

# **LAWYER'S BILL ASSESSMENT PROCESS**

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Court of Queen's Bench  
(Manitoba)

## COURT OF QUEEN'S BENCH OF MANITOBA

### LAWYER'S BILL ASSESSMENT PROCESS

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## **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 assessed.

This booklet describes the process for having your lawyer's bill assessed by a Master (or sometimes a judge) of the Court of Queen's Bench.

## **II. A CAUTION**

This booklet is designed to assist clients who want to have their lawyer's bills assessed. It will describe the circumstances in which a bill may be assessed, how you prepare for an assessment, how a hearing operates, and who pays the cost of the assessment.

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 assessed you should consider discussing your situation with another lawyer. You have several options:

1. Contact another lawyer directly, for advice about your case. Discuss with him or her whether you should apply for an assessment 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, which is listed in the white pages under Community Legal Education Association (CLEA) or visit their website at [www.communitylegal.mb.ca](http://www.communitylegal.mb.ca)

It is important to remember that a bill assessment can be a fairly complex legal proceeding and that there can be significant costs assessed against a party who is not successful in a bill assessment. In addition, if a portion of the disputed fees have not been paid you may be required to pay the full amount into court to be held until the assessment has been completed.

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### **III. WHAT IS AN ASSESSMENT**

An assessment of a lawyer's bill usually is conducted by a Master of the Court of Queen's Bench of Manitoba. Masters are judicial officers.

The authority to assess a lawyer's bill is contained in the *Legal Profession Act*, a provincial statute which governs the legal profession of Manitoba. The process is specified in Rule 71 of The Rules of the Court of Queen's Bench. See Appendix I.

The purpose of an assessment is to ensure that fees charged by lawyers are **fully disclosed, fair and 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 ASSESS A LAWYER'S BILL?**

The client – if you object to the amount of the bill, or specific items charged, you may have the bill assessed. The assessment process is **not** available to a third person who may have assumed responsibility to pay the bill.

### **V. IN WHAT CIRCUMSTANCES MAY YOUR LAWYER'S BILL BE ASSESSED**

It is very important to understand that not all lawyer's 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", 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 assessment.

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 assessment 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 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 practice law in the Province of Manitoba.

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2. **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 court to order the lawyer to give you particulars of the services.

3. **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.

4. **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. Do the bills relate to the same matter?

The rule allows you to apply for assessment of a bill together with any other bill previously rendered with respect to the same matter. This means that the earlier bill or bills must have been rendered as interim bills in connection with the same matter and not for some other service which the lawyer may have performed and billed for.

D. Is there already a court judgment for the amount of the bill?

If your lawyer delivers his or her bill to you and you do not pay it, 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 an assessment.

E. Is there a contingency contract between you and your lawyer?

You may have signed a contingency contract, by which a lawyer receives a percentage of the court's award if you win the case but nothing if you lose.

If you are asking for a declaration that this contingency contract is not fair and reasonable you must make an application to a judge of the Court of Queen's Bench within 6 months after the lawyer's remuneration has been paid to or retained by the lawyer. This is a different application than the bill assessment application.

F. Is it less than six months since you received the bill?

A bill may be assessed only if the application is filed within 6 months from the date on which the last bill in respect of the same matter was received by you. If you cannot establish that the bill was received by you in this time frame your application will be dismissed.

## VI. DO YOU NEED A LAWYER AT AN ASSESSMENT?

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

In deciding whether to hire another lawyer to assist you with the assessment you should consider several factors:

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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 Master, calling witnesses, and cross-examining the lawyer whose bill is being assessed and his or her witnesses?
4. Can you afford to hire another lawyer to represent you at the hearing?

The Master who presides at the hearing is an independent judicial officer of the Court of Queen's Bench and cannot give you legal advice about how you should conduct your case. However, if you attend a hearing without a lawyer the Master will try to make sure that you understand the purpose of the hearing, and the different steps involved.

## **VII. HOW TO START THE ASSESSMENT PROCESS**

### **A. Requesting more detail:**

Before applying to have your lawyer's account assessed, 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. Filing a Notice of Application**

The first step in the assessment process is to prepare a notice of application and supporting affidavit evidence. The prescribed forms for these documents appear in the [form](#) section of this booklet. The documents are then filed in the Court Registry and a date is obtained from the Masters' coordinator or other registry official, which date should be far enough in the future to make sure you can serve the lawyer at least 14 days before the hearing date.

