Monetary Jurisdiction

Action Limits Within Small Claims

In Small Claims Court litigation, from time-to-time, two or more Plaintiffs were harmed by the same Defendant. Often the would-be plaintiffs speak of damages approaching or above, the Small Claims Court jurisdictional $25,000 maximum. The Plaintiffs,

preferring that the matter be heard expeditiously and with a 'paralegal budget rather than lawyer budget', will inquire about what can be done to pursue their respective matters individually or jointly but in a manner that minimizes amounts that must be abandoned to bring their claims into the jurisdiction of the Small Claims Court. It is fortunate that the applicable law is such that each person (human or entity) with a cause of action providing an independent right of action may bring a claim in the Small Claims Court at the $25,000 maximum. It is unfortunate, as it appears that some Small Claims Court litigators, and perhaps even some deputy judges, misunderstand the terms 'cause of action' and 'right of action' and thereby misinterpret and misapply Rule 6.02 of the *Rules of the Small Claims Court* - the rule that forbids a Plaintiff from splitting a cause of action for the purpose of bringing a claim into the jurisdiction of the Small Claims Court.

To properly understand the Rule 6.02 limit, take note of the emphasized key word in the last sentence above; ***Plaintiff!***

Indeed, it is very true that Rule 6.02 forbids a single Plaintiff from bringing multiple claims in the Small Claims Court especially when the total amount sought exceeds the $25,000 maximum; however, when more than one person (human or entity) is unlawfully harmed, each has their own cause of action and therefore each has an individual right to bring an action on such cause of action.

Rule 6.02 specifically states that:

> *A cause of action shall not be divided into two or more actions for the purpose of bringing it within the court's jurisdiction.*

Note that Rule 6.02 refers to "*A cause of action*". Now, take note that, "*A cause of action has been defined as a factual situation the existence of which entitles one person to obtain from the court a remedy against another person*" as per Lord Justice Diplock in ***Letang v. Cooper***, [1964] All E.R. 929 (C.A.) at 934 and whereas a search for cases citing this definition in CanLII produces many confirming results. Now, with reference to Rule 6.02 and the definition of cause of action, tie the two together bearing extra-special attention to the wording in Rule 6.02 which singularly states, "**A** *cause of action ...*" and the definition which singularly states, " *... a factual situation the existence of which entitles* ***one person*** *to obtain from the court a remedy against another person.*" Accordingly a cause of action is a legal concept that is possessed individually and a cause of action is not shared; albeit, numerous persons can have their own cause of action, even their own cause of action arising from the same set of facts.

Where perhaps much of the confusion arises is when two or more potential plaintiffs are harmed within the same contractual business transaction or tortious wrongdoing occurrence and therefore each has experienced the same, from a label standpoint, cause of action. Note that the phrase "label standpoint" is used to indicate that causes of action have common names (i.e. breach of contract) yet the experience of a breach of contract by 'Joe' and the experience of a breach of contract by 'Bob' is not the same experience for 'breach of contract' even if both 'Joe' and 'Bob' are parties to the same breached contract. Confused? Try this! If 'Joe' owns a Corvette and 'Bob' owns a Corvette, is it necessarily the same Corvette? Of course not, each independently owns a Corvette. This example using a Corvette

is straightforward and common sense; however, this 'common sense' is often lost when referring to intangible legal concepts such as causes of action. Keep in mind the above definition of cause of action - "*... entitles one person ...*" - this one person cannot be 'Joe' and 'Bob' at the same time - 'Joe' is not 'Bob' and 'Bob is not 'Joe'.

Further confusion sometimes comes about from the misperception that a 'cause of action' derives from the perspective of a defendant instead of the proper perspective that a 'cause of action' is that of a plaintiff. Paraphrasing Diplock, L.J., a cause of action is the fact or set of facts that give a person a legal right to seek redress or relief. Quite simply, what the defendant did created only the fact or facts that give rise to the cause of action - the cause of action is born from the wrongdoing but it is not the wrongdoing just the same as a child born from its mother is not the mother. When viewed this way, a cause of action can be understood as an intangible possessed by a plaintiff from which there is a right to pursue legal remedy. In this way, 'cause of action' and 'right of action' are legally viewed as 'conjoined twin siblings'.

Now that it should be appreciated that 'cause of action' and 'right of action' are principles independently born and individually possessed, it can better discussed and debated and prepared to argue in court that an individual person (human or entity) has a cause of action and a right of action; the cause of action and right of action are independent of any cause of action and right of action possessed by other persons - even if the same 'cause of action' is shared in the sense that a cause of action may apply to multiple people when arising from the same factual situation or incident as an occurrence by the same potential defendant. Again, 'Joe' can own a Corvette and 'Bob' can own a Corvette which are not the same Corvette even if both bought individual Corvettes at the same dealership at the same time from the same salesperson - there are still two distinct Corvettes, one owned by 'Joe' and another owned by 'Bob'.

Example Scenario 1 - Tort Law

A vandal goes on a malicious spree taking a baseball bat to ten cars in a parking lot. Let's assume all ten were owned by friends and family at a celebration and $5,000 damage was done to each car. The vandal is caught. The ten car owners each seek a Small Claims Court action to recover their $5,000 for a total of $50,000 and all ten

choose to use the same paralegal so as to save costs (no sense getting ten different paralegals up to speed). In this situation, the law on point stating that each victim of the same tort has an independent cause of action and each individual plaintiff may claim up to $25,000 can be found at ***Lock v. Waterloo (Regional Municipality)***, 2011 CarswellOnt 15974 at paragraphs 12 to 18 and ***Tope v. Stratford (City)***, [1994] O.J. No. 3097 at paragraphs 2 to 5.

