

Getting a Lawyer

If you are accused of a crime, you will probably face the possibility of going to jail. This fact alone will most likely drive you to look for a good lawyer. Unfortunately, private criminal defense lawyers don't come cheap, and you may not be able to afford one. This doesn't mean you'll be completely at the mercy of the government, however. The Charter provides that you are entitled to be represented by an Lawyer if the state is trying to deprive you of your liberty. This means that Legal Aid may be required to appoint a lawyer to represent you for free. This section discusses the role of private and Legal Aid-appointed Lawyers in the criminal process and offers suggestions for finding a private Lawyer if you can afford one.

Questions answered in this article

- Should I expect a lawyer to guarantee a good result?
- How can I get Legal Aid to appoint a lawyer for me?
- Do I need a lawyer at my arraignment?
- Do legal aid defenders provide the same quality of representation as regular lawyers?
- How can I get a second opinion on my lawyer's advice?
- How can I find a private defense lawyer?
- What is a private lawyer likely to cost?
- Can I arrange for a contingency fee in a criminal case?
- Can I change lawyers if I'm unhappy with the one I hired?
- What if I'm not happy with my Legal Aid-appointed lawyer? Can I get a new one?
- Why do some defendants choose to represent themselves?
- How can I tell whether I should represent myself or not?
- How can I find out what my punishment is likely to be?
- Can I represent myself and pay a lawyer to advise me as I go?

DON MORRISON, B.A., M.S.W., M.Sc., L.L.B.

Barrister

Call 24 hours: 604.688-8331
Toll Free: 888-244-9995
Email: don@donmorrisonlaw.com
<http://www.donmorrisonlaw.com>

5th Floor 195 Alexander St.
Vancouver, British Columbia
V6A 1B8, Canada

Should I expect a lawyer to guarantee a good result?

Toasters come with guarantees; Lawyers don't. Steer clear of lawyers who guarantee satisfactory outcomes. A lawyer who guarantees a good result may simply be trying a hard-sell tactic to induce you to hire her.

How can I get a Legal Aid to appoint a lawyer for me?

Normally, if you want a Legal Aid to appoint a lawyer for you at government expense, you must:

- ask the Legal Aid to appoint a lawyer, and
- provide details about your financial situation.

Typically, your first opportunity to ask the Legal Aid to appoint a lawyer for you will be at your first Court appearance, normally called your arraignment or bail hearing. The judge will probably ask you whether you are represented by a lawyer. If you're not, the judge will then ask whether you want to apply for Legal Aid-appointed counsel. Courts will delay your case and until a lawyer is appointed after Legal Aid reviews your economic circumstances and a lawyer is appointed.

Each province makes its own rules as to who qualifies for a free lawyer. Also, the seriousness of the charge may affect the decision as to whether you are eligible for free legal assistance. For example, legal aid may recognize that a wage-earner can afford the cost of representation for a minor crime, but not for a crime involving a complicated and lengthy trial.

If you don't qualify for free help but can't afford the full cost of a private lawyer, you may still obtain the services of a Legal Aid-appointed Lawyer. Most provinces provide for "partial indigency," which means that at the conclusion of the case, legal aid will require you to reimburse it for a portion of the costs of representation.

Do I need a lawyer at my arraignment?

In most criminal courts the arraignment is where you first appear before a judge and enter a plea of guilty or not guilty to the offense charged. Assuming you enter a plea of not guilty, which almost every defendant does at this early stage, the court will then:

- set a date for the next procedural event in your case
- consider any bail requests that you or the prosecutor make

Most people can handle this proceeding without a lawyer. However, if you can get the Legal Aid to appoint a lawyer for you without postponing the arraignment, or you are able to arrange for private representation before your arraignment, it's always better to have a lawyer.

How can I get a second opinion on my legal aid lawyer's advice?

Like all Lawyers, legal aid lawyers are ethically obligated to vigorously defend their clients' interests. Undoubtedly, most lawyers live up to their ethical duties. But defendants who think that their Legal Aid-appointed Lawyers are not representing them adequately can buy advice from a private defense Lawyer. Even a low-income person may be able to pay for a short "second opinion" consultation.

How can I find a private defense lawyer?

Recently arrested people often need to talk to a lawyer as soon as possible. The most urgent priority is often getting a lawyer to help arrange release and provide some information about what's to come in the days ahead.

If you have been represented by a criminal defense lawyer in the past, that is usually the lawyer to call as long as you were satisfied with his services. If you have no previous experience with criminal defense lawyers, you can look to the following sources for a referral:

- Lawyers you know. Most lawyers do civil (non criminal) work, such as divorces, drafting wills, filing bankruptcies or representing people hurt in accidents. If you know any Lawyer that you trust, ask him to recommend a criminal defense lawyer. (Some lawyers who do civil work can also represent clients in criminal matters, at least for the limited purpose of arranging for release from jail following an arrest.)
- Family members or friends. Someone close to you may know of a criminal defense lawyer or may have time to look for one.
- Courthouses. You can visit a local courthouse and sit through a few criminal hearings. If a particular lawyer impresses you, ask for his/her card after the hearing is over, and then call for an appointment.

What is a private lawyer likely to cost?

It's impossible to give a definitive answer. Lawyers set their own fees, which vary according to a number of factors:

- The complexity of a case. Most Lawyers charge more for serious charges than for minor ones because they carry greater penalties and are likely to involve more work for the Lawyer.
- The Lawyer's experience. Generally, less experienced Lawyers set lower fees than their more experienced colleagues.
- Geography. Just as gasoline and butter cost more in some parts of the province than others, so do lawyers.

