

HOW TO REQUEST AN ASSESSMENT

Published by Alberta's Review Offices

Edmonton Review Office
Second Floor, South Tower
The Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Email: ReviewOffice.Edmonton@albertacourts.ca

Calgary Review Office
Calgary Courts Centre,
Suite 802-N, 601 – 5th St. S.W.
Calgary, Alberta T2P 5P7
Email: ReviewOffice.QBCalgary@albertacourts.ca

Current version: May 10, 2023

© 2020

About this publication and its use

This publication provides information and guidance for persons wishing to arrange for an assessment of court costs. It should be read before any steps are taken to arrange for the assessment. The topics covered in the publication explain:

- What you should know before you request an assessment;
- When an assessment not required;
- The difference between a desk assessment and an assessment by appointment;
- How each type of assessment is commenced and conducted;
- How to book an assessment by appointment;
- How to complete the court forms for an assessment;
- How to file and serve the forms for an assessment by appointment; and
- How a payment of costs may be enforced.

The topics are covered under separate headings that will appear in the order presented above. Unless you are already familiar with one or more topics, we recommend that you read the entire publication.

What you should know before you request an assessment

An assessment of costs is a proceeding through which the reasonableness of court costs claimed by a party is determined by an Assessment Officer. Before you request an assessment you should ensure that you are entitled to do so. You may request an assessment only if you are entitled to court costs or are required to pay them.

You are entitled to costs when they are awarded to you by the Court (i.e. an Applications Judge or a Justice) or where you were the successful party to a court application, action or appeal and the Court did not deal with the issue of costs. In the latter case, you would be entitled to costs under Rule 10.29 of the *Alberta Rules of Court* for matters that were dealt with in the Court of Queen's Bench, or under Rule 14.88 for matters that were dealt with in the Court of Appeal.

Conversely, you are required to pay costs only when they were awarded against you by a court order or where you were the unsuccessful party to a court application, action or appeal and the Court did not deal with the issue of costs.

Having regard to the above, it should be apparent that a party is not entitled to, or required to pay costs in the absence of an award of costs or where neither party was

successful in an application, action or appeal. However, there may be instances in which both parties claim to have been successful. In these instances, either party may request an assessment, leaving it to the Assessment Officer to determine which, if either, of the parties was successful.

Before you request an assessment, you should also ensure that you will be requesting the correct proceeding. Although there should be no doubt that an assessment is a proceeding that deals solely with court costs, there have been instances in which the documents for an assessment were filed when the desired proceeding was a review of lawyer's charges. A review is a proceeding through which the reasonableness of a lawyer's charges to the lawyer's own client (i.e. what the lawyer billed the client) is determined. Where it is the desired proceeding and assessment documents are filed, the error will be discovered and the party who filed the documents will have to file new documents and essentially start from scratch. This is in large part due to the fact that assessment documents are filed in an existing court file (the file for the litigation in which costs are claimed) while review documents are filed in a new court file that is opened for the review, with the parties to the proceeding being the lawyer and the lawyer's own client. Moreover, neither an assessment nor a review can be conducted until the proper documents are filed in the correct court file. Thus, filing the wrong documents will result in wasted time and effort – and, depending on when the error is discovered, the amount of time and effort wasted could be considerable.

When an assessment is not required

An assessment is not required when:

- (a) the Court awards costs in a specified amount (e.g., “the Plaintiff is entitled to costs in the amount of \$1,000.00, which amount includes disbursements and other costs”);
- (b) the parties agree to amount of the costs, which may be accomplished through negotiations; or
- (c) the Court expressly refuses to award costs to either party (e.g., “neither party is entitled to costs” or “the parties shall bear their own costs”), in which case there will be no costs to assess.

In every other case an assessment will be required. This includes cases in which the Court specifies the amount payable for some but not all of the costs (e.g., an amount is specified for legal fees but not for disbursements or other costs). In all of these cases, a party who is entitled to costs (the Costs Claimant) will be unable to enforce the opposing party's payment of them until an assessment is completed.

The difference between a desk assessment and an assessment by appointment

A desk assessment is completed without a hearing and may be requested only by a Costs Claimant. The party who is required to pay the costs is not given notice of the assessment and does not participate in it.

An assessment by appointment is completed through a hearing and may be requested by a Costs Claimant or by the party who is required to pay the costs. Regardless of who requests the assessment, the date and time for the hearing must be booked and the opposing party must be given notice of the hearing, so that the opposing party may attend and dispute the requester's position with respect to the costs.

Some other differences between a desk assessment and an assessment by appointment are:

- (a) who conducts the assessment;
- (b) what documents are required and whether they are submitted or filed; and
- (c) under what conditions the assessment may be requested.

