe and prolonged disabling condition no later than the expiry of their MQP.

If you anticipate receiving further objective medical evidence that will be helpful to your client do not hesitate to indicate that to the person conducting the reconsideration, and ask them to wait to make their decision until you've submitted that information.

Remember as this stage is only on paper the best evidence is **objective** as opposed to subjective as there is no way for the person conducting the reconsideration to assess the credibility of subjective evidence. You may wish to obtain a report from any specialist's your client has seen regarding their disabling condition(s).

## Social Security Tribunal

This level is the first chance your client will have to hopefully appear before a live decision maker. This level is the chance for you to submit **subjective** evidence as to the nature of your client's disability.

As there is no longer a guarantee of a hearing (let alone an in person hearing) you should submit all of your remaining evidence, both **objective** and **subjective**, within the allotted 365 days.

Examples of subjective evidence includes: evidence from the appellant themselves, from partners, adult children or former co-workers. The focus of this evidence should be on the affect the disabling condition has on the appellant, and the date of its onset.

Due to the non-guarantee of an oral hearing subjective evidence should be submitted in the form of sworn statements in advance of the hearing. If an oral hearing is granted any witnesses who submitted a sworn statement should be present at the hearing.

Always keep in mind your client's MQP when considering what evidence is relevant to include.

If you find cases that you think could be helpful to your client's case you may submit them to the SST along with a brief explanation of their application to your client's case.

# First Meeting

Ask a potential CPP Disability client to bring the following to their first meeting with you:

i. List and dosage of medications;
ii. List and contact information of past and present doctors;
iii. Copy of their CPP Disability Application (if applicable);
iv. Any correspondence in response to their Application (if applicable); and
v. Any correspondence from the SST (if applicable).

During the first meeting you should obtain the following from your client:

i. Consent forms allowing you to speak to all of their doctors *(insert hyperlink to sample medical consent form)*;
ii. A Consent to Communicate form to allow you to speak to CPP: http://www.servicecanada.gc.ca/cgi-bin/search/eforms/index.cgi?app=prfl&frm=isp1603cpp&ln=eng
iii. If applicable an Authorization to Disclose allowing you to speak to the SST can be found in the following link: http://gc.ca/sst-tss/hta-cij/cppgendiv-divgenrpc-eng.html
iv. Request for photocopy of a Worker's Compensation file, if any: http://www.wcb.ns.ca/wcbns/index_e.aspx?DetailID=761

The first meeting is also when you should advise your client of the following:

- If they are in receipt of income assistance they will have to repay any income assistance received for any period of time they are also in receipt of CPP Disability, and their CPP Disability will be deducted dollar for dollar from their income assistance entitlement on an ongoing basis; and
- If they have a private long term disability plan that it may contain a provision deducting CPP Disability benefits.

# If Your Client is Successful

Congratulations! However you should ensure your client is reminded of the following:

- All applicants will receive a retroactive amount of CPP Disability calculated from 11 months prior to the date of their application (the earliest a CPP disability applicant can be considered disabled is 15 months prior to their application, and there is a 4 month waiting period). This amount can be substantial. You should ensure your client does not spend that money upon receipt as they may owe a portion, or all of it, to the Province if they were also in receipt of income assistance pending receipt of their CPP Disability;

- If your client returns to work they **must** advise CPP. A CPP Disability recipient can earn up to the Year's Basic Exemption on an annual basis. However if they earn more their benefits will be discontinued, and they may face an overpayment.

- CPP Disability benefits are taxable. It may be to your client's advantage to apply for the Disability Tax Credit. You should contact the Canada Revenue Agency for more information on this program.

- Finally there is also a monthly benefit available to the dependent children (under the age of 18, or aged 18-25 if a full-time student) of CPP Disability recipients. Further information, and application forms, about the Disabled Contributor's Child Benefit can be found here: http://www.servicecanada.gc.ca/eng/services/pensions/cpp/child.shtml

# Additional Resources

## Case Law

Applicable case law on CPP Disability comes from the Pension Appeals Board (eventually the SST Appeal Division) and the Federal Court of Appeal. The Supreme Court of Canada can also make decisions on CPP Disability, but rarely does.

Pension Appeal Board decisions can be searched online at: http://dev3.canada.gc.ca/pab/

Federal Court of Appeal decisions can be searched online at CANLII at: http://www.canlii.org/en/ca/fca/

## Government

The federal government maintains a website on CPP Disability:
http://www.servicecanada.gc.ca/eng/isp/cpp/disaben.shtml

## Community Legal Education Ontario (CLEO)

CLEO has a publication about CPP Disability: http://www.cleo.on.ca/en/publications/cppdisability

## Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding CPP Disability. Their contact information can be found here: http://www.nslegalaid.ca/contact.php

# Debtor/Creditor & Small Claims Court

## Contents

# Legislative Framework

## Provincial Legislation

There are multiple Provincial statutes which govern various aspects of debtor/creditor law:

i. *Consumer Protection Act* and *Payday Lenders Regulations*: http://nslegislature.ca/legc/statutes/consumer%20protection.pdf & http://www.gov.ns.ca/just/regulations/regs/cppayday.htm

ii. *Collection Agencies Act*: *http://nslegislature.ca/legc/statutes/collecta.htm*

iii. *Consumer Creditors' Conduct Act: http://nslegislature.ca/legc/statutes/consumcr.htm*

iv. *Personal Property Security Act: http://nslegislature.ca/legc/statutes/personal%20property%20security.pdf*

v. *Judicature Act*: *http://nslegislature.ca/legc/statutes/judicatr.htm*

vi. *Small Claims Court Act* & *Regulations: http://nslegislature.ca/legc/statutes/smallclm.htm* & https://www.novascotia.ca/just/regulations/regs/sccfrmpr.htm

## Federal Legislation

The major piece of Federal Legislation to be aware of is the *Bankruptcy and Insolvency Act*: http://laws-lois.justice.gc.ca/eng/acts/B-3/index.html

This is a very lengthy and complex piece of legislation – don't worry! There are experts in the field who can assist your clients with issues related to bankruptcy.

# Exemptions from Seizure

## Exempt Assets

One of the most pressing issues many clients present with are concerns that creditors will attempt to seize their limited assets or income in order to satisfy debts owing.

The Nova Scotia *Judicature Act* and *Personal Property Security Act* list certain items that are exempt from seizure under an Execution Order:

- Clothing, household furnishings and furniture of the debtor and their family;
- The family's fuel and food;
- All grains, seeds and livestock reasonably necessary for the domestic use of the debtor and their family;
- A car valued no more than $6,500.00 if used for work and there is no public transit, or up to $3,000.00 if not used for work unless the debt in question was for money used to purchase the car. If that is the case the car can be seized regardless of its value;
- All medical and health aids reasonably necessary for the debtor and their family; and
- Farm equipment, fishing nets, tools and other items used in the debtor's chief occupation not exceeding $1,000.00.

## Exempt Sources of Income

Many sources of income are also exempt from seizure or garnishment by private creditors.

The following benefits cannot be seized or garnished by private creditors:

i. Income Assistance;
ii. CPP payments;
iii. OAS & GIS; and
iv. EI

It is important to remember that debts owing to the programs listed above **can** be deducted from benefits payable by those programs.

## Further Income Exemptions

The Nova Scotia *Civil Procedure Rules* also contain restrictions on whether someone's income can be seized pursuant to an Execution Order. The *Civil Procedure Rules* can be found here: http://www.courts.ns.ca/Rules/consolidated/cpr_consolidated_rules_13-08-01.pdf

*Civil Procedure Rule* 79.08 states that 15% of a judgment debtor's gross wages can be seized to pay a debt owing.

*Civil Procedure Rule* 79.08 also states that a judgment debtor's income **cannot** be seized if:

i. Seizure would result in the debtor having less than $330.00 net per week after all compulsory deductions have been deducted; **or**
ii. Seizure would result in a debtor supporting a dependent (as defined in the *Income Tax Act*) having less than $450.00 net per week after all compulsory deductions have been deducted.

The *Civil Procedure Rule* 79.08 also reiterates that banks are **not** to pay the Sherriff any income from exempt sources – such as income assistance or Canada Pension Plan payments.

## Practical Considerations

Despite *Civil Procedure Rule* 79.08 banks are sometimes unwilling to determine the source of income in a debtor's bank account, and when presented with an Execution Order by the Sherriff will simply hand over the money in a debtor's account.

If you anticipate that a creditor intends to obtain an Execution Order in order to seize money from a debtor's bank account you should contact their bank and advise them of the exemptions from seizure pursuant to rule 79.08.

Another tactic to be aware of when it comes to banks and credit card companies is that they will sometimes resort to 'self-help remedies'. In particular banks will freeze a debtor's account if they have a debt owing. Unfortunately there is little recourse for a debtor in this situation other than to negotiate repayment of the debt owing.

# Debt Collection & Options for Debtors

## Rules Governing Debt Collectors

Licensed collection agencies (pursuant to the *Collection Agencies Act*), and ordinary businesses seeking to collect debts (pursuant to the *Consumer Creditors Conduct Act*) are restricted from engaging in certain activities when attempting to collect debts owing.

Some of the restrictions include:

- Harassing debtors;
- Calling on Sunday or outside the hours of 8am – 9pm on any other day;
- Failing to satisfy themselves that the debtor actually owes the debt in question;
- Making collect calls to debtors;
- Lying, either directly or indirectly, to members of a debtor's family;
- Contacting or threatening to contact the employer of the debtor, their spouse or any family member and give information that could adversely affect any of those people's employment or employment opportunities;
- Contacting a debtor who has indicated they are represented by a lawyer; **and**
- In the case of a licensed Collection Agency phoning a debtor without first contacting them in writing.

### Debtors Represented by Lawyers

Of the restrictions listed the most useful one is often the restriction regarding contacting debtors who are represented by a lawyer.

Oftentimes debtors are not disputing their debt owing, but are unable to pay it and are merely interested in obtaining relief from the constant phone calls from debt collectors.

There is a form that can be completed by your client indicating that they are represented by a lawyer, and requesting that the creditor have no further contact with them.

Should a client advise you of a breach of the restrictions listed in the legislation by either a licensed collection agency, or a business attempting to collect their own debt owing they should contact Service Nova Scotia at **1-800-670-4357** to file a complaint.

## Options for Debtors

Some clients you assist with debt issues will be what is known as 'judgment proof'. These are clients whose only income is exempt from seizure, and do not possess any assets which could be seized pursuant to a Court Order to satisfy a debt owing.

Clients concerned about having income or assets seized to satisfy their debt owing have several options:

i. Contact Access Nova Scotia's Debtor Assistance Program;
ii. Declare bankruptcy;
iii. Defend or prosecute the matter in Small Claims Court.

## Debtor Assistance Program

Access Nova Scotia offers meetings with Debt Assistance Officers at no charge.

Debt Assistance Officers can provide debtors with advice on all of the options available to them for managing their debts. This may include reworking budgets, negotiating payment plans with creditors, paying off debts with a consolidation loan, etc…

Further information on the Debtor Assistance Program can be found here:
http://www.gov.ns.ca/snsmr/access/individuals/debtor-assistance.asp

## Consumer Proposals

One option available through the Debtor Assistance Program is a consumer proposal.

Debtors who owe less than $250,000.00 (excluding a mortgage) may enter into a consumer proposal.

Pursuant to the *BIA* debtors can make proposals to their creditors to pay off a percentage of their debts owing, increase the amount of time to pay debts owing or a combination of both.

If a sufficient number of creditors agree, or are deemed to agree by failing to respond to the proposal in the allotted time, it becomes binding.

There is a fee payable to Access Nova Scotia for consumer proposals that is determined by taking into account the financial circumstances of the debtor.

## Bankruptcy

The last resort available to debtors is to declare bankruptcy pursuant to the *BIA*.

In order to declare bankruptcy a debtor must use a trustee in bankruptcy.

The Office of the Superintendent of Bankruptcy maintains a list of licensed trustees:
http://www.ic.gc.ca/app/osb/tds/search.html

There is a fee payable to the trustee in bankruptcy.

Bankruptcy is a very complicated area of law, and questions should be left up to a Trustee in Bankruptcy to answer.

One very important question that you should ensure your client asks their trustee is whether the debt in question will be released via bankruptcy. Certain debts (i.e. those arising out of fraud) will not be released via bankruptcy.

## Bankruptcy Assistance Program

The Office of the Superintendent of Bankruptcy offers the Bankruptcy Assistance Program to help debtors wishing to declare bankruptcy, but who have insufficient funds to retain the services of a Trustee in Bankruptcy.

To be eligible for the Bankruptcy Assistance Program a debtor must:

i. Have contacted and been unable to retain the services of at least two Trustees (or one if there is only one Trustee in the area);
ii. Not be incarcerated;
iii. Not be engaged in commercial activities; **and**
iv. Not have surplus income (as calculated in accordance with the *BIA*).

For further information on eligibility and how to participate in the Bankruptcy Assistance Program a debtor should call **1-877-376-9902.**

# Small Claims Court

## Intro to Small Claims Court

Small Claims Court is presided over by lawyers who are trained as Small Claims Court Adjudicators.

The majority of people appearing in Small Claims Court are not represented by a lawyer.

Parties appearing in Small Claims Court will have the opportunity to present evidence, call witnesses, cross examine the opposing party and their witnesses and present the court with a summary of their evidence and any law applicable to their case.

The formal rules of evidence are not as strictly enforced in Small Claims Court. Generally evidence that is 'relevant' to the issue before the Court will be considered.

