

# Glossary of Terms

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## A

**Action** – A civil proceeding or lawsuit. Sometimes called a civil action.

**Adjournment** – Suspending a hearing or trial until a later date or time.

**Adjudication** – A judgment or decision of a court of the process of coming to a decision.

**Administration of Estates** – The collection of assets of a deceased, payment of debts and the distribution of surplus to beneficiaries.

**Administrator** – A person appointed to manage and distribute the property of another person.

**Advocate** – A person who speaks on another's behalf. Not to be confused with the French word which means lawyer.

**Ad Hoc** – (Latin) For this purpose

**Affidavit** – A written statement made by a person (called a deponent) who voluntarily signs it and swears or affirms that its contents are true to the best of his or her belief.

**Affidavit of Records**– A process in which the parties in a lawsuit are required to disclose to each other all relevant records in their possession.

**Allegation** – An assertion of fact made in a civil or criminal proceeding, which has not yet been proved to be true.

**Appeal** – A proceeding taken in a higher court to challenge the decision of a lower court or tribunal. There is not always a right to appeal a decision.

**Applicant** – The party bringing a motion.

**Arbitration** – A hearing before an arbitrator where both parties present their case and the arbitrator makes a decision which is binding on both parties.

**Articling Student** – A law student in training who is working under a lawyer in order to be called to the bar.

**Assessment** – To quantify or value something such as damages, property, taxation, etc.

**Associates** – Lawyers in law firms who are not partners but are salaried employees.

**Attorney** – A person appointed to act on another's behalf (e.g. Power of Attorney). Not to be confused with the American term which means lawyer.

## B

**Bar (or being called to the Bar)** – A word used to refer to the practice of law or all practicing lawyers. Originated from the partition across the front of a court behind which only barristers were allowed.

**Breach of Contract** – The breaking of a contractual obligation or promise. A breach entitles an injured party to damages.

**Brief** – A summary or concise statement. Case briefs are summaries of cases. Fact briefs of summaries of facts or client situations. Both are used for trial preparation.

**Burden of proof** – One party in a lawsuit must prove the case beyond a certain standard. The burden in a criminal case is “beyond a reasonable doubt”. In a civil case, it is “on the balance of probabilities”.

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## C

**Cause of Action** – The facts that give rise to a lawsuit or a right of action.

**Caveat Emptor** – Latin for let the buyer beware.

**Civil Law** – Roman Law. The law practiced in Quebec but not any of the other Canadian provinces. It is based on a civil code.

**Code** – A body of law or rules (e.g. the Civil Code). Also used to describe rules of professional conduct.

**Code of Conduct** – Published descriptions of standards of conduct expected of lawyers. There is a national code published by the Canadian Bar Association and provincial codes published by each provincial law society.

**Commercial Law** – The law of business contracts, incorporations, partnerships, banking, insurance, patents, bankruptcy, etc.

**Common Law** – The part of the law that developed through decided cases in the courts. These courts used past cases or precedents to develop a bundle of law referred to as the common law.

**Compensation** – Payment made to compensate for loss or injury to a person or property.

**Conflict of Interest** – When the lawyer’s interest conflicts with a client’s interest or when two clients’ interests collide.

**Constitution** – The highest law of Canada. The rules that distribute sovereign powers and describe the rights of citizens. The Charter of Rights and Freedoms is part of the Canadian Constitution.

**Contempt of Court** – Failing to abide by an order of the court or acting in an insulting way to a court or judge.

**Contingency Fee** – A fee charged by a lawyer that is contingent upon the outcome of a trial or a settlement. It is calculated as a set percentage of the outcome.

**Contract** – an agreement enforceable at law.

**Conveyance** – A deed or instrument which transfers property.

**Conviction** – Finding a person guilty of an offence at trial.

**Costs (or Bill of Costs)** – The cost of lawyers’ fees and disbursements awarded by the court to a party at some stage of an action. If costs are ordered at trial it usually means the losing party must pay the winning party’s costs. The amount of costs that can be awarded is determined by the Alberta Rules of Court.

**Counsel** – Another name for lawyer.

## D

**Damages** – Compensation for loss suffered. The principle is that the injured person should be put in the position he or she would have been in if not injured.