Desk assessments are usually conducted by court clerks who have been trained and designated to be Assessment Officers for purpose of desk assessments. Assessments by appointment may only be conducted by a Review Officer sitting as an Assessment Officer. A Review Officer is a judicial officer who conducts hearings for reviews and assessments.

Detailed information on how each type of assessment is conducted, as well as instructions for the filing or submission of documents for each is provided later in this publication.

Another importance difference between the two types of assessments concerns the conditions under which each type may be requested. Desk assessments may be requested only 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).

Although Review Officers may also conduct desk assessments, they are generally reluctant to do so, 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 of a trained Assessment Officer.

How each type of assessment is commenced and conducted

Desk assessments

A desk assessment is conducted through correspondence between a Costs Claimant and an Assessment Officer in the clerk's office. Because the Costs Claimant will usually be represented by a lawyer, our references to "the Costs Claimant", below, should be taken to refer to the lawyer where the Costs Claimant is represented.

The proceedings for a desk assessment begin when the Costs Claimant submits the following documents to clerk's office:

- (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.

Before the Assessment Officer begins the assessment, he or she will check the documents (and in some cases, the court file) to ensure that the conditions for a desk assessment have been met. If they have not, then the Assessment Officer will return the documents with a note advising the Cost Claimant that the assessment must be done by appointment.

Where the conditions for a desk assessment are met, the Assessment Officer will examine the costs claimed in the Bill of Costs and the amounts claimed for them, and will determine if any additional information is required. Additional information will be required where the Assessment Officer finds that the information that was initially submitted does not justify a particular cost or the amount claimed for it. In this case, the Assessment Officer will send a note to the Costs Claimant requesting the submission of information that might justify the cost or the amount. Alternatively, the Assessment Officer may send a note advising of the Assessment Officer's intention to disallow the cost or reduce the amount claimed. In either case, the Costs Claimant may respond (usually by submitting a letter and/or other documents to the Assessment Officer). After this correspondence is exchanged, the Assessment Officer will either accept or reject the Cost Claimant's justifications. Where the justifications are accepted, the Assessment Officer will allow all of the costs and amounts claimed, and complete the assessment on that basis. Where the justifications are rejected, the Assessment Officer will either complete the assessment after disallowing the cost or reducing the amount - or advise the Costs Claimant of the Assessment Officer's intention to make the disallowance or reduction. In the latter case, the Costs Claimant may request an assessment by appointment.

As a general rule, an Assessment Officer will not complete an assessment with a disallowance or reduction that is objected to by the Costs Claimant unless the disallowance or reduction is in an amount that would be relatively insignificant, having regard to the total of the costs claimed. Where the reduction would be significant, the Assessment Officer will usually give the Costs Claimant an opportunity to request an assessment by appointment.

An assessment is completed when the Assessment Officer signs a certificate in the Bill of Costs and files the Bill. The certificate certifies the total amount of the costs that are payable by the party required to pay them. Once this is done, the Costs Claimant cannot request an assessment by appointment. However, the Costs Claimant may appeal from the Assessment Officer's decision.

Assessments by appointment

Because an assessment by appointment is completed through a hearing before a Review Officer, the party requesting the assessment must first book an appointment for the hearing. The procedures for doing this are explained later in this publication.

Once a hearing has been booked, the party requesting the assessment must prepare and file a Form 45 *Appointment for Assessment*. Where the Costs Claimant is the party requesting the assessment, the following documents should be attached to the Form 45:

- (a) A proposed Bill of Costs in 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) Any other documents that the Costs Claimant believes will be of assistance to the Review Officer (e.g. time records kept by the Costs Claimant's lawyer).

Where the assessment is requested by the party that is required to pay costs, no attachments are required.

The filing and service of a Form 45 begins the assessment process and gives the opposing party notice of the assessment hearing. Until the form is served, the hearing may be canceled or rebooked to a new date, without the agreement of the opposing party. Once the form is served, the hearing can only be cancelled or adjourned by agreement or by requesting a cancellation or adjournment when the parties appear before the Review Officer on the originally scheduled date. This gives the opposing party the opportunity to oppose the request. A cancellation or adjournment will usually be granted where there is a good reason for it and a less persuasive reason for refusing it.

Because the Form 45 serves as the document that provides notice to the opposing party, the date and time of the assessment hearing, together with information on how to appear for the hearing, must be inserted in the form. This is why the party requesting the assessment must first book a date and time for the hearing.

Instructions for completing and serving a Form 45 can be found later in this publication.

On the date scheduled for the hearing the parties must appear (by webcam or telephone) before the Review Officer. Where the opposing party was properly served but does not appear, 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 this party desires. 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. Evidence may be presented orally, through documents or both. In some cases, the Review Officer may allow a party to provide relevant documents by email during the assessment hearing. Typically issues raised by the opposing party will be considered, one at a time, with the Review Officer making a decision on each issue before moving on to the next. Where this is done, the reasons for each 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 the proceedings, should either party wish to appeal from the Review Officer's decisions. At the end of a hearing, the Review Officer will usually summarize the decisions made and will complete the assessment by completing and signing a certificate in the Bill of Costs, filing the Bill and emailing a copy of the filed Bill to each of the parties.