DON MORRISON, B.A., M.S.W., M.Sc., L.L.B.

Barrister

Call 24 hours: 604.688-8331
Toll Free: 888-244-9995
Email: don@donmorrisonlaw.com
http://www.donmorrisonlaw.com

5th Floor 195 Alexander St.
Vancouver, British Columbia
V6A 1B8, Canada

According to a survey of readers reported in the February, 1996 issue of Consumer Reports, the median legal fee charged by lawyers in criminal cases was \$1,500. Many defendants can expect to pay more than this, however. A defendant charged with a minor offense should not be surprised by a legal fee in the neighborhood of \$3,000-\$5,000; a Lawyer may want \$15,000-\$25,000 in a serious case. And most Lawyers want all or a substantial portion of the fee paid up front.

Can I arrange for a contingency fee in a criminal case?

No. A contingency fee is an arrangement where the lawyer gets paid only if he wins the case. These arrangements are not allowed in criminal cases.

Can I change lawyers if I'm unhappy with the one I hired?

Generally, defendants who hire their own Lawyers have the right to fire them at any time. A defendant doesn't have to show "good cause" or even justify the firing. After firing a lawyer, a defendant can hire another lawyer or perhaps even represent herself. Of course, changing lawyers will probably be costly. In addition to paying the new lawyer, the defendant will have to pay the original lawyer whatever portion of the fee the original lawyer has earned.

Limits on Your Right to Change Lawyers

Your right to change lawyers is limited by the prosecutor's right to keep cases moving on schedule. If you want to change Lawyers on the eve of trial, for example, your new Lawyer is likely to agree to represent you only if the trial is delayed so she can prepare. The prosecutor may oppose delay, possibly because witnesses won't be available to testify later on. In these circumstances, the judge may deny your request to change lawyers.

What if I'm not happy with my Legal Aid-appointed lawyer? Can I get a new one?

Yes.

Why do some defendants choose to represent themselves?

Defendants choose to represent themselves for a variety of reasons:

- Some defendants can afford to hire a lawyer, but don't do so because they think the likely punishment is not severe enough to justify the expense.
- Some defendants believe (often mistakenly) that a Lawyer who represented them previously was ineffective, and figure they can do just as well on their own.
- Some defendants believe that lawyers are part of an overall oppressive system and seek to make a political statement by representing themselves.

DON MORRISON, B.A., M.S.W., M.Sc., L.L.B.

Barrister

Call 24 hours: 604.688-8331
Toll Free: 888-244-9995
Email: don@donmorrisonlaw.com
http://www.donmorrisonlaw.com

5th Floor 195 Alexander St.
Vancouver, British Columbia
V6A 1B8, Canada

- Some defendants want to take responsibility for their own destiny.
- Some defendants who are in jail can gain privileges through self-representation, such as access to the jail's law library. Also, not bound by lawyers' ethical codes, self-represented defendants can delay proceedings and sometimes wreak havoc on an already overloaded system by repeatedly filing motions.

How can I tell whether I should represent myself or not?

The most obvious rule is that the less severe the charged crime, the more sensible it is to represent yourself. Defendants charged with minor traffic offenses should rarely hire an Lawyer, while defendants charged with serious felonies should rarely be without one. The most difficult decisions involve misdemeanors such as drunk driving, possession of drugs or shoplifting. Hiring a Lawyer in these situations may be wise because jail time and a fine are possibilities, and convictions may carry hidden costs, such as more severe punishment for a second conviction or vastly increased insurance rates. On the other hand, first time offenders charged with nonviolent crimes are not usually sentenced to jail, and judges and prosecutors often offer standard deals to all defendants, whether or not they are represented by a Lawyer. Thus, the most critical piece of information that defendants should try to learn before deciding whether to hire a Lawyer is what the punishment is likely to be if they are convicted.

How can I find out what my punishment is likely to be?

It can be difficult to learn about judges' common sentencing practices. Typical sentences aren't usually listed in statutes or Court rules. If you want to find out what your punishment is likely to be if you're convicted, you might take the following steps:

- Pay a private defense Lawyer for an hour of consultation. An experienced defense Lawyer can often make accurate predictions as to likely punishment.
- Ask a relative or close friend who is or who knows a Lawyer for informal, unpaid advice.
- Talk to Crown Counsel. They will provide a document with the sentence they are seeking.

DON MORRISON, B.A., M.S.W., M.Sc., L.L.B.

Barrister

Call 24 hours: 604.688-8331
Toll Free: 888-244-9995
Email: don@donmorrisonlaw.com
<http://www.donmorrisonlaw.com>

5th Floor 195 Alexander St.
Vancouver, British Columbia
V6A 1B8, Canada

Can I represent myself and pay a lawyer to advise me as I go?

Yes. If you're thinking about representing yourself, you might want to seek out a Lawyer willing to serve as a "legal coach." The goal of hiring a legal coach is to combine a lawyer's knowledge with your own time. Because you pay for the lawyer's help only occasionally, the cost of a legal coach can be far less than turning the entire case over to a private Lawyer.

Not all Lawyers are willing to serve as legal coaches. Some are worried about their liability if they give wrong advice based on incomplete information; others do not want to be involved with a case unless they are in control of it. Thus, if you're considering going it alone and you think you'll want a lawyer's help, you should try to line up your legal coach before you make your final decision.

Copyright © 2004 Don Morrison. All rights reserved.