

Assessment FAQs
FREQUENTLY ASKED QUESTIONS ABOUT
ASSESSMENTS OF COSTS

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What is an assessment of costs?

An assessment of costs (also referred to as “an assessment”) is a Court of Queen’s Bench procedure for determining the reasonable and proper costs that a party to a lawsuit is entitled to under the *Alberta Rules of Court* or because of an award of costs

made by the Court. In most litigation, the Court will award costs to the successful party but will not specify the amount. Rather, it will specify the type of costs awarded, leaving it to the parties to agree on the amounts or have the amounts determined through an assessment. In other litigation, the Court may be “silent” as to costs. When this occurs, the successful party will be entitled to costs under Rule 10.29 of the *Alberta Rules of Court*, and the type and amounts of the costs will be determined by case law and other rules.

What is the difference between an assessment and a review?

An assessment deals only with court costs and the parties to it will be parties to the litigation in which the costs were awarded or are claimed pursuant to Rule 10.29. Because of this, all court documents for an assessment are filed in the court file for the litigation. A review is a different and separate process. Its purpose is to determine the reasonableness of the amounts that a lawyer charged the lawyer’s client or clients for the legal services provided by the lawyer. Thus, the parties to a review will be the lawyer (or law firm) and the lawyer’s client or clients. Because of these and other differences between assessments and reviews, the court form that is filed to commence a review (a Form 42 *Appointment for Review*) opens a new court file for the review. Before booking and filing documents for an assessment or a review, the party requesting the process must ensure that they are requesting the correct process. Filing documents for an assessment when a review is required (or *vice versa*) will result in wasted time and effort, and in some cases, lost filing fees.

Who may request an assessment?

An assessment may be requested by a party who is entitled to costs (the Costs Claimant) or by the party who is required to pay the costs. In most cases, the Costs Claimant will be the one requesting the assessment because, unless the Court otherwise ordered, payment of the costs will not be enforceable until the costs have been assessed. However, there are circumstances in which the party required to pay the costs may want to have them assessed. This sometimes occurs in foreclosure actions, where the Defendant (borrower) has paid everything owing to the Plaintiff (lender) except the Plaintiff’s costs - and the Plaintiff threatens to continue its foreclosure action until its unassessed costs have been paid. In this example, a Defendant who believes that the costs being claimed are excessive might want to have them assessed before paying them. By filing and serving the court document that starts an assessment proceeding (a Form 45 *Appointment for Assessment*), the Defendant can put a halt to the foreclosure action until the assessment is completed. Once the assessment is completed, the Defendant would have to pay the assessed costs (which

could be lower than the amount originally claimed by Plaintiff). Failing to pay the costs at this point could result in continuation of the Plaintiff's action.

Are there any fees for an assessment?

No. There is no fee for filing the documents required for an assessment and there is no fee or charge for the assessment itself.

Can an assessment be done without a hearing?

Yes. There are two procedures for an assessment. One of them, called "an assessment by appointment", requires notice to the opposing party and is conducted through a hearing before a Review Officer, sitting as an Assessment Officer. The other, commonly called "a desk assessment" does not require notice and is completed by a court clerk who has been trained and designated to be an Assessment Officer for purpose of desk assessments. Desk assessments are allowed where:

- (a) A Costs Claimant obtained or will be obtaining a default judgment and wishes to add assessed costs to the amount of the judgment;
- (b) Costs have been awarded by the Court and the award expressly provides that the costs may be "assessed without notice" or "without an appointment"; or
- (c) An Assessment Officer permits the assessment to done without an appointment. Assessment Officers have discretion under Rule 10.36(2) to do this but will typically do it only where the costs being claimed are relatively small and are highly unlikely to be successfully challenged by the party required to pay them.

In virtually every other case an assessment must be done by appointment (i.e. with notice to the opposing party and through a hearing before a Review Officer).

How is a desk assessment conducted?

A Costs Claimant (or a Cost Claimant's lawyer) may obtain a desk assessment by submitting the following documents to a court clerk:

- (a) A Bill of Costs [Form 44] itemizing the costs claimed and the amounts being claimed;
- (b) Copies of receipts or invoices for the disbursements that are being claimed; and
- (c) A covering letter requesting the desk assessment and, if applicable, justifying any unusual claim or any higher than normal amount being claimed for a fee or disbursement item.

