

LEGAL PROFESSION ACT HEARINGS

What is it? There are two sections under Part 8 of the *Legal Profession Act* that authorize a hearing before a registrar: 1) a review of a lawyer's bill to a client [s. 70] and 2) an examination of an agreement [s.68].

A bill means a lawyer's written statement to a client of fees, charges and disbursements. An agreement as set out in the *Legal Profession Act* means a written contract respecting fees, charges and disbursements to be paid to a lawyer for services rendered and includes a contingent fee agreement.

If there is anything contained in the bill that the client does not understand, the lawyer should be contacted for clarification. Sometimes issues may be resolved without the expense of having a bill reviewed. If the issues cannot be resolved, an appointment may be filed to have a hearing before a registrar. The client may hire another lawyer to represent them at the hearing.

Time limits for reviewing a bill/examining an agreement:

Only final bills may be reviewed. If 12 months have passed since a bill was delivered, or 3 months have passed since a bill was paid, the person charged with the bill cannot obtain an appointment to have the bill reviewed without an order extending the time to do so. A chambers application is required to obtain an order to extend the time. If the lawyer initiates the proceeding, the bill must be 30 days old or more. If the lawyer has obtained a judgment for the amount of the bill, the bill cannot be reviewed unless the court so orders.

An examination of a fee agreement can be performed by a registrar whether or not payment has been made but must be made within 3 months of signing the agreement or within 3 months of termination of the retainer.

A hearing date is arranged through Supreme Court Scheduling in the registry:

- where the court case took place (if there was one)
- closest to where the lawyer has his/her office, or
- where the client and lawyer agree to have the hearing.

The appointment [Form 49](with a copy of the bill/agreement attached) must be filed in the court registry and a filed copy must be served personally on the client or delivered to the law firm at least 5 days in advance of the hearing date.

If either party fails to attend, an affidavit of personal service (Rule 4-3(1)(j)) will be required by the registrar to prove that the party has been given proper notice of the hearing.

What needs to be done before the hearing?

- Gather exhibits - provide copies of exhibits to opposing counsel or parties at least 1 week prior to the hearing
- Expert Reports – If a party intends to rely on expert evidence, a copy of the expert's report must be delivered to the opposing party well in advance of the hearing. Parties contemplating the use of an expert are well-advised to arrange a pre-hearing conference so that directions may be made on exchange of reports, etc. The expert may be required to attend the hearing.
- Full exchange of information between counsel/parties before the hearing
- Define issues before the hearing.

- If the bill sought to be reviewed is \$25,000 or more; or if the hearing will exceed a half day (in non metropolitan locations) or one day (in metropolitan locations), a pre-hearing conference before a registrar must be scheduled and take place at least two months before the main hearing date.
- Witness or experts should be notified of the date and time of the hearing well in advance.
- The party who filed the appointment must, no later than 4 p.m. on the business day that is one full business day before the date set for hearing, provide the registry where the hearing is to take place, a hearing record. The hearing record
 - a) must be in a ring binder or in some other form of secure binding;
 - b) must contain, in consecutively numbered pages, or separated by tabs, the following documents in the following order:
 - i. a title page bearing the style of proceeding and the names of the lawyers, if any, for the applicant and the persons served with the appointment;
 - ii. an index;
 - iii. a copy of the filed appointment and of every document that is required to be filed with the appointment (lawyers bill);
 - iv. a copy of the affidavit of service of the appointment, which must not include the exhibits to the affidavit;
 - v. a copy of every filed affidavit and pleading, if any, that is to be relied on at the hearing;
 - c) the hearing record may contain
 - i. a draft of the proposed certificate of fees, and
 - ii. a list of authorities;
 - d) the hearing record must not contain
 - i. written argument,
 - ii. copies of authorities, including case law, legislation, legal articles or excerpts from text books, or
 - iii. any other documents unless they are included with the consent of the applicant and the respondents.

What happens at the hearing?

The hearing is conducted in the same manner as a trial. Each party gives evidence under oath and may be cross examined. The registrar will usually ask the client what the issues are. The lawyer gives evidence first. The client may then ask the lawyer questions. Then the client gives evidence and the lawyer asks them questions. Witnesses for both parties may be called and examined. Documents that support the evidence are entered as exhibits. Once all the testimony has been given, submissions are made by both the lawyer and the client to summarize their case. The registrar then will make a decision either immediately or if they need some time to decide may either request that the parties return at a later date for oral reasons or may produce written reasons for the decision at a later date.

This is an Information Sheet that provides general guidance only. It is not intended as legal advice. In the event of any conflict between this information and any Acts, Rules or law, the provision of the Acts, Rules or law apply.

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What happens after the hearing?

When the decision is made (either at the hearing or when the reasons are given) the registrar signs a Certificate of Fees. This certificate can then (after the appeal period has expired and no appeal has been filed) be filed in the court registry as a judgment upon paying the appropriate filing fee [\$40.00]. Enforcement proceedings cannot be commenced until 14 days after the certificate is filed. An application can be made to the registrar for an order that payment be made by instalments or that monies not be collected for a certain period of time.

Costs of the hearing:

If the bill is not reduced by at least 1/6th, the client will usually have to pay the costs of the lawyer for attending the hearing and any disbursements for witnesses (including experts) that the lawyer had attend. If the bill is reduced by at least 1/6th the lawyer must pay the client's costs. The costs usually can be significant. There are also hearing day fees associated with registrars' hearings which exceed 3 days. These are paid by the party who schedules the review, subject to any direction on costs made by the registrar.

For more information go to the Courts web site at www.courts.gov.bc.ca Supreme Court, Self Represented Litigants, information booklets, *Legal Profession Act* Reviews. If you do not have access to the internet, a copy of the information booklet may be purchased from the court registry.

Documents required:

- Appointment [Civil Form 49] – Filing Fee \$80.00
- Lawyer's Bill or Agreement

Note: If you appear at the hearing without proper documentation, the matter may be adjourned. This will result in an inconvenience to you and the opposing party and may result in costs being awarded against you.