

Limit on Costs of Cases Involving Multiple Processes

Basis of Calculation for Small Claims Court Costs



Typically, with some exceptions, [s. 29](#) of the *Courts of Justice Act*, [R.S.O. 1990, c. C.43](#) (the "*CJA*") limits a costs award, for the portion as reimbursement to a litigant for expenses for representation (lawyer, student-at-law, or paralegal) to fifteen (15%) percent of the total value of the claim. Of course, this is always subject to the discretion of the Judge and some judges prefer to view the limit as applicable based on the final award rather than based on the amount of the claim. Specially, [s. 29](#) of the *CJA* states:

An award of costs in the Small Claims Court, other than disbursements, shall not exceed 15 per cent of the amount claimed or the value of the property sought to be recovered unless the court considers it necessary in the interests of justice to penalize a party or a party's representative for unreasonable behaviour in the proceeding.

Whereas, at the time of this writing, [the Small Claims Court jurisdiction is limited to claims up to a maximum of twenty-five thousand \(\\$25,000.00\) dollars per Plaintiff](#), the general limit on reimbursement for representation expenses is three thousand seven hundred fifty (\$3,750.00) dollars, being the fifteen (15%) percent of the maximum claim limit. As indicated, this limit is subject to [exceptions for penalties as sanctions or deterrent](#) for unreasonable behaviour in the proceeding; however, the question of what is deemed a "proceeding" often arises as does the question of what happens to the limit when there are joined together as multiple proceedings heard concurrently such as is commonplace for matters involving a Plaintiff's Claim and a Defendant's Claim.

Per the Divisional Court in the matter of *10.1 Inc. v. 2248951 Ontario Inc.*, [2018 ONSC 381](#), where multiple proceedings are heard concurrently, such as a Plaintiff's Claim and a Defendant's Claim, the general fifteen (15%) limit is available based on

the combined amount of the proceedings:

[53] There is no reason why the amount of the defendant's claim should not be considered when determining costs under s. 29. Certainly the defendant would have insisted that costs be calculated on the amount of its claim had it been successful in this case. Parties in Small Claims Court proceedings must understand that there are potential adverse costs consequences if they exaggerate or inflate their claims or advance unmeritorious counter-claims. This, too, promotes settlement. See: Zuker and Winny, Ontario Small Claims Court Practice, 2018, at p. 58:

In cases involving a defendant's claim, the amount claimed in the defendant's claim and the amount claimed in the plaintiff's claim are added to determine the "amount claimed" for the purposes of s. 29 [citations omitted].

[54] The appellant argues that the Small Claims Court cannot award costs on the combined total of the plaintiff's and defendant's claims (\$35,500 in this case) because that amount exceeds the \$25,000 monetary limit of the Small Claims Court. I do not agree. There is no dispute that the Small Claims Court has the jurisdiction to hear both the plaintiff's claim and defendant's claim when the combined total of the two claims exceeds \$25,000, provided that each party's claim is under the monetary limit. Section 29 does not increase the monetary limit of the court, but sets out a method for calculating the maximum costs that the court can award in any particular case. Clearly the cost associated with a case involving a plaintiff's claim and a defendant's claim will usually exceed the costs of a case with only one claim, and it is only logical that the Deputy Judge can take into account the value of both claims when determining the maximum costs that can be awarded.

Summary Comment

As stated by the Divisional Court in *10.1 Inc.* by basing calculation of the fifteen (15%) percent on the amount claimed, including the combined claims where multiple processes are involved, parties are encouraged to carefully consider settlement positions. Additionally, the risk of substantial costs penalties

discourages frivolous processes whereas, if the limit was stuck at a maximum of fifteen (15%) percent of twenty five thousand (\$25,000) dollars, a Defendant would be without discouragement from bringing a frivolous counterclaim.

With the flexibility shown in *10.1 Inc.*, among other cases, the costs rules for the Small Claims Court provide a reasonable and effective control mechanism that balances both the need to reimburse successful parties for a substantial portion, and perhaps all, of the costs incurred for representation along with the encouragement to engage in constructive settlement discussions and discouragement of frivolous litigation.