How to book an assessment by appointment

All assessment hearings must be booked with the Review Officer 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, after completing the Form in accordance with the instructions provided in this publication, it may be filed and served.

How to complete the court forms for an assessment

When the assessment is being requested by the party required to pay the costs

Since only a Costs Claimant may request a desk assessment, a party that is required to pay costs may request an assessment only by appointment.

Most assessments are requested by Costs Claimants because Costs Claimants will want to be in a position to enforce the payment of their costs and they will be in a position to do this only after their costs have been assessed. However, there may be circumstances in which the party required to pay the costs might wish to have them

assessed. This happens most often in foreclosure actions where the Defendant (borrower) has paid everything owing the Plaintiff (lender) except the Plaintiff's costs. In this circumstance, the Plaintiff may threaten to continue its foreclosure action unless its costs are paid in the total amount claimed by it. Where a Defendant in this situation believes that the amount claimed is unreasonable, the Defendant may wish to have the costs assessed before paying them. Requesting an assessment in this circumstance should put a halt to the foreclosure action until the assessment is completed. Until then, the Plaintiff would have difficulty justifying the continuation of its action and also, making a claim for costs flowing from the continuance.

Regardless of why a party who is required to pay costs might wish to have them assessed, the *Rules of Court* provide a procedure for the request. Pursuant to Rule 10.37(3), the Requester must:

- (a) Book an appointment for the assessment hearing;
- (b) Prepare and file a Form 45 *Appointment for Assessment*;
- (c) If required, request that the Costs Claimant prepare a proposed Bill of Costs in Form 44; and
- (d) Serve a copy of the filed Form 45 (and the request, if required) on the Costs Claimant at least 20 days before the date of the hearing.

The request mentioned above, is usually contained in a covering letter that is served with the Form 45.

Pursuant to Rule 10.37(4) a Costs Claimant who receives a request for a proposed Bill of Costs must prepare, file and serve the proposed Bill on the Requester not less than 10 days prior to the assessment hearing. This requirement is stated in the "Warning Box" in every Form 45.

A request for a proposed Bill of Costs is not required where the Costs Claimant has already prepared and provided a proposed Bill to the party required to pay the costs.

The Form 45 *Appointment for Assessment* is the only court document that must be prepared and filed by a party that is required to pay the costs and is the party requesting the assessment. The following steps should be taken to complete the Form 45:

1. Download a copy of the form from the Review Office webpage. You can access the webpage by left-clicking on this link and selecting "open hyperlink":
<https://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

2. Insert the court file number where indicated in the form. This is same court file number that appears in the court documents that were filed for the litigation in which the costs are being claimed (“the underlying action”).
3. Insert the name of the judicial centre (JC). Again, this should be same JC as one that is shown in the documents that were filed in the underlying action.
4. Insert the names of the parties to the underlying litigation, as they appear in Statement of Claim or Origination Application that was filed in the underlying action. Where the action was commenced by an Originating Application, you will have to change “PLAINTIFF(S)” to “APPLICANT(S)” and “DEFENDANT(S)” to RESPONDENT(S)”.
5. Amend “PLAINTIFF(S)” and “DEFENDANT(S)” or “APPLICANT(S)” and “RESPONDENT(S)” to the appropriate plural or singular forms. Do this by removing the brackets around the “S” or by removing the brackets and the “S”, as required.
6. You will also need to indicate which of the parties is requesting the assessment and which will be responding to the request. Do this by adding “(Applicant)” after your name and “(Respondent)” after the Costs Claimant’s name”. Use “Applicants or Respondents if there is more than one. There could be more than one Applicant and/or more than one Respondent. EXAMPLE: the same costs are awarded to two Plaintiffs against three Defendants. In this example, the Defendants may jointly request (i.e. apply for) an assessment and the two Plaintiffs would be the Respondents. Alternatively, the Defendants, other than you, may simply rely on the results of your assessment, without participating in it.
7. Insert your address for service and contact information where indicated in the form. Your address should be an address where documents can be delivered to you, as opposed to a P.O. Box, but you should also include the P.O. Box (if you have one) so that documents can be mailed to you. In addition, you should include your telephone number and email address. This will not only facilitate service of the documents on you but will give the Review Office information that will enable it to contact you on short notice, should there be a need to do so. Where you are one of two or more Applicants who have agreed to jointly request an assessment, you may use your contact information for all of the Applicants.
8. In the “NOTICE TO RESPONDENT(S)” box in the form, insert the date and time that you booked for the assessment hearing.
9. The next field in the NOTICE TO REPONDENT9S) box is the “where” field. Prior to the introduction of remote assessment hearings, this field was used to indicate

where the parties must physically appear for a hearing. Now that all assessment hearings are being conducted remotely, the following wording must be inserted in the where field, depending on which Review Officer will be conducting the hearing. All assessments of costs in actions that were filed in the Judicial Centre of Calgary will be conducted by the Review Officer in Calgary, and all assessments in actions that were filed in any other Judicial Centre will be conducted by the Review Officer in Edmonton. Thus, you should select the correct wording for your where field, from the following choices:

