

Going To Court:

Employment Law
Litigation Tips





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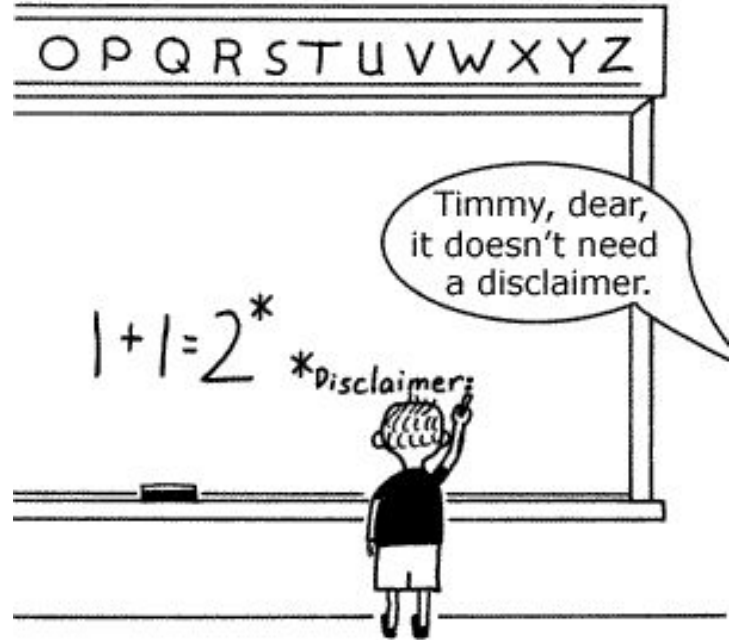
Spring LAW

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Timmy
doesn't need
a disclaimer
but we do...



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Presentation Roadmap

- The Who, What & How of Employment Litigation
- Tips to Save Time & Money
- The Why & the How of Avoiding Litigation
- Settling Versus Going to a Hearing
- If Litigation Cannot be Avoided
- Final Thoughts/Key Takeaways



The Who, What & How of Employment Litigation

Who - The Plaintiff and the Defendant

- This webinar is geared toward employers faced with litigation, in a non-unionized context
- The employee is typically the plaintiff/applicant
- The employer is typically the defendant/respondent

What Typically Leads to Litigation?

- **Wrongful Dismissals**
- **Workplace Harassment**
- **Human Rights Violations**
- **Breach of Contract**

Avenues for Taking Legal Action

- **Civil Action**
 - Regular
 - Small Claims
- **Human Rights Application/Complaint**
- **ESA Claim**
- **Other:**
 - Canada Labour Program

Civil Action General Steps

1.	General Litigation Steps	6.	Mandatory Mediation
2.	Statement of Claim (generally within 2 years of incident)	7.	Motions (optional)
3.	Statement of Defence (within 20 days)	8.	Exchange of factums and trial records
4.	Reply (not mandatory) (within 10 days)	9.	Trial (could be years after SOC)
5.	Examinations for Discovery	10.	Appeal (optional)

Small Claims Steps

1.	Plaintiff's Claim
2.	Defence (within 20 days)
3.	Defendant's Claim (within 20 days)
4.	Defence to Defendant's Claim (within 20 days)
3.	Settlement Conference
4.	Trial

Things to Consider

- Cost Awards
- Unpredictability
- Delay

Human Rights Claim

Claims of discrimination on the following grounds:

- Age
- Ancestry, colour, race
- Citizenship
- Ethnic origin
- Place of origin
- Creed
- Disability
- Family status
- Marital status
(including single status)
- Gender identity, gender expression
- Receipt of public assistance (in housing only)
- Record of offences (in employment only)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation.

Human Rights Steps

1.	Application (within 1 year of incident)	8.	Disclosure of Documents to be Relied on and Witnesses Statements (at least 21 days before hearing)
2.	Response	9.	Case Conference
3.	Reply	10.	Hearing (usually 1-2 years from Application)
4.	Mediation (optional)	11.	Decision (written weeks or months after Hearing)
5.	Notice of Hearing	12.	Request for Reconsideration (within 30 days after decision)
6.	Disclosure of Arguably Relevant Documents (45 days after Notice of Hearing)	13.	Judicial Review
7.	Disclosure of Documents to be Relied on and Witnesses Statements (at least 21 days before hearing)		<u>Optional:</u> Request for an Order, Summary Hearing...

Tips To Save Time & Money



Tips To Save Time & Money

- **Litigation Insurance**
- **Provide a chronology of events**
- **Gathering and saving evidence**
- **Organizing documents**
- **Be open to settlement (where possible)**

The Why & the How of Avoiding Litigation

Why Avoid Litigation?

- **Costs**
- **Time**
- **Stress**
- **Publicity & PR**

Best Practices To Avoid Litigation

- 1. Seek legal advice before acting**
 - *Ex. Constructive dismissals, terminations for cause*
- 2. Provide employees with employment contracts**
 - *Employment Standards Act notice vs. common law notice*
- 3. Have a solid termination provision**
 - *Unenforceable provisions do not reduce exposure*
- 4. Be open to compromise and settlements**
 - *As part of the cost of doing business*



Settling Versus Going To a Hearing

Settling Versus Going to a Hearing

- Understand the Strengths and weaknesses of your case
- What is the Strategy - How to make litigation work for you either way
- Get a litigation budget from your Legal Counsel
 - Fees can be unpredictable, cost awards won't cover everything you invested

**If Litigation Can't
Be Avoided**



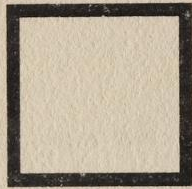
If Litigation Can't Be Avoided

- Anticipate costs
- Consider litigation insurance
- Be strategic (cost-benefit analysis)
- Address publicity/reputational concerns

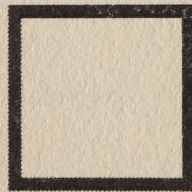
Final Thoughts/Key Takeaways



1st Priority



2nd Priority



3rd Priority

Final Thoughts/Key Takeaways

- Often best to avoid litigation
- Retain a lawyer
- Take steps in the beginning to ensure legal compliance

Questions?

To learn more about our team: <https://springlaw.ca/team/>

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