

CIVIL LAW

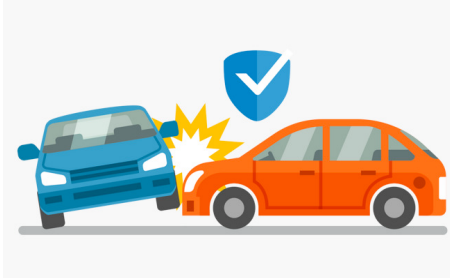
What is civil law

Private law – disputes between private parties about rights and duties

Person has experienced a loss.

A loss is a tort (civil wrong).

Disputes are everywhere!



CONSUMER

Civil law: Examples

Disability & Benefits Claims

- Unable to work (disabled) and denied disability benefits
- Insurance benefits denied

Injury Claims

- Slip and fall
- Hurt by unsafe object or product
- Hit by a car, truck, bus
- Driver, passenger, pedestrian

Civil law: Examples

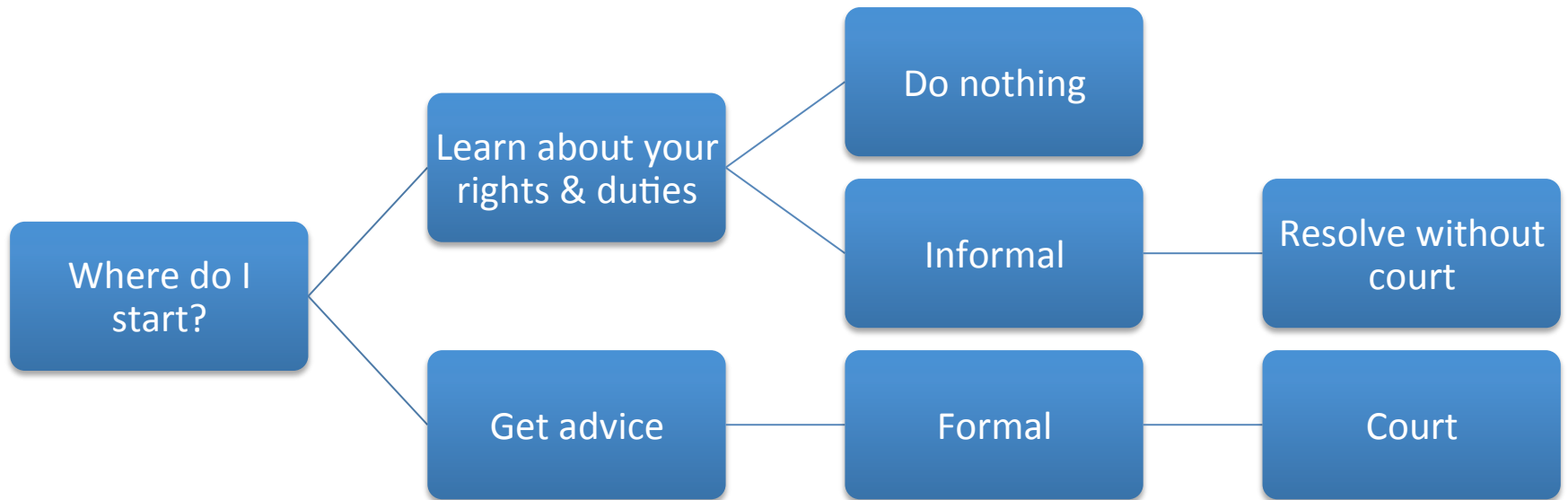
Medical Malpractice

- Injured by a doctor, dentist or other healthcare treatment

Loss Claims

- Property damage claims
- Financial loss claims

Civil Claim Process in NS



Civil law help

- Courts.ns.ca
 - Civil Procedure Rules
 - Small Claims Court information, Claim form
 - Supreme Court information, process & forms
 - Free Legal Clinics (Halifax, Yarmouth, Sydney)
- Legal Info NS – Information, Lawyer & Mediator referral
- Justice Access – Free form-filling help in-person (information only) by appointment