Calgary remote hearing – To participate by telephone, dial 403-776-2521 and when prompted, enter meeting number 24851545528. To participate by webcam, go to <https://albertacourts.webex.com/meet/review.officeccc> and follow the instructions there to join the meeting.

Edmonton remote hearing – To participate by telephone, dial 780-851-3573 and when prompted, enter meeting number 961102982. To participate by webcam, go to <https://albertacourts.webex.com/meet/review.officeelc> and follow the instructions there to join the meeting.

10. Finally, you must check one of the two boxes in the “Purpose of this appointment” section of the Form 45. If the Costs Claimant has already provided you with a proposed Bill of Costs, then you should check the box to the left of “the bill of costs that is attached” and you should attach the proposed Bill to your Form 45. If the Costs Claimant has not provided a proposed Bill of Costs, then you should check the box to the left of “the bill of costs that has been requested by the party filing this appointment”.

After completing the steps above, your Form 45 should be ready to file and service it. Information on how to file and serve the form is provided later in this publication.

When the assessment by appointment is being requested by the Costs Claimant

A Costs Claimant must request an assessment by appointment where the conditions for a desk assessment cannot be met. These conditions are enumerated on page 3 of this publication.

To request an assessment by appointment the Costs Claim must book an appointment and then prepare and file a Form 45, which has the following documents attached to it:

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

- (c) any other documents that the Costs Claimant believes might be of assistance to the Review Officer (e.g., copies of invoices received from the Costs Claimant's lawyer, copies of the lawyer's time records, etc.).

The Form 45 is the same as the one that is used where the party required to pay costs is the one requesting the assessment. To complete the form, follow steps 1 to 9, which begin at the bottom of page 8 of this publication.

Because a Costs Claimant must always attach a proposed Bill of Costs to the Form 45, you must always check the box on the form that is to the left of "the bill of costs that is attached".

The form for a proposed Bill of Costs can be downloaded from the Review Office webpage. The webpage can be accessed by left-clicking on this link and selecting "open hyperlink": <https://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>. Once you are on the webpage you will see that there are two Form 44 Bills of Costs. The one that you most likely need is the one for Schedule C Costs. The other should only be used where you are entitled to what are called "solicitor and client costs", "solicitor and own client costs" or "full indemnity costs". An entitlement to any of these "scale of costs" is rare. If you believe that you might be entitled to costs on any of these scales, then you should consult a lawyer before using the form for them. Otherwise, you should use the form for Schedule C costs, as it will almost always be the correct form.

To complete your Form 44, begin by filling in the top section of the first page (up to and including "ADDRESS FOR SERVICE AND CONTACT INFORMATION...". The information that you must insert in this section of the form should be identical to the information that you inserted in your Form 45, except that you needn't type "(Applicant)" and "(Respondent)" after the names of the parties.

Once you have completed this section, you must complete the "title" of the proposed Bill of Costs. The title is immediately below the Address for Service and Contact Information. Complete it by inserting, immediately after "BILL OF COSTS OF", the names and status of the Costs Claimant or Claimants. If you are not a Costs Claimant but are preparing the proposed Bill of Costs for someone who is (e.g., you are preparing it for a corporation controlled by you) your name should not be included. The following are examples of how the title should read:

Where the underlying action was commenced by a Statement of Claim –

BILL OF COSTS OF RONALD KRUMP AND KRUMP AUTO LTD.,
PLAINTIFFS [or DEFENDANTS].

Where the underlying action was commenced by an Originating Application –

BILL OF COSTS OF UNITED FOODS INC, APPLICANT [or
RESPONDENT].

The title of the proposed Bill makes it clear who the Costs Claimants are. This is why you needn't type "(Applicants)" in the section of the form that is above it.

Immediately beneath the title you will see four tables: one for fees, one for disbursements subject to GST; one for disbursements not subject to GST; and one for other charges.

Completing the table for fees requires considerable legal knowledge and should not be undertaken without the assistance of a lawyer or an experienced legal assistant. Because the completion of this table cannot be sufficiently explained in this publication, no directions for completing it will be given here. Yet, if you are the Costs Claimant and were self-represented throughout the underlying litigation, then you might not have to complete the fees table. Pursuant to Rule 10.31(5) of the *Alberta Rules of Court* a self-represented litigant is not entitled to claim fee costs unless the Court expressly awards them. Thus, unless the Court expressly awarded these costs to you, you should leave the fee table empty. The purpose of a fees claim is to partially or fully indemnify the Costs Claimant for fees paid to the Costs Claimant's lawyer and there would be no fee payments to indemnify where the Costs Claimant was self-represented throughout.

