COURT OF QUEEN'S BENCH
COSTS MANUAL

COSTS BETWEEN PARTIES

The **Costs Manual - Costs Between Parties** is a resource prepared for clerks of the Court of Queen's Bench. It 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*.

In response to requests from the public for access to the **Manual** it is made available on the Internet.

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Note too that changes in the law of 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.

To accommodate the PDF format the **Costs Manual - Costs Between Parties** has been broken down into four (4) sub-documents. Each may be viewed or printed as a separate document. They are:

Introduction to Costs

Taxation of Costs

Schedule C

Disbursements

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/".

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Disbursements

Introduction

The ***Rules of Court*** do not use the term "disbursement". The ***Rules*** refer to "expenses" or "costs". However, in many jurisdictions, including Alberta, it is customary to refer to any charges or expenses which a party or a party's lawyer has paid or is liable to pay as "disbursements", notwithstanding they may include in-house charges such as photocopying and facsimile transmissions.

To be sure, "disbursements" do not include the charges of barristers & solicitors for their legal services, which are limited by **Rule 605** to the amounts prescribed by **Schedule C** and are addressed in the preceding "Annotation of Schedule C".

For the purposes of this commentary the term "disbursements" will be used to represent all charges or expenses claimed as costs between parties, with the exception of **Schedule C** fees.[**]

See *Petrogas Processing Ltd. v. Westcoat Transmission Co.* [1990] A.J. No. 317; [1990] 4 W.W.R. 461: 73 Alta.L.R. (2d) 246; 105 A.R. 384, O'Leary J. at page 18 of A.J.:

> "It will be seen that the amounts which a litigant may claim as costs are "all the reasonable and proper expenses which any party has paid or become liable to pay" for the purpose of prosecuting or defending any action or proceeding. The non-exhaustive list of examples in Rule 600(1)(a) includes the charges of barristers and solicitors as well as other expenses paid either by a party or a solicitor on behalf of a party. I will refer to the amounts claimed by a party in respect of the charges of his solicitor as "fees", and other litigation expenses, whether incurred by the litigant directly or by the solicitor on the litigant's behalf, as "disbursements".

Reasonable & Proper

The Taxing Officer's discretion to allow or disallow disbursements comes from **Rule 600**, which states that "costs" include "all the ***reasonable and proper*** expenses which any party has paid or become liable to pay for the purpose of carrying on or appearing as party to any proceedings, . . ." and from **Rule 635** which authorizes the Taxing Officer to disallow costs which are excessive or brought about by steps that were "improper, vexatious, prolix or unnecessary, or taken through over-caution, negligence or mistake."

Reasonableness

The test of ***reasonableness*** was addressed in *MacCabe v. Westlock Roman Catholic Separate School District No. 110* [1999] A.J. No. 499; [1999] 10 W.W.R. 461; 70 Alta.L.R. (3d) 1; 243 A.R. 280, Johnstone J., at para. 76:

> "In determining whether or not a disbursement is reasonable, I may consider the following factors:
>
> (a) the length of the trial;
>
> (b) its complexity;
>
> (c) the nature and number of the issues involved in the trial;
>
> (d) the degree of contest as to evidentiary matters;
>
> (e) the degree of contest as to credibility of witnesses, including professional expert witnesses;
>
> (f) the nature and number of the defenses mounted;
>
> (g) the requirement for and use of experts;
>
> (h) the use of models, tests and scientific evidence;
>
> (i) the nature and amount of damages at issue;
>
> (j) the relationship of the expenses claimed as costs to the amounts at issue in damages;

(k) any agreement of counsel to share specific expense items.

"(See Westco Storage Limited v. Inter-City Gas Utilities Ltd. [1988] 4 W.W.R. 396, (Man.Q.B.) at p. 403 per Schwartz, J.; Lalli [v. Chawla (1997) 53 Alta.L.R.121 (Alta. Q.B.)] above, at pp. 127 and 128; Ed Miller Sales & Rentals Ltd. v. Caterpillar Tractor Co., (1994), 170 A.R. 341 (Alta.Q.B.) pp. 22 and 23, Berger, J. (as then he was))."

In *Petrogas Processing Ltd. v. Westcoat Transmission Co.* [1990] A.J. No. 317; [1990] 4 W.W.R. 461: 73 Alta.L.R. (2d) 246; 105 A.R. 384 (Q.B.), at page 29, the court observed:

"The issues raised from time to time by the pleadings and by discovery and production are significant circumstances. The magnitude of the expenditure in relation to the amount at risk in the proceedings is another important consideration. In all cases the party taxing costs has the burden of showing that both the nature of the expense and its amount were reasonable and proper in the circumstances."

Applied in *McCabe* (above).

