

# 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 King’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 be 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 of Costs 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 (virtually, by webcam or 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 Review Office Scheduler. This should be done by completing the on-line booking request form that can be accessed through the Review Office webpage at: <https://albertacourts.ca/kb/areas-of-law/reviews-assessments>, indicating, in the form, that the assessment will be done without notice to the opposing party or parties. Once the assessment has been booked, the Cost Claimant or the Cost Claimant’s lawyer must email a copy of its proposed (i.e. unfiled) Bill of Costs to the Review Office Scheduler or the Review Office, together with disbursement receipts or invoices. Because the assessment will be done without notice, a Form 45, *Appointment for Assessment*, 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 reductions; 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 being requested by a Costs Claimant, the Costs Claimant must attach the following to the Form 42 before filing and serving the Form:

- (a) a copy of the Claimant's proposed Bill of Costs (Form 44); and
- (b) copies of the receipts or invoices for the disbursements being claimed in the proposed Bill of Costs.

Assessments by appointment are conducted through remote hearings before a Review Officer. Form 45 advises the opposing party of the date and time of the assessment, and how the opposing party may participate remotely. 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 by her or him. After the hearing, the Review Officer will complete the certificate in the Bill of Costs, file the Bill of Costs and email a copy to the parties. This will usually be done within 24 hours of the assessment hearing.

### **How do I book an assessment by appointment?**

Assessments by appointment must be booked through the Review Office Scheduler. To book an appointment, you must first complete and submit an on-line booking request form. This form may be accessed through the Review Office webpage at: <https://albertacourts.ca/kb/areas-of-law/reviews-assessments>. Once the on-line form has been submitted, the Review Office Scheduler will email you and provide available dates and times. After this, the Scheduler will correspond with you until a date and time has been selected and confirmed by the Scheduler. Thereafter, the booked date and time may be inserted in your Form 45 and the Form, with any required attachments, may be filed and served.

### **Which Review Officer will conduct your assessment?**

In almost all cases, assessments of costs in actions prosecuted in the Judicial Centre of Calgary are conducted by the Review Officer in Calgary, and assessments in actions prosecuted in any other Judicial Centre are conducted by the Review Office in Edmonton. Where it is not possible for the Review Officer in Calgary to conduct an assessment in a Calgary action, or for the Edmonton Review Officer to conduct an assessment in an action outside Calgary, the Review Office Scheduler will notify you of this and provide you with instructions for participating in the remote hearing before the correct Review Officer.

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

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 Scheduler to obtain a new, mutually satisfactory date and time. Where possible this should be done through email correspondence with the Review Office Scheduler.

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 opposing party.

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 positions with respect to the costs being claimed, should the adjournment be refused.

The person who you select to attend on your behalf needn't be a lawyer but she or he should be prepared to argue your case for you.

### **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 King'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 will be comprised of an official transcript of the hearing and any documents submitted by the parties, either through court filings or by email sent during the hearing. In most cases, these would be limited to 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 or an Assessment Officer otherwise directs, the successful party to an assessment is entitled to costs of the assessment. This is provided for in Rule 10.41(2)(c). Because of its wording, an Assessment Officer has discretion with respect to costs of the assessment and may refuse to grant costs where she or he considers it appropriate to do so.

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. Procedural information that is not provided in our publications may be requested by email, addressed to the Review Office, 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 any search engine. The *Rules* that govern assessments are in Part 10 of the *Rules* beginning at Rule 10.28. Schedule C of the *Rules of Court* is located outside of Part 10, in a schedule section of the *Rules*.