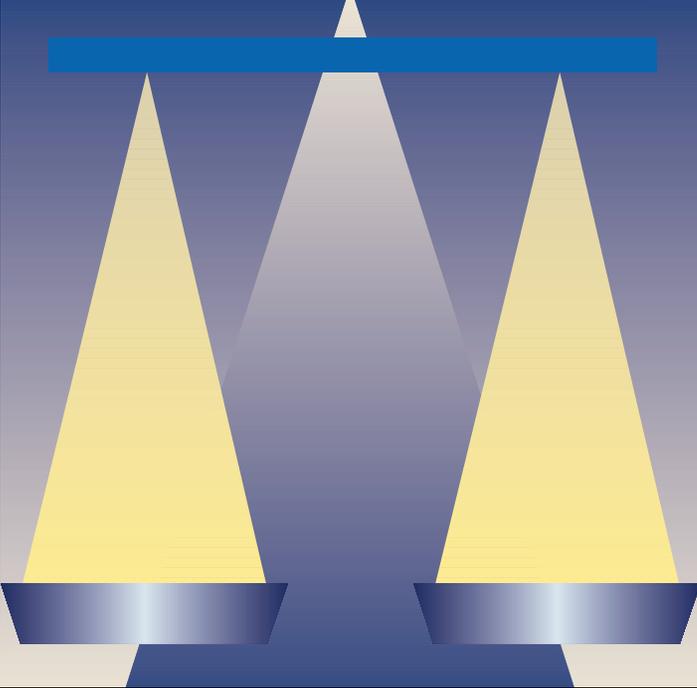


GREAT

EXPECTATIONS



A lawyer-client handbook

Produced by the

CANADIAN BAR ASSOCIATION

and the

CANADIAN BAR INSURANCE
ASSOCIATION



Lawyer's Desk Copy

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Welcome to *Great Expectations: A lawyer-client handbook*. This booklet is produced by the Canadian Bar Association, with sponsorship from the Canadian Bar Insurance Association, to help lawyers and clients better understand each other's needs.

Good communication is the single most important part of the lawyer-client relationship. Each side must understand the expectations and goals of the other party. This booklet speaks to clients about each step in the relationship with their lawyer, and offers the best ways for lawyers and clients to keep the lines of communications open and reach the goal together.

We are grateful to the CBA's Working Group on Client Rights and Responsibilities, which drafted the original text upon which this booklet is based.

We hope this handbook will become a part of every lawyer-client relationship in Canada, and help make each relationship as strong as possible. We welcome your feedback at info@cba.org. And please visit us on the Web at www.cba.org/public.

Eric Rice, Q.C.
President
The Canadian Bar Association

Ronald Mills
President
The Canadian Bar
Insurance Association

To the legal professional

The Canadian Bar Association is in the business of helping you practice law as effectively and successfully as possible. Accordingly, the CBA produces booklets such as this one and its predecessor, *Seven Keys to Great Client Service*, to help you serve your clients.

Although this booklet is written from the client's point of view, we highly recommend that you read its contents as well. The pages that follow contain crucial insights and information about what your client expects from you. In order to ensure a successful relationship with your client, read this booklet and fill out the appropriate forms at the back with each client to whom you present it.

Please keep this desktop copy handy for your own reference. To obtain more copies to give to your colleagues and clients, contact the CBA at 1-800-267-8860 or by e-mail at info@cba.org.

To the client

Lawyers (and notaries in Québec) are trained professionals who can help you achieve your goals and solve your problems relating to the law. They are well-educated, hard-working and caring. But the one thing they are not is mind readers! They depend on you to let them know how satisfied you are with their services.

This booklet sets out your rights and responsibilities as a client. Read through it and fill out the forms at the back with your lawyer. Stay in contact with your lawyer to provide the information he or she needs and to let them know how you're doing. And remember that your lawyer is always looking out for your best interests.

Do I need a lawyer's help?

A lawyer has specialized skills and expertise to help you get something done or solve a problem that involves the law. Lawyers are trained to understand the law and to work within the legal system to assist their clients.