The next table on in the Form 44 is for disbursements in respect of which GST was charged. As a general rule GST is charged for goods or services that are purchased from the private sector. An example of a disbursement that would be subject to GST is a fee paid to a courier service for the delivery of documents to the opposing party in your litigation. If you are uncertain as to whether or not a disbursement was subject to GST, look at the invoice for the disbursement. If GST was charged in the invoice, then you may assume that the disbursement was subject to GST.

Once you have determined which of your disbursements were subject to GST, list them in the table for disbursements subject to GST. In the description column, describe what the disbursement was for and who it was paid to (e.g., "Courier fees – Ajax Quick Delivery Inc." or "Real Property Appraisal – Martins Precision Appraisers Ltd."). If you have many low-dollar invoices for the same type of service, you may combine them in one description (e.g. "Courier fees – Ajax, Northstar and Fedex"). NOTE: You should be able to add rows to the tables in your Form 44, whether you are using the MS Word or the PDF version of the form.

After you have completed the description column, insert, in the amount column, the total amount for each description in the table, but do not include the GST in your totals. GST on these disbursements are added later in the proposed Bill of Costs and excluding GST at this stage makes it easier for a Review Officer to recalculate GST, should the Review Officer disallow some of your disbursements. Finally, add up the amounts in the amount column and insert the total where shown in the table.

The next table is for disbursements that are not subject to GST. As a general rule, GST is not charged for goods or services that are purchased from the Government of Alberta or the Government of Canada. A court filing fee is an example of a disbursement that is not subject to GST. So is a fee charged by Alberta's Court Transcription Management Services for a transcript of a court proceeding. Please note, however, that a fee paid to private court reporting service for a transcript (e.g. the transcript of a questioning) would be subject to GST. Again, if you are uncertain as to whether or not a disbursement was subject to GST, look at the invoice for the disbursement. If GST was not charged in the invoice, then you may assume that the disbursement was not subject to GST.

Once you have determined which of your disbursements were not subject to GST, complete the table in the same way that you completed the table for disbursements that were subject to GST.

The last table in the form is for "Other Charges". With one exception, other charges are for goods or services that are not actually paid by a Costs Claimant to a third party. They are for photocopying, printing, and faxing on a Cost Claimant's own equipment - and for travel by a private vehicle where the Costs Claimant was required attend a court proceeding outside of the Cost Claimant's home town or city. The amounts that may be claimed for them are:

- 15¢ per page for black and white photocopies;
- 25¢ per page for colour copies, if colour copies were required;
- 10¢ per page for printing;
- 15¢ per page for faxes sent or received; and
- 52¢ per km. for travel.

The one exception mentioned above relates to other charges billed by the Costs Claimant's lawyer. Although these charges were paid or are payable to a third party (the lawyer), they must be claimed as other charges, as opposed to claiming them as disbursements. This being so, they must be claimed in the amounts specified above, regardless of what the lawyer charged for them.

The exception does not apply to goods or services that were purchased from other third parties. The costs of these goods and services should be claimed in your Form 44's disbursement tables, in the amounts actually paid for them. The following are examples of these goods or services:

- Photocopying by a commercial photocopy supplier (this would be subject to GST);
- Photocopying by a court clerk to facilitate the filing of a court document by the Costs Claimant (not subject to GST); and
- Travel by air to attend a court proceeding (subject to GST).

Because disbursements and other costs are assessed differently, it is important that you claim them in the correct tables. If you find an error after you have completed your Form 44, correct it and adjust the totals at the end of the tables that you corrected.

To complete your table for other charges, enter a description for each type of charge and the total for it. The description should include your method of calculating the amount for each. Photocopies, for example, should be described as:

“Photocopies (859 pages at 15¢ per page)”.

If you made photocopies, sent or received faxes or printed documents on you own equipment but did not keep track of the number of pages, then you may estimate the number - but you should indicate this in your description (e.g., “Photocopies (estimate of 860 pages at 15¢ per page)”. The Review Officer will know, from experience, approximately how many pages would be expected for your type of court action and may reduce the amount claimed by you if it is found to be unreasonable.

Finally, add the amounts of your other charges and insert the total where indicated in the table.

The next step to completing your Form 44 is to calculate and state the GST being claimed by you. As you can see from the GST part of the form, you must state the GST for fees, for disbursements and for other charges. Calculate the amount for each by taking the total from the applicable table and multiplying it by 5%. Do not include the total in the table for disbursements that are not subject to GST. No GST may be claimed for these disbursements. Once you have calculated and inserted the amounts being claimed, add them and insert the total where indicated in GST part of the form.

