

Chapter 3: Getting a Lawyer

This chapter will focus on your right to a lawyer, the different ways to get a lawyer, and what you should expect from your lawyer.

It is always best to get a lawyer. Other adults may want to help, but they may not understand what legal options you have or how certain choices may affect your case or your future.

Part 1: The right to a lawyer

1. When do I need a lawyer?

You should talk to a lawyer if you:

- are charged with breaking the law,
- are arrested or detained by the police,
- have to appear in court, or
- have questions about your rights.

2. Why do I need a lawyer?

You need a lawyer to speak for you and to make sure that your rights are protected. Your lawyer can give you advice and help you to understand your options. Your parents and others who give you advice may not know how certain choices may affect your case or your future.

3. What does it mean to have the right to a lawyer?

If you are arrested for a criminal offence, you have the right to speak to and get advice from a lawyer. You also have the right to speak to a lawyer if you are offered an extrajudicial sanction.

See *Chapter 5*
ss.25(1), 10(d)

4. Will someone tell me about my right to a lawyer?

Yes. When you are arrested the police must tell you that you have a right to a lawyer and must give you a chance to contact one. s. 25(2)

The first time you go to court, if you do not yet have a lawyer the judge must tell you that you have a right to a lawyer. s. 32(1)(b)

5. How can I find a lawyer?

It is **not true** that you only get one phone call when you are arrested. You can make multiple phone calls to try to find a lawyer. Here are some places to check:

- If your region has Legal Aid, call your local Legal Aid office and ask for a list of lawyers who work with young people and criminal law.
- Look in the yellow pages of the phone book under "Lawyers".

- Call your local legal clinic (look in the phone book under "Legal Aid").
- Call your provincial or territorial law society to see whether they can help you find a lawyer.

6. How do I pay for a lawyer?

- If you have a job, you may be able to afford one yourself.
- Your parent(s) may pay one for you.
- If you cannot afford a lawyer and your parent(s) cannot afford a lawyer, or if your parent(s) refuse to pay for a lawyer, or there is another reason you don't want your parent(s) to be involved in hiring your lawyer, you can apply to Legal Aid. Legal Aid may be able to get you a free lawyer depending on your situation.
- If Legal Aid will not pay for a lawyer for you, you should tell the judge and ask the judge to make sure that a lawyer is appointed for you. (See section below on Court Appointed Lawyers) s. 25(4)-(5).
- In some courts there are free emergency lawyers called Duty Counsel who can give you limited help, but they will not represent you in trial and they will not be your permanent lawyer.

Part 2: Ways of getting a lawyer

A. LEGAL AID

Each province and territory's legal aid system is different. All provinces and territories have some form of legal aid available for Youth Criminal Justice matters. For more information on how legal aid works in your region call your nearest office (look in the phone book under "Legal Aid").

B. COURT ORDERED LAWYERS

If you applied for Legal Aid and Legal Aid decided that they will not pay for a lawyer for you, you should ask the judge to make sure that a lawyer is appointed for you. If it is not yet time for your trial or if there is no chance of you going to jail yet, then the judge might not appoint a lawyer for you yet (*R. v. L.S.*, 215 CCC (3d) 246). But if you are already at trial or if there is a chance of you being in jail, then once you ask the judge for a lawyer, the judge must appoint a free lawyer for you. s. 25(3)(4).

One exception is if you are 20 or older at the time you go for your first appearance* for a Youth Justice Court charge. In that situation you do not have the right to a free lawyer. s. 25(11)

Note: the province or territory can try to get back the money that is spent for your court-ordered lawyer from you or your parent(s). This does not mean that they will do this, only that they can. s.25(10)

If you have a particular lawyer you want, that lawyer can ask the judge to make sure that his or her fees are paid. If you do not have a particular lawyer that you want, someone who works for the province or territory will find a lawyer for you. s. 25

C. COMMUNITY LEGAL CLINICS/SPECIAL PROGRAMS

Some provinces and territories have other legal services available for people with low incomes. Often, universities with law schools have programs that provide legal services for free or for a small fee. Here are some examples:

Ontario has a large number of community legal clinics that provide legal services to people with low incomes. Justice for Children and Youth (416) 920-1633 or toll-free: 1-866-999-5329) helps young people under the age of 18 with various legal matters, including charges under the *Youth Criminal Justice Act*.

