

HOW DO I GET A LAWYER’S BILL REVIEWED?

Prepared by Law Help Ontario, a project of Pro Bono Law Ontario

This publication contains information of a general nature intended to assist the public at large. It is not legal advice about your situation. You should consult a lawyer for advice on your particular situation. This publication is not a substitute for you or your lawyer’s own research, analysis and judgment.

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INTRODUCTION

The purpose of this Tip Sheet is to explain how you can have your concerns about your lawyer's bill addressed.

Getting a lawyer's bill reviewed is called a *Solicitor-and-Client Assessment*. This is a court procedure where a client and/or a lawyer may have his or her legal bill reviewed at an assessment hearing in the Ontario Superior Court of Justice. An Assessment Officer conducts the hearing. An Assessment Officer is an official of the Superior Court of Justice. The purpose of the hearing is to decide whether the lawyer's bill is fair and reasonable.

HOW DO I ASSESS A LAWYER'S BILL?

Before you start the assessment hearing process, there are three (3) things you should give serious consideration to:

- i) **Talk to the lawyer.** It is a very good idea to speak directly with the lawyer whose bill you want to have reviewed and try to work out the issues in dispute. The lawyer may be willing to reduce some of the charges and you may be able to resolve the dispute without having to go to court.
- ii) **Do not wait too long.** At the same time, you should not delay too long because after one month goes by from the time you receive your lawyer's bill, you will have to get permission from a judge of the Superior Court of Justice in order to have the bill reviewed. This will cost you time and money and there is no certainty that a judge will give you permission.
- iii) **The potential costs.** Starting an assessment hearing proceeding means that you could be liable for costs. This means that if you lose your case the Assessment Officer or a judge may require to you to pay some of your lawyer's expenses in defending his or her bill.

STEPS REQUIRED TO GET AN ASSESSMENT HEARING

In general, in Ontario, in order to get a lawyer's bill reviewed, you will need to get an Order for Assessment from the court. There are three (3) steps in this process:

- i) Getting a Notice of Appointment (i.e., a date for the assessment hearing);
- ii) Serving the documents on the lawyer; and
- iii) Going to the assessment hearing.

NOTE ABOUT ASSESSMENT PROCESS IN TORONTO: *In Toronto, there is one extra step. Before you get a Notice of Appointment for an assessment hearing, you will have a preliminary appointment with the Assessment Officer. The purpose of the preliminary appointment is to see if the dispute about the lawyer's bill can be settled without a hearing. If the dispute cannot be settled, an assessment hearing will be scheduled. See pages 7 and 8 of this Tip Sheet for further explanation.*

TIMING

There are different rules and procedures to follow depending on the time at which you try to challenge the lawyer's bill. One of the following three (3) situations will apply to your situation.

- i) You challenge the bill **WITHIN ONE (1) MONTH** after delivery of the lawyer's bill;
- ii) You challenge the bill **AFTER ONE (1) MONTH** of the delivery of the lawyer's bill;
or
- iii) You want to challenge the bill but the lawyer has not delivered his or her bill to you.

What Should I Do WITHIN One (1) Month After the Delivery of the Lawyer's Bill?

You can start an assessment by simply asking for it at the Assessment Office, within one (1) month from the date you received the most recent legal bill from the lawyer. This is called an *Assessment by Requisition*.

You must:

- a) Go in person to the court office. If you are in Toronto, go to the public counter at the Assessment Office (Superior Court of Justice, 330 University Avenue, 7th Floor,) and bring four (4) copies of all the bills that you want to be assessed to the court registrar (**NOTE:** It is also recommended that you provide the assessment office with copies of *all* the bills from your file); and
- b) Pay the court filing fee and fill out the forms called a "*Requisition Form*" and an "*Order for Assessment*."

TIP: *If you are not able to afford the court fee (or any other court fee) you may be able to get the fee waived. Information regarding fee waivers is available at the public counter and online at www.lawhelpontario.org/forms*

At that time, the Registrar will do two (2) things:

- i) issue the Order for Assessment (as long as the retainer is not in dispute and there are no special circumstances); and will also,
- ii) provide you with a Notice of Appointment for a hearing date. (**NOTE:** In Toronto they will provide you with a copy of a Notice of *Preliminary* Appointment for a preliminary hearing date).

TIP: *The Notice of Appointment is set out in Form 58A under the Rules of Civil Procedure. You can access this form at the following website:*

<http://www.ontariocourtforms.on.ca>

What Should I Do AFTER One (1) Month From the Delivery of the Lawyer's Bill?