The documents may be submitted electronically or by delivery to the appropriate courthouse. Once they are received, they will be given to an Assessment Officer. The Assessment Officer will first ensure that the assessment can be done without an appointment. If it cannot, then the Assessment Officer will return the documents with a note advising that that this is the case. If the assessment can be done without an appointment, then the Assessment Officer will review the Bill of Costs and either allow all of the costs being claimed and the full amounts being claimed for them or, where appropriate, disallow minor cost items and make minor reductions in any amounts that the Assessment Officer considers unreasonable. After this, the Assessment Officer will complete the assessment by signing the certificate in the Bill of Costs, filing the Bill and returning a copy, with the filing stamp on it. Where the Assessment Officer considers it necessary to disallow a significant item in the Bill of Costs or make a significant reduction in an amount claimed, the Assessment Officer will usually return the Bill with a note advising of the intended disallowance or reduction. At this point, the Costs Claimant (or the Cost Claimant's lawyer) may agree to the Assessment Officer's intended action or provide additional information and explanations to justify the cost item or the amount claimed. In the former case, the Assessment Officer will complete the assessment. In the latter, the Assessment Officer will consider the Cost Claimant's additional information and explanations and send another note advising of the Assessment Officer's final position. In many cases, this note will also advise the Costs Claimant (or the Cost Claimant's lawyer) that if the Costs Claimant is not satisfied with the final decision, the Costs Claimant may make an appointment to have the assessment completed by a Review Officer. If the Costs Claimant agrees with the Assessment Officer's final position, then the Assessment Officer will complete the assessment by signing the certificate in the Bill of Costs, filing the Bill and returning a copy, with the filing stamp on it. If the Costs Claimant disagrees, then the Costs Claimant should book an appointment with the Review Office.

How and under what conditions would a Review Officer conduct a desk assessment?

Review Officers are also Assessment Officers and are the only Assessment Officers who are authorized to conduct assessments by appointment. As Assessment Officers, they may also conduct desk assessments but they typically do so in a slightly modified fashion. Instead of corresponding with the Costs Claimant (or the Costs Claimant's lawyer) a Review Officer will usually require that the Claimant or lawyer appear before the Review Officer (either personally or by telephone) and will audio-record the appearance. The appearance facilitates a more thorough exchange of concerns, information and explanations than would be possible by correspondence – and the audio recording provides a record that would otherwise be comprised of

correspondence between a “desk Assessment Officer” and the Cost Claimant or the Costs Claimant’s lawyer.

In order to obtain a desk assessment by a Review Officer, the Costs Claimant (or the Cost Claimant’s lawyer) must book an appointment with the appropriate Review Office (Calgary for court actions prosecuted in the Judicial Centre of Calgary – and Edmonton for court actions prosecuted in any other Judicial Centre). This, however, should not be confused with “an assessment by appointment”, as that term is used in the *Rules of Court* or elsewhere in this publication. “An appointment for assessment” requires the filing of a Form 45, *Appointment for Assessment*, and service of the Form and other required materials on the opposing party. A desk assessment before a Review Officer is still a desk assessment, notwithstanding that, in most cases, an appearance before the Review Officer would be required. A Form 45 needn’t be filed and service is not required.

Because most desk assessments should be dealt with by Assessment Officers in the clerk’s office, Review Officers are generally reluctant to deal with them, except where:

- (a) The costs being claimed are unusually complex, which is often due to the complexity of the underlying court action;
- (b) An Assessment Officer in the clerk’s office refers the assessment to a Review Officer because of its complexity or for other reasons;
- (c) An Assessment Officer in the clerk’s office has advised the Costs Claimant of the Assessment Officer’s intention to significantly reduce the costs claimed and Costs Claimant takes issue with the intended action; or
- (d) The clerk’s office is unable to accept a request for a desk assessment due to the unavailability a trained Assessment Officer.

Finally, it is worth noting that, pursuant to Rule 10.38(2), a Review Officer cannot assess costs after an Assessment Officer in the clerk’s office has already completed an assessment of the same costs. An assessment is completed when the Assessment Officer signs the certificate in a Bill of Costs and files the Bill. Should a Costs Claimant disagree with the decision of the Assessment Officer at this point, the Cost Claimant’s only remedy is an appeal.

How is an assessment by appointment conducted?

To obtain an assessment by appointment the party requesting the assessment must book an appointment for it, file a Form 45 *Appointment for Assessment*, and serve the Form on the opposing party. Where the assessment is requested by a Costs Claimant,

the Costs Claimant must also attach a proposed Bill of Costs (Form 44) and other materials to the Form 45 prior to its filing and service.

Assessments for appointment are conducted through hearings before a Review Officer. Form 45 advises the opposing party of the date, time and location of the hearing. Where the opposing party is properly served but does not appear for the assessment, the Review Officer may conduct the assessment in the opposing party's absence. This does not guarantee that the party who requested the assessment will get what she, he or it wants. Even in the absence of the opposing party, the Review Officer will review the costs claimed, ask questions, consider the oral and documentary evidence provided and disallow or reduce costs that the Review Officer considers inappropriate or unreasonable.

