

COMMERCIAL LITIGATION

Top Tips to Avoid Litigation



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Time and time again I see clients embroiled in litigation that could have been prevented. Here are my top practical tips for side stepping disputes.

1. Create Clear Agreements – In Writing

It may seem like over-kill, but be sure to put any and all agreements in writing and address all key concerns in the agreements. This applies to all situations – whether you are the business owner or the client. Even a quick email confirmation is better than no paper trail at all – and will go a long way in avoiding misunderstandings and preventing litigation.

2. Read the Agreement – Carefully!

Never assume that an agreement includes everything you've discussed – you actually have to read and understand it – and the whole thing! If you struggle to understand the agreement, consult a lawyer. Never be embarrassed to ask for clarification on sections you don't understand or on language that seems vague. Don't be afraid to challenge agreements that don't address your interests or concerns.

3. Consider (and limit) Your Contractual Liability

While no one can be sure what might happen in the future, there are steps you can take proactively to prevent future disputes. Try your best to anticipate which areas of the contract might be problematic and plan for that. This could mean choosing or negotiating business terms by defining your business responsibilities and those of your customers, partners, and vendors.

4. Don't 'Check Out' Once the Contract is Signed

Signing the contract is not the moment of happily ever after. A contract is only of value when you understand its terms and track its performance. It is possible to unknowingly void or lose the contractual protections by either not following the terms yourself or allowing the other party to default. Be conscious of the contract – even after it is no longer top of mind.

5. If Something Smells 'Fishy' – It Probably Is

When something seems too good to be true – it often is. A higher-than-normal return on investment or a chance to avoid costs that everyone else seems to be paying are both indications that it is time to call your lawyer for a non-partial second opinion.

6. Keep Good Records

So – you're happy with the contract and everything has been confirmed and signed. Now is not the time to push the agreement out of mind. A 'good' contract is no good if you don't keep it organized, accessible and concise. Should you be faced with a lawsuit, good records could be your saving grace.

7. Lean on Your Staff

Invest in hiring and training good employees – and keep them in the loop. They will become your allies on the front lines. Assist them in understanding your business and your expectations. Consider training them to spot potential liabilities and to report them.

8. Choose Your Business Partners Carefully

While it may be tempting to jump on each and every business opportunity that presents itself, it's important to be vigilant about who you do business with. Take time to research potential clients before committing to doing business with them. Make sure that you have a practical exit mechanism from a long-term business relationship and, if relationships take a turn for the worse, don't be afraid to end the relationships quickly and professionally.

9. Pick Up the Phone

Consistent communication is one of the best ways to avoid business conflict. Answer your phone when it rings, return missed calls promptly, deal with unhappy clients politely and efficiently. Letting misunderstandings stew will only be a detriment to your business in the long run. After important phone conversations, it is a good idea to send a written memo, preferably by email, to your counterpart for records.

10. Be Proactive

While it can be uncomfortable, it is best to act on problems and deal with mistakes as quickly as possible. Take immediate steps to deal with issues that arise – the longer

things are left unaddressed, the more difficult it becomes to resolve them. Train your team to spot potential issues and instruct them to report them right away so that they can be dealt with.

11. Be Willing to Compromise

Compromise can have a bad reputation in the business world – but that couldn't be further from the truth. Often, to make a deal work, you must be willing to compromise. Negotiations are key to any successful agreement. Stay reasonable and level-headed when making or giving concessions.

12. Seek Legal Guidance

You must always be proactive as to when to seek legal advice. You should consult a legal professional long before a problem arises. Being proactive on this front could prevent small issues from becoming large problems. No one likes paying for professional services but it almost always less expensive to hire them to keep you out of trouble than paying them to get you out of trouble. Consider doing so an investment in your business.

Song is a senior litigator, with extensive experience representing his clients in complex litigation. Song bridges cultural differences to help newcomer business professionals. If you would like to learn more about how to effectively navigate the Canadian legal system, please get in touch.



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