People count on a lawyer's assistance (and in some cases, on a notary's in Québec) when they prepare a will, buy or sell a house, separate from a spouse, start a company, have a claim against someone for damages, need to defend themselves against criminal charges, or want to right a wrong ... those are just some of the many reasons you may be asking a lawyer for advice.

What is special about the relationship between lawyers and clients?

Privacy is a special feature of the working relationship between lawyers and clients. Our legal system is built on the very important principle of *solicitor-client privilege*. (You will find definitions for all the terms in italics at the end of this booklet.)

What you say to your lawyer is confidential and cannot be repeated without your permission. Why? Because a lawyer cannot properly represent you and defend your interests without knowing the truth. Clients need to be able to talk openly and freely with their lawyers and tell them everything that has happened that is relevant to the situation.

You can feel confident that your discussions with your lawyer are private and protected by *solicitor-client privilege*.

Tip # 1 — Be honest with your lawyer.

Dealing with the unexpected — something you have kept hidden from your lawyer — can be costly.

What rights do I have as a client?

Clients have a right to expect prompt, courteous service from their lawyers and law firm staff.

Clients also have a right to have their lawyer explain the law and their options to them in language that they can understand. Lawyers do not make decisions for clients. Lawyers provide the legal information clients need to make decisions for themselves.

For example, your lawyer must tell you about offers that have been made to settle a case, so that you can decide how to respond to the offer. Your lawyer will give you legal advice, but it is up to you to decide what to do.

Clients have a right to know how work on their file is progressing. Sometimes, lawyers send their clients regular reports on what has been happening; sometimes they send a report when there has been an important development. You can discuss the type of reporting arrangement you would like to have with your lawyer and its effect on the costs of services at your first meeting.

As well, clients have a right to know how much legal services are likely to cost. Although it can be difficult for your lawyer to tell you exactly how much handling your case will cost, your lawyer can provide you with an estimate and information on the factors that will affect the total cost of legal services.

Tip # 2 — Ask questions if you don't understand something your lawyer says.

This is not a time to be shy or afraid of sounding uninformed. You need to understand the information and advice your lawyer gives you, so that you can make decisions and instruct your lawyer on what you want to do.

What responsibilities do I have as a client?

Lawyers need their clients to tell them the facts and details that are relevant to the case. Come prepared for your first meeting with your lawyer. Bring the papers, bills, receipts and any other information that you think might be important.

When your lawyer asks you to prepare a list of expenses, to produce a budget or to gather other information or paperwork, try your best to do this neatly and logically, and to have the information ready on time.

Lawyers also need their clients to be clear about what they want. Sometimes, you will need to know more about the law and to get legal advice before you can decide exactly what you want to do. The important thing is to make sure you discuss your goals with your lawyer, and to talk together again if something happens that makes you want to change your goals.

Like anyone else providing you with a service, lawyers expect you to pay your bills on time.

Tip # 3 — Be clear about what you expect your lawyer to do for you.

Don't make the mistake of talking about "A," when you are hoping for "B."

How do I find a lawyer who is right for me?

Just like doctors, lawyers have areas of expertise. You wouldn't go to an ear, nose and throat specialist when you have stomach trouble, and you wouldn't go to a criminal law lawyer when you are starting your own business or when you need tax advice.

The first step in finding a lawyer is to think about why you need a lawyer's services. Defining the problem will help you to know what kind of experience and skills you want your lawyer to have.

There are many different ways to find a lawyer. Friends and work colleagues can tell you about lawyers they know. The Yellow Pages of your phone book lists lawyers. Ads in the Yellow Pages and local newspapers provide information on areas of expertise.

In addition, the *law society* or Bar association in your province or territory may have a Lawyer Referral Service (see the "Contacts" list at the back of the booklet). These services usually provide the name of a lawyer in your community who has the appropriate expertise to handle your problem. A half-hour free consultation with the lawyer may be part of the lawyer referral service.

When you call to set up a meeting with your lawyer, you can ask questions about the lawyer's experience. "What is your training and experience in this area of law? Have you handled cases like this before?" If the lawyer does not have the experience you need, he or she may be able to refer you to another lawyer in the law firm, or to a lawyer in the community who would be better able to work for you.

