

SEAFARER SUBJECT GUIDE

USING LAWYERS IN NEW ZEALAND

This Guide deals in general terms with using lawyers in New Zealand. It aims to help a seafarer understand the legal profession in New Zealand, and to provide information on how to select, engage, and if need be, change his lawyer. This Guide does not, however, constitute specific legal advice in relation to the use of any particular lawyer. If a seafarer is dissatisfied with his lawyer, he is strongly advised to consult another lawyer qualified to practice in New Zealand.

1. What is the structure of the legal profession?

- 1.1 The legal profession is made up of lawyers (solicitors and barristers sole) and legal executives. Lawyers work either on their own account (alone or in partnership with others) or as employees. Lawyers are able to act as both solicitors and as barristers. This means that they can advise on any legal matter including both civil and criminal matters and also appear in court. In contrast, a barrister sole is a specialist court lawyer who may accept instructions only from a solicitor in order to appear in court. A legal executive (known as a para-legal in some countries) is a person who works as a trained assistant to a lawyer.
- 1.2 A seafarer in need of legal assistance should contact a lawyer in the first instance who may, if required, instruct a barrister on the seafarer's behalf.
- 1.3 The courts' structure is hierarchal and can be visualised as a pyramid-type structure. At its base are the courts of general jurisdiction. These courts include the District Courts which deals with most court business, including criminal and civil cases where the amount in issue is not more than NZ\$200,000 (US\$164,000 approximately). The other court of general jurisdiction is the High Court which hears cases where the claim exceeds the monetary limit of the District Courts, as well as specified serious criminal cases (such as murder).
- 1.4 Matters in the admiralty jurisdiction may be heard by both the High Court and the District Courts. Towards the top of the pyramid is the Court of Appeal which hears appeals from decisions of the lower courts. The Supreme Court, the final court of appeal, comprises the apex.

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1.5 Outside the pyramid for courts of general jurisdiction are specialist courts and tribunals. These include the Employment Court, the Environment Court, the Coroner's Courts, the Employment Relations Authority, the Disputes Tribunal and others.

2. How is the legal profession regulated?

2.1 The New Zealand Law Society ('the Law Society') is responsible for regulating lawyers who practice law in New Zealand (www.lawsociety.org.nz) ([website in English](#)). All lawyers practicing in New Zealand must have a current practicing certificate and be registered with the Law Society. The Law Society maintains a Register of Lawyers (see http://www.lawsociety.org.nz/home/nzls_services_for_lawyers/find_a_lawyer) ([website in English](#)).

2.2 Lawyers are required to act at all times in accordance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 ('the Rules'). The Rules set out the obligations lawyers owe to clients. The obligations (some of which are described later in this Guide) are subject to other overriding duties, including duties to the courts and to the justice system. Lawyers who do not meet the standards of this strict professional code may be subject to disciplinary action by the Law Society. In serious cases, the Lawyers and Conveyancers Disciplinary Tribunal has the power to strike a lawyer off the roll, or fine or suspend him for up to three years.

3. How can a seafarer find a lawyer?

3.1 General advice on appointing a lawyer is available from the Law Society (see http://www.lawsociety.org.nz/home/for_the_public/choose_a_lawyer) ([website in English](#)). A seafarer in need of legal assistance should consider appointing a specialist maritime lawyer. Some of the large law firms have lawyers with maritime law experience; however there are only a handful of specialist maritime law firms in New Zealand.

3.2 These can be found by a typing the term 'maritime lawyer New Zealand' into an internet search engine such as Google. A number of statutes may apply to seafarers working in New Zealand waters and ports. These include immigration, customs, employment, health and safety, criminal and maritime laws. A maritime lawyer should be able to advise on all aspects of these laws as they apply to seafarers; however there are also lawyers and law firms that specialise in one or more of these particular fields.

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- 3.3 Seafarers with claims or problems arising from their employment on board a ship, or against their employer for wages are advised to consider instructing a specialist maritime law firm as the Admiralty Act 1973 may apply (with the result that the seafarer may have grounds for a ship arrest). Similarly, if a seafarer is involved in a marine accident or incident, he should consult a lawyer with maritime law experience. If the incident concerns the operation of a ship, the ship owner's lawyer may be able to represent the seafarer, provided there is no conflict of interest. In the event that there is a conflict of interest, the seafarer should consult his own lawyer.
- 3.4 There are a number of trade unions that may be able to recommend a suitable lawyer, such as the Maritime Union of New Zealand (MUNZ) (www.munz.org.nz) (website in English), the Service & Food Workers Union (SFWU) (www.sfwu.org) (website in English), or the Rail and Maritime Transport Union (RMTU) (www.rmtunion.org.nz) (website in English). The New Zealand Fishing Industry Guild (NZFIG) (www.nzfiguild.co.nz) (website in English) is a union that represents domestic commercial fishermen and also foreign crew employed on joint venture vessels by New Zealand companies. These unions may also offer certain legal services to seafarers who are members and, in some cases, the union may appoint a lawyer to act on behalf of the seafarer.
- 3.5 There are a number of Seafarers' Centers operating in most New Zealand ports. These centers are run by organisations such as the Mission to Seafarers, and exist to provide a safe environment for seafarers as well as support services such as telephone and internet facilities.