After the one (1) month period expires, the process becomes much more complicated and additional legal steps will be required. If possible, you will want to avoid this lengthier process as it requires a court application to seek permission from a judge to start the assessment process. The court application process is more costly than a obtaining an Assessment by Requisition.

You and the lawyer cannot consent to extending the time after the one (1) month period expires. You must make an application before a judge of the Superior Court. In Toronto, the Superior Court filing office is at 393 University Avenue, 10th Floor.

TIP: *Before making an application you should review the guidebooks called *Starting a Proceeding in the Superior Court and Preparing an Affidavit*, available at www.lawhelpontario.org. You should also read Rule 14 of the Rules of Civil Procedure.*

There are a number of steps to follow in order to bring an application to a judge of the Superior Court of Justice.

Step #1: You must create the following documents and have three (3) copies of each document:

- a) A Notice of Application (Form 14E); and
- b) An Affidavit (Form 4D).

Your Notice of Application and Affidavit must include a request for an order to have the lawyer's bill assessed. You must include your explanation as to why you should be able to have the bill assessed. You should also include your explanation reasons why it took longer than one month to try and get the bill assessed.

TIP: *If you are able to anticipate in advance the order that will be made by the judge, you may wish to prepare a draft order (Form 59B). For information on how to prepare a draft order, you should review Tip Sheet #2 - How Do I Issue and Enter My Order? available at www.lawhelpontario.org/civil.*

Also, remember to be sure that your order from the court includes a specific reference to the lawyer's accounts that will be assessed by the Assessment Officer. The accounts can usually be identified by an invoice number and/or by the date of the account.

Step #2: You must put all these documents together to make an Application Record. Information concerning all of the documents you need to use on an application, including the content of Application Record is set out in Rule 38.09 of the *Rules of Civil Procedure*.

TIP: *Remember to include a Backsheet (Form 4C) at the back of your Notice of Application, Affidavit and Draft Order and on any other forms that are in the Rules of Civil Procedure.*

Step #3: You must pay the court filing fee for the application.

Step #4: You must serve the Application Record containing the Notice of Application, Affidavit, and all other documents and material required by the *Rules of Civil Procedure* on every part interested in the assessment, including your lawyer, and file it, with proof of service (Affidavit of Service – Form 16B), at the court.

Also, you need to be aware that if you delay and wait for more than one year after you receive the lawyer's bill to bring an application to a judge, then it will be very hard to convince the judge to allow you to get a review of the bill. You would have to convince the judge that some special circumstances existed that prevented you from bringing your application within one year.

What Do I Do if the Lawyer Does Not Deliver the Legal Bill to Me?

If you do not receive a bill you should first contact your lawyer to request the bill. If your lawyer does not respond to your request then you may:

- a) Go to the court office in person. In Toronto, go to the public counter at the Superior Court of Justice (330 University Avenue, 7th Floor, Toronto) and ask the court registrar for an order to have the lawyer deliver the bill to you within fourteen (14) days and to have the bill assessed; and
- b) Pay the court filing fee for the assessment.

At that time, the Registrar will do two (2) things:

- i) issue an Order requiring the lawyer to deliver the legal bill to you and to file the bill with the court; and will also
- ii) issue a Notice of Appointment for a hearing date.

When the court gets the lawyer's bill, the court registrar will make an order for the bill to be assessed (so long as the retainer is not in dispute and there are no special circumstances).

What Happens After I get the Notice of Appointment and the Order for Assessment?

The court will issue to you two (2) copies of a Notice of Appointment. In Toronto, this will tell you to attend at the Hearings/Assessment Unit at 330 University Avenue, 7th Floor, on the date that is specified in the notice.

In the case of an Assessment by Requisition, you must notify the lawyer. You must serve the lawyer with the Notice of Appointment and a copy of the Order for Assessment with the legal bill(s) attached.

In the case of an application to a judge, if an Order for Assessment is granted by the court, after getting the court's signed and entered order, you will have to attend, if you are in Toronto, at the public counter at 330 University Avenue, 7th Floor, to obtain an appointment for preliminary hearing. Then you must serve the lawyer with the Notice of Preliminary Appointment and a copy of the Order for Assessment with the legal bill(s) attached.

How Do I Serve the Lawyer With the Notice of Appointment and the Order for Assessment?