Legal Services

- When do I need a lawyer?
 - High stakes
 - You have tried to understand the law that applies to your case are not able to do so
 - You have tried to follow the court rules (Civil Procedure Rules) but are not able to do so
 - You find it impossible to think about your case or work on it without becoming emotional
 - A judge, or lawyer for the other party, has told you that you should get legal advice

Lawyer Fees

Cost:

- Hourly fee
- Fixed fee
- Contingency fee (% fee for winning)
- Limited scope retainer (unbundled)
- Free (pro bono)

See '[How lawyers charge for their work](#)'

Keeping Legal Fees Low

1. Tell the lawyer early on what you think would be a positive outcome
2. Ask lawyer for estimated total cost for each option
3. Only contact your lawyer when you have new information or are replying to your lawyer's questions
4. Use email/online or phone for meetings
5. Lawyer is not your therapist
6. Be prepared for meetings
7. Organize documents before giving them to your lawyer (chronological order, neatly arranged)
8. Get regular bill time accounts from your lawyer
9. Ask your lawyer what will make their job easier and take less time
10. Unbundled services (consultation, research, document preparation, negotiation, court representation)

What is the difference

Legal Information	Legal Advice
Legal definitions: what the words mean	Legal interpretations: how the law applies in a specific case
Procedures: What are the steps	Recommendations about which court to use or which procedure to follow
How to find legislation, court rules and cases and other information about the law	Legal research applying the law to a particular situation
Providing sample forms and instructions, pointing out required information	Preparing documents for someone or telling someone what to put on a form
Describing alternatives to court	Recommending a particular alternative
Explaining court procedure	Telling someone what to say in court

Solving it without Court

Negotiate: Meet and talk! Get in touch in writing or online

Ask a neutral person to help.

Get help from community resources – eg. Better Business Bureau of Atlantic Provinces

Mediation: ask a person trained in mediation as an alternative dispute resolution option to hear both sides and offer suggestions (\$)

Arbitration: ask a lawyer to hear both sides and decide the issue (\$)

Judicial settlement conference (court, but not really!)

Court

Litigants: the people* involved. Parties.

Litigation: civil lawsuit, the process

Plaintiff: person who starts the process.
Claimant.

Defendant: person being sued. Alleged to have caused plaintiff's loss.

Court

*Litigants can be individuals, businesses, non-profits, groups, organizations, government, etc.

Common questions

What court?	Small Claims Court? Supreme Court? Which court does what
Timelines	How long do I have to sue – limitation periods
How to prove your case	Documents, witnesses, other evidence
What remedy do you want?	Damages
How do I get my money?	Enforcement

What Court?

Small Claims Court	Nova Scotia Supreme Court
Made for non-lawyers	Made for lawyers/judges, but can self-rep Usually lawyers represent client
Less formal	Formal Civil Procedure Rules
\$25,000 or less	Large claims
Quick	Slower
NO: family, criminal, property disputes, estates, claims against government, personal injury cases (general damages cap), defamation	All. Including equitable relief.
YES: debt collection, used cars, contract disputes, wrongful dismissal, personal property return, lawyer bill taxations	
\$ Legal costs low; cannot award legal fees	\$\$\$ Legal Costs; Risk paying legal fees for other side

Timelines

- General Rule: Limitation period of 2 years in Nova Scotia from date of loss
- Claim may be denied if it is filed with the court after 2 years from the date of loss. A motion may be made (extend time), but it is best to file on time
- To file on time you must start a legal action with a court! Telling someone or taking informal action is not enough to protect a claim from deadlines

First Steps

Plaintiff prepares Statement of Claim (Notice of Claim in Small Claims)

File document with Court

Serve Defendant(s)

Wait for Defence to be filed by Defendant(s)

Next steps in civil action

- Document disclosure
- Discovery
- Trial

In Court

- Speak slowly
- At least 4 copies of every document (original for witness, copy for you, judge, defendant)
- Have a plan/roadmap
 - Why are you bringing your claim
 - What are your damages
 - How are you proving your loss
- Meet the burden of proof: balance of probabilities

Evidence

- Mission: prove your damages (losses)
- How? Present evidence to court
 - People (witnesses)
 - ‘Documents’ (paper, electronic, objects, video, audio...)

