

## Fact Sheet 13 – Settlement

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The people on opposing sides in a court case or legal dispute are called *the parties* to the case or the dispute. A *settlement* is an agreement between the parties. It generally involves one party agreeing to pay compensation to the other party or meet the other party's demands, and the other party agreeing to take no further legal action on their claim.

Sometimes settlement happens early in a case – around the time that one party begins legal action by *lodging a claim* with a court. Often settlement takes place just before the court is about to listen to the evidence or *hear the claim*.

### Why settle?

Settlement of a claim can have a number of advantages:

- Settling before the hearing of the case can mean significant savings in legal costs.
- Settlement can take the risk out of the case. It lets parties see exactly how much they will receive after paying their own legal costs and other expenses such as refunds to government authorities or bills for medical treatment and reports by expert witnesses. At any settlement discussions the parties have a chance to decide what they are willing to accept.
- Settlement avoids the stress of giving evidence and being cross-examined by the opposing legal representative.

However, not all cases can or should be settled. Sometimes the amount being offered by one party is simply too little. Sometimes the amount sought is unrealistically large. Occasionally the case involves a particularly important issue that one or other party wishes to have decided by the court.

### How can I reach a settlement?

Settlement is usually reached after discussions or negotiations between the lawyers acting for each party, each acting on the instructions of their clients.

Sometimes discussions about settlement involve mediation. In a mediation the parties and their lawyers discuss the issues with the help of a mediator, whose role is to help the parties to find a solution that is acceptable to all parties. Mediation is very different from a hearing because it is less formal and not about winning or losing.

### **How do I know if I should settle?**

Solicitors and barristers who are experienced in the relevant area of law will advise their clients about the strength of their case, the risks they might face if the case goes to a hearing, and the range of compensation or orders that the court is likely to award or make after a hearing.

Even highly skilled, experienced lawyers cannot always make accurate predictions about what a court will decide because there are too many factors beyond their control. However, clients should consider their lawyer's advice carefully before making any decision about settlement — even if that advice is disappointing.

The lawyer has a duty to offer objective advice about the prospects of success and the appropriateness of a settlement offer, but cannot make the final decision for the client. In the end, it is up to the client to decide whether to settle or to go ahead with court action. Lawyers should not apply undue pressure on a client to settle but can cease to act for a client who refuses to accept their professional advice. [Further information can be found on the OLSC Fact Sheet **Hiring a Lawyer**]

### **How do I instruct my lawyer about settlement?**

A lawyer must not settle a case without the client's clear instructions, or unduly pressure the client into settling if the client wishes to proceed with the action.

Usually lawyers will require their clients' instructions in writing. The lawyer might write these instructions for the client, but the client approves them. If necessary, the client might use an interpreter or translator in discussions about settling a case.

Written instructions about settlement usually include information about how much the client will receive after paying their legal costs and other expenses. Clients therefore have to make sure that their lawyers have all relevant information about expenses they have already paid or still have to pay.

Before settlement is executed, the lawyer must also disclose to the client an estimate of costs payable by the client and an estimate of the amount recoverable from the other side on account of costs.

### **Have I been pressured to settle?**

The settlement process can be very stressful and occasionally disappointing, especially where lawyers advise settlement for a lower amount than originally estimated. This can happen when the evidence for the other side weakens a case that appeared strong at the start. The first time that this evidence is presented might be at court.

**Can I change my mind after settlement?**

No. Settlements are final. Usually they include a requirement that the compensation is accepted as final payment and no further legal action will be taken.

For this reason it is important for the client and the lawyer to discuss the terms of the settlement carefully and fully before the client decides on the future course of action — whether or not to settle.