

# How to Survive Costly Disagreements

*Lawsuits over contracts or leases can be crippling for SMEs*

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Getting served with a lawsuit as a small business operator can be devastating. Just the thought of lawyer fees is daunting; to lose the case could cost the company its success.

But there are ways to avoid going to court and minimize hefty legal fees, say lawyers who specialize in assisting small businesses.

"Often disputes arise because of a communication breakdown," says Meldon Ellis, a lawyer with Ellis Business Lawyers, a Vancouver firm that provides services to small business in collections law and dispute resolution. "One of the first things we try to do is open those lines of communications."

To accommodate small business budgets, Mr. Ellis's firm charges a flat fee or a contingency fee, or collects a portion of settlement if a case is won. The structure is generally unique for a law firm.

Mr. Ellis is a qualified mediator and engages clients in mediating their disputes, which significantly saves costs. Arbitration is also a cost-effective means of settling a dispute, which involves a qualified third party imposing a binding decision much like a judge.

Most of Mr. Ellis's clients are trying to collect money owed from other businesses, a common dispute that often involves sums of money too small to sue for. In fact, many businesses don't even bother taking action to collect because of the cost of the process, Mr. Ellis says. "For many businesses, it's cost-prohibitive to pursue."

However, some of his clients are able retain his services to collect as little as \$5,000, he says. "We take a practical approach to the litigation that arises and use it as an opportunity to educate our clients about how the problem can be avoided in the future."

Small businesses can also find themselves involved in lawsuits over contracts, commercial leases, employee matters and partnership arrangements that turn sour. In many cases, these can be avoided by taking pro-active measures to ensure all agreements, contracts and other arrangements are structured properly at the outset.

Toronto lawyer Christopher Caruana also tailors his practice to small-and medium-sized business clients. He emphasizes measures they can take to avert litigation in the event of a dispute.

For disagreements over money owed by the operator's business, Mr. Caruana says maintaining adequate cash flow is imperative, along with business interruption or disability insurance.

If a customer is accruing arrears in payments, switch to a collect-on-delivery method of payment, he suggests. "Some business owners say 'I've got a really good customer, I just don't want to sour the relationship,' so the debt just piles up. But don't extend the credit," because once it warrants legal action, "you're just throwing good money after bad."

On the other hand, he warns, if your business is struggling and rent money is scarce, "don't sneak out in the middle of the night.

"If you take \$50,000 worth of furniture out of an office you're renting, you can get hit with damages of \$100,000. It's a penalty of double the amount" should the matter end up in court.

He says it's better to make partial payments for rent or supplies than not at all to demonstrate goodwill, and avoid making "empty" promises to pay at a later date. The same goes for payments to the bank on a loan or credit card, he says.

Most importantly, keep a paper trail, including e-mails, so there's a record of agreements and communications should a matter result in a lawsuit. "I'm more surprised when people come in with all their papers and have them in order," Mr. Caruana says. "E-mail is fantastic in this regard."