

# COURT OF QUEEN'S BENCH COSTS MANUAL

## COSTS BETWEEN PARTIES

Dec 2003  
Published Version

### **Disclaimer**

*The advice and opinions which follow are those of the writers, James Christensen & Joe Morin, Taxing Officers for the Province of Alberta. They are not necessarily representative of how they or other taxing officers of any Judicial District of Alberta might exercise their discretion.*

*This document has been prepared primarily as a resource for Clerks of the Court of Queen's Bench. Its treatment of the subject matter is rudimentary and is not a substitute for obtaining legal advice. It does not constitute legal advice. It does not represent policy of Alberta Justice or any other Government Department.*

# COURT OF QUEEN'S BENCH COSTS MANUAL

*Last Update: December 2003*

## Preface

The **Costs Manual - Costs Between Parties** is a resource prepared for clerks of the Court of Queen's Bench. In response to requests from the public for access to the **Manual** it is made available on the Internet.

### Discretion of the Taxing Officer

This manual is intended to serve as a **guide** for court clerks who tax bills of costs. It is not meant to fetter a clerk's exercise of his or her discretion.

Discretion is defined in Webster's as the "power of free decision or latitude of choice within certain legal bounds." Those "legal bounds" are set by the **Rules of Court** and by the direction and counsel of the Courts.

In *Hindson v. Kersey* (1680) 8 How. St. Tr. 57, Lord Camden, L.C.J. describes the use of discretion in an era hopefully foreign to us:

"The discretion of a Judge is the law of tyrants: it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is liable."

More in keeping with present day practice is Butt, J's directive in *Stoker v. Stoker* (1889) L.R. 14 Pro. D. 61:

"I must not forget that the discretion given to me must be exercised judicially, not fancifully or arbitrarily."

### PDF Format

The choice has been made to publish in PDF format for three reasons:

First, it has come to our attention that most individuals with any interest in these materials desire simply to print a "hard-copy" of them. The PDF format provides an exact duplicate of the original document, regardless which form of browser or computer or operating system the recipient may be using. Printing of this document in HTML format has been problematic for many users.

Second, the work involved in creating a PDF version of these documents (which are created in WordPerfect) is significantly less than that involved in converting to HTML.

Third, Adobe Acrobat Reader - the application needed to view and print PDF files - is free, is easy to download, easy to install, and the process of displaying and printing a PDF document from off the Internet is, in our experience, seamless.

To accommodate the PDF format and the length of the manual the **Costs Manual - Costs Between Parties** has been broken down into four (4) sub-documents. Each may be viewed or downloaded for printing as a separate

document. They are:

## Introduction to Costs

## Taxation of Costs

## Schedule C

## Disbursements

To be sure, each sub-document is available in PDF format only. You must have Adobe's *Acrobat Reader* in order to read them in PDF format. If you do not have Adobe's *Acrobat Reader* you can download it from the Court Services - Taxation Office website located at "www.albertacourts.ab.ca/cs/taxoffice/".

## Updates

Changes in the law related to costs are frequent and numerous. No manual or paper, regardless of diligent efforts to keep it current, can ever take the place of legal research into the present state of the law of any particular issue.

An update of the Manual for placement on the Taxation website has not occurred since November of 2001. Because of the number and magnitude of the changes no effort will be made here to catalogue all of them. **Changes** in the documents are identified either as "UPDATED" or "NEW". Hopefully this will facilitate a quick review of the Manual in order to assess the changes or additions.

**Note:** The *Introduction to Costs* sub-document was last updated by the writers in October of 2002.

*The Taxation of Costs* sub-document was last updated by the writers in October of 2002.

The *Schedule C* sub-document was last updated by the writers in December of 2003.

The *Disbursements* sub-document was last updated by the writers in December of 2003.

Highlights of changes are as follows (**N/B:** page references may vary by a page or two):

SUB-DOCUMENT	HEADING	UP-DATES
Introduction to Costs	Principle of Indemnification	Extract from <i>Alberta Civil Procedure Handbook (2003)</i> summarizes status of principle of indemnification in Alberta. - p. 2
Taxation of Costs	Issues to be Resolved - Court's Direction	Rule of <i>functus officio</i> as it relates to costs is addressed - p. 2
Taxation of Costs	Issues to be Resolved - Court's Direction	Four new or updated entries - p. 2 - 6
Taxation of Costs	Issues to be Addressed in Taxing the Bill of Costs	New sub-heading "Service of the Appointment for taxation - p. 10
Taxation of Costs	Appeals from Taxation	This is a new Heading which will hopefully be helpful - p. 12 - 14. Applies equally to appeals from a Lawyer / Client taxation.
Schedule C	Relevant Rules - 605(1)	Introduction of Rule 605(1.1) necessitated a revisit to 605(1) - p. 4
Schedule C	Relevant Rules - 605(1.1)	Our take on Rule 605(1.1) - p. 5

