

PARTY/PARTY BILL OF COSTS

What is it? Generally the party who is successful in a Supreme Court proceeding may ask the court for an order that the unsuccessful party pay their costs. These costs are commonly referred to as “party/party” costs. The “costs” are to partially indemnify a person for the legal costs incurred by them or the time spent prosecuting or defending a court proceeding. The costs are then, based on the tariff set out in the BC Supreme Court Civil or Family Rules. In addition to “costs”, a person may recover their out of pocket expenses (disbursements). Civil Rule 14-1, Family Rule 16-1 and Appendix B to both the Supreme Court Civil and Family Rules govern costs. The order will set the “scale” of the costs, which is the dollar amount per unit for tariff items (in civil matters) and in family matters the dollar amounts for each tariff item are fixed depending on the scale set. If the order does not set a scale, the scale is set at Scale B which translates into \$110.00 per unit in civil matters. In family matters, the default (where the order makes no mention as to costs) is “ordinary difficulty”. The amount of costs recovered will likely be a portion of what the successful party would have to pay their own lawyer. Costs are assessed at a hearing before a registrar usually after a proceeding has concluded – either by a judgment following trial or through settlement. Costs are assessed when:

- the court awards costs to be assessed
- a rule or statute provides for an assessment without an order
- where a settlement agreement provides for the payment of costs to be assessed
- under the Supreme Court Civil or Family Rules, costs may be assessed without an order:
 - on default judgments [Civil Rule 3-8]
 - where a plaintiff discontinues an action [Civil Rule 9-8 or Family Rule 11-4]
 - where an enforcement process is issued [Civil Rules 13-2, 13-3, 13-4, Family Rules 15-4, 15-6, 17-7 and under the *Court Order Enforcement Act*]
- costs of interlocutory or interim applications are generally not assessed until the end of the proceeding unless they were ordered payable forthwith (in which case the order for costs must say this)
- Unless the costs are payable under a rule or enactment, there must be an entered order awarding costs. This establishes the registrar’s jurisdiction to assess the costs.

What happens before the hearing?

The party who was awarded costs will prepare their bill in Civil Form 62 and Family Form F71 following the Tariff in Appendix B of each set of rules. The Tariff sets out items involved in prosecuting/defending a proceeding and assigns a number of units or sets a prescribed amount of costs for each of these events. In civil matters, some of the items show a range of units; others are fixed depending on how long the event took. If there is a range, the number of units awarded is based on the work done within the description of the items covered under a particular tariff item. The bill will also include a list of

disbursements. A copy of the bill is served on all affected parties. If a party does not agree with the amount of the bill, a hearing to assess the costs must be arranged before a registrar.

A date for the hearing is obtained from Supreme Court Scheduling in the court registry where the proceeding originated or the registry where all parties have agreed the costs assessment should take place. An appointment [Civil Form 49 or Family Form F55] with a copy of the bill attached must then be filed in the registry to confirm the hearing date and a filed copy must be served on all other affected parties in accordance with Part 4 of the Civil Rules or Part 6 of the Family Rules at least 5 days before the hearing date. If the amount involved is \$45,000 or more, or the hearing is estimated to require, in Vancouver, New Westminster and Victoria, one day or longer of hearing time; and in all other locations, one half day or longer, a pre-hearing conference is required, which must take place at least 2 months before the date of the main hearing. If the party required to pay objects to or needs more information on the disbursements detailed in the bill, the objecting party should send a letter to the successful party asking for copies of receipts or other justification of the amount claimed. The party who was awarded their costs will then need to prepare an affidavit attaching copies of the invoices for the disputed items and responding to any concerns raised. A copy of this affidavit must be served on all other affected parties at least 5 days in advance of the hearing date.

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 the hearing, provide to 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 (bill of costs and affidavit in support of disbursements);
 - iv. a copy of the affidavit of service of the appointment, which copy must not include the exhibits to the affidavit;
 - v. a copy of the entered order for costs;
 - vi. a copy of every filed affidavit and pleading, and of every other document, that is to be relied on at the hearing;
- c) may contain
 - i. a draft of the proposed certificate of costs, and
 - ii. a list of authorities;

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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- d) 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.

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.

What happens at the hearing?

The onus is on the party who was awarded costs to prove their bill. This means they must produce proof of work done and disbursements incurred. If proof is not given, the items may be disallowed. This is often done by producing at the hearing copies of the pleadings, any interim orders made, notices to admit and the like. The party presenting the bill of costs for assessment may make an affidavit setting out the work done, as well as an affidavit of disbursements. Sometimes, a party testifies in court, at the assessment hearing itself. The opposing party must be prepared to tell the registrar why they object to disputed items and disbursements on the bill. The assessment is conducted like any other court hearing. The person presenting the bill of costs goes first, the opposing party then makes their objections and then the party awarded costs has a right of reply. Sometimes the registrar will rule on the tariff items before turning to the disbursements but usually, the registrar will deal with all matters and provide their decision at the conclusion of the hearing.

If the opposing party does not appear, proof of service of the appointment (i.e. an affidavit of service) is required.

What happens after the hearing?

The registrar will sign a certificate in Civil Form 64 or Family Form F72 at the conclusion of the assessment if presented at the end of the hearing. It is sometimes submitted at a later date for signature. The signed certificate is then filed at the court registry upon payment of the filing fee (\$40.00). That certificate may then be enforced as a judgment.

Documents required:

- Appointment [Civil Form 49 or Family Form F55]
- Bill of costs [Civil Form 62 or Family Form F71]
- Filing fee \$80.00 to file appointment
- Copy of entered order (if applicable)
- Proof of disbursements (invoices, receipts etc.)
- Evidence to support tariff items i.e. correspondence, list of documents (to be produced at the hearing)
- Proof of service of the appointment if the other party does not appear (to be produced at the hearing)

**Further reading: Continuing Legal Education Manual – Practice Before the Registrar;
BC Supreme Court Self-Help Information Centre website
at:**

http://www.justiceeducation.ca/themes/framework/documents/bcscshic_costs.pdf

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