

RISK MANAGEMENT

How to Minimize the Costs of Litigation

Ed Upenieks

Litigation can be very expensive: one recent Ontario survey found that the average matter proceeding to trial costs each party \$38,000 in legal costs. If litigation is inevitable in a business dispute, several steps can be taken to minimize the cost.

- **Call your lawyer early in the process.** Don't wait until you are served with a Statement of Claim or you can't sleep at night. Call your lawyer when your gut first tells you that something is wrong: it probably is. Far better to seek legal advice now and head off future problems than to try to save money and wing it.
- **Prepare for the first meeting.** Legal services are billed based on the time spent. The more advance work you can do, the less time your lawyer needs to spend on your behalf. Be organized. Send us the key documents, a thumbnail sketch of what you think the issues are and a chronology in advance of the first meeting.
- **Tell us what's been keeping you up at night.** You could be worrying about something that doesn't matter, or where you have assumed certain legal consequences that do not follow.
- **Tell us everything — the good, the bad and the ugly.** Remember that all of your conversations with your lawyer are protected by solicitor-client privilege, meaning that they are forever confidential. In the first meeting with a client, I always ask, "Is there anything else?" In my experience, when the client says, "This is probably nothing, but..." what follows ends up being pivotal.
- **Keep us updated.** Let us know if you found other documents or notes, remembered other discussions, or have been contacted by the other side. All of these things can have a material bearing on the outcome.
- **Pick your battles.** Fight only those that you absolutely have to win in order to stay in business. Be prepared to compromise to get the best result for the long run.
- **Do not talk to the other side.** Anything you say to them or an intermediary can be used against you. Better simply not to talk about the legal dispute at all.
- **Do what we ask of you.** If we need your written comments on a pleading or on some testimony, respond in the time requested, since we are usually meeting court-imposed deadlines. If we ask you not to do something, follow our instructions: they're intended to prevent things from getting worse.



- **Be open to resolution.** Most legal disputes are resolved short of trial, but often too late in the proceedings to save thousands of dollars and prevent an emotional roller coaster ride. Mediations, arbitrations, or settlements reached between the lawyers directly can all lead to early resolution, usually with much less cost and stress. In most files we strive for some form of early dispute resolution whenever possible.



Ed Upenieks chairs Lawrences' Litigation Group. He has 25 years' experience as a litigator, and has been certified by the Law Society of Upper Canada as a Specialist in Civil Litigation. Ed can be reached at (905) 452-6873 or eupenieks@lawrences.com.

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