Sometimes a lawyer cannot take your case because of a *conflict of interest*. Lawyers and their law firms must obey

very strict rules about whom they can represent. For example, a lawyer cannot represent both a husband and wife in a divorce case, or both the person injured and the person thought to be responsible for the injury in a claim for damages. That's the best way to be sure that a lawyer gives a client full and fair representation and that the rules of *solicitor-client privilege* are not broken.

Once a lawyer takes your case, he or she cannot work for someone else whose interests in the case conflict with yours.

Tip # 4 — Make sure your lawyer is right for you.

You need to be able to communicate easily with your lawyer, to feel comfortable asking questions and to feel confident that you can work together to accomplish your goals.

What happens after I have chosen a lawyer?

At the beginning, your lawyer will ask you for a lot of information. You need to explain why you want the lawyer's help and what you hope to achieve. Depending on the situation, you may also need to bring your lawyer paperwork about the problem. With this information, your lawyer may be able to explain the law that affects you and outline your legal options right away.

When you are asking a lawyer (and sometimes a notary in Québec) to write a will for you or to handle the sale or purchase of a home, for example, the process is generally straightforward. Your lawyer will be able to describe what to expect, what needs to be done and where delays or other problems might occur.

When you are seeking legal help to solve a problem or to settle a dispute, your lawyer might need to do more research on the laws that apply and find out about recent court decisions in situations similar to yours.

A lawyer cannot guarantee to you what will happen in court or in negotiations with other parties. A lot of factors can affect how long your case will take and its outcome. You need to talk to your lawyer so that you have realistic expectations about the timing and possible results of any legal action you decide to take.

A lawsuit is not the only, or often the best, way to settle a dispute. Negotiation, mediation and arbitration are other ways of coming to a settlement. You and your

lawyer can discuss what *alternative dispute resolution* methods might be appropriate.

Remember, your lawyer acts on your instructions. Once you know more about the law that applies and your options, you will have to decide what you want to do and tell your lawyer.

Tip # 5 — Make a list of questions you have or information you want to give your lawyer before you call or meet.

By being prepared, you can make the best use of your time and make sure you don't forget anything. Limiting the number and length of phone calls to your lawyer can save you money.

How much does using a lawyer's services cost?

The cost of handling your legal issue or problem is something to discuss with your lawyer at your first meeting. People often find the subject of money awkward, but the best way to avoid misunderstandings or disputes about your lawyer's bill is to talk about cost right away.

Ask your lawyer to estimate the total fees for the legal services you require. How much is it likely to cost? What could affect the total cost? What is your lawyer's fee? What are the fees of other people, *legal assistants* or *articling students*, for example, who may do some work on your case? How often will you be billed? What are the cost implications of other options for solving the problem?

The fee your lawyer charges depends on several factors, including:

- the lawyer's skills, expertise and experience;
- the difficulty, complexity and distinctiveness of the case, all of which have an impact on the time and effort that the case will require;
- the area of law involved.

Lawyers generally charge for their services in one of these ways:

Fixed fees — A fixed fee is a set amount for a specific task, such as writing a will or power of attorney, settling an uncontested divorce, or handling a straightforward real estate transaction. Lawyers are most likely to agree to a fixed fee when they know exactly what work needs to be done in advance and when they can predict the amount of time and

effort required to complete the work. A *terms of engagement letter* must set out precisely the scope of services covered by the fixed fee.

Hourly rate — In more complex and unpredictable cases, lawyers are likely to charge fees based on an hourly rate — \$X per hour multiplied by the number of hours the lawyer spends on your file.

Percentage fee — The lawyer's fee is a set percentage of the value of the property involved. For example, a lawyer would charge a percentage of the value of the estate when settling the estate and handling related matters after someone has died.

Results-based fee — The lawyer's fee is set at the beginning, depending on the results of the case. If the case is settled the way you wanted within the specified time frame, the lawyer receives a fee you both agreed to. If there is a different outcome, the lawyer receives a different fee, a reduced fee or no fee.

In some provinces, lawyers are allowed to charge *contingency fees*. The lawyer receives a percentage of the settlement you receive, through negotiations or as a result of a court decision. If you do not receive a settlement, you only pay the lawyer *disbursements* and other costs, but no fees.

