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Blunders and Lost Opportunities

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The law is an ocean with many differing depths and currents. For those unfamiliar with the system it can become a process riddled with anxiety, stress, and agitation. While many individuals choose to represent themselves, it is not always the wise choice and you will likely find the primary goal of most legal representatives is to alleviate the stress and anxiety from their clients.

It is not uncommon for self-represented individuals to fumble with the rules of the Small Claims Court. With the number of rules which must be followed throughout any legal proceeding, it can be difficult for someone unfamiliar with the process to comply fully as each Court and Tribunal can be nuanced. Often, self-represented individuals will miss important filing deadlines as they are unaware of the five-day post rule, or they do not realize that it is their responsibility to summons the author of an expert report introduced by the opposing party if they wish to cross-examine.

Limitation Periods:

One of the biggest lost opportunities for a self-represented individual is being unaware of how long they have to commence a proceeding. This is known within the legal community as the limitation period. Limitation periods can vary for different types of legal action with some being as short as ten days, and some providing options for extending beyond the standard two years. [The Limitations Act, 2002¹](#) section 4 and 5 set out the general time period and explain the discoverability principle which applies to some areas of law. If you are unsure of when your limitation period expires that can cause some serious problems. If you file your claim after the limitation period ends you could end up paying the Defendant's legal fees as a sort of punishment for having wasted the Court's time. If ever you are unsure, it may be best to act quickly while memories are fresh and evidence can be easily obtained or to reach out to a paralegal or lawyer to request an assessment of your matter's limitation period.

¹ Limitations Act, 2002, S.O. 2002, c. 24, Sched. B

Drafting your Pleadings:

When completing your court forms, it may be tempting to include your full life story. It's only natural to want the Judge on your side. This common mistake could be costly as many facts may be completely irrelevant or damaging to your matter. Many self-represented individuals can be blinded by anger, anxiety or stress which causes them difficulty in critically analysing their matters to determine which facts are necessary and relevant to their cause of action. This emotion often leads to self-represented individuals missing a key element in their pleadings. Having a paralegal or lawyer review your case and break it down can assist in making your pleadings clear and concise. This can not only make the process smoother but may lead to a faster resolution.

Offers to Settle:

Many times, throughout the legal process one side will send an offer to settle. This offer may be a reasonable, unreasonable, or somewhere in the middle. It is almost a guarantee this offer will not equal the full amount claimed, and you may feel that you simply cannot justify accepting it. You must remember, the courts strongly encourage parties to at least attempt resolution outside of the courtroom and failing to accept a reasonable offer could lead to you paying costs to the opposing party for having wasted everyone's time. By making offers back and forth, not only do you increase the likelihood of reaching a settlement, you allow for creative solutions which may not be permitted by the Court. In settlement negotiations anything can be offered from services, food, money, or even buying tickets to a sport game for the other party which really opens you up to finding a workable solution.

Many paralegals and lawyers offer a free consultation to help narrow the issues of your potential case. If you feel like the legal professional has a good understanding of your case, you may have the option of hiring them to act on your behalf for a limited scope (perhaps only drafting your pleadings, or assisting you in attending a Settlement Conference), or to navigate the full matter on your behalf. Hiring someone to handle your legal matter can assist you in many ways by possibly ending your case sooner, advising you of limitation periods, identifying the true value your case, identifying which causes of action you may be able to pursue, and identifying realistic offers.

While this provides a brief overview, the law can be very complex, and many aspects are case specific. If you have an issue, call a paralegal at Cochrane Moore LLP in Oshawa for a free consultation.

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