



## Settlement by Scott D. Abel

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Lawyers have an obligation when they are retained by a client, to provide quality service to that client. One service that is often overlooked, or underappreciated, is the lawyer providing an opinion to the client, and recommending that settlement discussions take place.

Simply because a lawyer recommends settling a case, does not mean that the lawyer does not believe in your case, or is no longer “on your side”.

A lawyer is there to provide more than representation in court. A lawyer has an obligation, and you should expect your lawyer, to discuss the strengths and weaknesses of your case, and the benefits of settlement.

Why should anyone consider settling their case without going to court? There are two obvious reasons for doing so.

First, often times an agreement that is reached with the benefit of both parties being involved, creates a situation in which each party can walk away thinking that they have won. In court proceedings, usually one side wins, and the other side loses. That is what a judge is being asked to do. However, if the parties can sit down and work out their disagreements, often times an agreement can be reached which

each party can live with. The parties may not believe they won, but at least they will not walk away as the loser of a contested matter.

Secondly, is the cost and expense of proceeding to trial. Depending on the length of the trial, and the nature of the proceedings, legal fees and expenses can become overwhelming. Couple the financial cost with the emotional cost of proceeding to trial, with no guarantee of success, and the desire to proceed to court can quickly fade.

Settling matters provides clients with knowledge and clear expectations. The client can control whether or not he wishes to settle the matter, with the advice and input of his or her lawyer. If the matter proceeds to court, the client is leaving the decision in the hands of a judge.

Your lawyer should discuss settlement at all stages of the court proceedings, not just the day before trial.

A soon to be released American study of civil lawsuits, suggests that settling matters is often a better course of action for plaintiffs. The study showed that most plaintiffs who turned down a settlement offer and insisted on

taking their cases to trial wound up with less money, than what was offered.

The court system in Manitoba, is geared towards encouraging settlement, rather than encouraging litigation. In family matters, before a matter can proceed to trial, a pre-trial conference is to be held, where the issues for trial are discussed with a judge, who helps with settlement discussion.

In family and civil matters, outside mediators can be hired to help the parties negotiate a settlement, which focuses on a resolution, rather than legal posturing.

Judges themselves are becoming more involved, through a process called Judicially Assisted Dispute Resolution. The process involves a judge meeting with the parties and their lawyers, in an informal setting, trying to help the parties reach an agreement.

With the legal system geared towards settlement, people should not be surprised that their lawyers are discussing settlement with them. Such discussions are in the best interests of the legal system, and more importantly, the best interests of clients.