

Dealing with lawyers and the courts

Throughout our lives, whether in a personal or business capacity, we all have occasion to seek out legal advice, engage lawyers or even become involved in court proceedings. In this edition of *The Legal Lounge*, I provide some general guidance and tips on dealing with lawyers, and the courts.

1. Choosing the right lawyer

In days past, most people probably had one local law firm or practitioner that handled almost all legal matters, whether involving property transactions or estate planning, criminal charges, family law matters or commercial disputes. However, the law has become increasingly complex and diversified, and the legal profession and needs of the public have developed with it.

Where issues arise that relate to a specialised industry or area of law, it is prudent in my view to consider seeking specialist legal representation or advice. With the advance of communications technology, and the relative ease of travelling in New Zealand, you can in many cases look nationwide for the right person for the job rather than being confined to a particular location. Even if a specialist charges a higher hourly rate or some travel costs are necessary, engaging the right person for the job could in the long run prove more efficient and cost effective. A specialist will not only have greater familiarity with the relevant area of law, but in many cases, is likely to have networks with people who are relevant to the matter being dealt with, or just to know “who to talk to”. If you are able to immediately “*talk the lingo*” with the lawyer this will also assist you in instructing the lawyer, and should enable you to quickly build up a rapport.

The AIA website contains a list of lawyers throughout New Zealand who specialise in different aspects of aviation law, or legal transactions applicable to aviation participants, from aircraft purchases and insurance arrangements, to aviation regulatory law issues. You can also search under key areas of practice (for example, employment law, aviation law, insurance law) on the online version of yellow pages, finda or other online directories; or a google search may bring up ads or websites for lawyers with relevant expertise or areas of practice.

You should contact potential lawyers you have identified to ask them about their expertise and experience, their charge out rate, how they bill, and to have an initial chat about the issue and whether this is something they have particular expertise in dealing with. This should hopefully give you a pretty good feel for the lawyer and whether you are comfortable to proceed with an engagement. Even if you do not engage the lawyer, the lawyer has a continuing obligation of confidence about what you have discussed so there is no harm in an initial approach.

If you wish to engage a Barrister, be aware that they are required to have an instructing solicitor. You may need to arrange this, or sometimes the Barrister may do that for you. Agree on what role (if any) the instructing solicitor is to have on the file, and any costs you are likely to incur under that arrangement.

2. Managing the engagement

Relationship with your lawyer – It is important to have a good relationship with your lawyer, particularly if the engagement is going to span over a length of time. Having a good relationship does not mean you have to be friends, but you should feel comfortable with your lawyer.

There should be respectful and open lines of communication, but also, if necessary, you should expect robust discussions and debate. A good lawyer will not refrain from giving advice you may not want to hear or like – they would not be doing their job properly if they didn't. In sensitive cases, you should be careful that you are not letting emotions get in the way of your objectivity, and that you have realistic expectations about what a lawyer can achieve for you. But if there is a clear feeling of distrust or lack of confidence in your lawyer, or if it's clear that the relationship is dysfunctional, you may need to consider changing lawyers.

Provide all relevant information - It is important to ensure you disclose all relevant information to your lawyer. If you are being selective with the truth, or withholding information that is clearly relevant, you could end up getting the wrong legal advice, or you could end up in an embarrassing or adverse situation later on. You could also be incurring unnecessary costs with your lawyer. If the lawyer has to dig for information, or if you later disclose information the lawyer was unaware of, the lawyer may spend more time dealing with issues or revisiting issues than would have been the case if the information had been available at the outset. On the other hand, don't unnecessarily burden your lawyer with irrelevant information (such as historical grievances that have no bearing on a current complaint) as this also risks adding unnecessary time to your bill. If you are unsure whether information you have is relevant or not, talk to the lawyer about it and establish what information the lawyer needs.

Agree on instructions and 'who does what' – Sometimes, the sensitivity of an issue is such that you are best to hand it over to the lawyer and leave it all to them to deal with. However, there may be other situations where there are tasks that you can appropriately do yourself. For example, gathering information that you are able to access may be more cost effective than paying the lawyer to do it, or there may be some matters that you can continue to communicate directly with the other party on, rather than going through your lawyer(s).

Make sure that your lawyer also understands exactly what it is that you are asking them to do. If you are seeking a legal opinion, ask your lawyer to call you once they have reviewed any relevant information to discuss it first. A quick discussion will usually help to articulate and clarify the questions you want answered, or to clarify matters that you don't need your lawyer to spend time on. If the lawyer is satisfied the answer is relatively straight forward, you might be happy to receive oral advice and/or a short email, rather than paying the lawyer to write a formal legal opinion.

Manage costs – Whether the lawyer is providing a fixed service, or providing on-going services over a period of time, discuss the costs involved, and how it is going to be billed so that you can try to budget for it. In some cases, you may be able to get an estimate, although this is not always possible.

Most lawyers charge based on the amount of time spent on a file. However, lawyers have a legal duty to charge a fee that is fair and reasonable having regard to the skill and expertise involved in the work, the experience of the lawyer, whether the matter was urgent or done under routine time frames, the complexity of the work, any fee estimate or quote given, and what might reasonably be charged for such work in the market place. If you have any concerns about what you have been charged, you should raise it with your lawyer and seek an explanation in the first instance. If you remain dissatisfied you can complain to New Zealand Law Society and have it reviewed by a costs assessor.

3. Going to court

Going to court for any reason can be a stressful experience. Whether you are giving evidence in a civil matter, or facing a criminal charge, there are certain things that you can do to try and minimise the stress of the whole experience, and to put forward a good image.

Dealing with court processes - Assuming you are legally represented, your lawyer should take care of court process issues such as filing any necessary documents, ensuring you pay any necessary filing fees, and that you know when to turn up to court. Keep in touch with your lawyer to make sure nothing slips through the cracks. If you are not legally represented, make sure you contact the courts to find out what you need to do and when any deadlines must be met.

Appearing in court– Even as a lawyer, it can be intimidating walking into a courtroom you are not familiar with. I always recommend having a look around a court room where you are going to be appearing in advance, even if it means turning up early on the day. Ask your lawyer “who sits where”, what will happen when you get called and where you need to stand or sit. Just knowing what to expect up to that point can help to calm your nerves and make for a smoother start. Also, dress appropriately. A suit may not be necessary but a tidy appearance is a must.

Preparing to give evidence –Where necessary, educate your lawyer about your evidence. For example, if you are giving evidence about your involvement in an aviation related matter, ensure your lawyer fully understands what occurred or any technical matters you are giving evidence about, so that they can ask the right questions. If you know there are certain strengths or weaknesses with your evidence, discuss those with your lawyer. If you are very nervous about giving evidence, try practicing by speaking in a slow and calm voice.

Giving your evidence – Once you have been sworn in, concentrate on composing yourself. If you are not ready to start straight away, make this obvious by adjusting your position until you feel comfortable, or having a glass of water, before you look at the lawyer who is questioning you. Try to speak slowly and calmly. Take time to consider questions and don't feel rushed to give an answer.

Cross examination – Always remember the other lawyer is not trying to be friendly and will be trying to rattle you, and make you out to be untruthful or unreliable. Don't take it personally and try not to let it upset you. Just focus on the question and answer it truthfully. If there are multiple questions or statements, ask the lawyer to clarify or repeat the question. If you don't know the answer to something, say so. If you are not qualified to answer something, say so. Try to keep your answers short and to the point. Don't be too concerned about body language, but avoid crossing your arms. Most of all, if you know you are telling to truth, say so.

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