

WORKING WITH YOUR LAWYER

A Toolkit for Survivors of Domestic Abuse

1. EXPECTATIONS
2. COMMUNICATIONS
3. DECISION-MAKING

This brochure series is also available in French, Spanish, Farsi, Tamil, Vietnamese and Mandarin. Individual brochures are available for download in pdf form at: www.schliferclinic.com/legal/toolkit.htm

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This brochure series is produced with the assistance of
The Ministry of the Attorney General –
Ontario Victims' Services Secretariat

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3

Decision-Making



INTRODUCTION

GETTING THROUGH THE family law process can be an important step to rebuilding your life, especially if you are a survivor of domestic abuse. Working with your lawyer to make decisions that will impact upon your future can be an empowering experience. ¶ However, many survivors of domestic abuse have said that it is tempting to let lawyers make a number of decisions for them about complex legal issues. This is especially so when they are overcoming trauma or figuring out basic things like where to live and how to feed their children.

¶ The problem with this approach is that it can lead to outcomes that you never wanted. As you enter into a lawyer-client relationship it is important for you to understand your roles and responsibilities in order to make good decisions about your future.

What is decision-making?

Decision-making means telling your lawyer what legal action they can or can't take on your behalf (e.g. filing for divorce, agreeing to a settlement offer or appealing a court's ruling).

The lawyer-client relationship is organized around the goals that you set together. As family law matters can take months and often years to resolve, it is likely that your goals and priorities will change with time. Throughout the process, your lawyer should keep you informed about all developments and give you legal advice about the likelihood of getting what you want, your legal options and the possible strategies you can use to achieve your goals.

In turn, you have three general responsibilities:

- Explaining your goals and their order of importance to your lawyer;
- Providing your lawyer with complete and accurate information about issues in your case; and
- Telling your lawyer which legal options you would like to take.

What does “instructing counsel,” mean?

“Instructing counsel” means telling your lawyer what you want them to do, or giving permission to take an action. By law, your lawyer must take your instructions.

The best way to instruct your lawyer is in writing. When that is not possible, you should ask your lawyer to confirm your instructions in a letter to you.

What should you do before instructing your lawyer or making a decision?

Whenever you make a decision about your case you are binding yourself to an action or long-term outcome that can be difficult to undo if you change your mind at a later time. It is therefore in your best interest to pay close attention to your lawyer’s advice and to take the time to make the most informed decision you can.

Before you make a decision, you should ask yourself the following questions:

- Do I understand the legal advice my lawyer has given me?
- Do I understand the legal language and all of the legal issues involved?
- Do I understand all the options my lawyer has given me?
- Do I understand the implications of taking or not taking my lawyer’s advice?
- Does this advice allow me to achieve my major goals?
- If I have to compromise on some of my goals, are those compromises acceptable to me? (This question can be particularly important when you are negotiating a settlement agreement between you and your partner that will have a lasting impact on child custody and access arrangements. If there is something in the settlement agreement that is unacceptable to you, you should let your lawyer know immediately.)
- Do I have to make this decision right away, or can I take a day or two to think about it?
- Do I need to speak to friends or family before I make a decision?

What should you do if your lawyer isn’t following your instructions?

According to the *Rules of Professional Conduct* and Ontario law your lawyer must take instruction from you, and there can be serious consequences for lawyers who do not take instruction from their clients.

The only reasons that a lawyer can refuse to take your instructions are if:

- You ask your lawyer to do something illegal;
- You ask your lawyer to do something unethical; or
- Your lawyer determines that there is a breakdown in the solicitor-client relationship (for example, if you ignore their advice, refuse to communicate with them or threaten them).

It is also important to recognize that many lawyers are unwilling to do something they think is not in their clients’ best interests. This can be the case if you ask your lawyer to pursue a goal that you cannot reasonably expect to achieve, especially if it comes at the expense of achieving your other goals.

If your lawyer is not following your instructions, you need to have a meeting with them and ask why. You should take notes at this meeting. Ask your lawyer to explain:

- If, in their opinion, your instructions require them to do something illegal or unethical;
- The advantages or disadvantages to you if your lawyer does something contrary to their best judgement;
- If there is an alternative solution that will make you and your lawyer feel comfortable.

Most often an open discussion like this will resolve many of the problems you and your lawyer have. If it does not, you should consider getting a second opinion and/or finding another lawyer.

If you are on a Legal Aid certificate it can be very difficult to change your lawyer, so it is in your best interests to make all efforts within reason to resolve any conflicts with your lawyer. However if your differences are so great, you will need to apply to Legal Aid for a change of solicitor and explain why that change is necessary.