



CHOOSING A BARRISTER & ATTORNEY

By Jeffrey Elkinson

Life is all about choices, some are important and some are not. Choosing the colour of your new car is important but not life changing if you get it wrong and are unhappy with your choice afterwards. However, the choice of your barrister/attorney is truly important and the wrong choice can result, at a minimum, in aggravation and frustration and, at the other extreme, the burden of enormous financial loss and possible destruction of yours and your loved ones way of life.

How can this be, you ask. Aren't all barristers/attorneys the same? Haven't they all been to law school and qualified? Surely the only variants are personality and ability?

The short answer is indeed there is a variance in personality – you get, for example, pleasant barristers/attorneys and some unpleasant. Barrister/attorney abilities also vary as much as anyone else's, in any job. However, the most important variance of any barrister/attorney relates to their "skill set." "Ability" is self explanatory but the reference to skill set may require some explanation.

The legal profession today, with the number of laws and their complexities, has become more specialised and attorneys divide into the different areas of law which affect our lives in one way or another. The most common areas of the law which concern us in daily life are:-

- 1) Contracts
- 2) Conveyancing
- 3) Criminal
- 4) Divorce
- 5) Employment
- 6) Estate
- 7) Personal Injury
- 8) Trusts

See the table below for examples of the work done by barristers/attorneys in these areas.

In respect of these 8 areas, some of which crossover into each other, one may find an barrister/attorney who will profess to be able to represent you in all of them. You will also find, however, barristers/attorneys who hold themselves out as a specialist in one area of the law i.e. divorce and will show a marked reluctance to provide service in any other area. At the end of the day, the consumer must make the choice and the following are some basic principles as to how to make that choice.

FIRST PRINCIPLE

Don't be afraid to ask around your neighbours and friends about barristers/attorneys they have used, not simply ones they know the name of.

SECOND PRINCIPLE

When you have a recommendation, contact the barrister/attorney. If you can speak to him/her over the phone, that is all the better. Otherwise, you ask to meet the barrister/attorney to see if:

a) *he/she has any conflict in representing you*

This means whether the barrister/attorney is possibly already representing "the other side" or in some other way can't represent you as he/she has knowledge from a present or previous relationship with "the other side."

b) *he/she does the type of work you wish to instruct him/her on*

Don't be afraid to ask if the barrister/attorney has done this type of work before. If the answer is a vague "sort of" or "once or twice", then don't be afraid to hold back from instructing the barrister/attorney. It's your money that will be paying the barrister/attorney fees. You certainly wouldn't ask a plumber or an electrician who has never had any experience to work for you so why would you do the same with an barrister/attorney. And it's not cheap – you'll be hard pressed to find an barrister/attorney under \$300/hr and some may suggest a figure of \$650/hr. However, you must weigh the fact that really experienced barrister/attorney in their field of expertise can deal with your matter with ease, with less of a learning curve than an barrister/attorney who will need to go to the textbooks and start learning.

c) *Liability*

It is useful to know that your barrister/attorney has valid insurance, covering any potential negligence by your attorney. It is hoped that this would never be needed but the insurance purchased by your barrister/attorney is designed to protect you, his client, in the unlikely scenario that things go 'wrong.'

d) *Professional Conduct*

You may wish to know whether your barrister/attorney has ever been disciplined for any professional misconduct, and if so, the nature of that misconduct. This may be an issue that you wish to take into account in deciding upon your choice of barrister/attorney.

THIRD PRINCIPLE

Remember it's a relationship – you and your new barrister/attorney will have to work together. You should like him/her as a person and as a professional and there should be mutual respect.

YOUNG ATTORNEYS

Don't be afraid of using a young barrister/attorney – the basic principles for choosing an barrister/attorney apply as set out above but the enthusiasm of the younger barrister/attorney, combined with a lighter workload and lower hourly rate, can work to your advantage. It's a judgment call on your part and, if you're not sure, ask friends for their advice. I mean, even if you were buying that new car, you'd do some research and take some advice – wouldn't you!?

| Different Areas Barristers/Attorneys Specialise In | Example of Consumer Activity |
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| Contracts | Selling and purchasing appliances, goods or materials, obtaining insurance or making a claim on a policy, asking a contractor to build or renovate an apartment or a house. |
| Conveyancing | Buying or selling property, letting out a house or apartment or becoming a tenant in one. |
| Criminal | Speeding or drunk driving to serious crimes such as robbery, murder. |
| Divorce | Separating temporarily or permanently from a spouse, maintenance for children, restraining orders. |
| Employment | Entering into or terminating contracts of employment, redundancy, unfair dismissal, immigration (although some attorneys have this as a specialty). |
| Estate | Making wills, bequests, charitable donations, ascertaining or disputing a tax liability. |
| Personal Injury | Claims arising under road accidents or accidents at work. |
| Trusts | Establishing a trust, ascertaining rights of beneficiaries or obligations of trustees. |

SUMMARY

1. Get a solid recommendation.
2. Speak with the barrister/attorney to make sure:
 - a) he/she has no conflict in acting for you
 - b) he/she has experience in this area
 - c) that you think you will work well together
 - d) that you have a clear understanding of the fees you will be charged
 - e) liability insurance is in place
 - f) he/she has a good Professional Conduct history