4. On what terms can a seafarer engage a lawyer?

- 4.1 The agreement between lawyer and client is sometimes called a retainer. When accepting instructions from a seafarer, a lawyer must provide the seafarer with:
- .1 a letter of engagement setting out the specific terms of the arrangement between the seafarer and the lawyer;
 - .2 the lawyer's standard terms of engagement; and
 - .3 a client service information letter.
- 4.2 The nature and scope of the work to be performed for the seafarer, including the basis on which the fees will be calculated and information on the person responsible for the work, are set out in the letter of engagement which, together with the

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standard terms of engagement, provides information on payment terms, confidentiality, termination, conflicts of interest and other matters of a general nature. The client service information letter includes information on fees, the professional indemnity insurance held by the lawyer, the Lawyers' Fidelity Fund, the complaints process, and the specific client care and service information required by the Law Society. This care and service information includes a statement outlining what the seafarer can expect from his lawyer, for example: that the lawyer must:

- .1 act competently, in a timely way, and in accordance with any arrangements made;
- .2 protect and promote the seafarer's interests and act for the seafarer free from compromising influences or loyalties;
- .3 discuss with the seafarer the seafarer's objectives and how they should best be achieved;
- .4 provide the seafarer with information about the work to be done, who will do it and the way the services will be provided;
- .5 charge a fee that is fair and reasonable and inform the seafarer when they will be billed;
- .6 give the seafarer clear information and advice;
- .7 protect the seafarer's privacy and ensure appropriate confidentiality;
- .8 treat the seafarer fairly, respectfully and without discrimination;
- .9 keep the seafarer informed about the work being done and advise the seafarer when it is completed; and
- .10 let the seafarer know how to make a complaint and deal with any complaint promptly and fairly.

4.3 The Lawyers Fidelity Fund noted above is a fund established by the Law Society to provide compensation to people who have lost money or property as a result of theft by a lawyer.

5. How will a seafarer be charged fees by his lawyer?

5.1 Lawyers typically charge by the hour, and the hourly rate will, in most cases, be set out in the letter of engagement. The letter should also state whether the rate includes Goods and Services Tax ('GST') at 15%. If it does not, the seafarer should check whether GST is included.

5.2 A number of factors will influence the rates charged, such as the seniority of the lawyer(s) working for the seafarer, the type and location of the law firm, and the

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complexity and value of the dispute or the claim. In addition, lawyers may charge for any disbursements they incur on behalf of the seafarer. Disbursements include day-to-day expenses such as postage, printing, and phone-calls, and other costs such as court filing fees, barrister costs, and the fees of any other professional advisers the lawyer may instruct. Some lawyers incorporate the day-to-day expenses into the hourly rate. A seafarer should check with his lawyer the extra charges that are likely to be incurred.

- 5.3 A seafarer and his lawyer may agree to a conditional fee agreement with a seafarer. A conditional fee agreement is an arrangement under which a lawyer agrees that some or all of the lawyer's fees and expenses in respect of a matter are payable by the seafarer only if the outcome of the matter is successful. Under the Rules, a conditional fee agreement (including any amendments or variations) must be in writing and must provide specific information including, for example, (a) the method by which the fee is to be determined; (b) the condition or conditions that will amount to success; (c) whether there are any fees or expenses for which the seafarer will be liable whether or not the seafarer's claim is successful; and (d) the basis upon which either party may terminate the agreement and what the liability for fees on termination will be.
- 5.4 A lawyer may agree to a fixed fee arrangement with a seafarer if the matter is relatively simple or routine. The fixed fee may or may not include disbursements. The seafarer should read this type of agreement carefully to see what is included, and to see whether the fee is inclusive of GST. If the seafarer wishes to terminate the agreement early, the lawyer may be entitled to retain the full fee.

6. Can a seafarer get legal aid in a criminal case?

- 6.1 A duty solicitor is a lawyer on duty at the courts whose role is to give free legal help to people charged with a criminal offence who do not have their own lawyer. If a seafarer faces a minor offence and decides to plead guilty, the duty lawyer will probably be able to deal with the case. For more serious offences, the duty lawyer will deal with the immediate issues at court but will not usually represent a seafarer after the first day of his case. If a seafarer is unable to afford a lawyer, he will need to apply for legal aid for a lawyer to represent him for the rest of the case. Legal aid is available to anyone, including foreign nationals, facing criminal charges. As soon as a seafarer is charged with an offence, or receives a summons to appear in court, he can apply for legal aid. The duty lawyer will be able to help a seafarer with an application for legal aid.

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7. Can a seafarer get legal aid in a civil case?