**Disbar** – Force a lawyer out of the profession so he or she is no longer allowed to practice law.

**Disbursements** – “Disbursements” are defined as payments by the lawyer on behalf of the client to a third party for a service or a report or other document related to the case (eg. payments for Medical-Legal Reports, Land Titles searches etc.).

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## **E**

**Evidence** – The way in which facts are proven at trial. It is the legal means used to prove a fact, the truth of which is determined by a court or tribunal (e.g. oral evidence, affidavit evidence and documentary evidence).

## **F**

**Factual Analysis** – Gathering and determining which facts are legally relevant.

**Fees** – Fees can be calculated based on a number of factors including time spent, percentage of the amount recovered such as a contingency fee or a fee fixed and agreed upon by the lawyer and the client.

**Filing** – Providing an institution with documents. Court filings are documents filed at the court, usually for a fee.

## **G**

**Guarantor** – A person who is bound by a guarantee or one who promises to answer for another.

## **I**

**Independent Legal Advice** – Advice from a lawyer about the services a client received from another lawyer. This advice is needed if one lawyer is acting for two clients who have a potential conflict of interest.

**Indictment** – A written accusation of a crime.

**Injunction** – An order by the court requiring that a party stop doing something (e.g. stop removing assets until trial is complete).

**Interlocutory Order** – An intermediate order by the court or tribunal usually granted in the middle of legal proceedings.

**Interim Applications** – An application made to the court before trial. It is to ask for interim relief while trial is pending.

**Intestacy** – If you die without a will the law describes how your estate will be distributed. This is called the law of intestacy.

**Issue Determination** – Determining the legal issues from a given set of circumstances.

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## J

**Judgment** – A decision of a court or tribunal at the completion of a legal proceeding.

**Juris Doctorate (JD)** – A university law degree, granted after the completion of three years at a university faculty of law. Called a Bachelor of Law degree.

**Just Cause** – Sufficient reasons at law to permit employers to dismiss employees. For example, theft by an employee is usually just cause for dismissal. “Just cause” applies to other legal situations, in addition to the dismissal of an employee, such as “wrongful conversion of property” which is a taking “without just cause”.

## L

**LL.B.** – A university law degree, granted after the completion of three years at a university faculty of law. Called a Bachelor of Law degree.

**LL.M.** – A post-graduate university degree in law. Called a Masters of Law degree.

**Law Society** – Provincial and territorial organizations which regulate lawyers by setting standards for admission and disciplining those who are guilty of misconduct.

**Lawsuit** – A civil action or legal proceeding.

**Lawyer-Client Privilege** – The rule that certain communications between lawyers and clients is confidential. This confidence can only be broken in specific situations.

**Legal Aid** – A government scheme which provides legal assistance in certain situations to those whose income falls below a certain level.

**Legal Assistants** – Legal assistants provide certain legal services under the supervision of lawyers. They generally have legal assistant training which enables them to provide many legal services such as drafting and filing court documents.

**Legal Reasoning** – reading and synthesizing the law and applying statutes and cases to a particular situation. A fundamental legal skill.

**Lien** – The right to hold property of a person as security for the performance of an obligation.

**Limitation Date** – The date beyond which a person can no longer seek a legal remedy. A person may not be able to bring a lawsuit after a certain time has expired.

**Litigation** – Is a legal process by which opposing parties bring their disputes before a judge for determination. Each person in the case is called a litigant. The process is adversarial and each party must present his or her own case usually through his or her lawyer and be prepared to defend against the opposing party’s case. It also describes the type of law in which lawyers pursue civil or criminal remedies in the courts.

## M

**Mediation** – The process in which both parties, with or without lawyers, meet with a neutral third-party mediator to try to solve their dispute. The mediator does not decide; the parties must reach agreement together. The mediator does not decide, but only facilitates the discussion between the parties; the parties must reach agreement together.

**Mortgage** – The transfer of legal interest in land to secure the repayment of a debt. The mortgagor (or borrower) mortgages his or her property as security for a loan from the mortgagee (or lender).

**Motion** – An application to a court requesting something be done in the client’s favour. Usually done after legal proceedings have been commenced but before trial.

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## N

**Negligence** – Omitting to do something that a reasonable person would have done. If a person does not take reasonable care, he or she can be held liable for damages resulting from that negligence.