In **Manitoba**, law students at the University Law Centre (University of Manitoba) will represent* people with minor criminal charges.

In **Alberta**, a program is offered on the Siksika Reserve which provides criminal legal services..

D. DUTY COUNSEL

Some provinces and territories have duty counsel. Duty Counsel are Legal Aid lawyers who are in the courthouse building for the day to help you. If you do not have your own lawyer, duty counsel can give you some limited advice and speak for you in court. They usually will not represent you at a trial and they will not be your permanent lawyer.

E. USE OF A RESPONSIBLE ADULT (FOR EXAMPLE, A PARENT, GUARDIAN, OR FRIEND)

You are allowed to use a responsible adult to speak for you in court but it is not a good idea. s. 25(7)

It is a bad idea to use an adult who is not a lawyer because while this adult is concerned about you, he or she may not be familiar with the criminal law (especially the Youth Criminal Justice Act), the rules of the court or the consequences of not providing the appropriate information to the court. An adult who is not a lawyer may not understand what options you have or how certain choices may affect your case or your future.

Part 3: You and your lawyer

1. How do I decide whether to hire a particular lawyer?

Ask the lawyer lots of questions, including:

- Are you familiar with the Youth Criminal Justice Act, criminal and drug laws, and young people's rights?
- Are you familiar with the services and programs in the community available to young people?
- Will you listen to what I want and follow my instructions rather than those of my parent(s), social worker, or youth worker?
- Will you explain to me why you may give recommendations about what I should do?
- Will you do what I want rather than what you think is best for me even if we do not agree about how to handle my case?
- Will you keep everything I tell you private unless you check with me first? This includes talking to my parent(s).
- If I do not have any money, will you help me get Legal Aid?
- What services will you provide? Getting bail? Helping me find a place in a program?
- Will you show up for my court date?

If the lawyer answers "yes" to most of these questions, then he or she will probably be a good lawyer for you.

2. How should my lawyer treat me?

Your lawyer should listen to your problem and understand what you want. He or she should give you advice and then do what you want (within certain limits) rather than what other people think might be best for you. The information you give your lawyer is private. Your lawyer cannot tell anyone, including your parents or guardian, social worker, or the police, what you say unless you give your lawyer permission to do so. However, if you tell your lawyer that you are going to harm someone, they may have to report this to the police.

It is important to answer your lawyer's questions honestly and to give your lawyer all relevant information. If you do not understand something, ask questions. If you disagree with your lawyer's advice, make sure you speak up.

If you feel that your lawyer is not doing a good job representing you, you can ask that another lawyer take your case. If your lawyer is paid by Legal Aid, you should ask Legal Aid if they will still pay for your new lawyer if you change lawyers.

3. What should the lawyer I hired do for me?

Your lawyer should:

- Explain what your charges and options are, and give you advice on how to proceed with your case.

- Tell you how likely it is that you'll be found guilty and what your sentence might be,
- Make sure that the rules of the court are followed so that you get a fair trial,
- Make sure that your version of what happened is presented in court
- If you are found guilty, recommend to the judge a plan that meets your needs (if you agree). It is even better if you ask your lawyer to get you involved in a program that meets your needs,
- Be with you every time you go to court (if your lawyer cannot go to court on a particular day, he or she should send someone else to be there in his or her place, or your lawyer should speak to duty counsel for you in advance, or your lawyer should give you a letter to take to court), and
- Present your defence to the court.

4. Why do I need a lawyer to present my story?

The police will have a lawyer to help tell the story of what happened to the judge. That lawyer will know the rules of the court and will know how to argue the case. Because of this, you also need a lawyer who can tell your side of the story to the court in a logical way and knows the rules of the court. Your lawyer will also know how to carefully question the police and police witnesses.

5. What can I do if my lawyer has done damage to me or my case by not acting properly?

Ask your provincial or territorial law society about what can be done. You may want to appeal your case.

See Chapter 11 - Appeals.

Remember that your appearance in court may have serious short and long term consequences for you. You need a trained lawyer to advise you and to present your case in court.