

LEGAL PROFESSION ACT Review Process

1. Read through the Review Process brochure included in this package.
2. Call Supreme Court Scheduling at the location you wish to book your hearing for a hearing date and time.
3. Complete the two (2) page "Appointment" [Form 49] document. The Appointment must be filed in the registry nearest to the law firm's office. Before filing the Appointment, you should discuss the matter with the law firm to see if the matter can be settled without a hearing. Also, you should consult with the law firm concerning dates for hearing, before filing the Appointment, as the matter may end up adjourned if the lawyer is unavailable on the date you've set for hearing.
4. Make two (2) copies of the "Appointment". Attach copies of the disputed lawyer's bills to the original of the "Appointment" and to each copy.
5. Bring the original and two copies of the "Appointment" (with attachments) to the Court Registry for filing. **The filing fee is \$80.00.**
6. Serve the filed "Appointment" on the solicitor. (See Section VII of the Review Process brochure.)
7. If the review hearing is expected to take one day or longer or the bills being reviewed are more than \$25,000 set a time for a pre-hearing conference as this is a requirement pursuant to AN-8. A pre-hearing conference is an opportunity for you to request the court to order the law firm to provide documents you may need for your review, or particulars related to bill entries.
8. Provide a hearing record to the registry where the hearing is to take place, no later than 4 p.m. on the business day that is one full business day before the date set for the hearing. 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 lawyer acting for you on the review of the lawyer's bill, if any, and for the persons served with the appointment (the law firm whose bill you are reviewing);
 - ii. an index;
 - iii. a copy of the filed appointment and of every document that, under the Supreme Court Civil Rules, is required to be filed with the appointment (lawyers bill);
 - iv. a copy of the affidavit of service of the appointment, which copy must not include the exhibits to the affidavit;
 - c) may contain
 - i. a draft of the proposed report or certificate, and
 - ii. a list of authorities;

- 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.
- 8. Attend the hearing at the time and place of the appointment.
- 9. Retrieve the hearing record at the conclusion of the hearing.

In the Supreme Court of British Columbia

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
S.B.C. 1998, Chap. 9, s.70

Between

Law Firm

and

Client(s)

APPOINTMENT

I appoint:

Time:

Date:

Place:

as the time and place for the: *[Check the correct box(es) and complete any required information.]*

assessment of the bill of costs of
[party(ies)]

review of the bill of
[name of lawyer of law firm]

examination of the agreement between
[lawyer]

and
[client]

settlement of the terms of the order of
[Mr. Justice, Madam Justice or Associate Judge]
made
[dd/mmm/yyyy]

passing of accounts of
[executor, administrator, receiver or other]

reference under the *Court Order Enforcement Act*

reference order by
[Mr. Justice, Madam Justice or Associate Judge]

assessment of sheriff's fee

other

Attached to this Appointment the bill(s) of costs lawyer's bill(s)
[is/are]

sheriff's bill(s) agreement(s) order(s) that the subject of this Appointment.
[is/are]

Date:
Associate Judge, Registrar or Special Referee

To:
[name].

TAKE NOTICE of the above appointment.

The person seeking appointment believes the matter for which this appointment was sought:

[Check all of the following boxes that are correct and complete the required information.]

is is not of a time consuming or contentious nature.

will require approximately to complete
[time estimate]

Date:
Signature of person seeking appointment
 lawyer for person seeking appointment
.....
[type or print name]

Address and telephone number of person seeking appointment or lawyer for person seeking appointment:

Name:

Address:

.....

Telephone:

In the Supreme Court of British Columbia

Between

Law Firm

and

Client(s)

CERTIFICATE OF FEES

I certify that on the bill(s) delivered by
[dd/mmm/yyyy] [name of lawyer]

to and dated
[name of person billed] [set out date(s) – dd/mmm/yyyy]

have been reviewed, and that:

- a) the amount of fees, charges and disbursements allowed was \$.....
- b) the amount paid on account (if any) was \$.....
- c) the balance owing to[the lawyer/person charged].... was \$.....
- d) the costs of the review allowed to ..[the lawyer/person charged].. was \$.....
- e) interest allowed to this date was \$.....
- f) the total amount due to [the lawyer/person charged] is \$.....