Where the opposing party attends the assessment, the Review Officer will give each party the opportunity to present evidence and argue their respective cases. Typically issues raised by the opposing party will be considered, one at a time, with the Review Officer making a decision on each before moving on to the next. Where this is done the reasons for the Review Officer's decision will most often be provided when the decision is made.

All assessment hearings are audio-recorded, so that there will be a complete record of proceedings, should either party wish to appeal. At the end of a hearing, the Review Officer will usually summarize the decisions made and will complete the assessment by filling out and signing the certificate in the Bill of Costs, filing the Bill and giving each party a copy of the filed Bill. Where there is not enough time to complete the certificate and file the Bill of Costs, this is done later, with copies of the filed Bill being provided to the parties by email.

How do I book an assessment by appointment?

Assessments by appointment may be booked by email correspondence with the appropriate Review Office or by attending at the appropriate clerk's office. Assessments for costs in actions prosecuted in the Judicial Centre of Calgary must be booked with the Review Office in Calgary. Assessments for actions prosecuted in the Judicial Centre of Edmonton must be booked with the Review Officer in Edmonton. Assessments for actions prosecuted in any other judicial centre must be booked with a clerk at the courthouse in the judicial centre.

When you request a booking, you should provide the style of cause for your court action (e.g., "Smith v. United Frames Ltd.") and approximately when you would want the assessment to be heard (e.g., "in late March"). In response, the Review Office or clerk will provide you with a number of available dates and times. If you are booking by email,

then you should email your selected date and time to the Review Office and await email confirmation that the date and time have been booked. If you are booking in person, then the clerk may complete and confirm your booking before you leave.

Once you have booked your assessment, you may prepare and file your Form 45 *Appointment for Assessment*, which should contain the date and time booked.

Where are assessments by appointment heard?

Assessments of costs in actions prosecuted in the Judicial Centre of Calgary or in the Judicial Centre of Edmonton are heard in the Review Office in Calgary or Edmonton, respectively. All other assessments are conducted by closed circuit television (CCTV), with the parties appearing in the courthouse where the assessment was booked.

When you prepare a Form 45 *Appointment for Assessment*, you must include the place where the assessment will be heard. This is the place where the parties must appear. It is not the place from which the Review Officer may be participating by CCTV.

What can I do if I want to attend an assessment but am unable to do so?

If you are served with a Form 45 and wish to attend the assessment but are unable to travel to the location of the assessment, then you may request permission to participate by telephone. This can be done by emailing your request to the Calgary Review Office (for assessments in Calgary) or the Edmonton Review Office (for assessments anywhere else). In most cases, permission will be granted and you will be provided with the information that you will need for your telephone participation.

If you cannot attend an assessment because you will be unavailable on the date and time set for it, then you may request an adjournment.

How can I request an adjournment?

There are two ways to request an adjournment. The first is to contact the opposing party and ask for the opposing party's agreement. If the opposing party agrees to adjourn the assessment, then the parties can coordinate with the Review Office to obtain a new, mutually satisfactory date and time. Where possible this should be done through email correspondence with the Review Office.

The second way is to have someone attend the assessment on your behalf and request the adjournment at the outset of the hearing. You may employ this approach without first attempting to obtain the opposing party's agreement, but there is no guarantee that Review Officer will grant the adjournment. The Review Officer will hear arguments from both sides before deciding whether to grant the adjournment. In most cases, the

Review Officer will grant the adjournment where there is a genuine and believable reason for it (e.g., illness, work or family commitments, etc.). However, the Review Officer could refuse an adjournment where the costs being claimed are relatively small and unlikely to be successfully challenged or where delaying the assessment could prejudice the Costs Claimant.

Because the Review Officer could refuse to grant an adjournment, we recommend that you first explore the possibility of getting an adjournment by agreement. If the opposing party will not agree, then you should ensure that the person who you select to represent you on the scheduled date for the assessment will be able to clearly articulate your reasons for requesting the adjournment and explain your concerns about the costs being claimed, should the adjournment be refused.

The person who you select to attend on your behalf needn't be a lawyer and, if required, he or she may participate by telephone, provided that arrangements for this are made with the Review Office prior to the date scheduled for the assessment hearing.

Can I appeal from an Assessment Officer's Decision?

Yes. Either party to an assessment may appeal from the decision of an Assessment Officer (including a Review Officer who conducted a desk assessment or an assessment by appointment). This is provided for and governed by Rule 10.44 of the *Alberta Rules of Court*. Pursuant to this rule, an appeal from the decision of an Assessment Officer is an appeal to a Judge of the Court of Queen's Bench.

