



Lawsuits 101

or

How I Learned to Stop Worrying and Love Litigation

Introduction

- Lawsuits can be unpredictable, lots of different procedural things can happen, impossible to cover all potential litigation steps in one session
- This presentation covers the first few steps of a typical lawsuit faced by our Members for matters such as:
 - Slip and falls
 - Breach of contract
 - Wrongful dismissal
- We are covering actions in the Court of King's Bench, not Court of Justice, AKA small claims court

Scope of the Presentation

- Not going to cover settlement negotiations, mediations, trial, court applications
- Goal is to give you a roadmap for the early stages of a lawsuit and provide guidance on how you can respond most effectively
- Going to use a fictitious lawsuit as an example: a resident with a randomly generated name (Dan Jackson) has slipped in the parking lot of a bingo hall owned by the Town of Albertaville and sued for damages

Agenda

- (1) Pleadings
- (2) Document Disclosure
- (3) Questioning
- (4) Questions

Part 1: Pleadings

Statement of Claim

- Lawsuits are typically started by filing a Statement of Claim at the courthouse
- This document contains the following information:
 - The parties to the lawsuit: who is suing (plaintiff) and who is being sued (defendant)
 - The cause of action alleged by the plaintiff (negligence, breach of contract, etc.)
 - The facts the plaintiff relies on to prove the cause of action
 - The remedy the plaintiff is seeking (almost always money)

Statement of Claim (Pt. 2)

- Often template documents, especially in slip and fall or other personal injury cases
- Tendency is to name multiple defendants, allege all sorts of wrongdoing and claim an exorbitant amount in damages
- Not meant to be offensive, just plaintiff's counsel covering their bases
- Sets the scope of the lawsuit and determines what documents and witness testimony will be relevant later on
- Must be filed within two years of the date of loss, and served within one year of filing

Statement of Defence

- Document filed by the defendant setting out its version of events and why a court should reject the causes of action advanced in the Statement of Claim
- Often a template document that lists all possible defences
- Not meant to be offensive, just defence counsel covering their bases
- Must be filed and served within twenty days of the Statement of Claim being served, however this deadline is often extended by agreement of plaintiff and defence counsel

Notice to Co-Defendant

- Document filed by a defendant which states that another defendant should be fully or partially responsible for any losses suffered by the plaintiff
- Example: Dan sues Albertaville and snow removal contractor. Albertaville files a Statement of Defence stating it was not responsible, and a Notice to Co-Defendant stating that the contractor is responsible

Third Party Claim

- Document filed by a defendant to add a new party to the lawsuit that may be fully or partially responsible for the plaintiff's losses
- Example: Dan sues Albertaville (but not contractor). Albertaville files a Statement of Defence stating it was not responsible, then files a Third Party Claim adding the contractor to the lawsuit

Pleadings - What Can You Do?

- Don't panic!
- Report to your insurer immediately if you haven't already
- Consider anyone else who might be responsible and advise your insurer
 - Contractors, sub-contractors
 - Adjacent property owners
 - Individuals who created a dangerous situation
- Consider who in your organization might have knowledge of the situation and give that information to your insurer/lawyer
- Begin compiling relevant documents

Part 2: Document Disclosure

Affidavit of Records

- Parties in a lawsuit exchange relevant and material documents by swearing an Affidavit of Records
- This is a sworn document listing the relevant and material documents in a party's possession
- “Relevant and material” means a document that could help prove or disprove the version of events and cause of action alleged in the Statement of Claim
- Can also include documents that might point to the existence of other relevant and material evidence

Affidavit of Records (Pt. 2)

- Affidavit of Records lists documents disclosed to the other parties and documents for which privilege is claimed
- Privileged documents include communications with legal counsel and records created for the dominant purpose of litigation, neither of which need to be disclosed
- The plaintiff must serve their Affidavit of Records on the defendants within three months of the first Statement of Defence being served

Affidavit of Records (Pt. 3)

- If the defendant is an organization, its Affidavit of Records will be sworn by its representative
- The representative is the individual who represents the organization in the lawsuit. This means they swear the Affidavit of Records, attend questioning, and are often the main point of contact with legal counsel
- Defendant's Affidavit of Records must be served within two months of receiving the plaintiff's Affidavit of Records

Document Disclosure – What Can You Do?

- Perform a thorough document search as soon as possible
 - Digital and physical files
 - Text messages
 - Email accounts (including for departed employees)
 - Records from online portals
- Ask everyone involved to perform a thorough search
- Store everything you find in one place
- Send absolutely every document that even remotely touches on the lawsuit to your counsel, let them assess whether it is relevant

Part 3: Questioning

Questioning of Defendant's Representative

- Plaintiff's lawyer asks the Defendant's representative questions under oath about anything relevant to the lawsuit
- The defendant's representative has an obligation to make themselves as informed as reasonably possible about the facts of the lawsuit
- Typically virtual, with a court reporter present to make a verbatim transcript
- Defendant's lawyer is present to ensure that plaintiff's lawyer only asks proper questions and to object if they ask anything improper

Questioning of Defendant's Representative (Pt. 2)

- Defendant's lawyer cannot answer questions for the defendant and cannot assist them in answering questions or discuss their evidence with them during the questioning
- Questioning is focused on facts in the knowledge of the person being questioned, not opinions, theories, or suppositions
- Questioning of the defendant's representative will generally focus on liability: did the defendant do something wrong that harmed the plaintiff?

Questioning of Plaintiff

- Defendant's lawyer asks the plaintiff questions about anything relevant to the lawsuit
- Questioning of the plaintiff will focus on both liability and damages, i.e. what harm has the defendant allegedly caused to the plaintiff
- Counsel for both parties use the questioning process to assess the parties' credibility and how well they might do if they testified at trial. This is useful in assessing the risks of going to trial vs. settling the case early

Undertakings

- If during questioning a party
 - (a) doesn't the answer to a question they should have known if they were reasonably prepared, or
 - (b) it emerges that there are other relevant and material documents that have not been disclosed
- The questioning lawyer can ask for an undertaking to (a) answer the question in writing, or (b) provide the document
- The lawyer of the party being questioned will decide whether to grant the undertaking or refuse it

Undertakings (Pt. 2)

- Once the party being questioned obtains the information and/or record, their lawyer will prepare answers to the undertakings and serve them on the other party
- A party can be questioned on their answers to undertakings

Questioning: What Can You Do?

- Don't panic. Easy to get nervous, but once questioning gets started, it can actually be pretty boring!
- Take time to prepare by:
 - Reviewing your documents and the other parties' documents
 - Speaking with people in your organization who have relevant information
 - Listening to your lawyer's advice and asking them any questions you have about the process
- Tell the truth, don't try to spin things favourably

Part 4: Questions?