Date:

.....
Registrar

LEGAL PROFESSION ACT

REVIEW PROCESS

I. INTRODUCTION

II. A CAUTION

III. WHAT IS A REVIEW

IV. WHO MAY HAVE A LAWYER'S BILL REVIEWED?

V. IN WHAT CIRCUMSTANCES MAY YOUR LAWYER'S BILL BE REVIEWED?

- A. Did you "hire" the lawyer?
- B. Did you receive a "bill"?
- C. Is it a "final" bill?
- D. Has the bill been paid?
- E. Is there already a Court judgment in the amount of the bill?
- F. Is there a fee agreement between you and your lawyer?
- G. Is it less than one year since you were sent the bill?

VI. DO YOU NEED A LAWYER AT THE REVIEW?

VII. HOW TO START THE REVIEW PROCESS

- A. Requesting more detail
- B. Obtaining an appointment
- C. Notifying your lawyer of the hearing date

VIII. PROCEDURE AT THE HEARING

- A. The people who attend
- B. The sequence of events
 - 1. Proving service of the notice of appointment
 - 2. Focusing the issues in dispute
 - 3. The lawyer must justify his or her bill
 - 4. The lawyer's evidence
 - 5. Witnesses called by the lawyer
 - 6. The client's evidence

7. Witnesses called by the client
8. Producing documents
9. The rules of evidence
10. Submissions
11. The decision

IX. DETERMINING WHETHER THE BILL IS REASONABLE

- A. Fees
- B. Disbursements
- C. Unusual expenses and an over-cautious approach
- D. Reducing the bill

X. PAYING FOR THE COST OF THE HEARING

- A. Administrative costs
- B. The successful party's "costs"
- C. Calculating the "costs"

XI. THE CERTIFICATE OF FEES

XII. REVIEW BY THE COURT

I. INTRODUCTION

A dispute sometimes arises between a lawyer and his or her client about the lawyer's bill: Is it too high? What services were provided? How was it calculated? What out-of-pocket expenses were incurred?

If you have received a bill from your lawyer, and don't understand it or object to some part of it, the first thing you should do is discuss it with your lawyer.

Ask your lawyer what services were performed, and why. Find out how the lawyer's fee was calculated; was it a lump sum, or based on an hourly rate? If you are confused about the disbursements charged, ask what they are for, and why they were necessary.

In short, make sure you understand the bill; only then will you be in a position to decide whether you will accept the bill as delivered, or whether you will apply to have it reviewed.

This booklet describes the process for having your lawyer's bill reviewed by an independent official of the British Columbia Supreme Court.

II. A CAUTION

This booklet is designed to assist clients who want to have their lawyers' bills reviewed. It

will describe the circumstances in which a bill may be reviewed, how you prepare for a review, how a hearing operates, and who pays the cost of the review process.

You may find this booklet informative, but it is NOT legal advice. Some of the points discussed in this booklet involve complicated issues of law, and the law itself changes over time.

After you have read this booklet if you are considering having your lawyer's bill reviewed you should consider discussing your situation with a lawyer. You have several options:

1. Contact a lawyer directly, for advice about your case. Discuss with him or her whether you should apply for a review and if so, whether you want this lawyer to represent you. Be sure to discuss with the lawyer, at your first meeting, the likely amount of his or her fee, and how it will be calculated.
2. Call the Lawyer Referral Service, a program run by Access Pro Bono. This service is operated by the Canadian Bar Association, B.C. Branch, and it will refer you to a lawyer for an initial interview of up to 30 minutes for a fee of \$25.00.

III. **WHAT IS A REVIEW?**

A review of your lawyer's bill is conducted by an associate judge or the Registrar of the Supreme Court of British Columbia. Associate Judges are judicial officers who are legally trained. The Registrar of the Supreme Court is also legally trained.

The authority to review a lawyer's bill is contained in the *Legal Profession Act*, a provincial statute which governs the legal profession of British Columbia.

The purpose of a review is to ensure that fees charged by lawyers are reasonable, taking into account all the relevant circumstances of the case. It is a service unique to the legal profession; no other profession, trade or industry has a court-appointed official ensuring that fees charged are reasonable.

IV. **WHO MAY REVIEW A LAWYER'S BILL?**

Any one of three categories of people may have a lawyer's bill reviewed, depending on the circumstances:

- A. The lawyer - if a lawyer performs services for a client, renders a bill to the client, but is not paid, then the lawyer may have his or her own bill reviewed and enforced as if it were a judgment of the Court.
- B. The client - if you object to the amount of the bill, or specific items charged, you may have the bill reviewed.
- C. The person responsible to pay the bill - sometimes a third person agrees to pay the lawyer's bill. For example, if you hire a lawyer to represent you in a divorce, you and your spouse may agree that your spouse will pay your

lawyer's bill. In that case, your spouse may have your lawyer's bill reviewed.