In general, personal service is the preferred method of service. You should review Rule 16 of the *Rules of Civil Procedure* prior to serving the lawyer. You can serve the lawyer by:

- a) Personally delivering the Notice of Appointment and the Order for Assessment (with the legal bill attached) to the lawyer's office and asking that the person who accepts the documents to "admit service," or

TIP: When a person "admits service" this means that the person who accepts the documents will sign and date your documents so that you can prove you have served them. If no one will sign your documents you will have to prepare an Affidavit of Service (Form 16B).

- b) Send the Notice of Appointment and the Order for Assessment (with the legal bill(s) attached) to the lawyer by registered mail through Canada Post (**NOTE:** remember to keep the receipts and the internet print out to verify service because you will be required to provide them to the court at the preliminary appointment date); or
- c) Hire a private process server who, for a fee, will serve the lawyer with the Notice of Appointment and the Order for Assessment (with the legal bill(s) attached) and provide you with proof of service.

To prove to the court that you have served the lawyer you will need to fill out an *Affidavit of Service (Form 16B)* under the *Rules of Civil Procedure* and file it with the court. Bring a copy to the preliminary appointment.

What Happens at the Preliminary Appointment?

NOTE ABOUT PRELIMINARY APPOINTMENTS: *The sections addressing Preliminary Appointments refer to a procedure that is unique to Toronto. Distinct practices may have developed in other jurisdictions in the province of Ontario.*

At the preliminary appointment, if you and the lawyer cannot come to an agreement to settle the dispute about the legal bill, an assessment hearing date that is agreeable to both you and the lawyer will be scheduled.

If you want to settle the dispute with the lawyer you may be able to use mediation services provided by court officers but only if you and the lawyer both agree to go to mediation. Mediation may assist you to come to an agreement about your legal bill without a hearing. This can save you time and money. Mediation can happen at any time during the assessment hearing process. No fees are charged.

What If the Lawyer or I Do Not Attend the Preliminary Appointment?

Even if one side does not attend, the Assessment Officer will still set an assessment hearing date. If you attend, you will receive two (2) copies of a Notice of Appointment for the assessment hearing. This Notice will include the date and time of the hearing. Unless the court office agrees to serve the notice, you must serve one (1) copy of this Notice of Appointment as soon as possible on the lawyer. Keep the other copy for yourself.

If the lawyer does not attend at the hearing, you must provide proof of service (*Affidavit of Service – Form 16B*) to the Assessment Officer to show that the lawyer was served with the Notice of Appointment and Order for Assessment. If you cannot provide this proof of service, the hearing will not proceed.

What Happens at the Assessment Hearing?

TIP: *In order to better prepare for your hearing you should make yourself familiar with the Solicitors Act, R.S.O. 1990, c. S-15, and in particular with sections 3, 4, 9 and 11. The Act and its regulations are available at www.e-laws.gov.on.ca.*

The assessment hearing is an informal hearing conducted by an Assessment Officer. The lawyer must prove that the legal bills are fair and reasonable.

It is very important to bring to the assessment hearing copies of all correspondence between you and your lawyer, including any retainer agreement, as well as all documents that the lawyer prepared for you.

Both you and the lawyer will give your evidence orally under oath or by affirmation. You may call other witnesses but these witnesses must have personal knowledge about what happened. The lawyer may ask you questions and you can ask the lawyer questions. The Assessment Officer may also ask questions.

After hearing all the evidence and legal arguments, the Assessment Officer will decide if your lawyer's bill is fair or if it is too high. If it is too high, the Assessment Officer can reduce it. In most cases, the Assessment Officer will provide an oral decision. In some cases, such as long or complex cases, the Assessment Officer may not deliver his or her decision at the hearing. In these cases, the Assessment Officer will send out a written decision or set up a special appointment to provide his or her oral decision.

NOTE ABOUT COSTS: *It is also very important to be aware that the Assessment Officer may order the costs of the assessment to either you or the lawyer. Whether costs will be awarded is at the discretion of the Assessment Officer. The general rule is that costs are awarded against the losing party so if you are unsuccessful in getting your lawyer's bill reduced, the Assessment Officer may require you to pay your lawyer's costs of being involved in the assessment hearing.*

What Factors Does the Assessment Officer Consider to Decide Whether the Lawyer's Bill is "Fair and Reasonable"?

To decide whether the lawyer's bill is fair and reasonable, the Assessment Officer applies the law as set out in the *Solicitor's Act*, the *Rules of Civil Procedure* and previous court decisions.

The factors that the Assessment Officer will consider in deciding whether the lawyer's bill is fair and reasonable include:

- the time the lawyer worked on your case;
- the complexity of your case;
- the amount of money at stake in your case;
- how much responsibility the lawyer assumed in your case;
- the importance of the case to you;
- the skill and competence the lawyer applied to your case;
- the result of your case;
- your ability to pay the legal bill;
- your expectation of what the legal bill should be; and
- whether any steps taken by the lawyer were unnecessary or not calculated to advance your interests.