Personal injury

- Loss + Negligence
- You can't make a claim just because you lost something (your fault) or hurt yourself (accident)
- Someone else must be responsible – at fault (or partly): The defendant person or company
- Loss needs to have happened because of negligence

Negligence

You should not have done that because...

- It was against the law
- It was dangerous (reckless)

Negligence + loss = Civil Claim

Breach of Contract

Broken promises and agreements

- Contract for services
- Contract for goods
- Debt
- Wages

Who were the parties to the contract or agreement?

Remedies

General Damages (pecuniary and non-pecuniary)

Special Damages (out of pocket loss)

Punitive Damages (make an example)

Aggravated Damages (reprehensible conduct)

Nominal Damages (moral victory)

Specific Performance (strictly abide by contract)

Injunctions (do or stop doing something)

General Damages

Pecuniary – Money compensation for losses that can be calculated based on how much money the plaintiff lost

Non-pecuniary – does not involve actual money loss (non-economic loss)

- Pain and suffering
- Loss of opportunity

Assess: Non-pecuniary loss

Precedent – What have judges said in other cases with similar facts

Legislation –

- What does the law say? Eg. Car accident minor injury legislation

Special Damages

Compensation for out of pocket expenses:

Examples?

- Medication
- Therapy
- Lost income
- Car repairs

Punitive

When the court wants to make an example of the Defendant and show what will happen to others who act poorly. Act of deterrence

Examples?

- False imprisonment or arrest
- Assault
- Defamation
- Must show actionable wrong (breach of duty, good faith, etc.)
- No limit to amount of damages

Aggravated Damages

When the court provides additional damages to Plaintiff because of the Defendant's reckless disregard for the Plaintiff's welfare

Examples?

- Unjustified denial of benefits/bad faith by insurance company
- Must show proof of injury
- Damages \$10,000 to \$100,000

Nominal Damages

Minimal compensation to acknowledge a moral victory

Examples?

- Someone used your land without permission. You may be awarded a few dollars because you didn't suffer harm (loss), but your rights were breached.

Specific Performance

- Court order compelling someone to fulfill the contract terms
- Examples?
 - You paid a deposit for a puppy from a breeder. Breeder then decides to not sell you the puppy and returns your deposit. I want the puppy...not my deposit!



Injunctions

- Court order requiring someone to do or not do something
- Order may be permanent or temporary
- Examples?
 - Do not use dangerous chemicals
 - Do not use trademark without permission
 - Do not block my right of way
 - Allow workers to strike



You win!

The judge will not give you a cheque....

The decision has 2 main parts: Award + Costs

- Award = amount of your loss
- Costs = amount payable to the winner to offset fees incurred in the legal process

But...

The Defendant might not pay....WHAT NOW?

Enforcing a Judgment

Judgment: decision from a court stating that you won.

Will usually say \$\$ damages.

Ways to collect your money?

- **Examination of a judgment debtor** – question the person who owes you money about their assets
- **Garnishment** - % of wages paid to you
- **Seizure** – Sheriff takes assets and sells them so you are paid

You Lose

- May have to pay Costs to the winning party in addition to the damage award set by the judge

Can you afford to lose?

- Small Claims has only small Costs payable by the losing party
- Supreme Court could be big Costs!

TIPS

- Get free legal information. Learn about your rights and legal options
- Don't miss the time to file your claim
- Know what you have lost (a lawyer can help you)
- Know how you will present your evidence (people and documents) and tell your story

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Thanks

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Questions?

LEGAL INFO 
NOVA SCOTIA

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