



**Legal
Services**

The World of Litigation - Some of the Basics (Part A)

Reasons why litigation occurs

Why do people commence litigation?

A common reason why people take other people to court is that the first party considers that the other party has 'wronged' them in some way. It may be the case that the second party owes the first party money. This may arise out of a contract being breached because of the second party's actions or inactions, or the second party has been negligent and caused the first party harm (for example, through a motor vehicle accident).

The person that commences action against someone is called 'the plaintiff'. The person that is being sued by the plaintiff is usually called 'the defendant' (but may also be called 'the respondent').

Litigation is a means by which, should the parties not reach an agreement between themselves (with or without the involvement of lawyers), their dispute can be heard and determined by a Judge in a Court of Law. The Judge is an independent third party in the Judicial System that has the power to decide, according to law, whether the first party is entitled to receive what they are seeking or whether their case should be dismissed. Sometimes, the defendant may make a 'counterclaim' against the plaintiff. This means that although the Plaintiff is seeking a remedy from the defendant, in the same proceeding, the defendant is seeking a remedy from the Plaintiff.

What to consider before commencing litigation?

Before a plaintiff commences litigation, you should weigh up whether or not it is worth commencing litigation against the defendant. Some important considerations are:

- Whether the defendant has assets that the plaintiff may seize and sell to satisfy a judgment (in the event that they are successful);
- Whether the plaintiff has a good case against the defendant. This is called 'prospects of success'. The plaintiff will need to take into account the strength of their arguments, the quality of their evidence and what defence the defendant might raise;
- The costs of conducting the litigation (including Court costs and legal costs). If the plaintiff is unsuccessful, the defendant can ask the Court for the plaintiff to pay some or all of their legal costs (depending upon the circumstances).

Prior to commencing litigation, you should seek independent legal advice on your prospects of success against the defendant.

This factsheet is for general information purposes only. You should seek independent legal advice in respect to your specific circumstances.

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