## Beginning a Proceeding in Small Claims Court

### Notice of Claim

In order to commence a Small Claims Court matter a claimant must file a Notice of Claim. The Notice of Claim can be completed online: https://www.interactivecourtforms.ns.ca

The Notice of Claim **must** be filed in person at your local Small Claims Court. It **cannot** be filed online. A list of Small Claims Court locations can be found here:
http://www.courts.ns.ca/smallclaims/cl_location.htm

There is a filing fee for filing a Notice of Claim. If a claimant's income is sufficiently low the fee can be waived by completing a waiver of fees form:
http://www.courts.ns.ca/general/fee_docs/fee_waiver_form_june02.pdf

### Service

After filing a claim a claimant must personally serve the defendant with the Notice of Claim. The Small Claims Court will provide a deadline for service.

After serving the Notice of Claim an affidavit of service **must** be sworn and filed with the court. Small Claims clerks can swear the affidavit. The affidavit of service can be printed along with the Notice of Claim form, or obtained from the court when filing the Notice of Claim.

### Actions by Creditor

If a debtor is served with a Notice of Claim by a creditor the debtor can either:

i. Settle the matter out of court - The parties can come to an agreement to settle the matter forming the basis of the claim. Any agreement reached by the parties should be put in writing; **or**

ii. File a Notice of Defence or Counterclaim – If a debtor wishes to defend themselves against a claim, or file their own claim against the claimant, they **must** file and serve a Notice of Defence or Counterclaim **within 20 days** of being served with the Notice of Claim. If a Notice of Defence or Counterclaim is not filed and served within the limitation period a claimant can seek a quick judgment against the defendant.

Following the hearing the adjudicator will issue their decision in writing **within 60 days.**

### Appeals

A party to a decision from the Small Claims Court may appeal it to the Supreme Court of Nova Scotia within **30 days** of the date of the Adjudicator's decision.

There are only limited bases upon which an appeal to the Supreme Court can be made:

i. Jurisdictional error;
ii. Error of law; or
iii. Failure to follow the requirements of natural justice (i.e. the right to a fair hearing).

Should your client wish to appeal a Small Claims Court decision you **must** consult a lawyer.

## Enforcing Small Claims Court Orders

There are basically three options for enforcing a Small Claims Court Order. Prior to being able to pursue any of those options the successful party must ask the court which heard the case for an Execution Order, Certificate of Judgment and/or Recovery Order. This is done by simply contacting the court and explaining what it is you are seeking. In response the court will provide the necessary forms to complete in order to obtain the document requested.

The three options are:

i. **Execution Order** – this allows the Sherriff to seize wages, money from bank accounts, property which can be sold, etc… This option requires information about the debtor, and there is a fee payable to the Sherriff which will be added to the amount recoverable. Before the Sherriff will accept an Execution Order it must be registered with the Personal Property Registry. The Personal Property Registry is an electronic registry which allows creditors to register their financial interest in personal property. Individuals may register a judgment at the self-serve kiosk at any Land Registration Office, or hire a service provider to register it for them for a fee. Further information on registering a judgment can be found here: http://www.novascotia.ca/snsmr/access/land/personal-property-registry/registry-in-personal-property-registry.asp

ii. **Certificate of Judgment** – registering a Certificate of Judgment with the Land Registry Office limits the debtor's ability to mortgage or sell property they currently own, or may own in the

future, without first satisfying the Court Order. It creates what is known as a 'lien' against the debtor's real property. There is a fee to register the Certificate of Judgment, and the lien on the debtor's property will expire after 5 years. An interactive map with Land Registry Office locations can be found here: http://www.novascotia.ca/snsmr/offices.asp

iii. **Recovery Order** – this allows the Sherriff to seize property that was ordered to be returned to a party. A party seeking to enforce a Recovery Order must provide the Sherriff with as much detail as possible about the property in question (i.e. a description, its location, etc...). There is also a fee payable to the Sherriff.

**All** of the preceding options are available to either debtors or creditors who obtain a Small Claims Court Order.

# Payday Lenders

## Regulation of Payday Lenders

Payday lenders are regulated by the *Consumer Protection Act* and *Payday Lenders Regulations.* In addition, the NS Utility and Review Board has the jurisdiction to set the maximum cost of borrowing from payday lenders.

Payday lenders are permitted to offer their services over the internet in Nova Scotia.

Following the NSUARB's most recent payday lender decision the maximum cost of taking out a payday loan is $25.00 for every $100.00 borrowed. There is also a $40.00 penalty for missed payments.

Payday lenders are required by law to display a sign at their business, or on their website, which shows the total cost of borrowing $300.00 for 14 days.

Payday loans can be cancelled **without penalty** by the end of the business day following the day in which the loan was taken out, **or** within 48 hours if the loan was advanced from an Internet payday lender. Payday lenders are required to provide borrowers with a cancellation form at the time they take out their loan.

In order to operate in Nova Scotia payday lenders **must** be licensed pursuant to the *Consumer Protection Act*. A list of licensed payday lenders can be found here:

http://www.gov.ns.ca/snsmr/access/individuals/consumer-awareness/consumer-loans-credit/licensed-payday-lenders-in-nova-scotia.asp

# Helpful Tips

## Collections

Debt collectors often take very hard lines with respect to debts owing, and threaten to garnish wages, seize assets, etc... Do not be intimidated! Remember that if your client is judgment proof there is nothing that the creditor can do, and accordingly your client should not offer to pay any amount owing. Furthermore creditors **cannot** garnish wages or seize money or assets without a court order. The only exception being banks exercising 'self-help' remedies for debts owed to them, i.e. freezing a debtor's bank account

If you have a client who has some ability to pay you should encourage them to take advantage of the Debtor Assistance Program as opposed to them attempting to negotiate with a creditor directly.

By far the best way to stop a debt collector from contacting your client is to find a lawyer willing to represent them. Your local legal aid office should provide this service. Ensure that your client takes the Collection Agency form with them to their meeting with a lawyer.

## Small Claims Court

Many cases in Small Claims Court are decided based on the facts. Accordingly it is extremely important that your client is able to present the necessary evidence to confirm their version of the events in question. In debtor/creditor matters relevant evidence may include: receipts, invoices, contracts, etc… Be sure to make three copies of any documentary evidence you wish to rely on at the hearing – one copy for you, one for the opposing party and one for the Adjudicator.

The only restriction on introducing evidence in Small Claims Court is that it must be relevant to the matter at issue. However, significantly more weight will be given to evidence presented by a live witness who can be cross examined by the opposing party as opposed to a written statement from a witness.

Witnesses can be subpoenaed to attend a Small Claims Court hearing. A subpoena is a court document that requires a person to give evidence at a court hearing. A subpoena may require a witness to provide oral testimony, bring certain documents to court or both. A subpoena may be necessary if a witness is unwilling to attend a court hearing. Subpoena forms can be obtained from the Small Claims Court. In your binder you will find a detailed guide on how to use subpoenas in Small Claims Court.

In addition to evidence it may be helpful to rely on similar cases that have been decided on the legal issues in your client's case. If you find a case that you think is helpful you may provide it the Court. Be sure to bring three copies of any cases you wish to submit to the Court – one for you, one for the opposing party and one for the Adjudicator.

Don't worry if you don't have any case law to support your case. As mentioned on the previous slide the most important aspect of the case to focus on is the facts.

# First Meeting

Ensure that a potential debtor/creditor client brings the following information with them to the first meeting:

i. A copy of any correspondence received from creditors;
ii. Copies of any bills, receipts, invoices, etc… pertaining to the debt owing;
iii. Proof of income from all sources; and
iv. Copies of any Small Claims Court documents if applicable.

# Additional Resources

## Government

### Small Claims Court

*A Small Claims information guide can be found here:*
*http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_info_brochure_10.pdf*

*An excellent resource explaining how to enforce Small Claims Court Orders can be found here:*
*http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_guide_for_creditors_10.pdf*

*A guide on how to use subpoenas in Small Claims Court can be found here:*
*http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_using_subpoena_06.pdf*

### Payday Lenders

*Access Nova Scotia maintains a website with information about payday lenders here:*
*http://www.gov.ns.ca/snsmr/access/individuals/consumer-awareness/consumer-loans-credit/payday-loans.asp*

## Case Law

Potentially helpful Small Claims and Supreme Court decisions from Nova Scotia can be found here:
http://www.canlii.org/en/ns/

## Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding Debtor/Creditor matters. Their contact information can be found here:
http://www.nslegalaid.ca/contact.php

# Discrimination & Human Rights

## Contents

# Discrimination

## Legislative Framework

In Canada there are many legal sources of human rights, and legislation that prohibits discrimination on certain grounds.

On a national level there are the *Charter of Rights and Freedoms* and the *Canadian Human Rights Act.* This presentation will focus exclusively on Provincial legislation

In Nova Scotia protection against discrimination is governed by the *Nova Scotia Human Rights Act:* http://nslegislature.ca/legc/statutes/human%20rights.pdf

There are also a set of regulations governing Boards of Inquiry: http://www.novascotia.ca/just/regulations/regs/hur22191.htm

## Application

The *Human Rights Act* applies to all individuals in Nova Scotia.

The *Human Rights Act* applies to Municipal governments, and the Provincial government.

The *Human Rights Act* applies to private businesses and organizations that fall under the constitutional authority of the Provinces – i.e. universities, hospitals, etc…

The *Human Rights Act* does **not** apply to the Federal Government or private businesses and Crown corporations that fall under the constitutional authority of the Federal government (i.e. CBC, Canada Post, railways, airlines, etc…) – they are subject to the *Canadian Human Rights Act*.

## Discrimination

Discrimination is defined in the *Act* as the making of a distinction, either intentionally or unintentionally, based on a personal characteristic, or perceived characteristic, listed in the *Act*.

The distinction made must have the effect of imposing burdens, obligations or disadvantages on an individual, or group of individuals, not imposed upon others. Or the distinction must withhold or limit access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

The *Human Rights Act* prohibits discrimination in certain circumstances, and on the basis of a list of grounds contained in the *Act*.

### Specific Circumstances

The *Human Rights Act* prohibits discrimination in the following circumstances:

- The provision of or access to services or facilities (i.e. stores, restaurants or provincially funded programs);
- Accommodation (i.e. renting an apartment);
- The purchase or sale of property;
- Employment;
- Volunteer public service;
- A publication, broadcast or advertisement; **or**
- Membership in a professional association, business or trade association, employers' organization or employees' organization.

### Prohibited Grounds

The *Human Rights Act* prohibits discrimination on the following grounds:

- Age;
- Race;
- Colour;
- Religion;
- Creed;
- Sex (includeing pregnancy, the possibility of pregnancy or pregnancy-related illness);
- Sexual orientation;
- Gender identity;
- Gender expression;
- Physical disability or mental disability;
- An irrational fear of contracting an illness or disease;
- Ethnic, national or aboriginal origin;
- Family status (defined as being in a parent-child relationship);
- Marital status (including being single, engaged, married, separated, divorced, widowed or two people living common law);
- Source of income; **and**
- Political belief, affiliation or activity.

The Act also prohibits sexual harassment, or harassment based on any of the grounds listed above.

The *Human Rights Act* also prohibits discrimination on the basis of association with a person or group of people having a protected characteristic.

## Exceptions

There are certain exceptions to the general prohibition against discrimination contained in the *Human Rights Act*.

One of the most common exceptions arises in the employment context. It is commonly referred to as 'undue hardship'.

### Undue Hardship

Employers are allowed to establish what are known as '*bona fide* occupational requirements'.

A *bona fide* occupational requirement must meet the following criteria:

1. An employer must have adopted the requirement for a purpose rationally connected to the job;
2. The employer must have adopted the requirement in an honest and good faith belief that it was necessary for the fulfillment of a legitimate job related purpose (i.e. safety); **and**
3. The standard is reasonably necessary for the accomplishment of that legitimate job related purpose.

Once an employer establishes that the standard in question is a *bond fide* occupation requirement the law requires that they **must** accommodate an employee (i.e. modify workplace duties to accommodate an employee's disability) up to the point of undue hardship.

Undue hardship can include:

- Serious financial hardship to the employer;
- Significant risk to health or safety; and
- Unacceptable disruption to the employer's operation.

Whether a hardship is considered 'undue' may vary with the size and financial means of the employer in question.

## Affirmative Action

Another major exception contained in the *Human Rights Act* to be aware of is what is known as 'affirmative action'.

The *Human Rights Act* allows laws, programs and activities that have as a goal the improvement of conditions of people, or groups of people, including those who are disadvantaged because of a protected characteristic.

This exception means that for example a program created to hire women does not discriminate against men.

# Human Rights Procedure

## Making a Complaint

If someone believes that they have been discriminated against contrary to the *Human Rights Act* the first step is to make a human rights complaint.

A complaint is made to the Human Rights Commission. The Human Rights Commission is an independent government agency responsible for administering the *Human Rights Act*. The Commission has staff members who investigate complaints, provide human rights education, etc…

There are also Human Rights Commissioners. The Commissioners are appointed by the Provincial Government, and are responsible for determining the strategic direction of the Commission and making decisions on whether to refer complaints to Boards of Inquiry.

A human rights complaint **must** be made **within one year** of the action or conduct giving rise to the complaint, or within **one year** of the last instance of the action or conduct if it is ongoing.

In order to make a human rights complaint a complainant must contact the Human Rights Commission.

The Commission can be reached at **1-877-269-7699**. A potential complainant will speak with a Human Rights Officer employed with the Commission.

The Human Rights Officer will advise the potential complainant whether the conduct or action complained of is covered by the *Human Rights Act*.

If the matter is covered by the *Human Rights Act* the Human Rights Officer will fill out a complaint form with the assistance of the complainant. A complaint form **must** be completed by Commission staff or it will not be accepted. A sample completed complaint form can be found here: http://humanrights.gov.ns.ca/sites/default/files/files/Complaint%20form.pdf

## Dispute Resolution

Once a complaint is filed staff from the Human Rights Commission will contact the Respondent (the person or organization alleged to have discriminated against the complainant) to review the complaint with them, ask them to think of ways the complaint could be resolved and to give them the opportunity to gather information and witnesses.

As of 2012 the Human Rights Commission has adopted a policy of offering restorative approaches as the first option to resolve complaints.