- 7.1 A seafarer does not have to be a New Zealand citizen or resident to be eligible for legal aid in civil or family matters. Family matters include: relationship property problems, child support, care of children matters, protection orders, paternity and mental health matters. Civil matters include: recovering a debt, breach of contract, and bankruptcy or insolvency. Legal aid is also available for employment disputes, tenancy problems, taxation and human rights matters. There are a range of civil/family matters for which legal aid is not available, including, for example, divorce and immigration problems (except refugee matters).
- 7.2 A seafarer wishing to apply for civil/family legal aid should first contact the lawyer he would like to represent him. The seafarer must first check that this lawyer does legal aid work.
- 7.3 The Ministry of Justice has a database of lawyers who do legal aid work which can be accessed here: www2.justice.govt.nz/find-a-legal-aid-lawyer/ (website in English).
- 7.4 More information on criminal and civil legal aid can be found on the website of the New Zealand Ministry of Justice: www.justice.govt.nz/services/legal-aid (website in English).

8. Can a seafarer get any other free legal advice?

- 8.1 Most cities in have a Community Law Centre ('CLC'). These centers are independent community organisations set up to provide free legal help to members of the public. CLCs have qualified lawyers, as well as non-legal staff, available to provide free legal information and advice. Some centers may have staff available to represent a seafarer for free in tribunals or in court.
- 8.2 In addition, some law firms and lawyers provide advice to, or act for, clients without charge. This type of work is known as 'pro-bono'. If a seafarer is unable to afford representation, he can ask a lawyer whether his case could be considered for the lawyer's pro bono programme.

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9. Can a seafarer sue his lawyer?

9.1 A seafarer can choose to take a civil case against his lawyer. However, given the significant financial and time costs associated with court proceedings, using the Law Society Complaints Service (which is described in the following section) is likely to be, in most cases, a more efficient and less costly means of resolving any problems a seafarer may have with his lawyer.

10. How can a seafarer complain about his lawyer?

10.1 The client service information letter should provide details of what the seafarer may do if he is dissatisfied with the service he received from his lawyer. All lawyers are required to have a procedure for dealing with complaints promptly and fairly.

10.2 If the seafarer is still dissatisfied after going through the lawyer's internal complaints procedure, the seafarer may refer the complaint to the Law Society's Lawyers Complaint Service ('LCS'). Grounds for complaint to the LCS may include the lawyer's conduct, the lawyer's service (for example, if the lawyer has not done what he said he would do, involved the seafarer in unreasonable delays, given wrong or incomplete information to the seafarer, failed to reply to phone calls or letters or not kept the seafarer informed of the work he is doing for the seafarer) and the lawyer's invoice, if the bill is for more than NZ\$2000.00 plus GST. A Standards Committee will consider the complaint and take one of three courses of action: (a) it may inquire into the complaint; (b) it may ask the seafarer and the lawyer to consider resolving the matter by mediation or negotiation; or (c) it may decide to take no action (for example, if the complaint is trivial, or vexatious, or not made in good faith).

10.3 If the Standards Committee inquires into a complaint and finds that there has been unsatisfactory conduct on behalf of the lawyer, it may make a number of orders including an order that the lawyer pay the seafarer compensation of up to NZ\$25,000 (US\$21,000 approximately) for actual loss. The Standards Committee may refer a very serious complaint to the Lawyers and Conveyancers Disciplinary Tribunal. The website of the New Zealand Law Society has more information about the complaints service: ([www.lawsociety.org.nz/home/for the public/lawyers complaints service](http://www.lawsociety.org.nz/home/for_the_public/lawyers_complaints_service)) (website in English).

10.4 If the seafarer is dissatisfied with the service of the barrister that represents him in court, the seafarer should report the complaint to the instructing lawyer who will follow the barrister's procedure for dealing with complaints. This complaint may also be referred to the LCS.

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11. How can a seafarer change his lawyer?

- 11.1 A seafarer may terminate the services of his lawyer at any time and appoint a new lawyer. The seafarer is entitled to be given his file and any fees he has paid in advance that were not earned. However, if any money is owed to the lawyer for fees or costs incurred prior to the termination, the lawyer will be entitled to hold on to the file relating to the matter until outstanding money is paid. The lawyer may also have a claim against the seafarer for breach of any fixed-term agreement.
- 11.2 A seafarer may terminate the services of the barrister at any time by instructing his lawyer to do so.
- 11.3 Seafarers should bear in mind that changing lawyers could involve delays and additional expenses, especially if the seafarer's case is at an advanced stage, as the new lawyers will need to read the file and associated documents and familiarise themselves with the case. Seafarers are advised to check the costs involved before making a decision to change lawyers.

12. Is a foreign seafarer treated differently?

- 12.1 Foreign seafarers who pursue claims or who face criminal prosecution are not treated differently to New Zealand nationals.
- 12.2 However, in certain circumstances a foreign seafarer who is not resident in New Zealand may have to provide security for the other side's legal costs of defending a claim.
- 12.3 There are well established precedents for claims by seafarers and the courts are generally sympathetic to seafarers' concerns. Most court cases proceed relatively quickly by international standards.

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