V. IN WHAT CIRCUMSTANCES MAY YOUR LAWYER'S BILL BE REVIEWED?

It is very important to understand that not all lawyers' bills may be reviewed by the procedure discussed in this booklet.

Jurisdiction to review a lawyer's bill is restricted, depending on such factors as whether the lawyer was "retained", whether the account you received amounts to a "bill", whether it is an interim or final bill, when and if it has been paid, whether there was a specific fee agreement between you and your lawyer, and whether you have applied in time for the review. Each of these factors will be discussed in turn.

A. Did you "hire" the lawyer?

There must first be a decision about whether you hired or "retained" the lawyer. In most cases it will be obvious, and reflected in letters between you and your lawyer.

However, in some cases it may be a difficult issue to decide, and evidence may be called from both sides concerning the relationship between you and the lawyer.

If it is established there is no retainer, and that you did not hire the lawyer, the review cannot proceed. If a retainer is established, the hearing will proceed in the normal way.

B. Did you receive a "bill"?

Not every account constitutes a "bill". To be a bill, it must have all the following features:

1. **It must relate to services provided by a lawyer** - the account must be for legal services provided by a lawyer licensed to practise law in the Province of British Columbia.
2. **It must be signed** - the account or a letter accompanying the account and referring to it, must be signed by one of the following:
 - a) the lawyer who did the work;
 - b) the lawyer's agent, executor or assignee;
 - c) in the case of a partnership, by a partner or his agent, either with his own name or the name of the partnership.
3. **It must refer to the work the lawyer was hired to do** - it must contain enough information to enable you to identify the work for which the charge was made; the bill need not contain much description at all of what was done, but you may ask the reviewing officer, preferably before a scheduled hearing to order the lawyer to give you particulars of the services.
4. **It must show the amount of the fee charged** - this may either be itemized

for each service performed, or be shown as a lump sum charge.

5. **It must contain a detailed statement of disbursements** - these are out-of-pocket expenses incurred by your lawyer on your behalf, for such things as Court filing fees, travel, expert opinion reports, transcripts or title search costs.

C. Is it a "final" bill?

Only a **final** bill may be reviewed. "Final" means not subject to change in the future. It is quite common for a lawyer to submit interim accounts to a client, especially in lengthy cases; often these will be marked "interim". But it is sometimes difficult to determine whether an account is interim or final, and it will depend upon the understanding of the lawyer and client, and any agreement between them about the rendering of accounts. It is up to the associate judge or district registrar to decide, on the facts of each case, whether an account is interim or final.

D. Has the bill been paid?

Generally speaking paid bills are not reviewable unless the review process is initiated within 3 months after payment. Where there are a series of bills, however, payment of some but not all of the bills will not usually prevent a review from being conducted.

E. Is there already a Court judgment in the amount of the bill?

If your lawyer delivers his or her bill to you and you do not pay it, the lawyer has two avenues available to collect on the bill. First, he or she may have the bill reviewed as described in this booklet.

Secondly, the lawyer may take legal action against you in a court, by suing you for the amount of the bill. If the lawyer does this, and gets a court judgment against you, you may not later apply for a review.

That rule is subject to one exception: the B.C. Supreme Court may order that the bill be reviewed, in spite of the outstanding judgment, if a judge decides that the circumstances of your case justify a review.

F. Is there a contingent fee agreement between you and your lawyer?

You may have signed a "contingent" fee agreement, by which a lawyer receives a percentage of the court's award if you win the case but nothing if you lose. This agreement can be reviewed without a court order, in either of the following circumstances:

- 1) when an appointment is taken out within 90 days of signing such an Agreement.
- 2) when an appointment is taken out within 90 days of terminating such

an Agreement.

Where the agreement is found to be unfair or unreasonable under the circumstances existing at the time the contract was entered into..." it may be modified or cancelled. If it is modified the client and lawyer then operate under the modified contract. If it is cancelled the lawyer may be required to prepare a bill for services in the usual way and that bill is then reviewed.

G. Is it less than one year since you were sent the bill?

The general rule is that a bill may be reviewed only if the appointment is taken out within 12 months from the date on which the bill was sent to you by your lawyer. The date the appointment was taken out is the date stamped on the appointment by the registry.