A restorative approach focuses on the possible harm done to relationships (i.e. employer/employee), and how to restore those relationships. Restorative approaches also recognize that people other than the complainant may have suffered harm from discrimination (i.e. family members, co-workers, other tenants, etc…).

## Resolution Conference

The first attempt to resolve a human rights complaint is via what is called a resolution conference.

A resolution conference is an opportunity for the complainant(s), and the respondent(s) to meet face to face to discuss the complaint.

The resolution conference is facilitated by Commission staff. Resolution conferences are 'on the record'. Commission staff will record information provided, and that information may become part of the investigation.

Should the parties reach a settlement during the resolution conference it will be binding on both parties.

The solutions agreed to by the parties to resolve a dispute can take any form the parties are agreeable to. Settlement summaries can be found here:
http://humanrights.gov.ns.ca/settlement-summaries

## Mediation

If a resolution conference is unsuccessful in resolving the complaint the next step is mediation.

Mediation is performed by an independent third party.

Mediation is 'off the record'. Just like with a resolution conference the parties may enter into a binding settlement agreement through the mediation process.

## Investigation

Should a complaint be unresolved by either a resolution conference or mediation it will go to the investigation stage.

During an investigation a Human Rights Commission staff member will investigate the complaint with the ultimate goal of making a recommendation to the Human Rights Commissioners as to whether the complaint should be dismissed, or referred to a Board of Inquiry.

The factors taken into account when deciding whether to recommend referring a complaint to a Board of Inquiry are:

- The reasonableness of any solutions already offered to resolve the issues;
- Whether the Commission has the jurisdiction to assist the parties; and
- Whether there appears to be discrimination on a ground protected by the *Human Rights Act*.

During an investigation parties will be interviewed, and further evidence will be gathered. You can review a sample investigation report here:
http://humanrights.gov.ns.ca/sites/default/files/files/Investigation-Report.pdf

Once completed the investigation report is referred to the Human Rights Commissioners.

The Commissioners will review the report and decide whether to dismiss the complaint, or refer it to a Board of Inquiry.

## Judicial Review

Should the Human Rights Commissioners decide not to refer a complaint to a Board of Inquiry that decision can be judicially reviewed.

Should someone wish to seek a judicial review of a decision of the Human Rights Commissioners they **should** consult with a lawyer as there are limited grounds upon which a decision can be judicially reviewed.

# Human Rights Board of Inquiry

## The Board Chair

Should a complaint proceed to a Board of Inquiry a chair will be appointed to oversee it. The Chair is responsible for conducting the Board of Inquiry as well as writing the decision. Their role is similar to that played by a judge.

Board of Inquiry chairs are appointed by the Chief Justice of the Nova Scotia Supreme Court from a roster established by an independent selection committee. The minimum requirements to be appointed as a Board Chair are:

- A law degree;
- At least 5 years of experience in their professional field;
- Demonstrated experience in weighing conflicting information/evidence to arrive at a fair decision;
- Demonstrated experience in chairing hearings, meetings, or consultations where there are conflicting interests;
- Experience with human rights legislation or human rights issues; and
- A resident of Nova Scotia.

## Types of Hearing

Once a complaint has been referred to a Board of Inquiry there are two types of hearings that can be held:

1. A traditional Board of Inquiry; **or**
2. A restorative Board of Inquiry.

A traditional Board of Inquiry resembles a civil (i.e. non-criminal) trial.

Often times before traditional Boards of Inquiry the complainant(s) and respondent(s) will be represented by legal counsel, although it is not strictly necessary.

## Evidence

The rules of evidence before a traditional Board of Inquiry are not strictly enforced like in court. The Chair will determine whether evidence can be introduced. The most basic criteria is that evidence must be relevant to the matter before the Board of Inquiry.

Evidence before a Board of Inquiry will usually always consist of oral testimony from the complainant(s), respondent(s) and any witnesses. It may also consist of documentary evidence relevant to the human rights complaint.

The Human Rights Commission is also represented by its lawyer at a Board of Inquiry. The role of the Commission's lawyer is to protect the public interest as well as the interests of the Human Rights Commission. They cannot provide legal advice to any of the other parties before the Board of Inquiry.

## The Decision

A Board of Inquiry is open to the public, and decisions are reported and available to the public. Decisions, organized by topic, can be found here:
http://humanrights.gov.ns.ca/board-of-inquiry-decisions

Following the conclusion of a Board of Inquiry the Chair has 6 months to issue their decision.

A Board of Inquiry decision can be appealed to the Nova Scotia Court of Appeal. This is a complicated process, and anyone wishing to appeal a decision **should** consult with a lawyer.

## Restorative Board of Inquiry

Restorative Boards of Inquiry aim to create a safe non-adversarial space where parties can come together, and focus on sharing their perspectives on what occurred with the goal of understanding the harms done and to create a plan for repairing the harm, and preventing it from occurring in the future.

A restorative Board of Inquiry has two stages. The first stage is facilitated by a restorative facilitator who prepares the parties to meet one another and come up with an agreement to resolve the matter.

The second stage is facilitated by the Chair of the Board of Inquiry. The Chair will either confirm the settlement/plan reached between the parties, or will assist the parties to resolve any outstanding issues. If the parties cannot come to an agreement on an issue the Chair can make a finding of fact and issue a written decision on any outstanding issues.

The second stage of a restorative Board of Inquiry is open to the public.

Detailed information on the restorative Board of Inquiry model can be found here:
http://humanrights.gov.ns.ca/sites/default/files/files/RestorativeBOI.pdf

The restorative Board of Inquiry policy of the Nova Scotia Human Rights Commission can be found here:
http://humanrights.gov.ns.ca/sites/default/files/files/Policy/RBOIPolicy_Dec_2012.pdf

## Remedies

Remedies for a violation of the *Human Rights Act* may be provided either via the terms of a settlement agreement, or in a decision issued by a Board of Inquiry.

Some of the more common remedies include:

- A cessation of the activity that was in contravention of the *Human Rights Act;*
- Development of policies/practices to ensure that further contraventions of the *Human Rights Act* do not occur;

- Training for the respondents' organization regarding its obligations pursuant to the *Human Rights Act*; and
- Monetary damages payable to the complainant.

## Damages

General damages are often awarded to successful human rights complainants.

General damages are meant to compensate complainants for emotional harm done to them. In Nova Scotia general damage awards in successful human rights' complaints which resulted in the loss of the complainant's employment generally range between $2,500.00 to $10,000.00 depending upon the severity of the emotional harm done to the complainant.

The other category of damages that can be ordered are what are known as 'special damages'. Special damages cover things such as out-of-pocket expenses, and if the discrimination resulted in job loss – lost wages due to termination.

The general goal of damage awards in the human rights context is to place the complainant in the same situation they would otherwise have been in had the discrimination not occurred in the first instance.

# Additional Resources

## Government

The Human Rights Commission of Nova Scotia maintains a website with useful information: http://humanrights.gov.ns.ca

## Case Law

Appeals of Board of Inquiry decisions by the Nova Scotia Court of appeal can be found here: http://www.canlii.org/en/ns/

## Nova Scotia Legal Aid

NSLA offices **may** provide summary advice to clients regarding human rights. Their contact information can be found here: http://www.nslegalaid.ca/contact.php

# Employment Insurance

## Contents

# Qualifying for EI

## Legislative Framework

Employment Insurance is governed by the *Employment Insurance Act*:
http://laws-lois.justice.gc.ca/eng/acts/E-5.6/

There are also *Employment Insurance Regulations:*
http://laws-lois.justice.gc.ca/eng/regulations/SOR-96-332/

The *EI Act* establishes several types of benefits. This document will focus on regular EI benefits.

## Qualifying for EI

There are two basic initial qualifying criteria that must be met by an EI claimant:

i. **Interruption of Earnings** – for a claimant for regular EI benefits this essentially means the claimant is no longer employed. There must be no work performed and no income from employment for 7 consecutive days in order to constitute an interruption of earnings; and

ii. **Hours of Insurable Employment** – a claimant must have enough hours of insurable employment during their qualifying period (usually the 52 weeks leading up to their application). The hours required are based on the regional rate of unemployment. Generally a claimant will qualify for EI if they have worked 700 hours during their qualifying period. The number of hours required for EI per region can be found here:
http://srv129.services.gc.ca/rbin/eng/geocont.aspx

### Insurable Employment

An EI claimant's hours must come from insurable employment. If there is a dispute about whether the employment was insurable or not that issue is dealt with by the Canada Revenue Agency (CRA)

If your client is unsatisfied with the CRA's decision they have **90 days** from the date they receive it to appeal to the Tax Court.

A publication explaining how to appeal the CRA's decision re insurable employment can be found here:
http://www.cra-arc.gc.ca/E/pub/tg/p133/README.html

If possible you should speak with a lawyer if you have a client facing this situation.

### Additional Hours

One circumstance in which a claimant will require more than 700 hours is if they have committed a violation or violations (i.e. be found to have made false and misleading statements on a previous EI claim) within the past 5 years.

The seriousness of the violation or violations will determine how many additional hours are required to qualify for EI.
Another circumstance requiring increased hours is if someone is a new entrant or reentrant in the labour force. Someone is a new or reentrant if they have less than 490 total hours of workforce attachment during the year prior to their qualifying period (examples of workforce attachment include insurable employment, receipt of EI benefits, workers compensation, etc…). An exception to this rule is if someone received parental or pregnancy benefits in the 4 years prior to that year they are not considered a new or reentrant.

New or re entrants require 910 hours of insurable employment to qualify for EI.

# Applying for EI & Appeals

## Application Process

There are two ways to apply for EI benefits. Online, at:
http://www.servicecanada.gc.ca/eng/ei/application/employmentinsurance.shtml

Or in person at your local Service Canada office.

In order to process an EI application a claimant must have all of their Records of Employment (ROE) from the past 52 weeks.

If someone is experiencing difficulty in obtaining their ROE's they should contact Service Canada at 1-800-206-7218.

## Appeals

### Reconsideration

If a claimant's application for EI is denied they may request reconsideration of the denial **within 30 days** of the date they received the decision letter.

The form to request reconsideration is found here:
http://www.hrsdc.gc.ca/cgi-bin/search/eforms/index.cgi?app=prfl&frm=ins5210&ln=eng

### Social Security Tribunal

If a claimant's request for reconsideration is denied they have another chance to appeal to the new Social Security Tribunal (SST). The SST is composed of a general and appeal division as well as an EI and Income Security section.

The SST began hearing EI cases as of April 1st, 2013. It replaced the Board of Referees and the Umpire which previously heard EI appeals.

While the Social Security Tribunal is a new body it still subject to the previous case law on EI.

#### *Process*

A claimant has **30 days** from the receipt of the letter indicating that their reconsideration was denied to request an appeal to the Social Security Tribunal General Division EI Section.

Instructions on how to appeal an EI denial, along with the required forms, can be found at the Social Security Tribunal's website here:
http://www.canada.gc.ca/sst-tss/hta-cij/eigendiv-divgenae-eng.html

After an appeal is filed the EI Commission must provide the SST a package of documents which will include the request for reconsideration, all documents relevant to the decision being appealed, a copy of the decision being appealed and the submissions of the Commission. These documents must be sent by the SST to the appellant.

Along with the documentation pertaining to the appeal the SST will also include a Notice of Hearing **or** a Notice of Dismissal.

If the SST determines that an appeal has no reasonable chance for success they **must** summarily dismiss it – in other words there will be no hearing. Before summarily dismissing an appeal the SST must give written notice to the appellant, and offer the appellant a reasonable period of time to make submissions.

### *Hearings*

Hearings can either be in the form of written questions and answers or oral. Oral hearings can be via teleconference, videoconference or in person. You should request an oral hearing at the time of filing your Notice of Appeal to the SST.

The SST will provide interpretive services as required.

If you intend on calling witnesses at your hearing you should advise the SST as early in the appeal process as possible. This is extremely important as having witnesses will weigh in favour of having an oral hearing.

The SST will provide a copy to you (or your client) with all documentation submitted to it. However it will only provide **one** copy. Therefore it is extremely important that you retain the copy of the documentation you receive from the SST.

Do not bind or tab any submissions to the SST, the tribunal will do this for you.

One adjournment will be granted without reasons, however any subsequent adjournments will require exceptional circumstances.

## Social Security Tribunal Appeal Division

An appellant may appeal to the appeal division **within 30 days** of the date the decision is communicated to them by the SST general division.

### *Leave to Appeal*

Unlike at the SST general division an appellant must be granted 'leave to appeal' to the SST appeal division. Leave will only be granted in the following circumstances:

i. the General Division failed to observe a principle of natural justice (i.e. the right to a fair hearing) or otherwise acted beyond or refused to exercise its jurisdiction;

ii. the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
iii. the General Division based its decision on an erroneous finding of fact that it made in an arbitrary manner or without taking into account the evidence before it.
iv. The application for leave to appeal form to the SST Appeal Division can be found here: http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATATTAD.pdf

The one exception to the requirement to obtain 'leave to appeal' is a decision by the SST general division to summarily dismiss an appeal.

### *Process*

Clients who wish to appeal to the SST Appeal Division should consult with a lawyer.

Any submissions in support of an appeal **must** be made within 45 days of leave to appeal being granted.

With certain exceptions, decisions of the SST appeal division can be judicially reviewed by the Federal Court of Appeal. Should a client wish to seek a judicial review they **must** consult a lawyer.

Applications for judicial review **must** be made within **30 days** of the decision being communicated to the appellant.

# Disqualification

## Reasons for Disqualification

There are numerous reasons a claimant can be disqualified from receiving regular EI benefits.

Three of the more common reasons for EI claimants being disqualified are:

- Quitting a job (under the *EI Act* this is referred to as 'Voluntary Leaving');
- Misconduct; and
- Availability.