What Happens After the Assessment Officer's Decision is Made?

After the decision is made, the Assessment Officer completes a document called a Report and Certificate of Assessment and a copy is given to both you and the lawyer. This Report and Certificate sets out, in summary form, the results of the decision.

This Report and Certificate of Assessment must be "confirmed" before it becomes an enforceable order of the court. This "confirmation" shall occur:

- a) immediately (if all the parties who appeared at the hearing agree); or
- b) fifteen (15) days after a copy of the Report and Certificate of Assessment has been filed, with proof of service, at the court office (unless a notice of motion to oppose confirmation has been served within that time, as described below).

What Do I Do If I Don't Want to Challenge the Assessment Officer's Decision?

If you don't want to challenge the assessment officer's decision, you should make sure the decision gets confirmed. As noted above, confirmation happens either a) upon agreement of the parties; or b) 15 days after a copy of the Report and Certificate of Assessment has been filed, with proof of service, at the court office.

To obtain immediate confirmation, a signed consent of the parties must be filed. Either you or the lawyer can file this consent. To obtain confirmation after 15 days of filing of

the Report and Certificate of Assessment, either you or the lawyer must serve the Report and Certificate of Assessment on the other, and file it.

Because these steps can be completed by your or the lawyer, you should try to find out if the lawyer also wants the decision confirmed. If so, he or she may be willing to assist with the confirmation process. If not, it will be up to you to make sure the decision is confirmed.

What Do I Do If I Want to Challenge the Assessment Officer's Decision?

If you want to challenge the Assessment Officer's decision, you may "*oppose the confirmation.*" If you want to oppose the confirmation, you should make sure not to agree to confirmation or to serve the Report and Certificate of Assessment on the lawyer. However, you should make sure to find out if and when the lawyer has filed the Report and Certificate of Assessment with the court office. Usually this will happen on the same day or very soon after you are served with the Report and Certificate of Assessment.

In order to oppose the confirmation of the Assessment Officer's decision, you must you must make a motion to a judge of the Superior Court of Justice within fifteen (15) days of a copy of the Report and Certificate of Assessment being filed, with proof of service, at the court office.

How Do I Make a Motion to Challenge the Assessment Officer's Decision?

TIP: Before you consider making a motion to the court, you should review the guidebook called *A Guide to Motions in a Civil Action* available at www.lawhelpontario.org. You should also read Rule 54.09 of the *Rules of Civil Procedure*.

The Notice of Motion should:

- a) set out the grounds for opposing confirmation;
- b) be served on all parties within fifteen (15) days after a copy of the Certificate, with proof of service (Affidavit(s) of Service) on every party who appeared at the hearing, has been filed in the court office;
- c) name the first available motion date that is at least (3) three days after service of the Notice of Motion.

You should also be aware that it is not easy to win a motion opposing confirmation. As a general rule, the judge will be reluctant to change the Assessment Officer's decision unless he or she made an error in principle or was clearly wrong in determining the amount owed before the judge would grant your motion.

What Will the Judge Do?

The judge will review the case and hear the arguments of the parties. The judge can make any order that he or she considers to be just.

What Happens If I Lose the Motion?

You will likely have to pay the legal costs of the lawyer for defending against your motion. Also, the results of the assessment as set out in the Report and Certificate of Assessment may be enforced like any other money judgment of the court.

Where Can I Get More Information?

The Law Society of Upper Canada has a guide to assist you in proceeding with an assessment of your lawyer's bill entitled: "*Your Lawyer's Bill – Too High?*" which is available at: www.lsuc.on.ca

The assessment procedure is addressed in the *Solicitors Act*, R.S.O. 1990, c. S-15. To view the *Solicitors Act*, go to www.e-laws.gov.on.ca

The Ministry of the Attorney General has a series of guides that are available at court offices and at the Ministry of the Attorney General website. The site also has general information on civil cases: www.attorneygeneral.jus.gov.on.ca

Legal research: <http://www.canlii.ca>

Court forms: <http://www.ontariocourtforms.on.ca/english/forms/civil/index.jsp>

Guide to Ontario Courts: <http://www.ontariocourts.on.ca/english.htm>

Rules of Civil Procedure for Ontario (*Rules*): See Rules 54 and 55 at <http://www.canlii.org/on/laws/regu/1990r.194/20070813/toc.html>