

GN Policies, Procedures and Guidelines

Policy Section: General

Subsection: Legal

Topic: Lawsuits and Legal Advice

Status: Approved by GN Board

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Policy Statement

1. Background

GN may be involved in a lawsuit either as a an accuser or defendant. Although relatively rare, the impact of a lawsuit on the Society can be large and suitable procedures are required to deal with them.

2. Potential Lawsuit Scenarios

GN could sue for a variety of reasons. It could

1. sue the government for failure to follow its regulations in protecting the natural world, as was the case for the Greater Sage-grouse lawsuit.
2. sue a supplier or funding organization for failure to honour a contract.
3. sue an organization or individual for injuries, death, physical or monetary damages.

The last two reasons could also be used to sue GN. GN could also be sued by a government agency for failing to follow a regulation.

3. Provincial and Other Courts

Depending on the nature of the complaint, a lawsuit can be submitted in a federal or provincial court.

3.1 Alberta Courts

There are two governing courts in Alberta: 1) the *Provincial Court of Alberta* and 2) the *Court of Queen's Bench*. A comparison between the two courts can be found in the following link:

<http://www.mondaq.com/canada/x/416744/Civil+Law/How+To+Decide+If+Court+Of+Queens+Bench+Or+Provincial+Court+Is+Best+For+Your+Claim>

3.1.1 *Provincial Court of Alberta*

For civil claims, this court deals with smaller cases and is sometimes referred to as the "*Small Claims Court*". The *Provincial Court of Alberta* website provides a good description of how it handles civil claims.

<https://albertacourts.ca/pc/areas-of-law/civil/claims>

Some of the main features of this court are:

1. Claims are limited to a maximum of \$50,000.
2. The court will accept lawsuits with the exception of: 1) "matters involving the ownership of land", 2) "matters involving wills, malicious prosecution, false imprisonment, or defamation (libel and slander)" or 3) "matters involving governments".
3. The time limit to sue depends on the nature of the complaint. For general debt problems, the time limit to sue is two years from the time the debt began.
4. The proceedings follow the *Provincial Court Act* (<http://www.qp.alberta.ca/documents/Acts/P31.pdf>)
5. Organizations and individuals can represent themselves without the need of a lawyer.
6. Pre-trial and mediation services are mandatory but are provided free-of-charge.
7. A default judgment can occur if the defendant does not respond within 20 days by either paying the Civil Claim or filing a Dispute Note to contest the claim.
8. The overall process is usually faster, less complex and expensive than the Court of Queen's Bench. More courtroom locations are also available.

3.1.2 Court of Queen's Bench

This court usually addresses more serious cases.

Some of the main features of this court are:

1. Claims are not limited to a maximum of \$50,000.
2. The court accepts a wider range of complaints than the *Provincial Court of Alberta*.
3. The time limit is determined by the Alberta Limitations Act (<http://www.qp.alberta.ca/documents/acts/l12.pdf>).
4. The proceedings follow the *Alberta Rules of Court* (http://www.qp.alberta.ca/documents/rules2010/Rules_vol_1.pdf).
5. Although individuals can represent themselves, organizations must use a lawyer.
6. Mediation is possible through a mediator agreed to by both parties. This can be expensive depending on the mediation duration and the hourly rate charged by the mediator.
7. A default judgment can occur if the defendant does not respond within 15 days (see <http://www.eclc.ca/programs-services/dial-a-law/statement-of-claim/>).

3.2 Other Courts and Complaint Mechanisms

Other courts include the *Federal Court of Canada* and courts in other provinces and countries. The Greater Sage-grouse lawsuit was filed in a federal court because it involved the Canadian government and regulations. Claims, fines and penalties may be filed against GN by a federal organization such as for example, *Revenue Canada*. A contract may include a clause that indicates the jurisdiction. This can become an issue if GN is being sued by an organization outside Alberta. Information on litigation in different provinces is provided in the link, <https://www.blaney.com/webfiles/RMC%20Guide%20to%20Litigating%20in%20Canada.pdf>

Some issues may be addressed through other mechanisms. For example, complaints by employees can, depending on the nature of the complaint, be submitted to the *Alberta Employment*

Standards Branch, the Alberta Human Rights Commission or the Alberta Occupation Health and Safety (OHS). Complaints related to privacy can be submitted to the Office of the Information and Privacy Commissioner of Alberta.

4. Considerations when suing and being sued

Many factors must be considered when suing or being sued.

4.1 Suing considerations

When contemplating a lawsuit, GN should consider or ask:

1. Are the damages incurred covered by GN's insurance? The insurance company should be contacted to determine this.
2. The strength of the case. This may require consultation with the lawyer. It also involves a careful review of any relevant contract including deliverables, schedule, warranty, liability and indemnification. In the case of liability and indemnification, legal advice may be required to determine if the clauses are legal or applicable in Alberta. The issue of indemnification and subrogation may also come into play when dealing with the insurance company.
3. The GN human resources (time and knowledge) required to pursue the case to its completion. This is particularly important if no or limited legal advice is used.
4. The Court where the lawsuit will be filed such as the *Provincial Court of Alberta* or the *Court of Queen's Bench*. This depends not only on the amount of the claim but who GN is suing. For example, the government cannot be sued in the *Provincial Court of Alberta*.
5. The legal costs. This depends on the Court since GN can represent itself in the *Provincial Court of Alberta* but not in the *Court of Queen's Bench*. In addition to lawyer fees, there are also court fees and possible mediator fees if the application is filed in the Court of *Queen's Bench*. The costs can rise significantly if GN loses the lawsuit since it then needs to pay costs to the winning party. Depending on the court and the complexity of the case, which may include expert witnesses expenses, court fees and payment to the winning party can amount to tens of thousands of dollars
<https://www.disabilitylaw.ca/disability-lawyer-calgary/court-costs>.
6. After taking into account all of the above, does the Board and membership support the lawsuit?