To obtain a date you should contact the appropriate Registry of the Queen's Bench (the address and telephone numbers are listed at the back of this booklet). 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 assessed.

### **C. Notifying the lawyer of the hearing date**

Once you have filed the notice of application and supporting affidavits, you must deliver a copy of the documents to the lawyer whose bill is being assessed 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 documents and the date, time and location, in case a dispute arises later about whether the lawyer received it.

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You must deliver the documents to the 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 fourteen (14) days notice is required.

You may be required to file an affidavit of service with the court to prove service was completed in accordance with the court rules. A sample is provided with the forms section of this booklet.

## **VIII. PROCEDURE AT THE HEARING**

### **A. The First Hearing**

#### **A-1. The people who attend the first hearing**

The first hearings are held in the courthouse, usually in the Master's office. The people who usually attend a hearing are:

1. The Master – 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 assessed – he or she may represent himself or herself, or be represented by another lawyer.

If the Master or the parties decide that the matter is not going to be settled, the Master will discuss the time requirements for a formal hearing which will be heard by a different Master. The length of time set for the formal hearing will depend on the issues and whether, and how many, witnesses will be called to present evidence.

#### **A-2. The sequence of events for the first hearing**

1. Proving service of the notice of application - 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 Master must enquire whether the absent party received notice of the hearing. You will be required to file an affidavit proving service as discussed in section vii.c. The hearing may take place only if the Master is satisfied that the absent party was aware of the hearing, and voluntarily declined to attend.

If the Master is not sure whether the absent party was informed of the hearing, he or she must adjourn the hearing. In that case a new appointment must be obtained, and a copy delivered to the absent party.

2. Focusing on the issues in dispute - The Master will explain to you the procedure to be followed at the hearing. At the first hearing there will be a determination made as to whether your bill can properly be assessed. Your former lawyer may make a submission to the court asking for the proceeding to be dismissed if you do not meet the requirements for having an assessment, or the court can make a determination based on the affidavit evidence to decide this.

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3. Security – If the lawyer is concerned that the application is being brought without merit or to delay paying the lawyer proper remuneration, and there is a concern that you will not pay the remuneration ordered by the court at the conclusion of the bill assessment process, the lawyer may make a motion to the court for security for payment of costs of the proceeding and/or the outstanding amount of the bill or bills or some portion of the amount outstanding. If the court orders an amount to be paid into court by you as security, the proceedings will not continue until you have paid the required amount into court.

If it is decided that the assessment can proceed, the Master may, if it is a simple matter or involves a minor dispute as to the amount of the bill, consider the evidence and hear submissions from you and the lawyer at the first hearing, and make a decision.

In many instances the Master may decide that there should be a settlement conference, in which case the Master will invite you and the lawyer to discuss the issues about the account and may make comments to try and assist you and the lawyer reaching a settlement, and avoid the need for a formal hearing. The settlement conference may occur at the first hearing, or the Master may adjourn the matter for the settlement conference to occur on a later date if there is not sufficient time at the first hearing.

The process involving a settlement conference may only be available in Winnipeg due to the limited availability of masters in other judicial centres.

4. Directions for formal hearing – In the event that the matter is not settled at a settlement conference the Master will discuss what witnesses will be called by the parties and how much time is required for a formal hearing and will direct the parties to obtain dates for the formal hearing which will be heard by a different Master.

## B. The Formal Hearing

### **B-1 The people who attend the formal hearing**

1. The Master – The person who is in charge of the hearing, and who will decide whether the lawyer's bill should be confirmed or reduced. This will be a different Master than the Master who was in charge of the settlement conference.

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 assessed – 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 assessment. However, you will be restricted to witnesses identified at the earlier hearing before the Master at which the formal hearing date was set. If either party is relying on the evidence of a lawyer who will have reviewed the work done by the former lawyer, the court rules regarding expert evidence apply and that lawyer must provide a report to the other party in advance of the formal hearing.