### Voluntary Leaving

EI claimants can be disqualified from receiving benefits if they voluntarily leave their employment without 'just cause'.

Just cause is not defined in the *EI Act*. It is said to exist if there was no reasonable alternative to leaving employment, or taking leave having regard to all of the circumstances.

The *EI Act* lists certain circumstances which will constitute 'just cause' for voluntarily leaving employment.

### Just Cause

The *EI Act* lists the following specific circumstances as just cause for voluntarily leaving employment:

- sexual or other harassment;
- obligation to accompany a spouse, common-law partner or dependent child to another residence;
- discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act;*
- working conditions that constitute a danger to health or safety;
- obligation to care for a child or a member of the immediate family;
- significant modification of terms and conditions respecting wages or salary;
- excessive overtime work or refusal to pay for overtime work;
- significant changes in work duties;
- antagonism with a supervisor if the claimant is not primarily responsible for the antagonism;
- practices of an employer that are contrary to the law;
- discrimination with regard to employment because of membership in an association, organization or union of workers;
- undue pressure by an employer on the claimant to leave their employment; and
- any other reasonable circumstances that are prescribed.

## Misconduct

An EI claimant is disqualified from receiving benefits if they lost their employment by reason of their own misconduct.

The *EI Act* does not define misconduct. However it has been defined by various legal decisions.

Misconduct is **willful** conduct, or conduct that is so **reckless** so as to amount to willfulness, which adversely affects the employment relationship.

Misconduct is often found to exist where a claimant's actions irreparably damage the trust relationship between employer and employee.

To a certain extent the nature of a claimant's employment will determine whether the conduct complained of amounts to misconduct.

Dismissal for cause based on a claimant's conduct is not the same as dismissal for misconduct. For example: incompetence, stupidity, misunderstanding between an employee and employer, momentary carelessness or simple mistakes may be cause for dismissal but are not necessarily equivalent to misconduct.

Misconduct **must** be the reason the claimant lost their job, and the burden of proving misconduct rests with the EI Commission and employer.

## Availability

In order to be entitled to benefits, claimants must show that they are seeking employment and are available for work.

Availability is a willingness to work under regular conditions without unduly limiting the chances of obtaining employment.

It is a question of fact, and the burden for proving availability rests upon claimants.

There is a rebuttable presumption that a claimant who is enrolled as a full-time student is not available for work.

# Helpful Tips

## Applications

It is unlikely you will meet with a client prior to them making a claim for EI.

If a client left their employment voluntarily their application should detail why they had no reasonable alternative but to leave their employment.

If a client lost their employment due to misconduct their application should provide their version of the events that lead to their dismissal. It may be helpful to include copies of workplace rules or policies.

## Reconsideration

Reconsideration is mostly a paper based process. The person conducting the reconsideration will engage in some fact finding if necessary which may involve contacting the claimant, and other parties.

Any additional information in support of your client's claim should be submitted at this stage. Examples of additional information could include: letters to or from the employer, employment contracts, workplace rules or policies, etc…

While objective evidence is the most useful at this stage you may wish to consider submitting subjective evidence from your client or other witnesses in the form of sworn statements.

## Social Security Tribunal

Prior to a hearing before the SST your client will receive a package of documents. These documents will contain all of the factual information upon which the Commission's decision was based. Review the facts to ensure their accuracy.

The package will also contain a memorandum of facts and law written by an employee of the Commission. Review this document **carefully**. It contains the legal reasons why your client's claim was denied including cases supporting the Commission's position. You should review the cases cited by the Commission to better understand its legal position in your client's appeal.

The EI Commission does not send a representative to the SST General Division hearings, however other interested parties (i.e. an employer) have the option to attend. This would most likely occur in the event of a hearing into misconduct.

Remember that this is your client's first chance to tell their story, and have their credibility assessed by a decision maker.

You should walk your client through their version of the events in question keeping in mind the legal reason why your client's claim was denied.

Any witnesses who wish to give evidence should be present at the hearing.

After all of the evidence has been presented you should summarize your client's case, and explain how the evidence has addressed the legal issue which lead to the denial of your client's claim.
You may wish to submit case law to the SST in support of your client's case.

# First Meeting

Ask a potential EI client to bring the following to their first meeting with you:

i. A copy of their EI Application (if applicable);
ii. ROE's for the preceding 52 weeks;
iii. Any correspondence from the EI Commission (if applicable);
iv. Any correspondence from the SST (if applicable); and
v. Any other relevant information to their claim.
    - This will depend on the reason for the denial. For example if someone left voluntarily due to a significant change in work duties you may ask the client to bring in their old and new job descriptions. You may only ascertain what you need after your first meeting.

During the first meeting you should obtain the following from your client:

i. If applicable an Authorization to Disclose allowing you to speak to the SST. The form can be found in the following link: http://www.canada.gc.ca/sst-tss/hta-cij/eigendiv-divgenae-eng.html
ii. Consent forms to obtain any other records, i.e. medical, if applicable *(insert hyperlink to medical consent form)*.

Finally, you should also advise your client that if they are in receipt of income assistance they will have to repay the income assistance they received for any period of time they also receive EI.

# If Your Client is Successful

Congratulations! However you should ensure your client is reminded of the following:

i. Your client will receive EI retroactive to their initial application date (minus the two week waiting period). You should ensure they do not spend that money upon receipt as they may owe all, or a portion of it, to the Province if they were in receipt of income assistance pending receipt of their EI; and
ii. While on EI your client has certain responsibilities. These will be explained to them by the EI Commission; however you should impress upon them that they should be taken seriously as violations can result in financial penalties, and more stringent eligibility requirements for future claims.

# Additional Resources

## Case Law

Applicable case law on EI comes from the Umpire (eventually the SST Appeal Division) and the Federal Court of Appeal. The Supreme Court of Canada can also make decisions on EI.

There are **excellent** online case law resources for EI:

i. EI Appeal Decisions Favourable to Workers: http://www.ei.gc.ca/eng/board/favourable_jurisprudence/favourable_decisions_toc.shtml
ii. Jurisprudence Library: http://www.ei.gc.ca/eng/library/searchxt.shtml
iii. Digest of Benefit Entitlement Principles: http://www.servicecanada.gc.ca/eng/ei/digest/table_of_contents.shtml
iv. Index of Jurisprudence: http://srv130.services.gc.ca/indexjurisprudence/eng/about.aspx
v. Quick Reference Tool: http://www.ei.gc.ca/eng/board/quick_reference_page.shtml

## Government

The federal government maintains a website on EI here: http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml

## Community Legal Education Ontario (CLEO)

CLEO has a publication about EI that can be found here: http://www.cleo.on.ca/en/publications/empIns

## Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding EI. Their contact information can be found here: http://www.nslegalaid.ca/contact.php

# Income Assistance

## Contents

# Initial Eligibility

## Legislative Framework

Income Assistance is governed by the *Employment Support and Income Assistance Act (ESIA)*: http://nslegislature.ca/legc/statutes/employsp.htm

There are also two sets of Regulations:

i. The first set of regulations are key. They provide all of the details on how Income Assistance operates on a day to day basis: http://www.gov.ns.ca/just/regulations/regs/esiaregs.htm

ii. The second set of regulations govern the appeal process: http://www.gov.ns.ca/just/regulations/regs/esiaappl.htm

## Policy Manual

The Department of Community Services also has a Policy Manual for Income Assistance: http://novascotia.ca/coms/employment/documents/ESIA_Manual/ESIA_Policy_Manual.pdf

The Policy Manual is **not** the law! The *ESIA* and *ESIA Regulations* are the law, and the Policy Manual is only valid insofar as its contents reflect the law.

Nonetheless the Policy Manual is extremely important as it is what Income Assistance caseworkers use in making their decisions.

# Eligibility Criteria

## Budget Deficit

The most basic eligibility criteria for IA is the budget deficit system. The budget deficit system works as a ledger:

| Allowable Expenses: | Chargeable Income: |
|---|---|
| Personal Allowance | Employment Income (including spouse's income) |
| Shelter Allowance | Child Support |
| Special Needs | Canada Pension Plan |
| | Etc… (a full list of chargeable income is found in *Regulation 47)* |
| **Total Allowable Expenses** | **Total Chargeable Income** |

An IA applicant's allowable expenses must exceed their chargeable income to be eligible for IA – see *Regulation* 11.

## Residence

*Regulation 14; Policy Manual 5.1.1 & 5.11.1 – 5.11.7*

An applicant must be present in Nova Scotia at the time of their IA application.

There is no minimum residency period before someone can apply for IA.

## Other Sources of Income

*Regulation 12; Policy Manual 5.1.4*

Income assistance is a program of last resort.

Someone is ineligible for IA if there is another feasible source of income or applicable assets available to provide for their basic and special needs.

A feasible source of income could include: CPP, OAS, GIS, child or spousal support, EI, etc…

IA applicants and recipients are under an obligation to commence legal proceedings or enforce court orders that would provide them with financial support.

## Assets

*Regulations 2(f), 54, 55 & 60A; Policy Manual 5.7.10 – 5.7.15*

At the time of application a single person will be ineligible for IA if they have more than $1,000.00 in assets.

At the time of application a family will be ineligible for IA if they have more than $2,000.00 in assets.

If IA is denied on the basis of excess assets an applicant must wait at least 1 month and not more than 1 year before reapplying for IA.

Examples of assets that are not considered when assessing eligibility include:

i. An applicant's primary residence;
ii. A motor vehicle used for basic transportation;
iii. A Registered Education Savings Plan (RESP);
iv. An Registered Disability Savings Plan (RDSP); and
v. Tools or equipment related to a trade or profession.

### *Reasonable Dissipation of Assets*

*Regulation 55; Policy Manual 5.7.16*

An applicant can also be denied IA if they unreasonably dissipated assets within 1 year of their application for IA, as determined by a supervisor.

Reasonable dissipation of assets by either an IA applicant, or recipient, includes:

i. Personal and family shelter – including the purchase of a home;
ii. Basic needs;
iii. Necessary home repairs; **or**
iv. Replacement of necessary items.
v. Proof that assets were spent on those items must be provided (i.e. receipts).

## Age

*Regulations 14 & 66; Policy Manual 5.1.1 & 5.10.1*

The general rule is that a person must be 19 to apply for IA in their own right.

A person aged 16-18 can apply for IA if in the opinion of a caseworker:

i. They are exposed to an unsafe home environment;

ii. An unresolvable parental conflict; or
iii. Unable to remain at or return to home due to a parental decision.

A youth must also being willing to:

i. Participate in an employment plan;
ii. Attend school;
iii. Live somewhere with a level of supervision, accountability and guidance appropriate for their age; **and**
iv. Access medical and counseling services as required.

A caseworker may grant IA to a youth living alone if the caseworker is satisfied they have the necessary life skills and maturity to live alone.

## Spouses

*Regulations 2(ac) & 2(ja)*

According to the *ESIA Regulations* a spouse includes a husband or wife of an applicant or recipient **or** a common-law or same-sex partner of an applicant or recipient.

Common law partners must live with one another in a relationship of interdependence – both economically and domestically. In addition **1** of the following must apply to the 2 people in the relationship:

i. They have lived together for 12 consecutive months;
ii. They have a child or children – either by birth, adoption or legal custody;
iii. They previously lived together for 12 consecutive months, including any separation of less than 90 days; **or**
iv. They advise a caseworker they are a common-law couple.

### *Rules Relating to Spouses*

*Regulations 47(1)(a) & 10; Policy Manual 5.7.1 & 5.17.3*

A spouse's income is included with an applicant's income when applying for IA.

An applicant is ineligible for IA if they have separated from their spouse for the purpose of qualifying for IA.

## Employment

*Regulations 21(1) & 21(2); Policy Manual 5.17.6 – 5.17.7*

Applicants will be subject to a 6 week waiting period if they or their spouse within 4 months prior to their application for IA:

i. Quit a job without just cause;
ii. Were fired with just cause; or
iii. Quit a job for the purpose of qualifying for assistance.

While 'just cause' is not defined in the *ESIA* or *ESIA Regulations*, the Policy Manual (5.17.6) indicates that income assistance can be granted where there are justifiable circumstances for quitting or having been fired from employment. The only example provided in the Policy Manual is where the health or safety of the individual was in jeopardy.

People engaged in a strike or who are locked out by their employer are not eligible for IA.

### Education

*Regulation 67; Policy Manual 7.3.1 – 7.3.4*

IA will **not** be given to, with very limited exceptions, a person attending a post-secondary education program of more than 2 years in length.

In order to participate in an post-secondary education program of two years or less in length an IA recipient **must**:

i. Have been the subject of an employability assessment that recommends participation in a post-secondary education program of 2 years or less;
ii. Have pursued other sources of income, but they are unavailable or insufficient;
iii. Have been in receipt of IA for the 6 months immediately preceding the start of the program; **and**
iv. Be available for work when not in school.

Only IA recipients who are funded by the Employability Assistance for Persons with Disabilities Program or participants in the Career Seek Pilot Project are eligible to attend a post-secondary education program of more than 2 years in length.

Additional funds for books and tuition are **not** provided by IA.

## Applying for Income Assistance

*Regulations 5 & 9; Policy Manual 5.1.3 & 5.1.8*

In order to apply an Applicant must go to their local Department of Community Services office, and complete an application.

A list of Community Services offices can be found here:
http://novascotia.ca/coms/department/contact/index.html

At the time of application applicants will be asked to provide information to verify their eligibility for IA, and will be asked to sign a release to allow the Department to obtain necessary information from 3rd parties.

If an IA Applicant, or Recipient, would suffer undue hardship (in the opinion of a caseworker) by having to provide required documentation in a timely manner assistance **may** be granted pending the provision of the required documentation.

# Allowable Expenses

## Personal Allowance

*Regulations 31 & Appendix A; Policy Manual 5.3.1 – 5.3.8 & 5.5.1*

Once on IA all recipients are eligible for a personal allowance.

