

QUIZ FOR CLIENTS CONSIDERING LITIGATION OR MEDIATION

Introduction

Studies have shown that people who go to court are rarely satisfied. Even amongst those who win, clients rate themselves as satisfied only 25% of the time. Any decision has risks attached to it. Deciding to do nothing has risks, settling has risks, litigation has risks. Mediation is about understanding the risks attached to options and making informed choices. Mediation is much more about **risk analysis** than about **fairness**. To help you decide what you should do in mediation, and make you more informed about your choices to settle or to proceed to court, I have prepared an intensive *Litigation Risk Analysis* form. I often provide it to parties in mediation. Counsel have told me that the questions posed in the form help to focus their clients' minds and to develop a realistic sense of the litigation process, and mediation as an alternative. This quiz can also be found on my website (www.patricialane.bc.ca).

To get you started, here is a shorter quiz to get you thinking about the real choices you face in choosing litigation over settlement, or vice versa. It should also help you to develop a better idea of what dollar figure you should consider as your "real bottom line."

Part I. How long will it take and what will it cost?		
1.	How much will it cost? What is your lawyer's estimate of what you should expect to spend if your case goes to court? (Remember that in many cases multiple court dates are necessary, as well as discoveries and other pre-trial proceedings. Include ALL of these here, in a dollar amount.)	\$
2.	How long will it take? How long will it be until you have a final and binding decision? (Add additional weeks if your case is likely to get bumped from the first trial date. In some Vancouver courts, 40% of cases get bumped!)	weeks
AT THIS POINT YOU KNOW THAT YOU WILL WAIT _____ WEEKS TO GET A DECISION WHICH WILL COST YOU _____ THOUSAND DOLLARS.		
Part II. What will you win?		
3.	Best day in court Ask your lawyer what you might get if the judge sees everything your way and nothing the other side's way.	\$

4.	<p>Worst day in court Ask your lawyer what you might get if the judge sees everything <i>their</i> way and agrees with their experts and their lawyer.</p>	\$
5.	<p>What does your lawyer think? Ask your lawyer for his best percentage estimate that things will go the way he hopes. Remember that court cases happen because experts disagree. Yes, you have a good lawyer. So do they. You have a good case. They think they do, too. Often judges are influenced by specific facts as well as the law. In most family cases, the gamble is so great that this "certainty of a complete win" figure will not be higher than 65%. In other types of cases, seasoned litigation lawyers know you should often discount the best case by 75% in case you draw the wrong judge on the wrong day. Judges do vary in both opinions and competence and you have no choice about your judge.</p>	%
6.	<p>Now take the percentage in Question 5 and multiply it by the dollar amount in Question 3. This is what you can expect to win on a realistic day in court.</p>	\$
7.	<p>In all risk management, it's important to know the upside AND the downside. The answer to Question 6 is your realistic upside. Now what is your potential downside? Put the dollar-amount answer from Question 4 here.</p>	\$
	<p>Now subtract your legal fees.</p>	\$
	<p>Now add in the portion of costs you expect to pay if you win, and which you will pay if you lose.</p>	\$
<p>Now talk to your lawyer about collection problems. The biggest award in the world is worthless if you can't collect. This should give you some insight into the real risks you face if you go to litigation, just in terms of delay and costs.</p>		
<p>Part 3. What are the hidden costs?</p>		
8.	<p>How many hours per week will you spend physical, emotional or mental energy on this case? Look at the answer from Question 2 and ask yourself how many hours you will spend working on this case in those weeks. You will have to think about it, collect papers and documents, swear affidavits, talk to your lawyer, be mad or upset or nervous, lose sleep, strategize, travel to court/your lawyer's office.</p>	hours
9.	<p>Where will you find that time? Most of us are too busy now. Something will have to give. Many people find it harder to work productively; others find it taxes their parenting or partnering skills; others find their activities or hobbies harder or even impossible. That's just the worrying. Real time will have to be found to search for documents, visit your lawyer, attend discoveries and trial and prepare for all these</p>	

	hearings. What will you not do to make room for this? Calculate hours lost for each of the following, and the dollar cost for the first three.		
	Lost time from work (from now to final hearing)	hours	\$
	Productivity lost from work	hours	\$
	Lost time with children (from now to final hearing)	hours	\$
	Percentage decrease in quality of parenting	%	
	Hours lost from time with spouse or new partner		
	Hours not spent on hobbies (reading, music, etc.)		
	Hours not available to volunteer (coaching, driving, etc.)		
10.	Total the dollar amounts listed in Question 9. Add that total to the legal fees shown in Question 7. These are real costs that will be incurred.		
IV. Paying for peace of mind			
11.	<p>How much would you be prepared to pay to not go through the litigation?</p> <p>If you are in business for yourself, you know that if you lose focus this will cost plenty and is often hard to make up. How much are you prepared to pay to remain fully available to your business?</p> <p>If you are a parent, you know that childhood is short and precious. How much are you prepared to pay to remain fully available to your children?</p> <p>Try to be realistic about these numbers. They are real amounts that should go into the equation when you are assessing the risk of not settling.</p>		\$
12.	Add together the dollar amounts you've calculated for Question 11 and subtract them from the numbers of both the best and worst day in court. The total is:		\$
13.	<p>Add up the actual dollar amounts you listed above and add them to the lawyer's fees you listed above.</p> <p>This is the total that will give you a realistic assessment of a sensible approach to settlement early in the process. This is not to say this is the number you should settle for. You may be able to do much better than this. But knowing this number may help to give you a more solid foundation for deciding whether an offer they make is much too low, or is in the acceptable range.</p>		\$