If your lawyer applies to have his or her bill reviewed, the 12 month rule applies, but lawyers have a further limitation in that they may not apply for a review until at least 30 days after the bill was sent to you. The lawyer must then give you five (5) days notice of the date fixed for the review.

The 12 month rule is subject to one exception, which is that a judge may order that a review take place even outside the 12 month period if he or she decides that in fairness the circumstances of the case justify a review.

VI. DO YOU NEED A LAWYER AT A REVIEW?

You are not required to have a lawyer represent you at a review, but you may hire one if you wish. In practice, over half of the clients who appear at review hearings are not represented by a lawyer, especially in cases where the amount of money involved is relatively small.

In deciding whether to hire a lawyer to assist you with the review you should consider several factors:

1. Are you able and willing to take the time necessary to prepare for the hearing?
2. Do you understand the proceeding well enough to represent yourself?
3. Will you be capable of explaining your position to the reviewing officer, calling witnesses, and cross-examining your lawyer and his or her witnesses?
4. Can you afford to hire a lawyer to represent you at the hearing?

The associate judge or district registrar who presides at the hearing is an independent official of the B.C. Supreme Court, and cannot give you legal advice about how you should conduct your case. However, if you attend a hearing without a lawyer the reviewing officer will ensure that you understand the purpose of the hearing, and the different steps involved. He or she may also assist you in framing questions to ask witnesses, so that

relevant information is brought out. The reviewing officer will try to ensure that the lawyer whose bill is being reviewed does not get an unfair advantage in light of his or her legal training and experience.

VII. HOW TO START THE REVIEW PROCESS

A. Requesting more detail:

Before applying to have your lawyer's account reviewed, you should consider whether you have received from him or her an account which contains enough information to allow you to understand what work was done on your behalf. If you think that too little information has been supplied, ask your lawyer to give you a more descriptive account or an account which contains a more detailed statement of disbursements.

You may find that this additional explanation resolves the problem, and makes a review of the bill unnecessary. If it does not, this section describes the procedure to follow.

B. Obtaining an appointment

The first step in the review process is to obtain a date for the hearing. The proceedings are actually initiated by inserting the date and time given by the registry in a document called an "appointment". The appointment is then filed in the registry.

To obtain a date you should contact the appropriate registry of the Supreme Court of British Columbia. Where the bill relates to a court proceeding the appointment should be taken out in the registry where the proceedings were commenced or transferred. Otherwise the appointment should be taken out in the registry located nearest to the office of the lawyer whose bill is being reviewed.

If your lawyer hires another lawyer to represent him or her at the hearing you may be liable for that person's travel expenses as well and if your lawyer calls professional witnesses to testify on his behalf, you might be required to pay their reasonable travel costs and also a reasonable amount for the time that they have spent travelling and during which they could not otherwise be employed.

If your lawyer obtains an appointment to review his or her own bill (because you have not paid it), and chooses a registry some distance from your home or place of business, and the bill is reduced by one-sixth or more at the review, then the lawyer may have to pay your reasonable travel costs, in addition to your costs for the review itself (see Part X).

When you go to the registry to obtain an appointment, you should take two copies of the bill or bills which are disputed. The clerk in the registry will provide you with an appointment to complete and will assign a date and time for the hearing. It may be as much as four months ahead, depending on how busy that specific Registry is.

There is a filing fee for filing the appointment. The filing fee will include up to three days of hearing room time.

C. Notifying your lawyer of the hearing date

Once you have filed the appointment, you must deliver a copy of it to the lawyer whose bill is being reviewed at the address shown on the bill. You may deliver it personally to the lawyer, or leave it with a responsible staff member in the lawyer's office. You should make a written note of the name of the person to whom you delivered the appointment and the date, time and location, in case a dispute arises later about whether the lawyer received it.

You must deliver the appointment to your lawyer far enough in advance of the hearing date to ensure that he or she has a reasonable opportunity to prepare for the hearing. A minimum of five (5) days notice is required, but you should allow at least two weeks in usual circumstances.

D. Notifying you where your lawyer has taken out the appointment

If the lawyer obtained the appointment, he or she must deliver the notice to you, so that you are aware of the location, date and time of the hearing. The lawyer must give you at least five (5) days notice, so that you can prepare for the hearing.