Ask your lawyer to estimate the expected costs for disbursements in your case and check if there is any way to keep disbursement costs down.

Tip # 6 — Discuss money with your lawyer.

You need to have a clear idea of how much your lawyer's services will cost and what factors will affect the total cost. Ask what you can do to keep fees and other costs down.

What is a “terms of engagement” letter?

A “*terms of engagement*” letter is a letter your lawyer may send to you and that you would usually sign and send back. It sets out what your lawyer is going to do and how much it is likely to cost. A “terms of engagement” letter may include information on:

1. the nature of the legal problem;
2. the services the lawyer will provide;
3. the goals you have identified;
4. the strategies you and your lawyer have discussed;
5. the information you have agreed to provide about the tasks to be done;
6. a statement of what tasks you have to do (send in documents, make a list, etc.);
7. the role of the people in the law office and what they will be doing;
8. a schedule of events, along with factors that could affect the schedule;
9. an explanation of how fees will be calculated and what disbursements are likely to be made;
10. a cost estimate and the factors that might affect the total cost of legal services;
11. the amount that is owing immediately as a *retainer*, and what portion of this is refundable if you decide not to proceed;
12. the lawyer’s billing practice — how often you will be sent a bill and when and how much interest will be charged on amounts owing;
13. a statement that the lawyer is in a *conflict of interest* and/or that the lawyer will not take on a case that would

- create a conflict of interest, now that you have retained the lawyer's services;
14. a description of how you will be kept informed of developments and how you will be contacted to give instructions on important decisions and major steps; and
 15. the next steps that the lawyer will be taking, and when the lawyer is likely to contact you again.

A "terms of engagement" letter can be long and detailed. Or, it might not be necessary if your case is straightforward and simple. The advantage of a "terms of engagement" letter is that any misunderstandings can be easily identified before a lot of work has been done on your case.

You and your lawyer can agree on the cost of preparing and discussing the terms of engagement, or you might agree that the time spent on this task will not be charged to you.

Not all work that a lawyer does for you will require a "terms of engagement" letter. Speak with your lawyer to see if such a letter is appropriate in your case.

Tip # 7 — Check carefully the "terms of engagement" letter your lawyer sends you.

If you are not sure of something in the letter or it does not say what you want, don't wait to talk to your lawyer about it. You both need to be clear on what your lawyer will be doing for you.

What can I do if I am not satisfied with a lawyer's service?

You have a responsibility to tell your lawyer (and where applicable, your Québec notary) if you are unhappy with any services. Don't wait until the end of the case to voice your concerns. The sooner you tell your lawyer what is bothering you, the sooner your concerns can be resolved. Often, the problem is a simple misunderstanding that can be cleared up in one frank conversation.

If your concerns cannot be resolved by a telephone conversation, write your lawyer a letter. (Keep a copy for your records.) Your lawyer should respond to you promptly, preferably in writing.

If you remain dissatisfied after trying to work something out with your lawyer, or if your lawyer does not pay attention to your concerns or does not try to find a solution to them, you have the right to complain to the *law society* in your province or territory.

The law society (or in Québec, the Barreau du Québec or Chambre des notaires) will give you information about the kinds of complaints it handles, how the complaint process works, how long it takes, what results you can expect, and what alternatives are available for resolving disputes when the law society does not have the authority to handle them.

Tip # 8 — Talk to your lawyer when you have a problem with the service you are receiving or a concern about your case.

Problems cannot be solved if you keep them to yourself. If something is bothering or upsetting you, tell your lawyer.

What can I do if I feel my lawyer charged me too much?

When your case is completed, or sooner if you have agreed to a regular billing schedule, your lawyer will send you an itemized bill showing legal fees, disbursements, other costs and the total amount owing. The bill should detail the services provided and who did the work. Check the “*terms of engagement*” letter to see if the bill reflects the agreement you made.

If you do not understand something in the bill or believe that the total is unreasonable, discuss your concerns with your lawyer right away. In most cases, you will be able to work something out.