Immediately below the GST part of the form is a “GST warranty”. It should be left, as is. It applies to almost all Costs Claimants - and Cost Claimants to whom it does not apply

should know that it does not apply to them. Only these Claimants should remove the warranty. Removing the warranty when it applies to you could jeopardize your claim for GST.

Immediately after the GST warranty you must insert the totals for each type of claim being made by you. The amount for each type should be identical to the total at the bottom of the bottom of the table that corresponds to it or, in the case of GST, it should be the total GST claimed, as shown in the GST part of the form.

The next part of the form (Amount allowed by assessment officer) is only for the Review Officer's use and should be left, as is.

Under this is a signature line. Pursuant to Rule 10.35(2)(a) of the *Alberta Rules of Court* the person who was responsible for preparing the Form 44 must sign it. This could be the Costs Claimant or someone who prepared the form for the Costs Claimant. When a lawyer prepares the form (or supervises its preparation by a legal assistant) the lawyer will be the one who signs the form. The person who signs it is deemed to be the one providing the GST warranty, either as the Costs Claimant or as an agent of the Costs Claimant. This person's name should be inserted below the signature line, where indicated.

The final part of the form is the Assessment Officer's Certificate. Although this part is for use by the Review Officer, you should fill in the blanks that are intended to show who the costs are to be paid by and to whom they are to be paid. This will speed up the preparation of the certificate at the end of an assessment, and will help Review Officer identify the person or persons who should have been given notice of the assessment hearing (i.e. the Respondent or Respondents).

Once you have completed your Form 44 in accordance with the directions given above, it should be printed, signed and paper-clipped to your Form 45, together with the other documents enumerated on page 10. At this point the Form 45 should be ready to copy and file.

Documents for a desk assessment

Except where a Costs Claimant requests a desk assessment to add the costs to a default judgment, the documents for a desk assessment will be the same as those for an assessment by appointment, except that:

- (a) a Form 45 *Appointment for Assessment* is not required; and
- (b) the Form 44 (proposed Bill of Costs) and other required documents are not filed and served. Instead, they are submitted to the clerk's office in the

Judicial Centre show on the form, together with a covering letter requesting a desk assessment.

Because the Form 44 will be the same, you may use the directions provided under the immediately preceding subheading to complete your Form 44.

Where the Costs Claimant requests a desk assessment to add the costs to a default judgment, an abbreviated Bill of Costs may be used instead of a Form 44. Because these abbreviated Bills are almost always prepared by lawyer or other person with experience filing default judgments, no instructions for preparing them are given in this publication

Documents for an assessment of Court of Appeal costs

Assessments of costs that may be claimed for appeals before the Court of Appeal of Alberta (CA) may be conducted only by appointment. While the forms for them are essentially the same as those for Court of King's Bench (KB) costs, the top section of the first page of the forms (up to but not including "ADDRESS FOR SERVICE AND CONTACT INFORMATION..." could differ, depending on where the Form 45 *Appointment for Assessment* will be filed.

Where a Costs Claimant is entitled to as-yet-unassessed KB costs and CA costs in the action, the Costs Claimant may combine the costs into a single proposed Bill of Costs and file all of the assessment documents with a KB clerk. In this case, the Form 44 and Form 45 will be identical to those used for KB costs alone, except that the CA costs will be added to each table in the proposed Bill of Costs. These costs should be added to the bottom of each table (above the total) so that they can be more easily distinguished from the KB costs. In addition, it would be of assistance to the Review Officer to describe the CA disbursements and other charges in a way that identifies them as CA costs. EXAMPLES:

"Court runner's fees for the Appeal – Ace Deliveries Ltd."

"Process server – service of factum – Northstar Process Services"

"Photocopies for the Appeal".

Where a Costs Claimant is entitled to CA costs but is not yet entitled to costs in the underlying KB action or has already had the KB costs assessed, the documents must be filed with the Registrar of the Court of Appeal. In this case the top section of the first page of these forms (Form 44 and 45) must contain: the CA file number; the KB file number; the Registry Office where the forms will be filed (either Edmonton or Calgary); and the names and status of the parties at each level of court. An example of the first page of a Form 45 for CA costs is provided in Appendix "A" to this publication. This example may be used as a model for the preparation of your forms.

The attachments to the Form 45 will be the same as those for a KB assessment (i.e., the completed Form 44, invoices or receipts for disbursements and any other documents that the Costs Claimant believes might be of assistance to the Review Officer).

How to file and serve the forms for an assessment by appointment

Filing the forms

The Form 45 for an assessment of KB costs alone, or for combined KB and CA costs, must be filed with a KB clerk in the Judicial Centre shown in the form. For an assessment of CA costs alone, it must be filed with a clerk at the Registrar's Office in Edmonton or Calgary, depending on where the previous appeal documents were filed.

