

November 16, 2018

Kent Thomson Interviewed by *Lexpert Magazine* About Balancing Interests of In-House and External Litigation Counsel

In an article published in the November/December issue of *Lexpert Magazine*, Davies partner Kent Thomson shares his insights on how to balance the competing perspectives of in-house and external litigation counsel in difficult and contentious cases.

Kent noted that the kind of cases that may force a company to proceed to trial rather than take a more conciliatory approach are those in which senior officers or directors of a corporation have been accused of dishonest or disreputable behaviour that calls into question their integrity and business ethics. “Even when there’s nothing to the allegations, those are the sorts of cases that, as external counsel, you recognize at the outset are impossible to settle,” he says. “Complete vindication, unless the plaintiff is prepared to capitulate and walk away, is what the company usually wants.”

Kent explains that in contentious, high-stakes litigation in which emotions run high, a significant component of his responsibility is to “preach restraint. It’s to strongly encourage people to exercise caution, to prevent them from making mistakes in the heat of the moment by marching down paths they shouldn’t be on, making sure people take a deep breath and proceed very carefully. Basically, exercising sound professional judgment.”

In less extreme cases, Kent believes “the great majority should settle,” and he may well urge settlement even when the in-house lawyer doesn’t have an appetite for early resolution. Conversely, in instances in which the in-house counsel wants to settle despite an excellent chance of prevailing at trial, Kent says his job then becomes making sure the in-house counsel is properly advised of the merits of the case and is making an informed decision to settle on the best terms reasonably possible.

“It would be the very rare case where I would stand between a client and a settlement. It’s almost always the reverse. I spend a great deal of time talking clients out of litigation, convincing them it’s not a wise or productive strategy,” he says.