Fortunately, the time limits to sue (typically 2 years) are usually long enough to allow sufficient deliberations on these issues.

4.2 Considerations when being sued

There are not many options when being sued since the required response time is very short (typically 15-20 days). In this case, the GN Board needs to react quickly.

5. Obtaining Legal Advice

Generally speaking, GN does not often require legal advice. In the past, this has occurred when GN was looking into the type of insurance it required and when it negotiated a contract with the

City for the Medicine Hat Interpretive Program. In the case of the Greater Sage-grouse lawsuit, legal services were provided free-of-charge to GN through Ecojustice. GN needs to have an established relationship with a lawyer so that advice can be obtained when an urgent situation occurs.

Procedures

The approaches are different for the cases of suing and being sued.

1. Procedure when Suing

In this case, the approach depends on whether GN is suing

1. because of an issue related to its mandate, as was the case for the Greater Sage-grouse lawsuit, or
2. due to a breach of contract such as, for example, a client's unpaid debt, a suppliers failure to deliver a product or service, or a funding agency's failure to fulfil its obligations.

In the first case, the issue may first be discussed at the GN Issues Committee, who can then present its recommendation to the Board for consideration. In the second case, the issue can be presented directly to the Board. In either case, the Board may wish to consult other committees, including the Governance Committee, and/or seek legal advice. Once the considerations discussed in Section 4.1 have been addressed, the Board can then make a recommendation to the membership.

The problem becomes more difficult if one or more members express an interest to sue at a General Meeting. In this case, Board members at the meeting should try to avoid a vote to sue without being given sufficient time to fully consider the matter based on the considerations outlined in Section 4.1. If there is a motion to vote, tabling of the motion should be considered, subject to the GN *Bylaws* and guidelines provided in the P&P for *General and Board Meetings*.

2. Procedure when Being Sued

Because of the limited time to respond, the situation is much more urgent if GN is being sued. In this case

1. Board members must be immediately alerted.
2. All relevant contracts and/or regulations should be reviewed to evaluate the merit of the lawsuit.
3. An emergency Board meeting should be held to determine the way ahead including getting legal advice.
4. The insurance company should be notified if the insurance policy protects GN and directors from the lawsuit. If so, the Board should ask guidance from the insurance company as to how to proceed.
5. In the case where a lawsuit involves MHIP, and depending on the nature of the lawsuit, discussions may be held with the City, particularly if it is also named in the lawsuit. The approach in this case needs to be compliant with the contract between GN and the City.

GN needs to quickly determine if it intends to settle or contest the lawsuit such that the required documents can be submitted to the court before the deadline. In many situations, it is expected that GN would become aware of an intent to sue before the lawsuit is actually filed. In that case, the Board should be immediately informed so that appropriate actions can be taken to try to avoid a lawsuit if at all possible.

3. Obtaining Advice

3.1 Legal Services Involving Fees

The following should be considered when seeking legal advice:

1. The knowledge and experience of the lawyer for matters that are likely to be relevant to GN.
2. The cost of the services.

In terms of cost, the following issues should be discussed with a lawyer candidate:

1. The hourly rate and how it is calculated. This includes the minimum time and time increments.
2. Are some services offered at a flat fee?
3. Are there cases when a hybrid approach can be used where a flat fee is charged for part of service and hourly rates are applied for the remaining service? As an example, in the case of a contract, a flat fee could be applied to writing the clauses and hourly fees could be applied to follow-up discussions and revisions.
4. In the case where hourly fees are used, are regular interim billings possible such that there are no surprises at the end of the service?
5. Is there a discount for charitable organizations?

Although it is based on US legal services, the following link provides possible legal fee approaches for non-profit organizations:

<https://www.nolo.com/legal-encyclopedia/how-expensive-is-a-nonprofit-lawyer.html>

3.2 Free Legal Services

In some cases, legal costs may be reduced or eliminated by finding a lawyer that is willing to work pro bono for part or all of the legal services. Pro bono services can also be obtained through *ProBono Law Alberta* which offers free services for specific projects to individuals and organizations that cannot afford the legal fees. The application form can be downloaded from its website.

[https://www.pbla.ca/gethelp/item.5603-Help for NotforProfits and Charities through Volunteer Lawyer Services](https://www.pbla.ca/gethelp/item.5603-Help%20for%20NotforProfits%20and%20Charities%20through%20Volunteer%20Lawyer%20Services)

Since the application acceptance process takes approximately six weeks, this approach cannot be used for urgent matters.