In some cases the form may be electronically filed. Information on electronic filing may be obtained from a KB clerk or the CA Registrar's Office, whichever is applicable to documents you wish to file.

If you intend to file the form in-person or by using a court runner, you will need to make copies of it and its attachments. Because the attachments, including your Form 44, are not filed separately, you will have to organize your documents in the following order before copying them:

- the Form 45 on top;
- the Form 44 next;
- then the receipts or invoices for disbursements; and
- any other documents that you believe will be of assistance to the Review Officer, last.

Once you have copied the documents, staple the original and the copies in sets, with each set containing the documents in the order shown above. The original set should contain the copy of your proposed Bill of Costs that bears your original signature. This is the set that the clerk will keep. You will also need a set for yourself and one for each of the parties that you must serve (see the first paragraph under "Serving the forms", below). When you present the sets to the clerk, the clerk will place a filing stamp on the Form 45 at the top of each set and return the sets that are for you and the parties that you must serve.

Remember that an appointment by assessment that is being requested by a party that is required to pay costs might not have a proposed Bill of Costs attached to it, depending on whether or not one was previously provided by the Costs Claimant.

Where a letter requesting the provision of a proposed Bill of Costs was prepared, it should be attached to the Form 45.

There is no filing fee for filing the documents for an assessment of costs.

Serving the forms

If you are a Costs Claimant, then in addition to serving the party required to pay costs, you must also serve “other interested parties”. An interested party is a party that might be directly affected by the outcome of the assessment. In a foreclosure action, for example, the Plaintiff’s costs are usually paid from proceeds realized from a judicial sale of the mortgaged lands, and if there are any excess funds after payment of the costs, they could be payable to a second mortgagee. In this example the second mortgagee would be an interested party because any reduction in the costs claimed by the Plaintiff could result in more money for the second mortgagee. For this reason, the second mortgagee might wish to attend the assessment and challenge the amount claimed by the Plaintiff.

Pursuant to Rule 11.20 of the *Alberta Rules of Court*, the forms for an assessment may be served by:

- (a) personally delivering them to, and leaving them with, the party that is required to be served;
- (b) mailing them to the party by recorded mail (i.e., mail that must be signed for by the recipient);
- (c) emailing or faxing them to the party using a fax number or email address that the party has specifically provided for the receipt of documents or information related to the action;
- (d) mailing, emailing or faxing them to the party’s lawyer for the action, provided that the lawyer has not withdrawn as counsel for the party; or
- (e) using a method of service that has been agreed to by the Costs Claimant and the party under a contract that is the subject matter of the underlying litigation.

There are also rules that apply to the service of documents on trustees, personal representatives, litigation representatives, missing persons, corporations, partnerships, unincorporated businesses and entities that were created by a statute. Corporations, for example, may be served by recorded mail address to the registered office of the corporation. If a party that you are required to serve falls into any of these categories, then you should review Part 11 of the *Alberta Rules of Court* to determine the best or proper method of service.

If you have difficulty serving a party by using a method provided for in the *Rules of Court* but believe that another method will be effective (e.g., emailing the documents to an email address that you know the party uses), then you may use this method and, in the event that the party does not appear for the hearing, you may ask the Review Officer to validate the method of service used by you. Review Officers are authorized to do this and will usually do it where the Review Officer is satisfied that the party received or should have received the documents.

Review Officers are also authorized to dispense with service in appropriate cases. Thus, if you have made sufficient attempts to serve a party and were unable to do so, then you may ask the Review Officer to dispense with service. A Review Officer will do this where the Review Officer is satisfied that service of the documents on the party would be impractical or impossible. Where service is dispensed with, the assessment hearing may proceed in the party's absence.

While an Affidavit of Service should be prepared and filed after a party has been served, this could be done after the assessment hearing. It needn't be done if the party appears for the hearing. If the party does not appear, then the Review Officer may direct that you prepare and file the Affidavit.

If you intend to ask for a dispensation of service, then you should prepare and file an Affidavit of Attempted Service prior to the assessment hearing. An Affidavit of Attempted Service details the attempts that a party made to locate and serve another party and provides sworn evidence that a Review Officer will require to dispense with service.

This publication does not provide instructions for the preparation of an Affidavit of Service or an Affidavit of Attempted Service. If you required assistance for this, you should consult a lawyer or contact a Court and Justice Services (CJS). CJS staff should be able to help you with this and provide other procedural advice or guidance for KB proceedings, including assessments. Contact information for CJS can be accessed by left-clicking on this link and selecting "open hyperlink": <https://www.alberta.ca/court-and-justice-services.aspx>.

