

Orders and settlements in respect of court costs



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In determining whether to seek court costs, an important consideration is whether the client is contributing to the costs of their legal aid services. Costs recovered are applied to reduce the client's contribution agreement with LAO. Where the client has a financial interest in whether court costs are recovered, the service provider shall discuss the issue with the client.

Family law matters (other than child protection matters)

For interim steps in family law proceedings, service providers shall seek court costs when they would do so for a reasonable privately paying client of modest means, in accordance with Rule 24 of the *Family Law Rules*. This also applies to settling the issue of court costs during settlement negotiations, if trial authorization has not been granted on the certificate.

If trial authorization has been granted on a certificate, the service provider must seek instructions from LAO before dealing with court costs as part of a settlement, or when determining whether to seek costs before the court.

When seeking court costs, the service provider shall attempt to have costs fixed by the court to avoid the delay and expense of an assessment.

It is recommended that the court costs be made payable directly to Legal Aid Ontario as opposed to the client. Costs awarded to legally aided clients in family law matters are not to be enforced by or collected by the Family Responsibility Office, unless otherwise directed by LAO.

Costs awarded to a legally aided client are the property of LAO and must be paid to LAO, even if the costs are greater than the amount paid by LAO in respect of the legal aid services. In exceptional circumstances, LAO may consider a special discretionary increase to the solicitor where the costs recovered exceed the fees and disbursements as actually billed.

Court costs awarded to a legally aided client that have actually been paid to the service provider or the client cannot be waived and must be paid to LAO.

Child protection matters

Where the conduct of a children's aid society has been patently unfair or indefensible, it may be appropriate for the service provider to seek court costs against the children's aid society.

In circumstances where an offer to settle was served under the *Family Law Rules*, and the judgment is as favourable as, or more favourable than the offer, an application for court costs may also be considered.

Test case committee cases

In view of the potentially precedent-setting nature of these cases, court costs are not always awarded. Court costs shall be sought in those cases where the opposing party's behaviour is one of the issues in the litigation or unduly prolongs the case.

Crown as a defendant in civil cases

The service provider shall seek court costs just as they would for a reasonable private paying client of modest means.

Poverty law cases

It is rare for tribunals and boards to award costs.

In the case of tribunals and boards with authority to award costs, such as the Landlord and Tenant Board and the Licence Appeal Tribunal, service providers shall seek costs in cases where the opposing party's conduct was especially egregious, such as where the conduct was unreasonable and caused undue delay, or was frivolous, vexatious, or in bad faith.

Criminal cases

Service providers are not encouraged to seek court costs against the Crown. A service provider who considers it appropriate to seek costs against the Crown shall advise and discuss with LAO in advance. If a costs order is made, LAO will take steps to enforce the order.

Order for court costs obtained

A service provider who obtains an order or settlement for court costs for a client must immediately notify LAO of the terms of the order or settlement and provide LAO with a copy of the order or settlement and any other information or document that LAO specifies.

Court costs awarded against client

Court costs awarded against a legally aided client are the responsibility of the client.

In rare and limited circumstances, on application by the client or the party to whom the court costs are owed, LAO, in its discretion, may pay some or all of the court costs on behalf of the client.

Such applications must be made in writing to LAO.