



Court Costs By Jodi Wyman

Often when clients ask their lawyer to file a claim in court against someone, they ask that the other side be made to pay their legal fees. The client says that because they should not have had to take this person to court, why should they be out any money?

It is however not quite that simple.

In a court matter, the Judge has discretion to order “court costs” against one party, normally the unsuccessful one, if it seems appropriate to do so. It is an award the Judge makes, requiring the unsuccessful litigant to pay a certain amount of money to the winning party. No money actually goes to or from the court.

The point of court costs is that the successful client should be financially compensated for the money they spent getting to court. Also, the losing party may have been taking an unreasonable position and will suffer a financial penalty.

The threat of having court costs against you can be a reason to make a reasonable settlement

instead of fighting just to be difficult.

Lawyers always warn their clients that while it is a good idea to ask for court costs, it is not something to rely on in figuring out how to pay their legal fees.

In the first place, court costs are normally only awarded after a contested hearing. Most cases settle out of court after negotiations and will not end up in front of a Judge. The client may still have incurred a great deal of legal fees to get the settlement, but they will not then be reimbursed through court costs.

Secondly, the award of court costs is in the Judge’s discretion, meaning it is not automatic. Although you may lose your court case, the Judge could believe that you were being reasonable in taking the position you did. Sometimes there are unusual legal questions, such as Charter challenges at the Supreme Court of Canada, that need to be decided and it would not be reasonable to punish the losing party. In other cases such as in family law, the parent who tried to get custody of his or her

children may have had sincere motives even if they did not win. There too it may not be appropriate to award court costs. Other times, knowing the client’s financial situation, the Judge may decide costs are not appropriate.

Thirdly, the amount of the court costs award is not what the client actually paid. The amounts are set out in the court rules. There is a certain sum depending upon what happened in the case (what documents were filed, what type of hearing went to court) and the amount of the money at stake. Obviously, the more money involved will lead to higher court costs. Cost costs include some disbursements such as photocopies, filing fees and the expense of serving the other person. It is a rare case where the court costs will actually cover what the client spent in legal fees, filing fees and disbursements.

Lastly, although the Judge may order court costs, it is up to the client to actually collect the money. This sometimes can be very difficult.