How a payment of costs may be enforced

Although costs may be payable immediately after they are awarded or are claimable under Rule 10.29 or Rule 14.88 (explained on page 1), payment of the costs cannot be enforced until the costs have been assessed. Thus, if the costs are not voluntarily paid, then an assessment would be the first step to pursuing payment.

At the conclusion of an assessment, the Assessment Officer (or a Review Officer sitting as an Assessment Officer for an assessment by appointment) completes and signs a certificate in the Cost Claimant's Bill of Costs and files the Bill. After this, the Bill of

Costs bearing the Assessment Officer's certificate must be filed, either by one of the parties to the assessment or, in the case of a desk assessment, by the Assessment Officer.

Pursuant to Rule 10.43(2), where the assessment was done by appointment, the Review Officer's certificate is "conclusive proof of the amount that a party... who had notice of the assessment must pay", subject only to an appeal of the Review Officer's decision [see Rules 10.44(2) and 10.45]. While this does not apply to a desk assessment, the certificate is treated the same, except that the party that is required to pay the costs (the debtor) may not only appeal but may also seek to have the assessment set aside if it should have been done by appointment.

Whether the assessment was a desk assessment or an assessment by appointment, the next step in the enforcement process may be taken. The Costs Claimant is not required to first await the expiration of the one-month period for an appeal but if an appeal is likely to be successful, then taking the next step could result in wasted time and effort should the appeal succeed.

After a certificate is filed, the next step is to prepare and file a writ of enforcement and/or a garnishee summons for the amount payable to the Costs Claimant. The "amount payable", in this context, could include the amount of any money judgment that the Costs Claimant was granted, or it could be the amount of the costs alone. Where a judgment was not granted or not yet granted, the Assessment Officer's certificate is treated as if it were a money judgement for the purpose of filing a writ or a garnishee summons.

Once a writ of enforcement or garnishee summons is filed, the Costs Claimant may proceed to seize the debtor's personal property, file the writ against the debtor's real property, garnishee monies payable to the debtor or pursue any other lawful avenue for the enforce of a judgement.

Finally, all of the steps required to enforce payment must be taken in the Court of King's Bench. For this reason, where an assessed Bill of Costs is filed with a clerk in the Registrar's office for the Court of Appeal, a certified copy of the Bill (with the Registrar's filing stamp on it) must also be filed with a clerk of the Court of King's Bench. A writ of enforcement or garnishee summons cannot be filed until this is done.

Conclusion

This publication provides the knowledge required to request an assessment of costs. It explains: who may request an assessment; what court forms must be prepared; when an opposing party must be given notice; how an assessment with or without notice would be conducted; how the documents for an assessment should be served where notice is required; and how the payment of costs may be enforced. While the publication attempts to be as comprehensive and detailed as possible, it does not deal with topics that would unnecessarily extend its length and scope. As a result, the reader may have questions that are not answered in the publication. However, it is expected that these topics will be covered in future publications that will eventually be posted to the Review Office webpage. In the meantime, procedural information that is not covered in this publication can be requested by emailing either of our Review Offices. Email addresses for the Review Offices can be found on the cover page of this publication.

Procedural information and guidance for most court procedures, including assessments, can also be obtained from a Court and Justice Services (CJS). Contact information for CJS can be accessed through the link provided on page 19 of this publication.

Appendix "A"

Example of the first page of a Form 45 for Court of Appeal costs

Form 45
[Rule 10.37]

COURT OF APPEAL FILE NUMBER	1803-2126AC
QUEEN'S BENCH FILE NUMBER	1801-178382
REGISTRY OFFICE	EDMONTON
PLAINTIFFS	MARKUS BLIM and DONNA BLIM
STATUS ON APPEAL	RESPONDENTS (Applicants for Assessment)
DEFENDANT	UNITED HOME DEVELOPMENTS LTD.
STATUS ON APPEAL	APELLANT (Respondent for Assessment)
DEFENDANTS	CORIDOR CONSULTING INC. and JEOFF LOPITCH
STATUS ON APPEAL	NOT PARTIES TO THE APPEAL
DOCUMENT	APPOINTMENT FOR ASSESSMENT OF COSTS
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Simon & Mackenzie LLP Attn: Richard J. Roy Suite 10, 5121 – Jasper Avenue Edmonton, AB T5G 1W6 Phone: 780-433-5232 Email: RRoy@SMLaw.com

Clerk's Stamp

NOTICE TO RESPONDENT

You have the right to state your side of this matter before the assessment officer.

To do so, you must be present when this matter is heard by the assessment officer as shown below:

Date: January 25, 2021
Time: 9:00 a.m.
Where: Edmonton Review Office
Mezzanine, South Tower
The Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2

Go to the end of this document to see what else you can do and when you must do it.

Purpose of this appointment

The purpose of this appointment is for an assessment of costs set out in:

- ☒ the bill of costs that is attached.
- ☐ the bill of costs that has been requested by the party filing this appointment.