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The formal hearing will be monitored and a court clerk monitor will be present to ensure there is a record of everything that is said at the hearing, which can be transcribed into written form, at a cost, if required. You should make notes of all that happens. If you do, the notes will help you remember the questions you want to ask and the points you want to make.

## **B-2 The sequence of events**

1. The lawyer must justify his or her bill - 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.
2. 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 bills were calculated. When your lawyer has finished testifying, you may ask him or her questions, to bring out evidence in your favour.
3. 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 cases as yours to testify what is a reasonable fee for the services provided. The rules relating to witnesses and expert witnesses as set out in section B-1.4. apply.

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

4. 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.

5. 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. [The rules relating to witnesses and expert witnesses as set out in section B-1.4. apply].

6. Producing documents – If either you or the lawyer has 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.

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## 7. 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 witnesses 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/Experts – both you and the lawyer are permitted to call as witnesses lawyers, 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. The rules relating to expert witnesses apply to such lawyers. Generally witnesses who are not qualified as experts cannot give opinion evidence.

## 8. Submissions

When all the testimony is completed, and all the documents have been entered, the Master will ask your former 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 a 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. If you or the lawyer are relying on previous decisions of the court to support your position, you will refer to those decisions at this time. Any cases being relied on are required to be provided to the Master and the other party in advance of the hearing.

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. You are not allowed at this point to try and give any additional evidence. You can only refer to evidence which was led during examinations and cross examinations.

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

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## 9. The decision

In some cases the Master 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 Master 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 Master will then leave the room, and when ready he or she will return to inform you of the decision and the reasons for it.

Usually the Master will 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 several weeks for a decision to be announced. In each case the Master shall prepare and issue a written report which contains the Master’s findings and conclusions and the amount if any which the Master determines is the proper amount. The decision in the report is not an order of the court until or unless it is confirmed. See sections XI and XII.

## **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 Master will take into account the testimony led at the hearing, documents entered and submissions made by you and your lawyer. The Master 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 the commentary to Chapter 3.6-1 of The Law Society’s Code of Professional Conduct:

- [1] What is a fair and reasonable fee will depend upon such factors as:
- (a) the time and effort required and spent;
  - (b) the difficulty of the matter and the importance of the matter to the client;
  - (c) whether special skill or service has been required and provided;
  - (d) the results obtained;
  - (e) fees authorized by statute or regulation;
  - (f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;
  - (g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer’s inability to accept other employment;
  - (h) any relevant agreement between the lawyer and the client;
  - (i) the experience and ability of the lawyer;
  - (j) any estimate or range of fees given by the lawyer; and
  - (k) the client’s prior consent to the fee.

The Master’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 those listed above.

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## B. Disbursements

Disbursements are out-of-pocket expenses incurred by your former 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 court for a transcript, land title searches, private investigator fees, postage, photocopying and expert witness fees.

## C. Unusual expenses and 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 Master 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 Master 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 plus or minus 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 – When you file your notice of application you must pay the filing fee.

B. The successful party's cost – the Master may order the unsuccessful party to make a contribution to costs of the successful party with respect to the conduct of the hearing. The amount of costs is determined in part by the length of the hearing. A party who does not hire a lawyer to represent him or her at the hearing may or may not receive an award of costs. Success does not simply mean a reduction on the amount of the bill.

## XI. THE MASTER'S REPORT

When the Master decides the final amount of the lawyer's bill, and whether costs are payable by you or the lawyer, he or she issues a report.

A report will automatically be confirmed on a date specified on the report unless confirmation is opposed. You are responsible for informing yourself about the confirmation process which is governed by Queen's Bench Rule 54.06 (2) and Rules 54.08 through 54.10. See Appendix II

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## **XII. OPPOSING CONFIRMATION**

If you or the lawyer are not satisfied with the Master's decision, either of you may apply to the Court of Queen's Bench to oppose confirmation of the Master's report, which will be heard by a Court of Queen's Bench judge. If the matter for which the bill was rendered involved a family proceeding, the matter will be heard by a judge of the Family Division of the Court of Queen's Bench. If it involves any other type of legal matter it will be heard by a judge of the General Division of the Court of Queen's Bench.

At a hearing to oppose confirmation the judge will consider all the material filed at the hearing (including affidavits), and the Master's Report. If there is a written transcript of the evidence led at the hearing before the Master, the judge will generally consider that as well.

