

Chapter 1

Managing Your Legal Affairs

Learning Objectives

- Explain the meaning of “sophisticated client”
- Examine the role of the lawyer
- Identify when to hire a lawyer and when to represent yourself
- Explain how to find an appropriate lawyer
- Review how lawyers bill their clients
- Describe legal aid
- Outline the procedure to follow to complain about your lawyer
- Discuss the ethics of lawyers and of clients

Discussion

EXPLAIN THE MEANING OF “SOPHISTICATED CLIENT”

A “sophisticated client” understands the role of the lawyer, and their own role as client. This involves knowing when and how to hire a lawyer, the costs involved and what can be done if the lawyer is not meeting your expectations. Good business decisions can only be made with consideration of appropriate laws, whether the client is able to access that information for themselves, or through the services of a lawyer. A sophisticated client also understands the importance of evidence, and may change their procedures and those of the business in order to make sure the evidence is there in the event of a dispute.

EXAMINE THE ROLE OF THE LAWYER

The client is the ultimate decision maker, but makes those decisions with the advice of a number of experts, of which the lawyer is one. If clients deem other business factors to be of greater importance, they may choose to accept some legal risk, but it is an informed decision. Lawyers must follow the instructions of their clients unless they are illegal or unethical (although a lawyer may always resign).

IDENTIFY WHEN TO HIRE A LAWYER AND WHEN TO REPRESENT YOURSELF

The decision about when to hire a lawyer starts when decisions need to be made as to how the business will be organized, and whether to create a new business or buy an existing one. It allows business owners to minimize their risks and make sure they are in compliance with all laws. This would also apply to decisions about the premises, financing, existing or new contracts, intellectual property and, finally, selling the business. For less significant decisions, clients may choose to inform themselves, through the internet, or from the resources listed throughout this textbook and in MyBusLawLab. Sophisticated clients will know when to do research themselves and, if unable to obtain the information or understand the information found, to seek legal advice. Small claims court trials are often conducted, due to the relatively low monetary limits, unless the legal issues are too complex for the client to handle themselves. Criminal matters should nearly always be handled by legal counsel.

EXPLAIN HOW

Finding an appropriate lawyer is difficult. Referrals from trusted friends or

TO FIND A GOOD LAWYER	associates with the same type of legal problems are good. Some provincial law societies or branches of the Canadian Bar Association also have lawyer referral services that provide names of lawyers who practice in specific areas of law. You may have an initial consultation for little or no cost, and then decide if you wish to pursue the matter and hire one of them. If not going through one of those services, initial consultation costs will vary and should be confirmed with the lawyer in advance. The lawyer you choose should be someone who you think may be suitable to establish an ongoing relationship with your business.
REVIEW HOW LAWYERS BILL THEIR CLIENTS	Lawyers bill their clients for services either by a fixed fee, an hourly rate or by a contingency fee based on a percentage of the money recovered on behalf of the client. Clients are also responsible for paying disbursements, the lawyer's out-of-pocket expenses incurred, such as filing fees, long-distance telephone charges, etc. Sometimes a lawyer will require a financial retainer to start a file, which operates as a deposit against legal work performed.
DESCRIBE LEGAL AID	Legal aid may be available for people with low income, but the eligibility varies from province to province, so it's best to check with the administrators of the program in your province. What types of legal services are covered also varies, and it is generally not available for business issues. Duty counsel is often available at no charge in criminal court to provide advice, but not representation.
OUTLINE THE PROCEDURE TO FOLLOW TO COMPLAIN ABOUT YOUR LAWYER	Law is a self-governing profession, with provincial law societies that serve this function. Fee complaints are dealt with differently from province to province. Complaints about a lawyer's conduct are dealt with through the law society, which will have a resolution process that could include mediation, investigation and formal hearings, with penalties for wrongdoing. Claims for compensation are subject to limitation periods, as is any other action.
DISCUSS THE ETHICS OF LAWYERS	Professional and ethical obligations of lawyers are set out in rules of professional conduct established by each province's law society. The vast majority of lawyers meet these standards, but as with any profession, there are a few that do not. If this occurs, the client needs to take appropriate action on a timely basis.
CODE OF BUSINESS CONDUCT	There is no code of conduct for business people, and there have recently been a number of well publicized examples of breaches of ethical conduct by high profile business people. This affects the public's perception of the integrity of enterprises in our country and the advisability of doing business here. Each business should make a commitment to ethical behaviour by preparing a code of conduct for their employees. It needs to include issues such as conflicts of interest, use of corporate assets and opportunities, confidentiality, fair dealing, compliance with laws and reporting of unethical or illegal behaviour within the business. It needs to reflect the business' core ethical values and principles, in order to encourage ethical behaviour on the part of all those associated with the business. This, in turn, can enhance the long term success of the business.

Answers to Questions

1. Explain the meaning of “sophisticated client”.

Sophisticated clients are confident, knowledgeable, up-to-date and understand the role of a lawyer. As well, they know when to represent themselves and when to hire a lawyer, and the costs involved when a lawyer is hired.

2. Why should the owner of a small business have a lawyer on “the team”?

A lawyer is an expert, providing relevant advice to the client, which allows the client to make an informed decision.

3. Distinguish the role of the client from the role of the lawyer.

The client is the decision maker, who consults a number of experts, including lawyers, in order to make decisions. Lawyers are experts in their field who provide advice, and who must follow the instructions of the client.

4. “The elimination of ‘solicitor-client privilege’ would significantly undermine the integrity of the Canadian legal system.” True or false? Explain your answer.

True. Solicitor-client privilege ensures full and frank disclosure between clients and their lawyers. The value of the lawyer’s advice will be greatly reduced if it is based on incomplete information.