There are several ways in which the appointment may be delivered to, or served, on you:

1. Personally - actually placed personally into your hands by the lawyer or someone acting on his or her behalf;
2. Left with you - if you refuse to accept the notice, the reviewing officer may be satisfied that you were "served" if there is evidence that the notice or its contents were clearly brought to your attention;
3. An incorporated company - if the bill was originally sent to a client which is an incorporated company, the lawyer must prove that a copy of the appointment has been sent by registered mail to the company's registered office address or left at that address or served on an officer or director. If the registered office address is the address of the lawyer who is having the bill reviewed, then a copy of the notice must be served on an officer or director of the company.

VIII PROCEDURE AT THE HEARING

A. The people who attend

Hearings are held in the courthouse, usually in a medium sized room which looks like a conference room or a small courtroom. The people who usually attend a hearing are:

1. The Associate Judge or Registrar - the person who is in charge of the hearing, and who will decide whether the lawyer's bill should be confirmed or reduced;
2. The Client - you may attend personally and represent yourself, or you may hire another lawyer to attend with you;
3. The lawyer whose bill is being reviewed - he or she may represent himself or herself, or be represented by another lawyer;
4. Witnesses - you or your former lawyer, or both of you, may bring witnesses to testify at the hearing, if the evidence of those witnesses is relevant to the questions to be answered on the review.

You may wish to make notes during the hearing for your own records. At the conclusion of the hearing, and upon paying the prescribed fee, you may request a copy of the clerk's notes from the court registry that will show the result of the hearing, such as the decision of the district registrar or associate judge or an adjournment. A transcript of the proceedings and/or the reasons for decision may be purchased from the local transcription company. You may contact the court registry to obtain the contact information about the transcription company.

B. The sequence of events

1. Proving service of the notice of appointment - if both you and the lawyer attend the hearing, it is clear that you both were informed of it, so the hearing may proceed. If one of you is not present or represented, then the reviewing officer must enquire whether the absent party received notice of the hearing. The hearing may take place only if the reviewing officer is satisfied that the absent party was aware of the hearing, and voluntarily declined to attend. Usually proof of service or delivery is provided by way of an affidavit. A copy of the affidavit of service is required to be in the hearing record pursuant to Rule 23-6(3.1)(b)(iv).

If the reviewing officer is not sure whether the absent party was informed of the hearing, he or she may adjourn the hearing. In that case a new date must be obtained, and a copy of the requisition re-setting the date must be delivered to the absent party.

2. Focusing the issues in dispute - the reviewing officer will explain to you the procedure to be followed at the hearing, and will ask you to state briefly the nature of your complaint. This will allow him or her to understand why the hearing is taking place, and will allow everyone to focus on the issues which are really in dispute.
3. The lawyer must justify his or her bill - in a review hearing it is up to the lawyer to demonstrate that the charge made is reasonable, taking into account all the circumstances of the case. For that reason, the lawyer presents his or her case first.

4. The lawyer's evidence - the lawyer will explain what you instructed him or her to do, what services were provided, why they were necessary, and how the fees and disbursements shown in the bill were calculated.

When your lawyer has finished testifying, you may ask him or her questions, to bring out evidence in your favour. Sometimes the lawyer whose bill is being reviewed will not attend the hearing, but will file an affidavit in which he or she describes the work done. In that event, you may ask the reviewing officer to order that the lawyer attend the hearing so that you can question him or her. It is up to the reviewing officer to decide whether the lawyer should be required to attend.

5. Witnesses called by the lawyer - sometimes the lawyer will call other witnesses to help prove his or her claim that the bill is reasonable. For example, he or she may call another lawyer who is experienced in the same type of legal case as yours to testify what is a reasonable fee for the services provided.

You are allowed to ask questions of any witness called by the lawyer.

6. The client's evidence - you may testify, and will probably want to do so if you dispute something said by the lawyer. For example, you may disagree with his or her version of what your instructions were, or what the hourly rate would be.

After you have finished testifying the lawyer may question you, as you did him or her.

7. Witnesses called by the client - you may want to call one or more witnesses to testify about facts in dispute. For example, you may call another lawyer to testify that the fees charged were unreasonably high for the circumstances involved. Or, you may call someone to corroborate your version of the instructions you gave the lawyer, if that person was present and heard the conversation.

Any witness you call may be questioned by the lawyer whose bill is being reviewed.