The personal allowance amount is contained in a table at the end of the *ESIA Regulations*.

The personal allowance for adults is currently **$255.00** per month.

While legally entitled to it, dependent children (under the age of 18) do not receive a personal allowance unless they are **not** in receipt of the child tax benefit.

## Shelter Allowance

*Regulations 31, 35(1) & Appendix A; Policy Manual 5.4.1 – 5.4.8 & 5.5.1*

Once on IA all recipients also receive a shelter allowance.

There are shelter allowance rates for those who rent or own, and shelter allowances for boarders. The policy manual sets out the criteria for when someone is considered to be a boarder versus a renter.

Both shelter allowances cover 100% of **actual** shelter costs up to a maximum based on family size. Shelter allowances are contained in a table at the end of the *ESIA Regulations*.

### What is Included

*Regulations 36 – 42; Policy Manual 5.4.6*

The shelter allowance includes 100% of the following up to the maximum allowable shelter allowance:

i. Rent or mortgage payment;
ii. Property taxes;
iii. Heating costs;
iv. Electricity costs; and
v. Water costs.

### Amounts

*Regulation Appendix A & 35(2); Policy Manual 5.5.1 & 5.4.8*

*Current monthly shelter allowances for people who rent or own are as follows:*

*i. $300 for a single person;*
*ii. $570 for a family of two; and*
*iii. $620 for a family of three or more;*

*Current monthly shelter allowances for boarders are as follows:*

*i. $223 for a single person;*
*ii. $242 for a family of two; and*
*iii. $282 for a family of three or more.*

*In roommate situations each roommate will receive 50% of their actual shelter costs based on their family size.*

## Incremental Shelter Allowance

*Regulations 45 & 32; Policy Manual 5.4.1(a) & 5.4.2*

If certain criteria are met single IA recipients can receive an incremental shelter allowance of **$535.00** per month. This amount is instead of, not in addition to, the regular shelter amount.

The criteria for receiving an incremental shelter allowance are:

i. Disability;
ii. Fleeing abuse;
iii. 55 years of age and over; **or**
iv. A youth (16-18).

A supervisor **may** exceed the incremental shelter allowance if a recipient requires barrier free housing.

# Special Needs

## What are Special Needs?

*Regulation 24(1) & Appendix A; Policy Manual 6.2.1 – 6.2.34 & 6.3.1 – 6.3.4*

Special needs are amounts provided for items which fall outside of the personal and shelter allowances.

Examples of special needs include, but are not limited to:

i. Dental care;
ii. Optical care;
iii. Pharmacare coverage;
iv. Special diet;
v. Transportation; and
vi. Phone for health or safety reasons.

A full list of special needs is found in the Policy Manual.

### Special Needs Requiring a Doctor's Note

*Regulation 62; Policy Manual 9.1.1 – 9.1.6*

The most common special needs are:

i. Pharmacare – all IA recipients are covered.
ii. Transportation for medical reasons (usually a bus pass);
iii. Telephone for medical reasons; and
iv. Special diet – the special diet schedule is contained in the Policy Manual.

An IA recipient should be able to obtain the above noted special needs (except Pharmacare) with a doctor's note indicating that the special need is required for medical reasons.

Pharmacare covers prescriptions for IA recipients, and their families, provided the prescription is for a drug listed on the *Nova Scotia Formulary*. There is a $5.00 co-pay which can be waived if a recipient has more than 3 prescriptions, is a person with a disability or has a small dosage prescription to be taken on a frequent basis.

If a condition necessitating a special need is chronic occasionally only one doctor's note is required. However caseworkers may, and often do, ask for a new note on an annual basis.

### Special Needs Requiring More than a Doctor's Note

*Regulation 24(B); Policy Manual 6.1.2*

For other special needs requests contained in the Policy Manual it may be necessary to provide the following information:

i. An explanation as to the why the special need is required;
ii. A description of the special need;
iii. Any documentation from professionals supporting the special need;
iv. The monthly or total cost of the special need;
v. The resources or alternatives that have been investigated with respect to obtaining the special need from other sources;
vi. If the item or service costs over $200.00, two estimates from separate providers; **and**
vii. An invoice or receipt if the special need has already been acquired.

## Special Needs Not Listed in the Policy Manual

*Regulations 24(2) & 24(A)(1) – (2); Policy Manual 6.1.1 & 6.2.18*

Recent changes to the *ESIA Regulations* (effective October 1st, 2013) allow the approval of special needs not contained in the Policy Manual provided certain criteria are met.

If a client is seeking a special need not contained in the Policy Manual the first step to determine whether it is a permissible special need. A special needs request will **not** be granted, regardless of the circumstances of the applicant, if:

i. The request is for an item or service that is insured by a Provincial health care plan (i.e. MSI), or otherwise funded by government;
ii. The request is for a prescription drug not listed on the Nova Scotia Formulary;
iii. The request is for shelter costs or personal allowances; **or**
iv. The request is for medical marijuana or any equipment or supplies used in producing or administering medical marijuana.

The item or service in question **must** meet the following criteria in order to be considered a special need:

i. It must be prescribed in the scope of their practice by either a physician, dentist or nurse practitioner;
ii. It must be essential to the health of an applicant, recipient, their spouse or their dependent child/children; **and**
iii. It must be provided by a medical professional licensed or registered to practice in Nova Scotia [A full list of of medical professionals licensed or registered to practice in NS can be found at the bottom of this link http://nslegislature.ca/legc/bills/61st_4th/1st_read/b147.htm - however it is important to note that the Policy Manual lists examples of treatments (such as massage therapy and acupuncture) which are not provided by professionals on the above list].

### *What the Caseworker Will Consider*

In making the determination as to whether an item or service will be approved as a special need a caseworker will consider the following (some of these criteria are covered on the 'Request for Essential Medical Treatment' form that must be completed):

i. The needs and circumstances of the applicant, recipient, spouse or dependent child;
ii. The medical evidence of the appropriateness, necessity and effectiveness of the requested item or service;
iii. The cost of the item or service in comparison to possible alternatives;
iv. Availability of alternatives insured by the Province or otherwise funded by government; **and**
v. Whether approving the item or service will fulfill the purposes of the *ESIA*.

In making their decision a caseworker may request advice from a person qualified to provide medical advice on the appropriateness, necessity or effectiveness of the item or service requested. If a caseworker requests advice they **must** advise their supervisor.

Should a caseworker determine that an item or service **should not** be approved as a special need they **must** notify the applicant and provide them with written reasons, and their decision is appealable.

# Chargeable Income

## What is Chargeable Income?

*Regulation 47; Policy Manual 5.7.1 – 5.7.2 & 5.7.9*

Chargeable income includes the income of an IA recipient, their spouse and amounts received on behalf of a dependent child.

Chargeable income falls into two categories: unearned and earned.

### Unearned Income

Unearned income includes CPP payments, child or spousal maintenance payments, workers compensation, etc…

Unearned income is charged against a recipient's budget at **100%** - in other words every dollar of unearned income received results in one dollar less of income assistance.

### Earned Income

*Regulation 48(1); Policy Manual 5.8.1 – 5.8.2*

The most common form of earned income is wages from employment. There is an 'earning incentive' applied to income from wages.

An IA recipient's first **$150.00** of net wages is exempted from the budget deficit calculation, **and** the remaining net wages are charged at **70%** against an IA recipient's monthly entitlement.

For IA recipients engaged in supported employment the first **$300.00** of net wages is exempt – the remainder is treated the same as recipient's not engaged in supported employment.

## Non-Chargeable Income

*Regulations 52 & 60A; Policy Manual 5.9.1 & 5.7.13*

Certain sources of income are **not** considered in the budget deficit calculation.

Common examples of non-chargeable income include:

- Income tax refunds;
- Child tax benefits;
- The Nova Scotia Poverty Reduction Credit;
- The Nova Scotia Affordable Living Tax Credit; etc…

A full list of non-chargeable income is contained in *Regulations* 52 & 60A.

# Budget Deficit Exemption

*Regulation 46; Policy Manual 5.17.2*

A casework supervisor has the ability to exempt an IA applicant or recipient from the budget deficit calculation in certain circumstances:

i. To protect the health or safety of an applicant, recipient or their family; **or**
ii. To preserve the dwelling of an applicant or recipient. This could mean helping someone with major repairs to their home.

# Ongoing Eligibility

## Overview

It is up to IA recipients to prove their ongoing eligibility for IA.

If a recipient undergoes a change of circumstances – i.e. starts a job, gets married, etc… They must provide their caseworker with that information.

If a recipient does not advise their caseworker of the change in their circumstances it may result in their income assistance being cut-off, and a subsequent overpayment.

### Employment

*Regulations 17 – 20; Policy Manual 5.17.4 – 5.17.4 & 7.1.1 – 7.1.4*

Some of the services offered to IA recipients are those which fall under the umbrella of *Employment Support Services*.

IA recipients, and their spouses, **must** undergo an employability assessment.

If the assessment determines they are able to work IA recipients, and their spouses, **must** enter into an employment plan.

Failure to accept suitable employment or participate in services that are part of an employment plan may result in ineligibility for IA.

IA will be discontinued for 6 weeks if an IA recipient, or their spouse:

i. Quit a job without just cause;
ii. Was fired with just cause; or
iii. Quit a job for the purpose of qualifying for additional assistance.

### Assets

*Regulations 2(f), 55 & 60A; Policy Manual 5.7.10 – 5.7.16*

An IA recipient, or their spouse or dependent child who obtains applicable assets in excess of the asset limits can be cut off income assistance for not less than 1 month or more than 1 year.

Cut offs due to excess assets can be prevented if the excess assets are spent on certain items previously listed in **Slide 8**.

Cut offs can also be prevented if a recipient places their asset (assuming it is cash) into certain types of exempt assets – i.e. RESP's and RDSP's.

Prior to spending or investing excess assets it is **essential** that an IA recipient receive supervisory approval.

## Cohabitation

*Regulations 6, 7, 15(3), 15(4) & 47; Policy Manual 5.1.9, 5.1.10 & 5.7.1*

If an IA recipient begins cohabiting with someone they **must** advise their caseworker.

An IA recipient's cohabitant's income will be included in assessing the family's eligibility if the cohabitant meets the definition of a 'spouse'.

According to the *ESIA Regulations* a spouse includes a husband or wife of an applicant or recipient **or** a common-law or same-sex partner of an applicant or recipient.

Common law partners must live with one another in a relationship of interdependence – both economically and domestically. In addition **1** of the following must apply to the 2 people in the relationship:

i. They have lived together for 12 consecutive months;
ii. They have a child or children – either by birth, adoption or legal custody;
iii. They previously lived together for 12 consecutive months, including any separation of less than 90 days; **or**
iv. They advise a caseworker they are a common-law couple.

The Regulations stipulate that proof of cohabitation can be proven by any relevant evidence, and is **deemed** to occur where 2 people represent themselves to others to be each other's spouse.

Unfortunately mere allegations of cohabitation often result in IA being cut-off and possible resultant overpayments.

# Services for Persons with Disabilities

## What is Services for Persons with Disabilities?

The Department of Community Services also offers a collection of programs that are generally referred to as Services for Persons with Disabilities (SPD).

As of June 2012 there is a general SPD policy governing the programs offered under SPD. It can be found here: http://novascotia.ca/coms/disabilities/SPDProgramPolicy.html

This policy covers all of the eligibility criteria for SPD programs, amounts for special needs, etc...

A complete list of all the programs offered under the umbrella of SPD can be found here: http://novascotia.ca/coms/disabilities/index.html

The SPD program is governed by the *Social Assistance Act*.

The programs are offered to Nova Scotians with various mental, intellectual and physical disabilities. They focus primarily on providing residential options for people with disabilities (i.e. Residential Care Facilities, Small Option Homes and Group Homes), offering support to families caring for persons with disabilities (i.e. respite care) and providing minimal assistance with activities of daily living for people living at home.

Depending on their living situation SPD participants may be in receipt of a personal and shelter allowance from IA. SPD participants are also eligible for special needs.

Despite the legislative authority for SPD being found in the *Social Assistance Act,* appeals of SPD decisions are governed by the *ESIA* and the *Assistance Appeal Regulations*.

Accordingly the appeal process for an SPD participant will be the same as that for an IA recipient.

### Differences Between Income Assistance and SPD

*SPD Basic and Special Needs Policy 9.0, 7.4 & 7.4.2; SPD Financial Eligibility Policy 5.5.4.*

In general, SPD policies are reflective of what we have already covered regarding *ESIA*. Some key differences to be aware of are as follows:

i. SPD participants are eligible for an additional amount of money called a 'comfort allowance'. The comfort allowance is currently $115.00 per month;

ii. SPD participants who are employed can earn up to $300.00 per month without it affecting their monthly entitlement. If they earn over $300.00 per month it is charged against their monthly entitlement at 70%;
iii. SPD participants are also eligible for some special needs that are unavailable to regular IA recipients – for example occupational therapy, physiotherapy and speech pathology;
iv. SPD participants **are** eligible for up to $200.00 per month in excess shelter as a special need provided they meet the following criteria:
v. A participant requires barrier free shelter;
vi. The cost of relocating the participant exceeds the annual rent increase;
vii. A participant's approved support plan has identified elements related to shelter that promote independence and reduce long term SPD support costs (i.e. reducing transportation costs, staffing, etc…); **or**
viii. A participant cannot secure housing in a safe location that allows them to safely access the community or in a location that allows them to pursue their support plan goals.

# Appeals

## Appealing a Decision

*ESIA Act sections 12(1), 12(4) & 12(5); Policy Manual 12.1.2, 12.1.5 & 12.1.9*

Any decision made regarding IA that affects either an applicant or a recipient can be appealed.

Decisions are usually made in writing, but are sometimes made orally. An oral decision can be appealed.