**Negotiation** – The process by which parties discuss possible settlement of a dispute. In addition to their own lawyer, parties sometimes hire a trained negotiator to act on his or her behalf.

**Notaries Public** – Notaries Public are allowed by statute to provide certain limited legal services. They do not have the same education or training as lawyers.

**Notice (employment)** – The amount of notice the employer must give to the employee if intending to dismiss the employee.

# O

**Oath** – A religious act by which a person calls God to witness the truth of what is being said. An affirmation may be said instead of an oath.

**Offence** – Crime

**Opinion Letters** – Letters written by lawyers providing an opinion to a client about the law; how it applies to a particular situation and the action a client should take.

**Order** – A direction or command. A court order is a command made by the court directing the parties to do something. It is issued by the court on completion of a hearing or trial and is legally binding on the parties to the litigation.

# P

**Paralegals** – People who assist lawyers. In most of Canada, paralegals (also called legal assistants) must work under the supervision of a lawyer. Some Ontario paralegals can provide limited legal services.

**Particulars** – The details of a lawsuit which each party needs to know in order to bring or defend a claim. Often lawyers will ask a court to order the other party to provide particulars.

**Partners** – Lawyers within firms who share in profits of the firm and higher level decision-making within the firm.

**Petition** – A written statement to the government, court or public office asking for a remedy or relief. For example, bankruptcies are begun by way of petition. A petitioner is the person who files the petition.

**Plaintiff** – The person bringing a civil lawsuit. The defendant is the person defending the claim.

**Plea Bargain** – The defendant in a criminal prosecution may plead guilty to a lesser charge in return for the prosecution providing some advantage.

**Pleadings** – The written documents filed in a court describing the positions of the people bringing the action and the people defending the action. Initial pleadings are called Statements of Claim and Statements of Defence.

**Power of Attorney** – An instrument which empowers one person to act for another, usually in specific situations.

**Precedent** – A decision of a court or tribunal which sets a precedent for the case being decided. A precedent usually has similar facts and issues, and can be used by the court as a guide. As a general rule, lower courts must abide by the higher court decisions.

**Pre-Trial Conference** – A meeting of the parties to a lawsuit and their lawyers before a judge. The judge will help the parties narrow down issues and perhaps enable settlement to occur.

**Prosecutor** – A lawyer paid by the government to act on behalf of the Crown in criminal matters.

**Purchase and Sale Agreement** – An agreement between a buyer and seller which sets out the terms of the sale and purchase of a property such as a business or land.

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## Q

**Questioning** – A meeting at which a party to a lawsuit is asked questions about the case by the opposing party’s lawyer under oath in the presence of a reporter who records the questions and answers.

## R

**Respondent** – The opposing party to the applicant on a motion.

**Retainer** – The money a client provides to a lawyer when the lawyer is hired. It is used to retain the lawyer and is applied against costs incurred by the lawyer.

**Retainer Agreement** – An agreement made between a lawyer and a client that specifies the terms under which a lawyer is hired. It includes a description of fees to be charged and services to be provided. It can take the form of a letter or a contractual document.

**Retainer Letter** – A retainer letter is one from a lawyer to a client outlining the terms by which the lawyer was hired or retained.

**Review of Legal Bill** – Review and assessment of a legal bill by an officer of the court.

## S

**Solicitor** – A lawyer who typically does office-based legal work and rarely presents cases in court.

**Statement of Account** – A statement that is sent to clients after legal services have been rendered, describing the services provided and the amount owing.

**Statement of Claim** – A written statement by the plaintiff in a lawsuit stating the facts upon which he or she will rely in support of a claim against a defendant.

**Statute** – A law made by an Act of Parliament (either provincial or federal) or by an Act of one of the Legislatures or the National Assembly of Quebec.

## T

**Trial** – The hearing by a court of law of facts and law resulting in a decision by the court.

**Tribunals** – Court-like bodies which decide matters of administrative law such as labour disputes, workers' compensation and immigration.

## U

**Undertaking** – A promise to do something. If a lawyer breaches an undertaking, he or she may be disciplined.

*Source: Fitzgerald, Maureen F.; So You Think You Need a Lawyer, McGraw-Hill Ryerson, 1998*