## **XIII. ASSESSMENT BY A JUDGE**

The court rules provide for an assessment to be heard by a judge where a Master is not available. If an assessment does proceed before a judge the procedure which is followed may differ slightly since the judge has greater powers than the master and is not restricted to the procedures and powers given to masters by the court rules. However the judge will give directions as to what procedure will be followed at the first hearing, or the judge may make an order based on the affidavit evidence filed, after hearing submissions from the lawyer and from you. When a judge hears an assessment, an order will be made at the conclusion of the hearing, rather than a report. That order is a final order which is subject only to an appeal to the Court of Appeal.

You can see that a bill assessment may be quite complicated, and you would be wise to discuss your case with another lawyer before deciding what to do.

## **XIV. ALTERNATIVES TO BILL ASSESSMENT**

Rather than proceeding with a bill assessment, there are alternatives available to you.

1. You could defend an action by the lawyer to collect monies which the lawyer claims are owed pursuant to the bill. This action may be a small claims action if the outstanding amount is \$10,000.00 or less. Otherwise the action may be commenced in the Court of Queen's Bench and will be heard by a judge.
2. You could commence an action against the lawyer to recover fees paid to the lawyer which you claim to be excessive. If the amount in issue is \$10,000.00 or less this will be a small claims action. Even if the amount has not been paid by you and you are disputing the bill, you could commence an action. If you are alleging that the lawyer was negligent in his or her conduct of the matter and are asking the court to find the lawyer negligent, or if you are alleging fraud, you must proceed by way of a statement of claim.
3. You can seek to have the fee dispute determined through The Law Society of Manitoba which offers an arbitration process at no cost, but requires you and the lawyer to agree to participate in the process.

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## APPENDIX I

### RULE 71 — ASSESSMENT OF LAWYER'S BILL

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#### [Form 71A](#)

#### [Notice of application for assessment of lawyer's bill](#)

### ASSESSMENT OF LAWYER'S BILL

#### APPLICATION FOR ASSESSMENT

##### **Application for assessment**

**71.01(1)** A lawyer's client may make an application to the court at any time within six months after receiving the lawyer's bill for an assessment of

(a) that bill; or

(b) a bill previously rendered in respect of the same matter;

by filing a notice of application in Form **71A** verified by an affidavit made in accordance with rule 71.04.

##### **Legal Profession Act prevails**

**71.01(2)** If the time for filing an application under subrule (1) conflicts with section 53 of *The Legal Profession Act*, that Act prevails.

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## FILING APPLICATION

### Family proceedings

**71.02(1)** If the lawyer's bill is rendered primarily in connection with a family proceeding within the meaning of section 41 of *The Court of Queen's Bench Act*, the application shall be filed in the family division.

### Jurisdiction of master

**71.02(2)** Subject to subrules (3) and (4), the application shall be made to a master.

### If master not available

**71.02(3)** If a master is not available at the judicial centre where the notice of application is filed, the application shall be made to a judge.

### Exception — re unfair contingency contract

**71.02(4)** If the application is for a declaration under subsection 55(5) of *The Legal Profession Act*, the application shall be made to a judge.

### Notice of application

**71.03** The notice of application shall set out

- (a) as the hearing date, the date obtained from the registrar; and
- (b) as the place of hearing, the judicial centre in which the applicant proposes the application to be heard.

## AFFIDAVIT

### Affidavit

**71.04** The affidavit shall

- (a) state the date that the lawyer's bill which is to be assessed was received by the applicant;
- (b) set out relevant facts to support the grounds on which the applicant is seeking to have the lawyer's bill assessed; and
- (c) include copies of all bills received by the applicant that relate to the assessment, attached as exhibits.

### Service of application

**71.05** The notice of application and affidavit shall be served on the respondent lawyer at least 14 days before the date of the hearing.

## NO ACTION BY LAWYER

### No action by lawyer

**71.06** After being served with a notice of application under rule 71.01 the respondent lawyer shall not commence a proceeding or take a further step in a proceeding relating to the bill that is the subject of the application, until the application is disposed of, except with leave of the court.