There is a two step appeal process. The first step is an internal Administrative Review, and the second step is a hearing before the independent Assistance Appeal Board (AAB).

### Step 1

*ESIA Act sections 12(3) & 12(4); Appeal Regulation 6(1); Policy Manual 12.1.4 – 12.1.5*

A person must commence their appeal within **30 days** from the time the decision they wish to appeal is communicated to them.

An appeal can be commenced either by a written, signed letter that requests an appeal and sets out the decision being appealed and the reasons why the decision is being appealed; or by using the Department's appeal form:
http://novascotia.ca/coms/employment/documents/Assistance_Appeals_Pamphlet.pdf

Upon receiving an appeal request the Department has **10 days** to conduct an administrative review of the decision under appeal. An administrative review decision is done by a casework supervisor – not the supervisor of the caseworker whose decision is being appealed.

Upon completion of the administrative review the Department sends a substantive written decision to the appellant.

The decision will contain both the factual and legal basis for the Department's decision.

If a person wishes to continue to the next stage of the appeal process (an oral hearing) they must tick the appropriate box and send in their appeal request within **10 days** of receiving the administrative review decision.

### Step 2

*ESIA Act sections 11 & 13(1); Appeal Regulations 4(3), 5, 11(1) & 12; Policy Manual 12.1.7 & 12.1.9.*

The second step of the appeal process is an oral hearing before the AAB.

The AAB will consist of one member who will hear the appeal. The appeal board member is a Provincial appointee, and is **not** an employee of DCS.

Proceedings before the AAB are informal, and are not held in public. However the *Appeal Regulations* require that an appellant be given a chance to present relevant evidence, cross examine witnesses, rebut evidence presented by another party and argue or summarize their case.

The Department usually sends the caseworker and/or eligibility review officer whose decision is being appealed and that person's supervisor. Very occasionally the Department will send a lawyer to represent its interests before the AAB.

The law, and the Policy Manual, specifically allow appellants to be represented by an advocate at their AAB hearing.

# Judicial Review

*Appeal Regulations 13(2) – 13(3); Policy Manual 12.1.9*

Following the appeal hearing the AAB will issue a written decision (*insert hyperlink to sample AAB decision)* within 7 days.

Upon application a decision of the AAB can be judicially reviewed by a justice of the Supreme Court of Nova Scotia.

Prior to applying to have a decision judicially reviewed your client **should** consult with a lawyer as there are limited circumstances when a judicial review will succeed.

There is a **25 day** time limit from the date the decision is communicated to the appellant to commence a judicial review.

# After the Hearing

*Appeal Regulations 14(2) & 15(1)*

If your client was successful the decision subject to appeal will be reversed as of the date of the original decision.

If the issue upon appeal was eligibility for income assistance your client will remain cut-off of income assistance until they remedy the issue which lead to them being cut-off in the first place. Once that has taken place your client should reapply for income assistance.

Your client may also be charged with an 'overpayment'.

# Overpayments

*ESIA Act section 14; Regulation 68; Policy Manual 8.1.1 – 8.1.2 & 8.1.12*

An overpayment is a debt owing to the Province.

An overpayment is the result of an IA recipient receiving IA for which they were not entitled as a result of error, misrepresentation or for a period of time during which a recipient received deferred income.

If someone is determined to be ineligible for IA all amounts paid to them, including Pharmacare, will be included in the overpayment amount.

Having an overpayment does not render someone ineligible for IA.

Overpayments are deducted from an IA recipient's monthly amount at a maximum of $45.00 per month. The minimum deduction, as per the Policy Manual, is $15.00 per month.

Overpayments can be waived upon successful request to the Minister of Community Services.

Pursuant to the *ESIA* an overpayment can be waived if:

i. Recovery is not possible due to the death, bankruptcy or permanent absence from the Province of the person owing the overpayment;
ii. Recovery would cause undue hardship; **or**
iii. Recovery is contrary to the purpose of the Act.

A request to waive an overpayment can be made via a letter to the Minister. Unfortunately waiver of overpayments is extremely rare.

# Underpayments

*Regulation 69; Policy Manual 8.1.3*

It is possible for IA recipients to be underpaid. For example they may have an approved special need (i.e. medical transportation) that is not paid to them in a given month or months.

If a recipient is underpaid, through no fault of their own, they are limited to recovering only 6 months of the underpayment.

# Helpful Tips

## General Tips

If you have a client who comes to you with an IA issue your first point of contact should be their caseworker.

Be persistent! Caseworkers can be very difficult to reach via phone, and often only have certain hours during which they return calls.

If you do not hear back from a caseworker, or you are not able to make any progress with them you should speak to their casework supervisor.

Supervisors have more discretion in making decisions, and sometimes you can reach a resolution regarding your client's issue. Specifically supervisors are able to make decisions involving greater sums of money than caseworkers. A caseworker can only make decisions costing up to $200.00.

## Appeals

The first step of the appeal process is a paper process only.

If you have additional evidence to submit in support of your client's appeal you should do so at the first stage of the appeal process. Sometimes the additional information will be sufficient to overturn the initial decision.

If you go to an appeal hearing be sure to gather all of the evidence you think you will need to prove your client's case. This could include documentary evidence and/or witnesses who can testify about certain events. If you have documentary evidence be sure to bring 3 copies to your client's appeal hearing – one for you, one for the Department and one for the AAB member.

You must also ensure that you have all of the evidence that the Department will be using against your client. The best way to ensure you have all of that evidence is to make a Freedom of Information request to view your client's IA file. The Department's FOIPOP coordinator can be contacted at **424-5558.**

Remember that the appeal hearing will be your client's first chance to provide their version of events to a live decision maker. The result of the appeal hearing may come down to their credibility in the eyes of the decision maker.

During the hearing you may refer to sections of the *ESIA* and *ESIA Regulations* to support your case. Remember that the Policy Manual is not the law.

Depending on the complexity of the issue you may wish to make written submissions on the law to the AAB prior to the hearing.

# First Meeting

Ensure that a potential IA client brings the following with them to the first meeting:

i. Name and contact information of their caseworker;
ii. Any relevant correspondence from the Department of Community Services; and
iii. Any relevant evidence supporting their position.

During the first meeting you should obtain the following:

i. Consent from your client to speak with the Department of Community Services about their file;
ii. A completed FOIPOP request form.
iii. Consent forms for any other professionals, i.e. doctors, if applicable.

# Additional Resources

## Government

The government of Nova Scotia maintains a website about income assistance with useful information: http://novascotia.ca/coms/employment/income_assistance/index.html

## Dalhousie Legal Aid Service

There is a 'Welfare Right's Guide' and a pamphlet on 'Special Diets' – both published by the Dalhousie Legal Aid Service.

## Case Law

Appeal board hearings are not available, however judicial reviews of those decisions are available via CANLII: http://www.canlii.org/en/ns/

## Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding IA. Their contact information can be found here: http://www.nslegalaid.ca/contact.php

# Residential Tenancies

## Contents

# Leases

## Legislative Framework

Residential Tenancies is governed by the *Residential Tenancies Act (RTA)*:
http://nslegislature.ca/legc/statutes/residential%20tenancies.pdf

There is also a set of regulations passed pursuant to the *RTA*:
http://www.gov.ns.ca/just/regulations/regs/rtgenrl.htm

### Application of the *Residential Tenancies Act*

*RTA sections 3(1) & 2(h)*

The *RTA* applies when a landlord/tenant relationship exists in respect of residential premises.

'Residential premises' includes: apartments, homes, manufactured homes, boarding houses, co-ops, etc… But **does not** include: university residences, hospitals, jails, hotels, nursing homes, residential care facilities or maternity homes.

A landlord/tenant relationship is deemed to exist when a person possesses and occupies residential premises, and has paid or has agreed to pay rent.

A landlord **cannot** contract out of the *RTA*. The *RTA* will apply in full when a landlord/tenant relationship exists, or is deemed to exist.

## The Lease Agreement

### Lease Requirements

*RTA sections 8(1) – 8(5)*

A lease can be either oral or written. However, all landlords and tenants who do not use a standard form lease will be considered to have done so, and all of the clauses in the standard form lease will apply to the tenancy.

Provisions can be added to a standard form lease (i.e. landlord's rules) provided they are not in conflict with the *RTA*, **and** that they appear on both the landlord and tenant's copy of the lease.

A landlord **must** provide a tenant with a written copy (unless there is an oral agreement) of their lease **and** a copy of the *RTA*.

### Types of Leases

*RTA section 10(A)(1) – (4)*

Leases can either be periodic or for a fixed period of time.

Periodic leases are either yearly, monthly or weekly. These types of leases automatically renew unless notice is given by the tenant.

A tenant on a yearly lease can make a request, in writing, to their landlord three months prior to their anniversary date requesting that their lease be changed to a monthly lease. A landlord must have a legitimate reason to withhold their consent when presented with such a request.

Fixed term leases run from a fixed start date until a fixed end date. A fixed term lease may continue upon new fixed terms as agreed to between the landlord and tenant, or will continue on a monthly basis at the end of the fixed term if the tenant is not asked to leave.

# Security Deposits

*RTA sections 6 & 12(1) – (4); RTA Regulation 5(d)*

Landlords are allowed to ask for a security deposit from tenants. However, application fees are **not allowed** by the *RTA*.

A security deposit **cannot** be more than ½ of one month's rent.

Landlords must hold security deposits in a trust account, and interest will be credited at a rate determined by the *Regulations*. The current rate of interest is 0%.

# Rental Increases

*RTA sections 11(1) – 11(3)*

Landlords **cannot** increase a tenant's rent during the first 12 months of the tenancy.

Following the first 12 months of a tenancy a landlord may only increase rent if they provide a tenant with written notice:

i. For a yearly or monthly lease 4 months prior to the anniversary date;
ii. For a weekly lease 8 weeks prior to the anniversary date; or
iii. For a fixed term tenancy the lease will indicate the amounts and effective dates of any rental increases.

A landlord **cannot** increase rent more than once during any 12 month period.

There are **no** restrictions on the amount of a rental increase.

A deletion or withdrawal of service (i.e. heat or electricity no longer included in monthly rent) is deemed to constitute a rental increase in the amount of the value of the deleted or withdrawn service.

The same restrictions on frequency and notice requirements for rental increases do not apply to public housing tenants whose rent is based solely on increases and decreases in income.

# Landlord & Tenant Obligations

## Landlord's Obligations

*RTA section 9(1) statutory condition 1*

The *RTA* contains *Statutory Conditions* to which both landlords and tenants must adhere. Some of the landlord's *Statutory Conditions* that lead to landlord/tenant disputes are as follows:

### Condition of Premises

A landlord has an obligation to keep residential premises in a good state of repair and fit for habitation.

This condition means that a tenant can make an Application to the Director of Residential Tenancies (as will be discussed later) requiring their landlord to make repairs to their rental unit or render it fit for habitation (i.e. exterminate bedbugs or other pests, eliminate mould, obtain necessary occupancy permits, etc…).

The *RTA* does not contain any provisions for forcing landlords to make repairs, or verifying that necessary repairs are carried out. This means that Residential Tenancy Officers are often reluctant to make orders requiring repairs. One option to compel landlords to make repairs is to request that rent be paid in trust to Residential Tenancies, and only be paid to the landlord once the repairs are completed – this is done via an order of the Director of Residential Tenancies (how to obtain an Order will be discussed later in the presentation).

Another, often times, more effective method of forcing a landlord to make repairs is through Municipal or town By-laws. Some municipalities and towns have by-laws which set out minimum standards for residential occupancy.

Should there be an applicable by-law a successful by-law complaint may result in a landlord being fined if they do not fix the problem that lead to the bylaw violation in a timely fashion.

### Entry of Premises

A landlord may only enter a tenant's premises without consent if:

i. There is an emergency;
ii. Notice of termination of lease has been given and the unit is being shown to a prospective renter at a reasonable hour; and
iii. If **written** notice is provided 24 hours in advance of the entry, and the entry is during daylight hours.

### Entry Doors

*RTA section 9(1) statutory condition 8*

A landlord **cannot** unilaterally change the locks on the doors of a tenant's unit, **for any reason** (i.e. due to late rent, if a landlord wants to evict a tenant, etc…) during the course of the tenancy.

If a landlord changes the locks on a tenant's unit the police should be contacted.

If a landlord threatens to change the locks on a tenant's unit a Residential Tenancy Officer should be notified so that they may contact the landlord, and advise them of their obligations pursuant to the *RTA*.

## Subletting

*RTA section 9(1) statutory conditions 5; RTA Regulation 2*

A landlord cannot unreasonably or arbitrarily refuse a tenant's request to sublet their rental unit (i.e. the landlord must have a legitimate reason to refuse a proposed subletter).

A landlord may only charge a tenant for expenses actually incurred as a result of allowing the unit to be sublet. The current maximum fee for subletting that landlords can charge is $75.00.

## Abandonment & Termination

*RTA section 9(1) statutory condition 6 & RTA section 6(3)*

Prior to disposing of any property abandoned by a tenant a landlord must follow the procedure set out in the *Regulations*.

Should a tenancy end without proper notice a landlord is also under an obligation to limit their financial damages as much as possible – i.e. by making an honest effort to re-rent the rental premises as quickly as possible.

## Good Behavior

*RTA section 9(1) statutory condition 3 & RTA section 9(A)*

A landlord must not act in a way that interferes with a tenant's possession or occupancy of their rental premises.

## Landlord's Rules

While not a statutory condition, a landlord also has obligations with respect to making rules for tenants.

A copy of rules must be provided to tenants prior to signing their lease, and 4 months notice is required to change or repeal a rule.

Landlord's rules must also be 'reasonable'. In order to be considered reasonable a rule **must** meet the following criteria:

i. It is intended to:

a) Promote a fair distribution of services and facilities to all tenants;
b) Promote the safety, comfort or welfare of tenants or people working in the building; **or**
c) Protect the landlord's property.

ii. It is reasonably related to the purpose for which it was imposed;
iii. It applies to all tenants fairly; **and**
iv. It is clearly enough written so that a tenant knows what they must do to comply with it.