Despite best efforts to avoid surprises or misunderstandings, it may be that you and your lawyer cannot agree on the total amount owing. In this case, in Québec, contact either the Barreau du Québec (for lawyers) or the Chambre des notaires (for notaries). Both bodies have dispute resolution mechanisms in place. In other provinces, you can usually apply to the local court for an independent review of your lawyer’s bill. This is called *taxation*.

There is often no charge for this review, but you must ask for it promptly. There might be a time limit, such as 30 days from the day you received the bill. As soon as it is clear that you and your lawyer cannot resolve the dispute over the bill, contact the court and ask for the person who handles fee taxation.

The *law society* has general information about taxation. It may also have a mediation service that you and your lawyer can use to come to an agreement about the bill, usually at no cost.

Tip # 9 — Review the bill you receive right away.

If you believe it reflects the agreement you made with your lawyer, pay it according to your agreement. If you have concerns about it, discuss it with your lawyer immediately. If you and your lawyer cannot reach an agreement, look into *taxation* or mediation without delay.

What is the key to a successful lawyer-client relationship?

Communication is the key to a successful lawyer-client relationship. As in so many areas of life, a productive relationship begins with good communication — clear, honest, forthright exchanges of information and ideas that are based on facts, not assumptions. Choose a lawyer who communicates effectively with you and do your best to communicate effectively with your lawyer.

You will find some forms on the next few pages. You can use these forms to help you get the information you need from your lawyer and to lay the groundwork for good communications and a strong working relationship with your lawyer.

We hope that you have found the information in this booklet useful. The *law society* or Bar association in your province or territory has more information to help lawyers and clients work together successfully. You may also find useful information at the Canadian Bar Association's Website: www.cba.org/public.

Tip # 10 — Be realistic about what a lawyer can do for you.

Lawyers and Québec notaries have legal knowledge and expertise that can help you with legal problems. They cannot move mountains, magically return your life to what it was like before the accident, or make the spouse you are divorcing a different person.

Staying in touch

Contact information

How do I reach you during the day?

What is a good time of day to call?

Is there a number I can call in an emergency?

Who should I call if I want to set up an appointment?

Are there other people in the firm I can call with questions?

Will you send me copies of all the letters you write and everything you receive about my case? What impact will this have on the cost of your services?

Will you send me regular reports on what has gone on? What impact will this have on the cost of your services?

When will you be in touch with me again?

What happens next?

What do I need to do next?

What items should I send to you or bring you?

What are the major steps that will likely take place next?

How long will this take?

Costs of legal services

What do you estimate the total cost of this work will be?

What is your hourly fee, if appropriate?

Will other people work on my case?

What is their hourly fee?

What disbursements are you likely to make? How much will they cost?

What other costs might there be?

Will you charge me for travel time? At what hourly rate?

Will you tell me first before changing your fee?

How often will I be billed?

What information will the bill have? How long will I have to pay the bill?

Will I be charged interest if my payment is late?

Can I pay you by installments?

Alternative billing methods

Methods of charging for services that are not based on an hourly rate. Examples include fixed fees, fees based on results achieved, and contingency fees.

Alternative dispute resolution

The use of mediation, arbitration, negotiation and similar approaches to resolve a dispute that would otherwise be resolved in court.

Articling student

A student who has finished law school and is gaining practical experience working with a lawyer, or in Québec, with a notary. An articling period is required before being admitted to the practice of law. Articling students often assist lawyers by interviewing clients, doing legal research, filing documents in court and doing some courtroom work.

Conflict of interest

A conflict between clients' interests, or between the interests of a client and lawyer. Lawyers must not be in a conflict of interest with their clients, and must make sure that they tell their clients of any possible conflict. For example, a lawyer who is representing one party in a dispute cannot give legal advice to another party in the dispute.

Contingency fees

An alternative billing method. Instead of a fixed fee or hourly rate, the lawyer receives a percentage of a settlement received by a client. In Canada, the rules about legal contingency fees vary from province to province.

Disbursements

Money spent by a lawyer on expenses associated with your case. Examples include photocopies, messenger services, long-distance telephone charges, travel costs, secretarial overtime, court fees, witness fees, and fees paid to government agencies for certificates and document searches or registration.