8. Producing documents - if either you or the lawyer have documents which are relevant to the issues in dispute, they may be introduced into evidence by any witness who can identify them. A document which cannot be identified as being relevant to the hearing cannot be admitted.

9. The rules of evidence

- a) Leading questions - when you are asking questions of a witness whom you have called, your questions may not suggest the answer you want. For example, you may ask

"What colour was the car?", but you may not ask "The car was red, wasn't it?".

When you are asking questions of the lawyer, or of any witness called by the lawyer, you may ask leading questions which suggest a particular answer.

- b) Hearsay - the general rule is that a witness may only testify as to what he or she saw, heard or did, but not testify as to what someone else said happened. For example, if your spouse was present with you in your lawyer's office when fees were discussed, then your spouse may testify as to his or her recollection of the conversation. But if your spouse was not present, and only knows what was said because you later recounted the conversation, your spouse may not testify as to what was said, because his or her testimony is second hand or hearsay.

The person who said, heard, saw or did the fact in dispute should be brought to the hearing to testify; only in this way can that person's powers of observation and recollection be tested on cross-examination.

- c) Opinions - both you and the lawyer are permitted to call as witnesses up to two lawyers each, to express an opinion about the nature and importance of the services performed, and the reasonableness of the charge made. A witness who gives this type of expert opinion evidence is first questioned by the person who calls him, and then may be cross-examined by the other party.

Occasionally this expert may not appear at the hearing personally, but may state his or her opinion in a sworn affidavit. In that case the witness may be required to attend at the hearing to be cross-examined. For example, his or her opinion as to the reasonableness of the bill may not be valid if the assumptions upon which the opinion are based are wrong or unproved.

10. Submissions

When all the testimony is completed, and all the documents have been entered, the reviewing officer will ask your lawyer and you to summarize your case. This is your opportunity to emphasize the points in your favour, based on the evidence led at the hearing. Remember that the purpose of the hearing is to determine whether the lawyer's bill is reasonable in all the circumstances of the case, and your submissions should focus on the specific reasons which make you think it is not reasonable.

Since it is up to the lawyer to justify the bill, he or she is the first one to make a submission. Listen carefully, so you can comment on any points with which you do not agree, based on the evidence led at the hearing.

After the lawyer's submission it is your turn. Be specific, clear and concise, and refer to the evidence led at the hearing to support your points.

The lawyer is entitled to reply to your submission before a decision is made.

11. The decision

In many cases the reviewing officer is able to make his or her decision immediately and will do so, giving reasons for the conclusions he or she has drawn, referring, when appropriate, to the evidence led during the hearing and to previous legal decisions on points of law.

Sometimes the reviewing officer will want to take a few minutes to think about the case before reaching a decision. In that case, you may be asked to remain briefly in the hearing room to await the decision. The reviewing officer will then leave the room, and when ready he or she will return to inform you of the decision and the reasons for it.

In some cases the reviewing officer may need more time to consider the testimony or documents, or study the law involved, and will "reserve" his or her decision. In that case it may take up to several weeks for a decision to be announced, and the reviewing officer will usually prepare a written decision which will be made available to you and the lawyer.

IX. DETERMINING WHETHER THE BILL IS REASONABLE

A. Fees

In deciding whether the fee charged in the lawyer's bill is reasonable in the circumstances, the reviewing officer will take into account the testimony led at the hearing, documents entered and submissions made by you and the lawyer. He or she will also apply his or her general knowledge and experience.

Over the years the Courts have set out factors which should be considered in deciding whether the fee charged is fair. These factors include but are not limited to the following, as set out in s. 71(4) of the Legal Profession Act:

- (4) At a review of a lawyer's bill for fees, expenses and disbursements, the registrar must consider all of the circumstances, including
 - a) the complexity, difficulty or the novelty of the issues involved,
 - b) the skill, specialized knowledge and responsibility required of the lawyer,
 - c) the lawyer's character and standing in the profession,
 - d) the amount involved,
 - e) the time reasonably spent,

- f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
- g) the importance of the matter to the client whose bill is being reviewed,
- h) and the result obtained”.

The reviewing officer's overriding duty is to ensure that all factors essential to justice and fair play are taken into account, so he or she may consider factors other than the seven listed above.

B. Disbursements

Disbursements are out-of-pocket expenses incurred by your lawyer on your behalf while carrying out the work you instructed him or her to perform. They include such expenses as court filing fees, fees paid to the Official Court Reporter for a transcript, land title searches, private investigator fees, and expert witness fees.