# Tenant's Obligations

## Rent

A tenant's most important obligation is to pay their rent in full and on time.

It is impermissible to withhold rent under any circumstances, and rent should not be withheld as it exposes the tenant to the risk of eviction for non payment of rent.

As will be explained later tenants can be compensated in the form of rent abatement should their landlord fail to meet their obligations pursuant to the *RTA*.

## Statutory Conditions

*RTA section 9(1) statutory conditions 3 & 4*

Like landlords tenants are also subject to some of the *Statutory Conditions* contained in the *RTA*:

### *Good Behaviour*

Tenants must also be of good behaviour so as not to interfere with the landlord or other tenant's possession or occupancy.

### *Cleanliness & Damage*

Tenants are responsible for keeping their premises clean, and for any damage done by themselves or their guests.

Tenants are not responsible for ordinary wear and tear of their rental unit. 'Ordinary wear and tear' means the usual degree of depreciation or deterioration caused by living in a residential premises relative to the length of the tenancy – faded paint, worn carpets in high traffic areas, etc… are examples of 'ordinary wear and tear'.

## Tenant Insurance

While not a statutory obligation many leases require tenants to have tenant insurance. Provided it meets the criteria for landlords' rules this can be contained in a lease. However if the lease says, for example, 'tenants are *responsible* for tenant insurance' this doesn't mean they **must** have it, only that it is their responsibility to pay for it and that a landlord's insurance policy will not apply to the tenant.

Remember that tenant insurance covers not only a tenant's belongings, but also liability for damages caused by a tenant, their child or a guest (i.e. if a tenant's child starts a fire that damages multiple units the tenant will be liable).

# Ending a Tenancy - Landlords

## Reasons for Ending a Tenancy

*RTA sections 10(6) & 10(7)*

Landlords may only end a tenancy for the **following reasons**:

i. Rental arrears;
ii. Threat to safety or security;
iii. Violation of certain statutory conditions; and
iv. In certain circumstances contained in the *RTA*.

### Rental Arrears

A landlord may issue a **15 day** Notice to Quit to a tenant in a yearly, monthly, or fixed term tenancy if there are **rental arrears of 15 days.**

A landlord may issue a **7 day** Notice to Quit to a tenant in a weekly tenancy if there are **rental arrears of 7 days.**

#### *Notice to Quit*

A Notice to Quit for rental arrears in a monthly, yearly or fixed term tenancy **must** be on the form provided by the regulations:
http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-D-landlord-notice-to-quit.pdf

The Notice to Quit **must** be signed, contain a description of the premises (i.e. the address) and the date on which the tenancy terminates.

It is important to understand that a Notice to Quit from a landlord **does not** require a tenant to vacate their rental unit as of the date contained in the Notice.

Upon receipt of a Notice to Quit a tenant has the following options:

i. Pay the outstanding rent within 15 days of receiving the Notice to Quit (in the case of a monthly yearly or fixed term tenancy), or in 7 days in the case of a weekly tenancy; **OR**
ii. Make an Application to the Director of Residential Tenancies disputing the Notice to Quit **within** 15 or 7 days depending on the type of lease.

If a tenant doesn't pay the rent owing, or file an Application disputing the Notice to Quit they are deemed to have accepted it. In that circumstance a landlord can obtain an Order from the Director of Residential Tenancies requiring that the tenant move out, pay any outstanding rent owed and any rent due in the current month and allowing the landlord to apply the security deposit to any outstanding rent owed.

The Order can be obtained **without a hearing** if the tenant does not make an Application disputing the Notice to Quit.

## Safety & Security

*RTA section 10(7)(A)*

A landlord may issue a 5 Day Notice to Quit to a tenant who they consider a risk to the safety and security of the landlord or other tenants in the same building.

Upon receipt of a 5 Day Notice a tenant is **not** required to vacate their rental unit on the date specified in the Notice.

In order to evict a tenant for reasons related to safety and security a Landlord **must** obtain an Order for vacant possession which can only be obtained if the landlord is successful at a hearing. A hearing is only held once a landlord has filed an Application and served it on the tenant.

The case law has established a two part test in order to evict a tenant on this basis:

i. First, there must be a contravention or breach of an enactment by the tenant (including any part of the *RTA*); **and**
ii. That the contravention poses a 'genuine' risk to the safety and security of other tenants in the same building **or** the landlord.

## Violation of Statutory Conditions

*RTA section 10(7)(B)*

Landlords can issue a 15 day Notice to Quit if a tenant violates the following Statutory Conditions:

i. Good behaviour;
ii. Ordinary cleanliness of their unit; and
iii. Subletting premises.

If a tenant receives a 15 day Notice to Quit for violation of statutory conditions they are **not** required to vacate their rental premises. They are only required to vacate their premises if their landlord is successful in obtaining an Order for vacant possession following a hearing. A hearing is only held once a landlord has filed an Application and served it on the tenant.

## Other Circumstances

*RTA section 10(8)*

There are other circumstances pursuant to which a landlord can give a tenant Notice to Quit. They include:

i. The residential premises have been made uninhabitable by fire, flood, etc…;

ii. The residential premises were rented to an employee by their employer during the term of their employment, and the employment has terminated;
iii. The landlord in good faith requires the premises to live in for themselves or a member of their immediate family; **or**
iv. The landlord in good faith requires vacant possession of the premises in order to conduct repairs or renovations requiring a building permit.

A tenant **does not** have to vacate their unit upon receipt of a Notice to Quit in the circumstances listed on the previous slide. A tenant is only required to vacate their premises if their landlord is successful in obtaining an Order for vacant possession following a hearing. A hearing is only held once a landlord has filed an Application and served it on the tenant.

An Order for vacant possession issued due to a landlord requiring a rental unit for their own use, or for renovations must contain a date for vacant possession no later than 1 year from the date of the Order.

# Ending a Tenancy - Tenants

## Ways a Tenancy can be Ended

### Unilateral Termination

A tenant may terminate their lease at any time by simply moving out of their rented unit, and ceasing to pay rent. This is known as unilateral termination as it is done absent an Order terminating the lease or the landlord's consent.

Should a tenant decide to unilaterally terminate their lease they are responsible for the rent owing for the term of their lease subject to their landlord's duty to attempt recover any financial loss they suffer, i.e. by re-renting the unit. It is also highly likely that the landlord will retain the tenant's security deposit regardless of whether they suffer a financial loss or not.

Given the financial risks of unilateral termination it should only be considered if it would be unsafe for a a tenant to remain in their rental unit pending a hearing seeking an Order terminating their lease.

### Notice to Quit

*RTA section 10(1), 10(4) & 15(1)*

A tenant can provide Notice to Quit provided they meet the following notice periods:

i. In the case of a yearly tenancy Notice to Quit must be provided **3 months** prior to the anniversary date;
ii. In the case of a monthly tenancy Notice to Quit must be provided **1 month** prior to the expiry of that month; and
iii. In the case of a weekly tenancy Notice to Quit must be provided **1 week** prior to the expiry of that week.

A Notice to Quit **must** be in the form prescribed by regulation:
http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-C-tenants-notice-to-quit.pdf

The completed Notice to Quit form **must** be served on the landlord either personally or via registered mail.

### Early Termination upon Income Reduction or for Health Reasons

*RTA sections 10(B) & 10(C)*

A tenant in a yearly or fixed term tenancy may provide one month's Notice to Quit if:

i. They have a significant deterioration in their health; **and**
ii. It results in a decrease in their income such that they cannot afford their rent and other reasonable expenses (or portions thereof if they are shared); **or**

iii. It results in the tenant, in the opinion of a medical practitioner, being unable to continue the tenancy, **or** the unit is rendered inaccessible to the tenant.
iv. If the preceding conditions are met a tenant may serve their landlord (either personally or by registered mail) with a completed Notice to Quit and Physician's Certificate as prescribed by the regulations: http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-G-H-tenants-notice-to-quite-early.pdf

The Notice to Quit must also be served on all other tenants in the same rental unit.
If a tenancy is terminated due to income reduction, or for health reasons it is terminated for **all** the tenants in the same rental unit. However, if there are any remaining tenants they can sign a new lease with the consent of the landlord. A landlord can only withhold their consent if they have a legitimate reason.

## Early Termination upon Acceptance into a Home

*RTA section 10(D)*

A tenant in a yearly or fixed term tenancy may provide one month's Notice to Quit upon permanent acceptance into a nursing home or home for special care.

The Notice to Quit form is the same as the form for early termination for reduction in income or health reasons. The only difference being that the physician's certificate does not need to be completed.

As indicated on the form a tenant also requires a letter from the nursing home or home for special care confirming acceptance of the tenant.

## Early Termination upon Death of a Tenant

*RTA section 10(E)*

If a tenant in a yearly or fixed term tenancy dies, and there are no other tenants in the same residential premises, a personal representative of the deceased tenant may give one month's Notice to Quit.

The Notice to Quit must be in the form prescribed by the *Regulations:*
http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-I-tenants-notice-to-quit-personal.pdf

## Early Termination due to Domestic Violence

*RTA section 10(F) – 10(H)*

A tenant in a yearly or fixed term tenancy may provide one month's Notice to Quit if they are a victim of domestic violence.

A tenant wishing to rely on this provision must contact Victim Services at **1-888-470-0773.** Victim Services will assist the tenant in obtaining a Domestic Violence Certificate, as well as serving the Certificate along with the appropriate Notice to Quit on their landlord.

The Certificate issued by the Director of Victim Services **must** be served on the landlord no later than **60 days** after it is issued, and a landlord **must** keep the information contained in the certificate confidential.

If a tenancy is terminated pursuant to this provision it is terminated for all tenants in the same residential premises. However, any remaining tenants may enter into a new lease with the landlord.

### Violation of Statutory Conditions

A tenant may seek to end their tenancy if their landlord fails to live up to their Statutory Obligations as contained in the *RTA* – i.e. the rental unit is not kept in a state of good repair and fit for habitation.

There is no specific Notice to Quit prescribed by the *Regulation*s for this circumstance. Normally a tenant would simply file an Application seeking the termination of their tenancy as a result of the landlord's failure to live up to their obligations.

## Security Deposits

*RTA sections 12(5) – 12(7)*

If at the end of a tenancy a landlord wishes to retain all or any portion of a security deposit to cover outstanding rent or any other expenses incurred, and the tenant does not consent in writing, the landlord **must** file an Application within **10 days** of the end of the tenancy.

If a tenant does not consent in writing, or the landlord does not file an Application the landlord **must** return the security deposit in full (with interest) to the tenant within **10 days** of the end of the tenancy.

# Manufactured Homes

## Statutory Conditions

*RTA section 9(2)*

The *RTA* contains some specific rules regarding manufactured homes (i.e. mobile homes or trailers) and land lease communities (i.e. mobile home or trailer park) .

In addition to the Statutory conditions applicable to all landlords and tenants manufactured homes and land lease communities are subject to the following additional conditions:

i. A landlord cannot interfere with a tenant's ability to sell, lease or otherwise dispose of their manufactured home;
ii. If a tenant wishes to sell or lease their manufactured home they must obtain consent from their landlord. A tenant must apply, in writing, for their landlord's consent. A landlord cannot arbitrarily or unreasonably refuse to provide consent. After receiving an application a landlord has **10 days** to either (in writing) provide consent or provide the tenant with reasons why consent is being withheld. If a landlord does not respond within 10 days they are deemed to have given consent. A landlord cannot charge a fee for providing their consent, although they can charge a tenant reasonable expenses for granting consent;
iii. A landlord cannot charge commission for acting as a tenant's agent in the sale or lease of their manufactured home, unless a separate written agency agreement was entered into between the tenant and landlord. In order to be valid the agency agreement must have been entered into after the lease was signed and at the time the tenant wishes to sell or lease their manufactured home;
iv. A landlord cannot restrict a tenant from purchasing goods and services from the person of the tenant's choice;
v. A landlord can set reasonable standards for manufactured home equipment;
vi. A landlord must comply with all municipal by-laws pertaining to the common areas of the land lease community, and with respect to services provided; and
vii. Tenants must comply with all municipal by-laws with respect to their manufactured home and manufactured home space.

## Rental Increases

*RTA section 11(1) & 11(2)(d)*

Like other residential premises a landlord cannot increase rent for a manufactured home space during the first 12 months of the lease, nor can they increase rent more than once during 12 months.

In order to increase rent for a manufactured home space a landlord **must** give tenants written notice **7 months** prior to the anniversary date in the form prescribed by the *Regulations:*

http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-M-notice-of-rent-increase-for-manufactured-home-space.pdf

Unlike for other tenants Service Nova Scotia sets a maximum amount that a landlord can increase the rent for manufactured home space. This amount is calculated pursuant to a formula contained in the *Regulations*, and for 2013 it is set at 3%. It is set at 2.9% for 2014.

## Application Process

If a landlord wishes to increase the rent by more than the allowable amount they **must** make an Application to the Director of Residential Tenancies. It is important to note that this Application **does not** result in a hearing.

A landlord must serve a tenant with their Application **7 months** prior to their anniversary date.

A tenant may review the supporting material filed by the landlord along with their Application by contacting their local Access Nova Scotia office.

A tenant may also put their concerns in writing regarding the requested rental increase. Any written submissions must be made **within 14 days** of the 7 month deadline for service of the Application upon the tenant. Any submissions made by a tenant will be provided to the landlord.

A landlord may respond in writing to a tenant's submissions within 14 days.

The Director will make a written decision based on all of the materials submitted. The Director can either grant or refuse the rental increase requested by the landlord **or** increase the rent by another amount not exceeding the amount requested.

