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SETTLE OR SUE?

I have written this report based on questions often asked of me while in private law practice in British Columbia and Alberta, Canada, since 1975. Although my first hand experience is limited to those jurisdictions, wherever possible I have written in non-legal terms and with general principles in mind.

Here is one of the most challenging questions you will ever face in the legal system:

If you are having a disagreement with someone, is it better to SETTLE that disagreement by a compromise, or is it better to SUE the other person in a court and to have a judge decide the outcome?

There is no simple answer that fits all situations. The best you can do is to consider these generally applicable factors.

1. Costs. The costs of successfully settling a matter will be less than the costs of going to court.
2. Certainty of closure. Settlement discussions are voluntary, and there are no rules or time limits that must be followed. As a result, time and money can be spent on settlement discussions without actually reaching a settlement.
3. Time. Settlement will take less time than a court process. However, as mentioned above, it is possible to spend time and money on settlement discussions without actually reaching a settlement.
4. Emotion, energy, and irritation. Using the legal system to solve disputes, whether by settlement discussions or through the courts, is an unhappy experience. However, in most cases, solving a dispute by settlement will cause you less annoyance than solving a dispute through the courts.
5. Standing on principle. Most people involved in a dispute believe that they are right, and that the other side is wrong. In a settlement, both sides usually compromise, which means they each reluctantly give up some part of what they believe to be right. On the other hand, some court decisions are a compromise of two competing positions, and some are completely in favour of one party and completely against the other. It is this latter court result that you are striving for if standing on principle is foremost in your mind.
6. Rigidity and finality. In settlement discussions there is a great deal of flexibility, and until you agree with the settlement, no decision can be forced upon you. Court processes are governed by a strict set of rules, with the result that the process is much more rigid. Further, at the end of a court process, a decision will be rendered by the judge whether you like it or not.

Given the above factors, here is a common sequence in trying to resolve a dispute.

1. Start with settlement discussions.
2. If the other side reasonably participates in those discussions, continue to a settlement.

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3. At any point during the discussions, either you or I (or both) may sense that settlement is not working. If this happens, turn to the courts.
4. As a variation of the above steps, in some situations it may be necessary to start a court process just to get the other side to participate in a settlement discussion. In this situation, the court process can be paused if settlement discussions begin and are reasonably proceeding.

If at the end of reading this, you feel a sense of frustration, then you are getting a brief taste of why answering the question "Settle or Sue?" is so challenging. This in turn leads me to my most common refrain. We will help you in any dispute, but it is always better to use our firm and the legal system to avoid disputes rather than to resolve disputes.

You wouldn't expect to read anything "legal" without some kind of caution - so here it is: This report is general information only and not to be relied upon without legal advice. For legal advice, call us.

I hope this helped answer your questions.

For more answers to common legal questions, please visit our website: www.salmonarmlaw.com

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