

Notice – Amendments to the Rules of Court

March 24, 2020

By Order in Council 78/2020 and AR 36/2020, a number of important amendments were made to the *Rules of Court* governing reviews and assessments. These amendments came into effect on March 17, 2020 (except for the amendments to Schedule C of the *Rules*, which will come into effect on May 1, 2020). Thus, with the exception of the amendments to Schedule C, all of the amendments are currently in effect and will be applied, as discussed below.

Rule 10.10(2) [*Time limitation on reviewing retainer agreements and charges*] – The time limit for a review of a lawyer’s account has been increased from 6 months to one year. Apart from the increase, the amendment does not affect the law regarding the application of rule 10.10(2) to interim vs. final accounts. Effective immediately, the new time limit will be applied to all reviews in which a time limit issue has not been previously determined by a Review Officer or dealt with by the Court, regardless of when the Form 42 *Appointment for Review* was filed. Where a Review Officer has previously determined that an account is out of time for review, an extension of time will still be required but may now be granted by the Review Officer in an otherwise normal review hearing [see the amendment to Rule 10.17 below].

Rule 10.13 [*Appointment for review*] was amended to make it clear that a Form 42 *Appointment for Review* must be served in the same manner as a commencement document (e.g. a Statement of Claim). However, readers are reminded that, pursuant to subrule 10.17(1)(g), Review Officers have authority to validate service and even dispense with service in appropriate circumstances. A request for a validation or dispensation of service may be made at the outset of a review hearing and, if granted, the review may proceed immediately thereafter.

Rule 10.15 [*Retainer agreement confidentiality*] – The amendments to this rule ensure that retainer agreements, lawyer’s time records and other evidence filed for a review (including a lawyer’s accounts) will be treated as confidential. Previously:

- only retainer agreements were treated as confidential and were required to be filed in sealed envelopes;
- lawyer’s accounts were attached to Form 42s and were thus filed as part of the Form 42s;
- time records and other evidence were attached to Form 42s or filed separately; and
- all of these documents, with the exception of retainer agreements, were available to the public through court file searches.

The effect of the amendments is to recognize the confidentially (and in some cases privileged nature) of evidence filed for a review and to therefore preclude public access to it. To assist in the attainment of this objective, the Review Office has developed a

“Confidential Evidence Coversheet” which should be used to file retainer agreements, lawyer’s accounts, time records and other confidential or privileged documents. All of these documents should be attached to the coversheet, with the coversheet and attachments being filed as a whole. None of the documents attached to the coversheet will be available to the public. Documents that are not attached (like the Form 42 and the Review Officer’s certificate) will. This should help to ensure that confidential and privileged documents are not inadvertently disclosed to the public through court file searches. The Confidential Evidence Coversheet can be found in the “Forms for Reviews” section of our webpage. In conjunction with the amendments to rule 10.15, subrules 10.13(2)(b), 10.13(3)(b) and 10.14(1)(c) were amended to remove the requirement to file retainer agreements in sealed envelopes. This is no longer required to ensure their confidentiality.

Rule 10.17 [*Review officer’s authority*] - This rule was amended to give Review Officers authority to determine the *applicability* of, and extend or shorten, any time period that is specified in the rules relating to reviews. The amendment therefore applies to the time limits specified in rule 10.10 and eliminates the need to apply to a Master or Judge for an extension of time or for permission to review an out-of-time account or retainer agreement. Instead, a request for an extension of time can be made to a Review Officer at the outset of a review hearing and if an extension is granted, then review may proceed immediately thereafter.

Rule 10.20(1) [*Enforcement of review officer’s decision*] – This amendment makes it clear that an application to the Court to have a Review Officer’s decision entered as a judgment must be done on notice to the opposing party. The rule and the standard forms for a regular court application [rule 6.3, Form 27 *Notice of Application* and Form 49 *Affidavit*] should be followed, with review proceedings being considered “an action” within the meaning of rule 6.3.

Form 42 [*Appointment for Review of Retainer Agreement/Lawyer’s Charges*] - The style of cause for this form was amended to more accurately define the parties to a review and to avoid common errors in completing the form. In addition, the form was amended to update some of the language previously used and to help identify the accounts and retainer agreements that will be presented for review, without the accounts being attached to the form [see amendments to Rule 10.15, above]. The new Form 42 can be found in the “Forms for Reviews” section of our webpage. Detailed information on completing the form can be found in our publication entitled “How to Request a Review”. The version that is now on our webpage has been updated to reflect the amendments discussed in this Notice.

Form 43 [*Notice of Appeal of Review Officer’s Decision*] – The style of cause for this form was also amended to more accurately define the parties. The new form can be found in the “Forms for Reviews” section of our webpage - and information on how to complete the form can be found in our publication entitled “Appealing from a Review Officer’s Decision”. Our webpage version of this publication has also been updated.

Form 44 [Bill of Costs] – This form was amended to separate “Disbursements” into “Taxable Disbursements” and “Non-taxable Disbursements” throughout the form, and to add a signature line to the Certificate of Assessment Officer. These amendments were made to correct long-recognized shortcomings. The versions of Form 44 that were, and are remain posted on our webpage already incorporate the amendments. They were previously modified pursuant to rule 13.13(1), which authorizes modifications to prescribed forms “as circumstances require”.

Schedule C, Division 2 (Tariff of Recoverable Fees) was amended to increase the tariff amounts in the schedule by approximately 35% and by adding a tariff item for trial preparation costs where an action is resolved less than 3 months before the trial was scheduled to commence. However, these amendments are not effective until May 1, 2020. Unless otherwise directed by the Court, Assessment Officers will not apply the amended schedule to awards of costs made prior to May 1, 2020. With respect to costs that are claimed under rule 10.29 [*General Rule for payment of litigation costs*], Assessment Officers will apply the amended schedule only where the circumstances giving rise to a claim occur after May 1, 2020. The following are examples of circumstances that would give rise to a claim under rule 10.29:

- a summary judgment or summary dismissal is obtained;
- an application is successfully completed; and
- a default judgement is entered or will be entered on the completion of an assessment.

Other *Rules of Court* were also amended but only those with a direct impact on reviews and assessments are discussed in this Notice.