# Resolving Disputes

## Applications

*RTA section 13*

Should a landlord and tenant come into conflict either party can make an Application to the Director of Residential Tenancies to resolve the issue – provided it is one covered by the RTA. An Application **must** be filed within **1 year** of the termination of the tenancy.

The Application form can be found here:
http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-J-application-to-director.pdf

Once completed the Application must be filed in person at your local Access Nova Scotia office. A list of Access Nova Scotia offices can be found here: http://www.gov.ns.ca/snsmr/offices.asp

If you are filing an Application on behalf of a client you must have them complete a Notice of Representation form authorizing you to file the Application on their behalf.

### Application Process

*RTA section 27 & RTA regulation 33*

There is a fee for filing an Application. The fee can be waived for those in receipt of the the Guaranteed Income Supplement and income assistance recipients. Be sure your client has proof of income when filing their Application if they are seeking to have the filing fee waived.

Upon filing the Application the Applicant will receive a hearing date, and a Residential Tenancy Officer will be assigned to the matter. The Residential Tenancy Officer (RTO) is an employee of Access Nova Scotia tasked with resolving disputes under the *RTA*. RTO's are granted the power to make decisions on behalf of the Director of Residential Tenancies.

### Service

*RTA section 15*

After filing an Application it must be served upon the landlord. Service is done either personally **or** via registered mail.

An affidavit of service must be completed, and returned to the Access Nova Scotia office where the Application was filed. The Affidavit of Service proves that the opposing party received a copy of the Application.

The affidavit of service form can be found here:
http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-L-affadavit-of-service.pdf

If a tenant is having difficulty serving a landlord the RTO assigned to the file should be contacted immediately so that the RTO can decide on an alternative method of notifying the landlord of the Application.

# Mediation

*RTA section 16*

RTO's are authorized to attempt to reach a mediated settlement between the parties provided that both parties consent to mediation.

A mediated settlement is an agreement reached between the parties without the need for a hearing.

Sometimes an RTO will attempt to reach a mediated settlement between the parties prior to the hearing date. However, the more common scenario is that the RTO will ask both parties if they are willing to attempt to reach a mediated settlement in person immediately prior to the commencement of the hearing.

Should the parties reach a mediated settlement the RTO will put it in writing, and it will be signed by both parties.

A mediated settlement will contain an itemized list of what each party has agreed to do. The contents of a mediated settlement **cannot** be appealed to Small Claims Court.

Should either party not do what they agreed to do in the mediated settlement an Order from the Director of Residential Tenancies can be issued against that party.

If an Order is issued as a result of a party not doing what they agreed to in the mediated settlement that Order **can** be appealed to Small Claims Court.

# Hearings

If mediation is unsuccessful a hearing will begin immediately.

The hearing will be presided over by the designated RTO. The RTO is in charge of the procedure for the hearing. Hearings will proceed by having the Applicant present their case followed by the Respondent.

Both parties will be allowed to call witnesses, and present relevant evidence (i.e. documents, pictures, etc…)

In addition to presenting their case both parties should be given the opportunity to ask the opposing party questions; however this will be up to the RTO presiding over the hearing.

Remember that there is no transcript of these hearings so keeping good notes is important!

## Decisions

*RTA section 17(1)*

After the hearing the RTO will issue a written decision within **14 days**.
As agreed upon at the hearing the decision will either be mailed to the parties or be available to be picked up at the Access Nova Scotia location where the hearing took place.

# Remedies

*RTA section 17A*

Under the *RTA* there are various remedies that can be granted in an Order issued by an RTO. The Application form contains a full list of remedies available to both tenants and landlords.

For tenants one of the most important remedies that can be granted is financial compensation. Financial compensation can be ordered to compensate a tenant for actual expenses incurred or in the form of what is often called 'rent abatement' (note that on the Application form it is called 'relief from rent owing').

Rent abatement is a reduction in the amount of rent a tenant otherwise owes to their landlord. It can be ordered to compensate a tenant for a landlord's breach of the *RTA.* It is commonly ordered in instances where a landlord has failed to carry out repairs. In those circumstances a tenant can request that a portion of their rent paid during the time the repairs were not carried out be returned to them.

# Appealing an Order

*RTA section 17C*

An Order of the Director of Residential Tenancies can be appealed to Small Claims Court within **10 calendar days** of the date it was issued.

To start an Appeal at Small Claims Court an Appellant must file a Notice of Appeal at their local Small Claims Court. *(insert hyperlink to Notice of Appeal)*

If your client misses the 10 day appeal period it **can** be extended. An Application to extend the time to appeal can be obtained from the Small Claims Court. *(insert hyperlink to Application to extend time)*

A list of Small Claims Court locations can be found here:
http://www.courts.ns.ca/smallclaims/cl_location.htm

There is a filing fee for filing a Notice of Appeal. If an Appellant's income is sufficiently low the fee can be waived by completing a waiver of fees form:
http://www.courts.ns.ca/general/fee_docs/fee_waiver_form_june02.pdf

After filing a Notice of Appeal with the Small Claims Court it must be served personally upon the Respondent **and** the Director of Residential Tenancies.

The Small Claims Court clerk will provide a service deadline on the Notice of Appeal form when it is filed.

The Director of Residential Tenancies is served by serving **any** employee of the Access Nova Scotia office where the hearing took place.
After serving both the Respondent and the Director the affidavits must be sworn, and returned to the Court. The affidavits can be sworn by a clerk of the Small Claims Court. Swearing an affidavit simply means that the person who prepared it swears that its contents are true before a Commissioner of Oaths who signs the affidavit.

### Small Claims Court Hearing

The 'appeal' before Small Claims court is actually an entirely **new hearing** (sometimes referred to as a 'trial de novo'). This means that any evidence presented, arguments made, etc…before the RTO at the first hearing **must** be all done again at Small Claims Court.

New evidence not presented to the RTO can be introduced at the Small Claims Court hearing as long as it is relevant.

The Small Claims Court hearing will be presided over by an Adjudicator who is a lawyer.

The hearing will be much more like court, but still less formal than an actual court appearance.

The Appellant will present their case first followed by the Respondent. Each party may call witnesses and present relevant evidence, and will be given an opportunity to cross examine the opposing party and their witnesses.

Just like before the RTO there is no transcript of a Small Claims Court hearing so it is important to take good notes!

Following the hearing the Adjudicator has **14 days** to issue their decision.

## Appeal to Supreme Court

*RTA section 17(E)*

A party to a decision from the Small Claims Court may appeal it to the Supreme Court of Nova Scotia within **30 days** of the date of the Adjudicator's decision.

There are only limited bases upon which an appeal to the Supreme Court can be made:

i. Jurisdictional error;
ii. Error of law; or
iii. Failure to follow the requirements of natural justice.

Should your client wish to appeal a Small Claims Court decision you **must** consult a lawyer.

## Enforcing Orders

*RTA section 17(B)*

After the 10 day appeal period has expired, a decision of the Director of Residential Tenancies can be made into an enforceable Small Claims Court Order.

To request that an Order of the Director be made into a Small Claims Court Order you must contact the RTO who held the hearing.

After making your request the Small Claims Court will send the requisite forms. At this point you have several options for enforcing the judgment against the landlord.

Alternatively if you are seeking to obtain an Order following a Small Claims Court hearing you must contact the Court where the hearing was held, explain what it is you wish to obtain and the Court will send the necessary forms.

### Options

Basically there are three options for a party attempting to enforce a Small Claims Court Order:

i. **Execution Order** – this allows the Sherriff to seize wages, money from bank accounts, property which can be sold, etc… This option requires information about the debtor, and there is a fee payable to the Sherriff which will be added to the amount recoverable. Before the Sherriff will accept an Execution Order it must be registered with the Personal Property Registry. The Personal Property Registry is an electronic registry which allows creditors to register their financial interest in personal property. Individuals may register a judgment at the self-serve kiosk at any Land Registration Office, or hire a service provider to register it for them for a fee. Further information on registering a judgment can be found here: http://www.novascotia.ca/snsmr/access/land/personal-property-registry/registry-in-personal-property-registry.asp

ii. **Certificate of Judgment** – registering a Certificate of Judgment with the Land Registry Office limits the debtor's ability to mortgage or sell property they currently own, or may own in the future, without first satisfying the Court Order. It creates what is known as a 'lien' against the debtor's real property. There is a fee to register the Certificate of Judgment, and the lien on the debtor's property will expire after 5 years. An interactive map with Land Registry Office locations can be found here: http://www.novascotia.ca/snsmr/offices.asp

iii. **Recovery Order** – this allows the Sherriff to seize property that was ordered to be returned to a party. A party seeking to enforce a Recovery Order must provide the Sherriff with as much detail as possible about the property in question (i.e. a description, its location, etc...). There is also a fee payable to the Sherriff.

**All** of the preceding options are available to either Tenants or Landlords who obtain a Small Claims Court Order.

## Retaliation

*RTA section 20*

A decision maker under the *RTA* (an RTO or Small Claims Court Adjudicator) **may** refuse to make a decision in favour of a landlord (including setting aside a Notice to Quit) if they think the landlord is retaliating against a tenant attempting to enforce their rights under the *RTA*.

The onus of proving retaliation rests upon the tenant alleging it. In order to successfully claim a landlord is acting in retaliation a tenant must prove the following:

i. That a right exists under the *RTA*;
ii. That the tenant was attempting to exercise that right; **and**
iii. That the landlord acted in retaliation for that attempt.

# Helpful Tips

## Pre-Application

Prior to filing an Application to the Director of Residential Tenancies it is extremely important that a tenant document as much as possible any problems they are having with their rental unit.

A copy of any correspondence between the tenant and landlord should be saved for possible use at a hearing.

Prior to filing an Application it is good practice for a tenant to offer a landlord a final chance to remedy the problem. This can be done by sending a demand letter to the landlord. This letter should indicate that the tenant will be filing an Application if the issue is not remedied by a certain date.

## Hearings & Appeals

It is important to remember that your client **must** prove all the elements of their case in order to be successful.

Your client should ensure that they have all the evidence necessary for their case. Evidence may include photos, documents, receipts, witnesses, etc… You should ensure you have three copies of all documentary evidence – one for you, one for the other side and one for the decision maker (i.e. the RTO or Adjudicator).

If a witness cannot be present at a hearing you can submit a sworn statement from them. However their evidence will be given more weight if they are present in person.

As mentioned previously RTO's set their own procedure. Nonetheless your client should be given the opportunity to ask the landlord, and any of their witnesses questions. You should insist upon this right being afforded to your client.

Depending on the complexity of the legal issue you may want to explain how you think the law applies to the issue. Don't worry about the format you choose for written submissions. The content is more important than the format! One option is to write a letter to the decision maker explaining the applicable law, and how courts have interpreted it. If you make written submissions make sure that you provide them to the decision maker and the other party in advance of the hearing.

Remember you can introduce **new evidence** at Small Claims Court even if you did not introduce it during your initial hearing.

Witnesses can be subpoenaed to attend a Small Claims Court hearing. A subpoena is a court document that requires a person to give evidence at a court hearing. A subpoena may require a witness to provide oral testimony, bring certain documents to court or both. A subpoena may be necessary if a witness is unwilling to attend a court hearing. Subpoena forms can be obtained from the Small Claims Court. In your binder you will find a detailed guide on how to use subpoenas in Small Claims Court.

# First Meeting

Ensure that a potential residential tenancy client brings the following with them to the first meeting:

i. A copy of their lease;
ii. A copy of any Applications filed by either themselves or their landlord;
iii. A copy of any Orders issued;
iv. A copy of any relevant correspondence sent to or received from their landlord;
v. Any relevant evidence pertaining to the issue.

You should obtain the following from your client during the first meeting:

i. If applicable, a Notice of Representation form;
ii. If applicable, a waiver of fees form for Small Claims Court; and
iii. If your client is a public housing tenant you may wish to file a FOIPOP request to view their housing file with the local Housing Authority.

Should your client have already filed or been served with an Application to the Director you should contact the RTO assigned to the file, and advise them that you will be representing your client at their hearing.

# Additional Resources

## Government

The Province maintains a residential tenancies website which contains downloadable forms, landlord and tenant guides, sample Orders of the Director, etc…:
http://www.gov.ns.ca/snsmr/access/land/residential-tenancies.asp

A guide on how to use subpoenas in Small Claims Court can be found here:
http://www.gov.ns.ca/just/srl/guides/_docs/UsingaSubpoenaSmallClCrt.pdf

An excellent guide on enforcing Small Claims Court can be found here:
http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_guide_for_creditors_10.pdf

## Dalhousie Legal Aid Service

There is a 'Tenants' Rights Guide' and an 'Annotated *Residential Tenancy Act*' both published by the Dalhousie Legal Aid Service.

## Case Law

Small Claims Court and Supreme Court cases on residential tenancies are available via CANLI:
http://www.canlii.org/en/ns/

## Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding Residential Tenancies. Their contact information can be found here: http://www.nslegalaid.ca/contact.php

# Advocates & the Legal System

## ACKNOWLEDGEMENTS

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# Contents

# 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 <u>the person they are advocating for.</u>**

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 <u>independent:</u>**

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

**Advocates must be <u>accessible:</u>**

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 <u>skills, resources, and supports</u> 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.

**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.

**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.

## 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

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.

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 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.

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.

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.

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

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.

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.

### 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

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.

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).

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.

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. Statues 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.

**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.

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.

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.

**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/

**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

**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 Counsel 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 public

**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.

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:

Visit www.legalinfo.org.

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

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

**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.

### *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.

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.

**Remember**, if mediation is not successful, the parties are still free to use other ways to solve the problem.

### *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.

### *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.

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/

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:**

- 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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## 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.

Laws change frequently. We will try our best to make sure the information contained in all of our documents, as well as any other information you receive from Dalhousie Legal Aid Service, is reliable. However, **we cannot guarantee that the information in this document is completely accurate and up-to-date.** By accessing information from Dalhousie Legal Aid Service you assume any risks that arise from doing so.