5. What are some examples of decisions that owners of small businesses make? What role can a lawyer play with respect to the making of these decisions?

The legal form of the business, whether to buy an existing business or create a new one, what are the relevant laws and regulations affecting the business and what constitutes compliance, issues with regard to purchase or lease of business premises, funding of the business, contracts with employees, suppliers and customers, intellectual property and, finally, sale of the business.

6. What role has the computer played with respect to the solicitor-client relationship?

Computers allow clients to research easily accessible legal information online, rather than having to consult a lawyer for every decision.

7. “It is a good idea to hire a lawyer when you have been charged with a crime.” True or false? Explain your answer.

True. The stakes are high. If convicted, you will be punished and have a criminal record.

8. When you are trying to find a lawyer to help you, what are some sources of lawyer’s names?

Sources include referrals from friends or relatives, provincial law societies, lawyer referral services, provincial branches of the Canadian Bar Association, advertisements and the Yellow pages.

9. What is the primary purpose of an initial consultation with a lawyer?

To decide whether the lawyer is suitable for you to retain. If so, then the lawyer will decide if it is agreeable to represent you.

10. Briefly explain three ways lawyers bill their clients. Which of the three is most commonly used?

Fixed fees - for specific tasks such as will preparation, purchasing a house or incorporation.

Hourly rate - billing for time spent on the client's file. This is the most common method of billing a business.

Contingency fee - charging a percentage of the amount the client collects. Most appropriate for personal injury or product liability cases. If the client does not collect, the lawyer does not get a fee. The types of cases covered and allowable percentages vary from province to province.

11. "Legal aid is available to anybody with a legal problem." True or false? Explain your answer.

False. There are financial limitations and limitations on the types of disputes legal aid will deal with. This also varies from province to province.

12. What can a client do if she is unhappy with the bill she received from her lawyer?

Attempt to resolve the dispute directly with the lawyer. If not successful, mediation may be an option. If mediation is not available or successful, the bill could be reviewed by court officials. The method of review varies from province to province.

13. "Should a client lose money because of the carelessness of his lawyer, he will be compensated for his losses if he makes a complaint to the law society." True or false? Explain your answer.

False. The Law Society deals with disciplinary matters only in respect of the carelessness. Compensation would have to result from settlement or, if unable to reach an agreement, through a legal suit by the client against the lawyer. The Law Society will likely require the lawyer to have errors and omissions insurance which will assist with recovery of the loss after settlement or judgment.

14. When will a lawyer be disbarred?

Lawyers who fail to follow the rules of conduct of the Law Society they belong to are subject to disciplinary investigations and hearings. If the conduct complained of is a serious breach, such as misuse of client funds, they may be disbarred.

15. "When a person acts unethically, she will also have broken the law." True or false? Explain your answer.

False. Ethics tells us what we should do; the law tells us what we must do. Generally speaking, every person breaking the law in Canada is acting unethically, but a breach of ethics is not necessarily breaking the law.

16. What is a code of business conduct? Should such a code be used by a small business?

A code of business conduct is a statement of values and principles of ethical behaviour that establishes a code of conduct which all employees, officers and directors of the business would be expected to follow. If created when a small business is first established, it is probably the best way to ensure the long-term application of these principles as the business grows.

17. What is “corporate social responsibility”? What is a benefit of being transparent about the reasons why you are engaging in socially responsible behaviour?

Some speak of corporate citizens. With the benefits of citizenship, goes the responsibility of being a citizen. The exercise of corporate social responsibility shows commitment to the communities within which a business operates. Transparency about exercising social responsibility being not just to “do good” for the organization and its community, but also to improve the organization’s image, will reduce community skepticism and disillusionment about the organization.

Solutions to the Cases

1. *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, [2010] 1 S.C.R. 815, 2010 SCC 23

The Supreme Court unanimously reversed the decision of the Court of Appeal. Section 2(b) of the *Charter* does not guarantee access to all government documents. The documents protected by the Ontario *FIPPA* dealing with solicitor-client privilege were excluded from being disclosed. Lawyers required to register as lobbyists may have to disclose client names and the nature of the lobbying activity. Some banking records of lawyers regarding client names and information may be accessible under money laundering and state security legislation.

2. *Canada (Attorney General) v. Chambre des notaires du Québec*, [2016] 1 SCR 336, 2016 SCC 20 (CanLII)

It was unanimously held by the Supreme Court that the provisions requiring the production of the documents infringed the protection against unreasonable search or seizure found in Section 8 of the Charter of Rights and Freedoms. The Court further held that Section 8 would not be limited under the closing words of Section 1 of the Charter to allow the impugned provisions to operate.

3. *Wayne v. Wayne*, 2012 ABQB 763 (CanLII)

The relevant legislation does not expressly allow the court to pierce the solicitor-client privilege. The basis for this is for clients to have complete trust their counsel representing them.

Counsel can only represent clients if clients are completely open and speak freely with counsel. The privilege is for the benefit of the client. In this case, the mental state of the trustee’s mother, the privilege does not work to her benefit. The court should grant access to the estate file.

4. *University of Alberta v. Chang*, 2012 ABCA 324 (CanLII)

The appeals were allowed and the applications were remitted back to the trial court for rehearing. The chambers judge copied and pasted the briefs filed by the parties and simply retyped them. He signed them as reasons for judgment. Briefs are often one-sided so they so they were prepared in an adversarial context. The passages from the chambers briefs did not disclose how the chambers judge arrived at his decision. There was no evidence to suggest there was inordinate delay.

The appellate court must rebut the presumption that the lower court has reached its decision through its own unbiased analysis to overturn the decision of the lower court.