Example Scenario 2 - Contract Law

Take the above story but imagine instead that the vandal was not caught. Also imagine that there was a valet service contractually paid for safekeeping of each car (ignore any issues about waiver of liability, etc.). In this slightly altered scenario, grounded in contract law, the result remains the same as each victim still has their own independent cause of action. Furthermore, even if one contract was entered into by multiple victims, such as husband and wife that had 50/50 shared ownership and thus a financial interest in one of the cars, each still has their own independent cause of action according to ***Kent v. Conquest Vacations***, 2005 CanLII 2321 at paragraphs 3 to 9.

Of particular interest in ***Kent*** is paragraph 8 which states:

> 8 While the damages of the individual parties arise out of a common transaction, they need not be asserted in a single action. Rule 5 of the Rules of the Superior Court, although not directly applicable to the Small Claims Court, is instructive. It provides that two or more plaintiffs, if represented by the same solicitor, "may" join as the plaintiffs in the same proceeding where their claims arise out of the same transaction. The joinder is voluntary.

Accordingly, it seems that multiple plaintiffs can use the same paralegal yet do so bringing separate actions so as to enable each to control the outcome of their own respective case such as settlement terms and other directives without fear of forced joinder.

Equally of interest in ***Lock*** are paragraphs 13 to 17 which state:

13 The same point has been addressed under the Simplified Procedure provided in Rule 76 of the Rules of the Civil Procedure, R.R.O. 1990, Reg. 194. There is a monetary limit for the mandatory application of that procedure and it has been held that multiple plaintiffs each claiming within the monetary limit can be properly joined in one claim: Baker v. Chrysler Canada Ltd. (1998), 38 O.R. (3d) 729 (Ont. Gen. Div.), leave to appeal denied 112 O.A.C. 277 (Ont. Div. Ct.). It has also been held that Rule 76 should be liberally interpreted to carry out its policy of containing the cost of litigating the smaller claims to which it applies: Lillie v. Bisson (1999), 46 O.R. (3d) 94 (Ont. C.A.) . In my view both of those principles are equally true of proceedings in the Small Claims Court.

14 To hold otherwise would be to require that the case at bar be divided into two actions involving virtually identical allegations of fact and law. I see no useful purpose in requiring that multiplicity of proceedings, nor any proper basis to do so under the law of joinder or the law defining this court's jurisdiction.

15 Section 23(1)(a) of the *Courts of Justice Act* gives this court jurisdiction "in any action for the payment of money where the amount claimed does not exceed the prescribed amount..." "Action" is defined under s. 1(1) of the Act only as including proceedings, other than applications, commenced by a not-exhaustive list of originating documents. The list does not refer to the Small Claims Court and does not mention the Plaintiff's Claim which, along with the Defendant's Claim, is the originating document in this court.

16 Section 1(1) of O.Reg. 626/00 sets the monetary jurisdiction of the Small Claims Court, stating that "The maximum amount of a claim in the Small Claims Court is $25,000." That differs from s. 23(1) by referring to a "claim" in this court rather than an "action" in this court. As was found in *Action Auto Leasing & Gallery Inc. v. Robillard* (2011), 106 O.R. (3d) 281 (Ont. Div. Ct.), dealing with the minimum appealable amount, there is a material inconsistency between the language of the Act and the language of the corresponding regulation.

17 The *Courts of Justice Act* and its regulations should be interpreted liberally and as a coherent package. In my view, properly interpreted, the effect of the applicable provisions is that plaintiffs suing together in one action in the Small Claims Court may properly each claim damages up to the maximum monetary jurisdiction of the court.

Accordingly, it also seems that multiple plaintiffs can choose to join together in the same action while each makes a claim up to the $25,000 maximum. The upside is one, albeit very long, Plaintiff's Claim to draft and one court fee to pay for issuance. The downside is that in joinder each plaintiff no longer has independence to control and direct the single action. Additionally, multiple plaintiffs in one action give rise to all the usual joint retainer concerns addressed by the *Paralegal Rules of Conduct*.

Another interesting case on this subject is that of ***KNP Headwear v. Levinson***, 2005 CanLII 47090 wherein KNP entered into two contracts with two corporate entities owned by Levinson. Within each contract, Levinson acted as a payment guarantor. When the entities defaulted, KNP brought two claims against Levinson - where the total amount sought in both claims would exceed the Small Claims Court monetary jurisdiction. Levinson contended that KNP was splitting causes of action and should be required to join the claims and limit the sum to the Small Claims Court maximum. The court disagreed and deemed that as Levinson apparently established two independent entities for the purpose of spreading personal liability risks, the personal liability arising out of the two individual contracts and two individual guarantees could be kept separate. It seems that the court wisely ensured that Levinson couldn't have his cake and eat it too.

Note: Portions of this article appear in ***Bleeks, et al v. Keenan, et al***, 2014 CanLII 90436 as well as ***McCruden v Nead***, 2018 CanLII 123230.