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## PROCEDURE AND POWERS

### Applicable rules

**71.07** The following rules apply to the assessment hearing, with necessary changes:

- (a) rule 38.08 (hearing by telephone, video conference or other means of communication);
- (b) rule 38.12 (dismissal of application for delay).

### Powers of the court

**71.08** On hearing an application under this rule, the court has the power to do any one or more of the following:

- (a) order the lawyer to deliver a bill to the client;
- (b) order the lawyer to provide particulars of a bill already delivered to the client;
- (c) specify the time within which a lawyer must comply with clause (a) or (b);
- (d) with or without a motion, make an order for security
  - (i) for payment of the amount which may be found due and owing, or
  - (ii) for costs;
- (e) direct the parties to attend a settlement conference with a judge or master who thereafter must not hear the matter if a settlement is not concluded;
- (f) vary or disallow any fee, charge or disbursement included in the lawyer's bill on any ground;
- (g) vary or disallow the amount of interest payable on the bill;
- (h) award and assess costs in respect of the application;
- (i) dismiss the application;
- (j) exercise any additional power that is conferred by rule 55 in relation to the conduct of a reference;
- (k) make any other order as is just.

## HEARING BY A JUDGE

### Order

**71.09** If the application is heard by a judge, the judge may make

- (a) an order setting out the amount, if any, payable by the client, after taking an account of all payments and credits; and
- (b) any other order as is just.

## HEARING BY A MASTER

### Report by master

**71.10(1)** If the application is heard by a master, the master shall make a report that

- (a) contains his or her findings and conclusions;
- (b) sets out the amount, if any, payable by the client, after taking an account of all payments and credits; and
- (c) sets out a deemed confirmation date determined in accordance with subrule (2).

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**Deemed confirmation date**

71.10(2) The deemed confirmation date shall be a date that is 35 days after the date the report is signed by the master.

**Report must be confirmed**

71.10(3) A report under subrule (1) has no effect until it is confirmed.

**Confirmation procedure**

71.10(4) The following rules apply with necessary changes to the procedure to confirm the master's report:

- (a) rule 54.08 (entering and serving report);
- (b) rule 54.09 (deemed confirmation date);
- (c) rule 54.10 (opposing confirmation).

**Report deemed to be confirmed**

71.10(5) The master's report is deemed to be confirmed as of the deemed confirmation date set out in the report unless before the deemed confirmation date, a motion to oppose confirmation is

- (a) made to a judge; and
- (b) filed and served on each party who appeared at the assessment hearing.

**Motion opposing confirmation**

71.10(6) A judge hearing a motion to oppose confirmation may confirm the report in whole or in part or make such order as is just.

**Confirmed report is court order**

71.11 When the report is confirmed it becomes an order of the court.

**CLIENT'S DOCUMENTS****Delivery of documents**

71.12 Where

- (a) the amount found to be due to the lawyer is paid; or
- (b) nothing is found to be due to the lawyer;

the lawyer shall, if required in writing by the client, without delay, deliver to the client all documents in the lawyer's custody or control that belong to the client.

**UNNECESSARY STEPS****Cost of unnecessary steps**

71.13 The court may allow the costs of steps taken by the lawyer that

- (a) were in fact unnecessary if the court is of the opinion that the steps were taken because, in the lawyer's judgment, reasonably exercised, the steps were conducive to the interest of the client; or
- (b) were not calculated to advance the interest of the client if the steps were taken at the request of the client after being informed by the lawyer that they were unnecessary and not conducive to the client's interests.

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## APPLICATION OF RULE

**Application of Rule**

[71.14\(1\)](#) This Rule applies to an application for an assessment of a lawyer's bill filed on or after September 1, 2007.

[71.14\(2\)](#) An application for an assessment commenced before September 1, 2007 and not finally disposed of before that date, shall be dealt with in accordance with Rule 71 as it read immediately before that day as though it had not been replaced.

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## APPENDIX II

### Report must be confirmed

[54.06\(2\)](#) A report under subrule (1) has no effect until it is confirmed and rules 54.08 to 54.10 apply to the confirmation procedure.

### CONFIRMATION PROCEDURE

#### Entering report

[54.08\(1\)](#) Immediately after the report referred to in rule 54.06 is signed by the master it shall be entered on the court file.

