# The Effect of Increasing the Small Claims Court Limit

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"If money go before, all ways do lie open."

- Shakespeare, *Merry Wives of Windsor,* Act 2 Scene 2.

On January 1, 2020, the Small Claims Court limit in Ontario will increase from $25,000 to $35,000. Ostensibly, this change will promote access to justice for litigants and take some pressure away from the overburdened Superior Court of Justice. However, for the self-represented, the devil is in the details.

Small Claims Court exists in that peculiar spot between claims that may not be worth litigating at all, and claims that require legal counsel to navigate. Some of the mechanisms in place to promote judicial economy at the Superior Court, such as summary judgment, are becoming watered down in Ontario. Resolving a claim at the Superior Court level could take years, not to mention the price of admission.

The increase of the Small Claims Court limit means that claims which may otherwise have been too small for lawyers to take on contingency and too complex for self-represented litigants to handle themselves in Superior Court, may be heard and disposed of through the (theoretically) more manageable and streamlined Small Claims Courts.

While that may sound like a win-win for courts and litigants alike, with more money comes more problems.

## *The Cost of Doing Business*

$10,000 may seem like a modest increase, however, the potential ramifications are significant. When Ontario began contemplating increasing the Small Claims Court limit from $10,000 to $25,000, which ultimately came to pass in 2016, those with an eye for judicial reform began to see problems.

The Civil Justice Reform Project predicted that along with the monetary increase, facilities would need to be expanded. Additional court staff including registrars, clerks and judges would have to be hired. The 77 Small Claims Courts across Ontario would need to be ready when the time came.

Four years after the last increase we find ourselves in the same straits once again; with no more staff, judges or courts to show for it than we had in 2016. If the increase in limits is intended as a heal-all, additional infrastructure must be built into the change. Without resources to accommodate the increase in cases on an already burdened Small Claims system, access to justice will not win out.

***Expanded Powers***

It is not only the brick and mortar machinery of the judiciary that requires attention. Options for disposing of claims are limited in the Small Claims Court. Unlike the Superior Court and the Court of Appeal, Small Claims Court does not have the jurisdiction to grant equitable relief.

Equitable relief is a non-monetary mechanism. It is used to either force a party to act, or stop them from acting altogether. It is commonly used to rescind and revise contracts, particularly in cases involving intellectual property.

However, it could also be used in Small Claims Court, in limited circumstances. Tired of your neighbor shoveling their snow onto your driveway? The court could order them to keep excess snow on their property. This mechanism would provide practical solutions to problems which cannot be remediated through monetary awards.

In Alberta, where the Small Claims Court limit is currently set at $50,000, judges have powers to grant equitable relief, provided the value of the claim is within the monetary limit. It would be wise to consider a similar scheme in Ontario, before the change creates a situation beyond remedy.

If we simply shift the burden from the Superior Court to Small Claims Court, all the trappings of progressive change will be on full display, but without the substance to meaningfully improve the system. It may be that these growing pains result in future amendments, but a handful of small changes now will save dividends in the long term.

### *Practical Considerations for Insurers*

For insurers, the increase will likely have a noticeable effect. Files that would have been prohibitively expensive for plaintiffs to bring to trial in Superior Court are more likely to go forward in Small Claims Court.

The *Courts of Justice Act* provides that, short of punitive damages for unreasonable behavior, costs awards in Small Claims Court are limited to 15%.[1] When the increase comes into force, this means the maximum cost award will be just $5,250.

Where the increase in the monetary limit correlates to an increase in complexity, the likelihood that the expense of preparing for trial outweighs the potential cost award is high. Conversely, for plaintiffs, the spectre of a cost award of $5,250 is far less daunting than what they would have faced in Superior Court.

While the increase does not amount to a paradigm shift for insurers, it will be important to bear these considerations in mind; particularly when performing a cost/benefit analysis with respect to the value of claims and settlement offers.

As with any change to the system, it will take time to see where the dust settles. It may be that the increase allows smaller files to be disposed of early by insurers, without resorting to the now cumbersome summary judgment process.

Either way, as the New Year looms, it is a good time to consider any claims which fall under the $35,000 limit, and prepare for the possibility that they continue in Small Claims Court.

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[1] *Courts of Justice Act*, R.S.O. 1990, Chapter C.43, s. 29.