An appeal from the decision of an Assessment Officer is "an appeal on the record of the proceedings before the Assessment Officer". This means that the appeal will be based solely on what happened in the assessment and on the evidence that was presented to the Assessment Officer. Where the assessment was a desk assessment conducted by an Assessment Officer in the clerk's office, the record of what happened would be comprised of correspondence (including notes) exchanged between the Assessment Officer and the Costs Claimant or the Costs Claimant's lawyer. Where the assessment was conducted by a Review Officer, the record of what happened may be comprised of correspondence or an official transcript, depending on whether or not the appearance or hearing before the Review Officer was audio-recorded. Other evidence that may be considered would typically include copies or receipts or invoices for disbursements. Evidence that was not submitted to the Assessment Officer before or during the assessment cannot be considered without the permission of the Judge hearing the appeal, which permission is rarely granted.

Rule 10.44 lists the documents that must or may be filed for an appeal and specifies time limits within which they must be filed and served on the opposing party. Written arguments are optional and may be filed by either or both parties, as desired by them.

The Judge who hears the appeal may confirm the Assessment Officer's decision, replace the decision with a new decision or refer the matter back to the same or another Assessment Officer, often with directions as to how the assessment should be re-heard.

Are costs negotiable?

Parties can avoid an assessment through negotiations that result in an agreement on the costs payable. Where there is no doubt that the party required to pay the agreed upon costs will do so, a Bill of Costs needn't be filed, although the agreement and the payment should be documented. Where payment is doubtful, the agreement may be documented by an "approved Bill of Costs". This is a Bill of Costs that is drafted according to the agreement and is signed by the party required to pay the costs (or that party's lawyer) under an "Approved by:" notation.

An approved Bill of Costs may be submitted to an Assessment Officer in the clerk's office for certification. Pursuant to Rule 10.37(3) of the *Alberta Rules of Court*, an approved Bill of Costs must be certified "without change". Once the Bill is certified and filed, payment of the costs may be enforced in the same manner as the payment of a judgment would be.

Is the successful party to an assessment entitled to costs of the assessment?

Unless a Judge of Master otherwise orders, an Assessment Officer may include, in the costs approved by the Assessment Officer, a reasonable amount for the costs of the assessment. This is provided for in Rule 10.41(2)(c). Because of its wording, the rule does not authorize an award of costs against a Costs Claimant where the party required to pay the costs succeeds in having the costs reduced. Thus, the most that an Assessment Officer can do in this circumstance is disallow any assessment costs claimed by the Costs Claimant.

Rule 10.41(2)(c) does not distinguish between desk assessments and assessments by appointment. However, the amounts that may be allowed for the fee portion of assessment costs are generally limited by Schedule C to the *Rules of Court*. This schedule specifies the maximum fee amounts that may be allowed for a contested assessment [item 7(1) of the Schedule] an uncontested assessment by appointment [item 6(1)] and a desk assessment [item 6(2)]. That said, Assessment Officers may, and often do, allow lower amounts where the maximum amounts are unreasonable having regard to the amount of work that a Cost Claimant's lawyer did for the assessment.

Another general practice employed by Assessment Officers is to allow assessment costs only if they are claimed in the Cost Claimant's proposed Bill of Costs. This being so, a Costs Claimant who seeks these costs should include them in the proposed Bill of Costs. This may be done by claiming the maximum amount for a desk assessment or the maximum for a contested assessment, as applicable. Thereafter, these amounts may be allowed or reduced by the Assessment Officer, as previously stated or because what was expected to be a contested assessment was unopposed.

Finally, it should be noted that the costs of an assessment may be avoided through negotiations that result in an approved Bill of Costs. A Costs Claimant's lawyer will almost always drop a claim for assessment costs to facilitate an agreement on the costs payable. This often provides the opposing party with an incentive to settle, particularly where the opposing party has no major concerns with the costs claimed.

Where can I get more information about assessments and costs?

More information on the topics covered in this publication, as well as detailed instructions for completing, filing and serving the documents required for an assessment can be found in our publication entitled "How to Request an Assessment". It and other publications on costs and assessments can be found on our webpage at: <https://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

Our webpage also contains the court forms required for assessments and contact information for the Review Offices in Calgary and Edmonton. Procedural information that is not provided in our publications may be requested by email but case-specific information or advice will not be provided unless it is jointly requested by all of the parties to a pending or potential assessment.

Another source of valuable information is the *Alberta Rules of Court*. They may be found on-line by entering "alberta rules of court queen's printer" in a search engine or by accessing the Canadian Legal Information Institute (Canlii) website. This website can be found by entering "canlii" in a search engine. The *Rules* that govern assessment are in Part 10 of the *Rules* beginning at Rule 10.28. Schedule C of the *Rules* is located outside of Part 10, in a schedule section of the *Rules*.