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LawTalk Blog



My ex-partner has filed Family Court proceedings and is forcing me to go to court. Can I make my ex pay my legal costs?

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When it comes to determining legal costs, how costs are considered in Family Law matters is different to general civil litigation matters.

In Family Law matters the general principle is that each party is required to pay their own legal costs regardless of whether they “win” or “lose”.

It does not matter who behaved more poorly in the breakdown of the relationship, or who was at fault for the breakdown of the relationship. The Family Law jurisdiction is a “no fault” jurisdiction, which means that the division of a property settlement and the associated legal costs are not apportioned based on fault.

Courts do however have the power to make an order for one party to pay the other party's legal costs in certain circumstances which justify it in doing so.

When might an order be made for costs?

Common situations which can lead to an order being made against a party for costs in Family Law include:

1. When a party breaches a court order and the other party is required to file an application to the court as a result of the breach.

2. When a matter is already before the court but a party is required to file a further application during the proceedings regarding an ongoing issue (for example non-disclosure) the successful party in such an application may be awarded costs.
3. Where one party makes a written offer for settlement during the course of negotiations and the other party refuses to accept that offer. Costs can be awarded in favour of the party who made the offer if the matter proceeds to trial and the party who made the offer receives a settlement which is equal to or greater than the original offer.

What will the court consider when making an order for costs?

In considering whether an order should be made for costs, the court will consider the following:

1. The financial circumstances of both parties;
2. Whether any party to the proceedings is in receipt of Legal Aid;
3. The conduct of the parties in relation to the proceedings;
4. Whether the proceedings were necessitated by failure of a party to comply with previous orders of the court;
5. Whether a party has been wholly unsuccessful in the proceedings;
6. Whether either party has made an offer in writing to the other party; and
7. Any other factor that the court considers relevant.

If the court decides to make an order for costs against a party, these costs will generally be awarded on a "party-party" basis. Party/party costs are the costs a court may make the losing party pay the winning party.

Party-party costs are awarded in accordance with a schedule of costs set out in the court rules. The schedule of costs will often only represent a portion of the actual costs incurred by that party and therefore their entire costs will not be covered.

Here's an example of how party-party costs might look:

- You have a case and your lawyer's fees are \$3,000
- You win the court case
- The court orders the other side to pay \$2,000 of your costs, called party/party costs
- You are now responsible for the remaining \$1,000 of your solicitor/client costs

Order of costs on an "indemnity basis"

In some situations, the court will make an order for costs against a party on an "indemnity basis". Orders of this nature are rare and will only be made in situations where such costs are warranted. If an order for costs is made on an "indemnity basis", the party against whom the order is made will be required to pay **all** costs of the other party, provided they are reasonable.

It is important that you have an understanding of how your legal costs work in your family law matter and are aware of the circumstances where the Family Law courts make orders for costs. We have a specialist [Family Law team](#) at Andersons who can assist you and [provide you with advice](#) on these issues.

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