Law society

A governing body for the legal profession. Each province and territory has its own law society, whose mandate and powers are set out in legislation (Québec has two: the Barreau du Québec for lawyers and the Chambre des notaires for notaries). Responsibilities include setting and enforcing standards of professional conduct and receiving

complaints and settling disputes between clients and lawyers. All lawyers working in a province or territory must belong to their law society.

Legal assistant

A person trained to carry out certain functions related to the law or to assist a lawyer.

Legal fees

The amount paid to a lawyer for professional services and legal advice.

Retainer

For clients who use a lawyer's services often, a retainer is a fixed monthly amount paid to ensure the availability of the lawyer's services. For clients who use a lawyer occasionally, a retainer is a deposit — an amount paid in advance for the lawyer's services. The retainer will be deducted from the lawyer's final bill.

Solicitor-client privilege

The legal and ethical duty of a lawyer to keep confidential all information concerning the business and affairs of a client. There are strict rules concerning the circumstances in which a lawyer can disclose confidential client information.

Taxation

The review of a lawyer's bill by an independent official of the court or a law society to determine whether the bill is fair and reasonable under the circumstances. Taxation takes place at the request of a client who does not agree with a lawyer's bill. In Québec, contact the Barreau du Québec or the Chambre des notaires, as appropriate, for more information on your lawyer's bill.

"Terms of Engagement" Letter

A letter written by the lawyer to the client to confirm the lawyer's understanding of the nature of the case, the client's goals, what the client is asking the lawyer to do, and how legal fees and disbursements will be calculated and billed. The client agrees to the contents of the letter by signing and returning it to the lawyer, with or without corrections and amendments.

Contacts

LAW SOCIETIES ACROSS CANADA

Law Society of British Columbia

(604) 669-2533

www.lsbcc.org

Law Society of Yukon

(867) 668-4231

www.lawsocietyyukon.com

Law Society of Alberta

(403) 229-4700

www.lawsocietyalberta.com

Law Society of the Northwest Territories

(403) 873-3838

www.lawsociety.nt.ca

Law Society of Saskatchewan

(306) 569-8248

www.lawsociety.sk.ca

Law Society of Manitoba

(204) 942-5571

www.lawsociety.mb.ca

Law Society of Nunavut

(867) 979-2330

<http://lawsociety.nu.ca>

Law Society of Upper Canada

(416) 947-3300

www.lsuc.on.ca

Chambre des notaires du Québec

(819) 879-2911

www.cdnq.org

Barreau du Québec

(514) 954-3400

www.barreau.qc.ca

Law Society of New Brunswick

(506) 458-8540

www.lawsociety.nb.ca

Nova Scotia Barristers' Society

(902) 422-1491

www.nsbs.ns.ca

Law Society of Prince Edward Island

(902) 566-1666

Law Society of Newfoundland

(709) 722-4740

www.lawsociety.nf.ca

More information on law societies

www.cba.org/info/faq/law_society.asp

PUBLIC LEGAL INFORMATION ORGANIZATIONS

**Public Legal Information
Association of Newfoundland**
(709) 722-2643
www.publiclegalinfo.com

**Community Legal Information
Association of P.E.I.**
P (902) 892-0853
www.isn.net/~cliapei

**Legal Information Society
of Nova Scotia**
(902) 454-2198
www.legalinfo.org

**Public Legal Education and Inform-
ation Service of New Brunswick**
(506) 453-5369
www.legal-info-legale.nb.ca

Éducaloi (Québec)
(514) 954-3400
www.educaloi.qc.ca

**Community Legal Education
Ontario**
(416) 408-4420
www.cleo.on.ca

**Community Legal Education
Association of Manitoba**
(204) 943-2382
www.acjnet.org/white/clea
**Public Legal Education Association
of Saskatchewan**
(306) 653-1868
www.plea.org

**Public Legal Education Network
of Alberta**
(403) 343-3712
<http://plena.org/>

**Legal Services Society
of British Columbia**
(604) 601-6000
www.vcn.bc.ca/lssbc/http

Lawyer referral services
www.cba.org/info/faq/referral.asp

In review...

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NOTES:
