

The Rights and Responsibilities of the Self-Represented Litigant

John-Paul Boyd
18 November 2012

You are a “self-represented litigant” if you are involved in a court proceeding and are not represented by a lawyer. There is no rule that requires you to have a lawyer to represent you in court. Although court can be complicated and confusing at times, you have the right to represent yourself.

This note is about your rights and your responsibilities as a self-represented litigant involved in a civil court proceeding in Canada, and what you should expect from the judges, court staff and lawyers you will meet along the way.

I. Lawyers and Judges

A. Dealing with Lawyers

1. You should expect to be treated with respect and courtesy by the other party's lawyer.

All Canadian lawyers are members of their province's or territory's law society. Each law society has a written code of conduct that describes the minimum standards of behaviour expected of their members. In general, these codes of conduct require lawyers to treat opposing parties who are not represented by counsel politely and in the manner they would treat a lawyer.

Of course, litigation can be difficult and emotional at times, and you must remember that the lawyer's job is to represent his or her client, not you, and to advocate for his or her client's interests, not your interests. Don't mistake a lawyer's position on behalf of his or her client as rudeness or incivility.

2. You should expect to have your emails, letters and telephone calls to the other party's lawyer returned reasonably promptly.

The law societies' codes of conduct require lawyers to respond to communications reasonably promptly. This doesn't mean right away or even the same day, but in general you should expect the lawyer to reply to your letter or telephone call within two or three weeks.

It is possible that a lawyer may insist on communicating with you only in writing. Lawyers usually want to restrict communication like this because they want to keep a written record of everything that is said and to make sure that there are no misunderstandings.

You should not expect the lawyer to answer legal questions or give you legal advice. The lawyer is the lawyer for the other party, and law society rules prevent the lawyer from giving you legal information and advice.

3. You should expect the lawyer to keep his or her word.

The law societies' codes of conduct require lawyers to act in good faith and to do the things they have told you or the court they would do. Although circumstances may change and it may become impossible or inappropriate for the lawyer to carry out a promise, the requirement to act in good faith means that the lawyer cannot promise to do something knowing that it can't be done.

Lawyers may also make special promises called undertakings. A lawyer who gives or accepts an undertaking is required to fulfill that undertaking. The law societies take lawyers' breaches of undertakings very seriously.

4. What happens if the lawyer doesn't do what he or she is supposed to do?

Law societies say who can and cannot work as a lawyer and have the power to discipline their members. You have the right to complain to the lawyer's law society if you believe that the lawyer has behaved improperly. You do not need a lawyer to make a complaint and there are no fees charged to make a complaint.

B. Dealing with Judges

1. You should expect the judge to treat you with respect and courtesy.

The job of the judge is to manage and decide steps in your court proceeding fairly. Fairness means, among other things, that the judge must listen to you carefully and must not treat you substantially differently than the judge treats the other party or the other lawyer.

Because the judge must also be fair to the other party and consider the needs of other people's court proceedings, the judge may have to limit the time you have or ask you questions that help you get to the legal issues involved in your case. Don't mistake the judge's wish to help you or the other party, or to get through the other cases set for the same day, as rudeness or incivility.

2. You should expect the judge to give you basic information about court procedures when you need it.

Fairness also means that the judge should give you information about court procedures so that you understand the rules you must follow and the steps in your court proceeding. Although the judge cannot give you legal advice or tell you how to manage your case, the judge will usually give you basic information about court procedures so that you can present your case as best you can.

Depending on the circumstances and the nature of your case, the judge may:

- a) explain court processes and procedures;
- b) ask whether you understand the court's processes and procedures;
- c) refer you to organizations that may be able to assist you in preparing your case; and,
- d) refer you to organizations that may be able to provide you with legal representation for your case.

You must not count on only the judge to give you information about court procedures. You have an obligation to learn the rules of court and court procedures that apply to you and your court proceeding, and the judge cannot give you any assistance beyond basic information about court procedures.

3. You should expect the judge to follow the rules of court and the law.

The rules of court govern every step of your court proceeding, and the judge must manage your court proceeding as the required by the rules. The rules of court also give the judge some flexibility to adapt the rules to special situations and to do things a bit differently than the rules require if it would be fair to do so.

The judge must also manage hearings and trials as the law requires. This includes the rules of evidence and any legislation that is relevant to your court proceeding. You have an obligation to learn rules of evidence and any legislation that applies to you and your court proceeding.

4. You should expect the judge to give you a fair hearing.

The judge must hear your case, your evidence and all that you and the other lawyer or the other party have to say without bias and without favouring either you or the other party. Although the judge may decide to give you some leeway in how you follow the rules of court and court procedures, the judge must apply the law equally to you and to the other party, whether the other party has a lawyer or not.

Depending on the circumstances and the nature of your case, the judge may:

- a) provide you with information about the law and the rules of evidence;
- b) modify the traditional order of court processes or hearing evidence; and,
- c) question witnesses.

Because the judge must also consider fairness to the other party, the witnesses who are being asked to give evidence and the needs of other people's court proceedings, the judge may have to limit the time you have to present your evidence or explain why you want the result you are hoping to get. Don't mistake the judge's need to manage your hearing as efficiently as possible as unfairness.

5. What happens if the judge doesn't do what he or she is supposed to do?

Judges of the provincial courts are governed by their province's Chief Judge. Judges of the superior courts (Courts of Appeal, Supreme Courts and Courts of Queen's Bench) are governed by the Canadian Judicial Council. Both the Chief Judges and the Canadian Judicial Council have expectations of how judges will conduct themselves and court proceedings.

You have the right to complain to the provincial court's Chief Judge or to the Canadian Judicial Council if you believe that a judge involved in your case has behaved improperly. You do not need a lawyer to make a complaint and there are no fees charged to make a complaint.

However, it is important to know that you do not have the right to complain to the Chief Judge or to the Canadian Judicial Council about the result of a hearing or trial. If you are unsatisfied with the result of a hearing or trial, you will usually be able to appeal the decision to another court or take another step to challenge the result.

II. Court Staff

A. Dealing with Court Staff

1. You should expect to have your business processed accurately and reasonably quickly.

The people who work in the courthouse are employees of their province or territory's government. Their jobs are to process new court proceedings, applications and documents coming into the courthouse, manage the files for each court proceeding, and help the people coming in to the courthouse to do business. The court staff should treat you politely and process your business as quickly as they can in the circumstances.

Most courthouses are very busy. As a result, there are often lineups to speak to the court staff and there may be delays in processing your business. These lineups and delays are generally beyond the control of the court staff.

2. You should expect court staff to give you accurate information about court processes.

The court staff should tell you about the steps you must take to complete court processes like beginning a court proceeding, making an application and looking at a court file, and the information they give you should be accurate.

In general, court staff can:

- a) refer you to sources of information about the law, the rules of court, court forms and court processes;
- b) briefly explain and answer questions about court processes;
- c) tell you what court forms you may need to file;

- d) provide you with blank court forms or tell you where you can find them;
- e) check your paperwork and court forms for completeness;
- f) tell you how to take your case to a hearing or trial before a judge; and,
- g) estimate when your court proceeding will get to a hearing or trial.

However, the court staff cannot answer legal questions or give you legal advice. Court staff are not lawyers and cannot answer questions about the law or give legal advice. This can be very difficult at times, but only lawyers can give legal advice.

B. How Court Staff Cannot Help

Court staff members are employees of their province or territory's government and are responsible for managing the business of the courts and people involving in court proceeding. They do not work for the judges of the court and they do not have the authority of a judicial officer.

Court staff cannot:

- a) give you legal advice;
- b) tell you how to complete court forms or what orders to ask for;
- c) check your paperwork and court forms for accuracy;
- d) tell you what to say in court;
- e) predict the outcome of your court proceeding;
- f) interpret or enforce a court order;
- g) change a court order; or,
- h) help you speak directly to a judge, except at the hearing or trial of your case.

III. Your Responsibilities

1. You have the obligation to learn about and follow the rules of court.

Everyone who is involved in a court proceeding must follow the rules of the court. The rules of court govern each step in a court proceeding, from how a proceeding is started, to how parties are served with court documents, to how applications are made, to how a trial is scheduled and run. The rules of court also say which court forms must be used for different tasks and set out deadlines for things like replying to claims and applications, filing documents and exchanging information.

The rules of court apply to everybody, and there can be serious consequences if you don't follow the rules. It is your responsibility to learn the rules that apply to you and your court proceeding. If you do not, you may lose the right to reply to a claim or an application, or you may lose the right to present certain kinds of evidence at your hearing or trial.

2. You should learn about the rules and laws that apply to your court proceeding.

You should familiarize yourself with the legal practices and principles that relate to the issues in your court proceeding. You will be expected to prepare and present your own case at your hearing or trial.

It can be difficult to learn about the law that applies to your court proceeding, however you can usually get a good introduction to the relevant law and legal principles by meeting with a lawyer through a pro bono organization or through a lawyer referral service, or by a paid consultation with a private lawyer. You may be eligible for legal representation provided through a legal aid program. Whether you are able to get legal advice or not, the rules of court and the laws of the federal government and or each province and territory are available online, and university law libraries and most courthouse libraries are open to the public although they may have restricted business hours.

3. You have the obligation to treat court staff with politeness and courtesy.

Just as court staff members should be polite and courteous to you, you should be polite and courteous to court staff.

Court staff are required to follow the rules of court as well as the court's internal procedures and protocols. These rules may prevent the court staff from processing your business as you would like or as quickly as you would like. Although this can be frustrating, it is important to remember that the court staff are doing their jobs in the manner they are required to do them.

4. You have the obligation to treat the judge with respect and to do as the judge directs.

The judge is responsible for managing and deciding your court proceeding and you owe respect to the judge for the job he or she must do, for the years the judge has spent learning the law and court procedures, and for his or her role in society. Among other things, this means standing when you are speaking to the judge, not interrupting when the judge is speaking, and addressing the judge by the proper title.

The judge is required to make orders and directions as necessary to manage and decide your court proceeding. You must obey the judge's orders and directions. If you do not, you can be punished for contempt of court and the court may be required to draw legal conclusions from your behaviour. If the judge must punish you for contempt of court, you may be fined, sentenced to jail or made to do something like community service.

IV. Hearings and Trials

A. Fairness

The role of the judge is to listen your case and your evidence in a neutral, impartial manner. Fairness may require the judge to give you assistance and information about court procedures and to accommodate the fact that you are representing yourself.

1. *You have the right to a fair hearing and a fair trial.*

“Trial judges have a responsibility, particularly when dealing with unrepresented litigants, to strike a balance between the desire to resolve matters expeditiously, and the need to adjudicate cases in a principled manner that employs a fair process and preserves the appearance of justice.”

Wagg v. Canada, 2003 FCA 303, paragraph 61

“Fundamental to any concept of procedural fairness must be a judicial duty to do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.”

Seminatore v. Banks, 2006 NBCA 110, paragraph 9

2. *What does fairness mean?*

“Fairness does not demand that the unrepresented litigant be able to present his case as effectively as a competent lawyer. Rather it demands that he have a fair opportunity to present his case to the best of his ability. ... It does require that the trial judge treat the litigant fairly and attempt to accommodate the unrepresented litigants’ unfamiliarity with the process so as to permit them to present their case.”

Dauids v. Dauids (1999), 125 O.A.C. 375, paragraph 36

3. *You have the right to be told about court procedures.*

“A trial judge is required to ensure that a self-represented litigant has basic information about the procedure before the court.”

Graylake Holsteins Ltd. v. Kzam Farms Ltd., 2004 ABQB 828, paragraph 21

“Self-represented parties are entitled to receive assistance from [the judge] to permit them to fairly present their case on the issues in question. This may include directions on procedure, the nature of the evidence that can be presented, the calling of witnesses, the form of questioning, requests for adjournments and even the raising of substantive and evidentiary issues.”

Kainz v. Potter (2006), 33 RFL (6th) 62 (Ont. S.C.), paragraph 65

“Judges must give appropriate advice and instruction at each stage of the trial ... this duty also applies to judges dealing with interlocutory matters.”

CT Comm Edmonton Ltd. v. Shaw Communications Inc., 2007 ABQB 473, paragraph 4

B. The Rules of Court

The rules of court govern how the court and court proceedings are managed. They describe the processes and court forms that must be used, they set out due dates and timelines for different processes, and they set out how hearings and trials are run. The rules of court apply to everyone.

1. You have the obligation to comply with the rules of court.

“While self represented parties may be granted more leniency in terms of the amount of time and number of opportunities they are given to comply with the Rules of Court, they are required to comply after being given a reasonable opportunity. There must be a fairness and an equal application of the law to both parties.”

Ferstay v. Dywidag Systems International, 2009 BCSC 833, paragraph 21

2. The judge may decide to exercise some latitude in how he or she applies the rules of court to you.

“A represented party is entitled to every possible and reasonable leeway to present a case in its entirety and that strict mechanical rule should be relaxed for unrepresented litigants.”

Da Costa Soares v. Canada, 2007 FC 190, paragraph 22

C. Presenting Your Case

You are responsible for preparing and presenting your case to the best of your ability. The judge may, in the interests of fairness, provide you with limited help in presenting your case, however the judge may not give you legal advice and the judge must remain impartial and unbiased.

1. You have the right to basic procedural assistance from the judge.

Judges are obliged to ensure that self-represented litigants “present their cases to the best of their abilities.”

Wood v. Wood, 2011 ONSC 1575, paragraph 5

“A judge dealing with an unrepresented litigant has a responsibility to explain the proceedings and provide appropriate assistance.”

Staples v. Barnes, 2008 NLCA 9, paragraph 10

“A trial judge may intervene to clarify witness testimony in order to understand the evidence. A trial judge may assist litigants by directing them away from irrelevancies and indicating what issues are determinative of the matter, or by asking the litigant to focus their questioning of witnesses on legally relevant factual issues.”

Jimenez v. Azizbaigi, 2008 BCSC 1465, paragraph 7

2. The judge will decide how much procedural assistance is fair to give you.

“An unrepresented litigant has the right to a fair trial and a trial judge has a duty to take reasonable steps to assist a self-represented litigant.”

Smith v. Doucette, 2005 NSSC 327, paragraph 16

“It is difficult for a judge to conduct a trial when one of the parties is self-represented. Two competing interests must be balanced. First the judge obviously cannot be an advocate for a party. At the same time the trial must be run as efficiently and fairly as possible. This may require the judge to offer guidance to a self-represented party. The appropriate balance falls within the judge’s discretion.”

Murphy v. Wulkowicz, 2005 NSCA 147, paragraph 37