The reviewing officer is required to approve all disbursements which your lawyer can justify as being reasonable and necessary expenses in the circumstances of your case.

C. Unusual expenses and an over-cautious approach

Normally a lawyer is not entitled to increase the fees or disbursements for unusual work performed in relation to the kind of problem for which he or she was hired, or because the lawyer was over-cautious in the way he or she performed the legal services.

Those types of extra charges are only allowed if evidence is called from which the reviewing officer can conclude that you gave the lawyer specific instructions to do the unusual work, incur the unusual disbursements, or take an over-cautious approach to the case.

D. Reducing the bill

There is no authority to increase the amount of the bill. It may be left unchanged or reduced. If it is reduced, the reviewing officer may reduce specific items of fees or disbursements, or may simply reduce the final total figure on the bill.

The amount that you must pay is that new total, plus interest charges and any costs of the hearing which are assessed against you or credited to you.

X. **PAYING FOR THE COST OF THE HEARING**

- A. Administrative costs - Whoever takes out the appointment must pay the filing fee. The fee for the use of the hearing room is based on the length of the hearing. Finally, a fee is charged to file the certificate issued at the conclusion of the hearing.
- B. The successful party's costs - unless the reviewing officer decides that there are special circumstances involved in your case which demand that the costs of the hearing be dealt with in a different way, the costs of the hearing are paid for as follows:
1. By the client - if the bill is not reduced or reduced by less than one-sixth of the total amount charged. The "total amount charged" is the total of the fees and disbursements listed in the bill;
 2. By the lawyer - if the bill is reduced by one-sixth or more of the total amount charged.

You should realize that the amount of "costs" which you may claim or be required to pay is not necessarily the full expense you incurred in having the account reviewed, as described in the next section.

C. Calculating the "costs"

1. Disbursements - for example, court fees, travel, photocopy charges, etc.
2. Travel expenses - reasonable out-of-pocket expenses incurred by the parties and his or her witnesses, in travelling to the hearing from another city;
3. Fees - under Appendix B of the Supreme Court Civil Rules a successful party is entitled to claim certain Items under the Tariff. The average dollar cost could range from \$550 for a half day hearing to \$990 for a full day hearing.
4. Expert opinions - a reasonable amount for hiring up to two independent lawyers to give an opinion about the nature of the work done, and the reasonableness of the amount charged.

XI. THE CERTIFICATE OF FEES

After the reviewing officer decides the final amount of the lawyer's bill, and whether costs are payable by you or the lawyer, he or she signs a Certificate of Fees (Form 65).

By this document the reviewing officer certifies the amount, including fees and disbursements, plus any interest charges and hearing costs as assessed.

Once the Certificate of Fees is signed there is no authority for the reviewing officer to change the amount owing.

Occasionally, especially in lengthy proceedings, the reviewing officer may sign an Interim Certificate of Fees if it is clear at that stage in the hearing there will be money owing to

you by the lawyer.

Once the Certificate of Fees has been signed, either you or the lawyer may file it in the registry where the appointment was filed. After the period within which a further review by the Court may be sought (see section XII), that Certificate then becomes enforceable as a judgment of the Court.

A signed Certificate of Fees of this type will enable the lawyer to take steps to recover the money owing, such as by garnishing your bank account or employer, or by directing the Sheriff to seize your personal property. If there is found to be money owing to you from the lawyer, you will have the same rights.

XII. REVIEW BY THE COURT

If either you or the lawyer is not satisfied with the reviewing officer's decision, either of you may apply to the B.C. Supreme Court for a review of the decision.

Normally, an application to review a reviewing officer's decision must be made within 14 days from the date he or she signed the Certificate of Fees, although that period may be extended if:

1. The reviewing officer at the time he or she signs the Certificate of Fees, specified a longer period; or
2. A judge of the B.C. Supreme Court specifies a longer period.

On the review, the judge will consider all the material filed at the hearing (including affidavits), and any written decision.

A judge who reviews a decision will not interfere with the decision unless he or she is satisfied that in reviewing the bill an error in principle was made.

In other words, the judge will not try to second-guess a decision about which evidence to accept or reject, or by how much a disbursement should be reduced. The judge will interfere only if the reviewing officer has made an error in law.

You can see that a review of this type may be quite complicated, and you would be wise to discuss your case with a lawyer before deciding what to do.