#### Serving report

[54.08\(2\)](#) The report shall be served by the court on each party to the reference no later than four days after the report is signed. Service may be made

(a) by sending a copy of the report by regular lettermail to the party at the address on the court record for the party; or

(b) if there is a lawyer of record for the party who maintains a pick-up mailbox at the Law Courts Building in the judicial centre where the reference is conducted, by placing the report in the mailbox.

#### Effective date of service

[54.08\(3\)](#) Where service is made in accordance with clause (2)(a) or (b), service is effective on the fifth day after the report is mailed or placed in the pick-up mailbox, as the case may be.

### DEEMED CONFIRMATION OF REPORT

#### Deemed confirmation date

[54.09\(1\)](#) The deemed confirmation date shall be a date that is 35 days after the date the report is signed by the master.

#### Report deemed to be confirmed

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**54.09(2)** The report is deemed to be confirmed as of the deemed confirmation date set out in the report unless a notice of motion to oppose confirmation, as set out in rule 54.10, is filed and served before the deemed confirmation date.

### **Extending or shortening deemed confirmation date**

**54.09(3)** The parties may, before the deemed confirmation date, agree to extend or shorten the deemed confirmation date set out in the report by signing and filing a Confirmation Date Alteration Agreement (Form 54A).

## **MOTION TO OPPOSE CONFIRMATION**

### **To a judge**

**54.10(1)** A motion to oppose confirmation of a report shall be made to a judge.

### **Notice of motion to oppose confirmation**

**54.10(2)** A notice of motion to oppose confirmation of a report shall,

- (a) set out the grounds for opposing confirmation;
- (b) be filed and served on each party who appeared on the reference before the deemed confirmation date set out in the report; and
- (c) name the first available hearing date that is at least 14 days after service of the notice of motion.

### **Cross motion to oppose confirmation**

**54.10(2.1)** A party who is served with a notice of motion to oppose confirmation of the report may also oppose confirmation of the report

- (a) by filing a notice of motion within four days after being served with the other party's notice of motion that
  - (i) sets out the grounds for opposing confirmation, and
  - (ii) sets a proposed hearing date that is the same date as the hearing date set under clause 54.10(2)(c); and
- (b) by serving the notice of motion on every other party who appeared on the reference.

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**Motion for immediate confirmation**

[54.10\(3\)](#) A party who seeks confirmation before the deemed confirmation date may make a motion to a judge for confirmation.

**Disposition of motion**

[54.10\(4\)](#) A judge hearing a motion under subrule (2), (2.1) or (3) may confirm the report in whole or in part or make such other order as is just.

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## FORMS

### Form 71A Notice of Application for Assessment of Lawyer's Bill

**Form 71A** is one of the forms prescribed by the Court as part of the *Court of Queen's Bench Rules*. Two versions of the form are available.

**User-friendly version** — in [Microsoft Word format](#).

The user-friendly version is based on the prescribed version and is provided by the Court as a public service. You can fill in the form on a computer and print the completed form, or you can print the form and complete it in handwriting.

When printing the form:

- use good quality printer paper, 216 mm x 279 mm (8.5" x 11"),
- print only on one side of the paper.

If you complete the form on a computer before printing it:

- do not change the format in any way,
- use double spacing between lines,
- make sure the left hand margin is about 40 mm (1 ½ inches) wide.

If you print the form and complete it in handwriting, make sure the handwriting is readable.

If the form has a cover page, you must include it.

If the form is an affidavit:

- the font must be size 14,
- the pages must be numbered,
- exhibits must be separated by numbered or lettered tabs,
- the completed form, including exhibits, must be stapled or bound so that pages and exhibits do not become loose or separated.

If your form includes a dollar amount, use a decimal point to show dollars and cents (e.g. \$250.00).

**Prescribed version** — in [WordPerfect format](#) or [PDF format](#).

In many cases, the prescribed version cannot be simply printed for use in court proceedings. It is usually designed as a template with instructions for creating and completing the form as required. For example, a Statement of Claim must be in Form 14A, which requires you to include the general heading in Form 4A and the covering page in Form 4C.

If you create a form based on the prescribed version, the formatting should match the formatting of the user-friendly version and you should follow the instructions provided above for the user-friendly version.

If you need legal advice, call a lawyer or Legal Aid.

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