



Family Lawyers Association

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Dear Ms. Wright:

RE: Family Law Rules Committee Consultation on Costs under the Family Law Rules

Under cover of this letter I provide to you the submissions of the FLA on this issue. The submissions were drafted by Jean Hyndman, Co-Chair of the FLA.

We appreciate the opportunity to be included in this process.

Yours truly,


Katharina Janczaruk
Chair – Family Lawyers Association

**FAMILY LAWYERS ASSOCIATION
PROPOSED COSTS GRID**

To: Family Law Rules Committee

Re: Costs Grid Proposal

The Family Lawyers Association has been asked to provide comments on the proposal of a Costs Grid to be applied in Family Law cases. The Family Lawyers Association was founded some 22 years ago in response to a Legal Aid crisis. The majority of our members do much of their work on legal aid retainers and practice more in the Ontario Courts of Justice. We recognize that costs have been generally dealt with differently in the Ontario Courts of Justice where the litigants tend not to have a lot of money, even if they have too much income to qualify for Legal Aid certificates.

The Family Lawyers Association does not support a costs grid for the following reasons:

1. The costs grids that have been introduced in the past did not reflect actual expenditures for legal fees and disbursements and therefore were not a realistic consideration when trying to incentivise a settlement. We recognize, of course, that costs awards rarely cover all of a client's expenditures.

2. While it may encourage a settlement in some cases, it may have the opposite effect in others. If an unreasonable litigant sees his maximum exposure on a Costs Grid, they may decide that it is a risk worth taking. It may also encourage them to discharge their counsel and represent themselves.

3. There is also a risk that this will discourage people with a good case from proceeding to trial. We do see this happen already when clients decide to accept considerably less than they would likely achieve at trial because they

cannot afford to pay their own counsel. Seeing a risk of costs might discourage more of them.

4. Many of the clients who are legally aided and a significant number of those who are just above the legal aid financial eligibility guidelines are essentially judgement proof.

5. A Costs Grid would either remove or substantially curtail judicial discretion in awarding costs. Costs should not be awarded merely because a party has been successful, but many other factors need to be taken into account. Offers to Settle and the Rules around awarding costs where Offers to Settle have been made is a much better way of incentivising settlement and should be a factor taken into account in determining costs. Costs can and should be used to encourage good litigation behaviour, such as making timely and complete financial disclosure and discouraging delay tactics and raising irrelevant issues, often repeatedly.

In conclusion, we do not see a Costs Grid as encouraging settlement or discouraging litigation.

Respectfully submitted on behalf of the Family Lawyers Association Board.