Schedule C	Relevant Rules - 605(4)	A note of concern re: lack of use of sub-rule 605(4) - 7
Schedule C	Relevant Rules - 605(7)	An explanation of the sometimes tricky handling of changes in the Provincial Court Limit on November 1 <sup>st</sup> , 2002 . . . it might save you some money . . . then again it might not - p. 11
Schedule C	Relevant Rules - 605(7)	Our take on why Column 1 of Schedule C ought to start at \$0.01 instead of \$10,000 - p. 12
Schedule C	Relevant Rules - 605 (9-10)	New Rules in March of 2003 are pretty straightforward, but we offer a bit of advice nonetheless - p. 13 Note that a sample "GST Recovery Affidavit" can be found at p. 51
Schedule C	Annotation	Column 1's \$10,000 starting point addressed - p. 15
Schedule C	Annotation	Costs associated with Provincial Court Appeals to Q.B. has generated a number of new cases - p. 15
Schedule C	Annotation - Item 1	Parentage & Maintenance Proceedings is updated - p. 19
Schedule C	Annotation - Item 1	Reciprocal Enforcement of Judgments is new - p. 19
Schedule C	Annotation - Item 1	Taxing Officer's Discretion to Reduce from Maximum is revised - p. 19
Schedule C	Annotation - Item 2	Uncontested Trial is defined by case law - p. 19
Schedule C	Annotation - Item 4	Provide some case law which sheds some light on this cost recovery - p. 22
Schedule C	Annotation - Item 5	Case law regarding "observer status" is quoted - p. 23
Schedule C	Annotation - item 5	Calculation of "Half Day" provides some helpful case law - p. 24
Schedule C	Annotation - Item 6	Treatment of Consent Orders is updated . . . interestingly - p. 26
Schedule C	Annotation - Item 7	Effect of viva voce evidence on costs - p. 28
Schedule C	Annotation - Item 10	Three page overview of Preparation for Trial - p. 30
Schedule C	Annotation - Item 10	Preparation for JDRs - recoverable? - p. 33
Schedule C	Annotation - Item 10	Preparation of rebuttal evidence - p. 33
Schedule C	Annotation - Item 10	Certificate of Readiness - p. 33
Schedule C	Annotation - Item 10	Payments In, Offers of Judgment or Settlement - p. 33
Schedule C	Annotation - Item 11	Cost Consequences of Trial Adjournment - p. 34
Schedule C	Annotation - Item 12	Two Sets of Written Submissions - p. 35
Schedule C	Annotation - Item 13	Steps Taken considered - p. 37
Schedule C	Annotation - Item 14	Changes to the Item - p. 37
Schedule C	Annotation - Item 17	Interlocutory Applications in Court of Appeal are Subject to Rule 607 - p. 38
Schedule C	Annotation - Item 17	Telephone Application - Item 7(1)?? - p. 38
Schedule C	Annotation - Item 19(2)	A way around Rule 378?? - p. 39
Schedule C	Annotation - Item 22	Enforcement of a Possession Order - Rule 4 - p. 40
Schedule C	Schematic of Application of GST	Amended to allow for Rule 605(9&10) changes - p. 50
Schedule C	Sample Form	Rule 605(10) GST Recovery Affidavit - p. 51
Disbursements	Incurred Prior to Action	Expanded: mainly because it is a pet peeve of ours.

Disbursements	Must Establish Proof of Payment or Liability	Expanded due to much misunderstanding on the point. More information on when it is and when it is not necessary to provide proof. And, more direction on the discretion the taxing officer can use to prevent legal constipation by means of voucher/receipt production.
Disbursements	Agent's Charges	New case - p. 9
Disbursements	Civil Enforcement Agencies	Significantly revised and expanded - p. 10
Disbursements	Conduct Money	Some new cases - p. 12-14
Disbursements	Consulting Experts	New sub-heading - p. 14
Disbursements	Document Production	New sub-heading - p. 15
Disbursements	Expert Witness Fees & Expenses	Some new cases relative to legal experts - p. 16
Disbursements	Filing Fees	New sub-heading - p. 16
Disbursements	Letter of Credit	New sub-heading - p. 18
Disbursements	Meals	Updated allowances - website location for Regulation provided - p. 18
Disbursements	Mediation	New sub-heading - p. 18
Disbursements	Photocopying	Significant changes: more documents / lower rate - p. 19
Disbursements	Print / Laser Copying	New sub-heading - p. 22
Disbursements	Process Servers	Mileage rate addressed - p. 22
Disbursements	Research (Contract or Computer)	Revised & updated - previously titled "Computer Research" - p. 22
Disbursements	Travel Expenses	Rate change up to 12 cents per kilometre and 38 cents - website location for Regulation provided - p. 24
Disbursements	Witness Fees & Expenses	New case law - p. 25
Disbursements	Sample Form	Certificate / Affidavit of Disbursements - p. 27

# **TABLE OF CONTENTS**

**Introduction to Costs**

**Taxation of Costs**

**Schedule “C”**

**Disbursements**