

## The Duty to Settle

Plan members have, on occasion, contacted us with concerns about their lawyer urging them to accept an offer to settle that they think is unfair. The member feels that the lawyer is not acting in their best interests, or would be abandoning them at a crucial time. While most lawyers will continue to act for you even if you do not accept their advice, if a lawyer believes that you are insisting on a course of action that is entirely unreasonable, they may, in certain circumstances, choose to end the relationship. Some clients are under the mistaken perception that a lawyer is obligated to represent them “no matter what”.

It is important to be aware that the Rules of Professional Conduct\* that govern lawyers, impose certain ethical obligations to encourage reasonable settlement. Why would they encourage you to settle if you, the paying client, do not want to? If the lawyer believes, based on their knowledge and experience, that continuing legal proceedings will not be of benefit to you, they are required to let you know so that you are spared the wasted time and expense involved. In addition, if a reasonable offer is presented to you and you do not accept it, you risk having costs awarded against you if you proceed. This means that you may have to pay some or all of the costs of the other side in addition to your own.

A lawyer may have a justifiable cause for terminating their representation of a client if the client refuses to accept and act upon the lawyer’s advice on a significant point, or is generally uncooperative. You may disagree with your lawyer and feel that you have every right to direct your case as you wish. And you do. But a lawyer is not obliged to continue representing you if there is a loss of confidence in the relationship. You may have to retain another lawyer.

There are significant limitations on a lawyer’s right to withdraw. Your lawyer may not abandon you at a critical point in your proceeding, where doing so would put you in a position of considerable disadvantage. The lawyer must provide reasonable notice of withdrawing from representation and most importantly, a lawyer should not use the threat of withdrawal to force you into a hasty decision on a difficult question.

Often a client’s determination to pursue a matter despite what the lawyer considers to be a reasonable offer is based on feelings of injustice, desire for revenge, or “to make a point”. These are all legitimate feelings, but are not what a court will usually consider when making a determination. You are certainly entitled to know why your lawyer believes the offer is “reasonable” and at that point you should seriously consider whether it makes sense to proceed.

\*In the Province of Ontario. Other provinces have similar legislation.