See too Stevenson & Côté, ***Civil Procedure Guide*** (1996), p. 1939, at "G. Reasonableness of Disbursements" for a good discussion of the position that disbursements "do not need to have been necessary to be recoverable".

Propriety

The propriety of an expense was considered in *Fung v. Berkun* [1982] 4 W.W.R. 381, (B.C.S.C.), wherein Wetmore, L.J.S.C. states, at p. 383:

"In *Francis v. Francis*, [1956] P. 87, [1955] 3 All E.R. 836, Sachs J. said at p. 840:

'When considering whether or not an item in a bill is "proper" the correct viewpoint to be adopted by a taxing officer is that of a sensible solicitor sitting in his chair and considering what in the light of his then knowledge is reasonable in the interests of his lay client.'"

In *Waters v. Smith* (1973) 2 O.R. 490 at 494, the venerated Ontario Taxing Officer McBride expressed words of circumspection to slash-happy taxing officers:

"I favour the . . . argument that I should not "second guess" counsel with respect to such matters as the necessity of surveys, photographs and so on. I might say that a Taxing Officers is required to do just that in cases falling within the ambit of [Ontario] Rules 674, 675 and 677. However, I incline to the view that costs should be disallowed in such cases only when it is quite clear to the Taxing Officer that the services rendered or expenses incurred were not necessary and should have been seen at the time to be unnecessary or unreasonable."

Point in Time to Apply the Test

In *Van Daele v. Van Daele* (1983) 45 C.P.C. 166 (B.C.C.A.) it was held that the "reasonableness" and "propriety" of an expense should be considered as at the time it was incurred. See too *Monashee Petroleums Ltd. v. Pan Cana Resourses Ltd.* (1988) 85 A.R. 183 at 192-3 (C.A.) which concluded:

"It has always been the rule that expenditures for witnesses are based on what seemed reasonable at the time, not on hindsight about witnesses who in the event turned out later to be unnecessary. Costs are for proper expenses, and expenses are incurred by ordinary mortals, not by prophets."

In *Petrogas Processing Ltd. v. Westcoat Transmission Co.* [1990] A.J. No. 317; [1990] 4 W.W.R. 461: 73 Alta.L.R. (2d) 246; 105 A.R. 384, O'Leary J., at page 29, stated:

"The test of reasonableness is not, in my opinion, entirely based on the importance of the expenditure to success at trial. Hindsight may show that some liabilities assumed were, in the end, of little or no benefit. The question is whether the expense was reasonable and proper in the light of the circumstances which existed at the time it was incurred."

NEW

Sidorsky v. CFCN Communications Ltd. 1995 CarswellAlta 86, 27 Alta. L.R. (3d) 296, 35 C.P.C. (3d) 239, [1995] 5 W.W.R. 190, 167 A.R. 181, [1995] 5 W.W.R. 190 (Q.B.), McMahon, J.:

"17 It is equally clear that the reasonableness of the expenditures for witnesses is based on what seemed reasonable at the time, that is during and before trial. One should not rely upon hindsight, particularly in respect of experts retained for rebuttal purposes and then not called because the plaintiffs' evidence does not warrant it."

NEW
In *Viridian Inc. v. Dresser Canada Inc.* [1998] A.J. No. 947, 1998 ABQB 687, 1998 CarswellAlta 797, 82 A.C.W.S. (3d) 26 (Q.B.) the Honourable Mr. Justice Côté stated:

> "3 The issue in this Court is the amount of fees payable to two expert witnesses, . . .
>
> "4 It is trite law that the question is not what was necessary, still less how much hindsight suggests was really necessary. The question is whether what was done, and the money that was spent at the time, were reasonable, given the state of knowledge then existing."

Both *Van Daele* and *Petrogas* were followed in *Hetu v. Traff* [1999] A.J. No. 1270, 1999 ABQB 826 (Q.B.).

And *S.F.P v. MacDonald* [1999] A.J. No. 478 wherein Veit, J, relying upon *Monashee*, concluded:

> "that the test of whether an expert's expense is reasonable is whether it was reasonable at the time the expense was incurred. It would be too onerous to a litigant to impose a higher test, as for example, whether the evidence was useful in the result."

Stevenson & Côté, ***Civil Procedure Handbook 2002***, at page 451, elaborates:

> "Hindsight is not the test, and still less is whether the disbursement later actually contributed to victory. An unreasonable and so unrecoverable disbursement may be one which was negligent, or overcautious or extravagant, bearing in mind all the facts then known, including the amounts in issue in the suit and whether other matters such as people's reputations were at stake."

Incurred Prior to the Action

At the very least, the "costs of any step necessarily taken before action to give regularity to the statement of claim when issued" are recoverable (see *Northern Trusts Company v. Coleman* [1923] 1 W.W.R. 802; [1923] 1 D.L.R. 1132 (Alta.S.C.), Walsh J. at 804; recognized in *Canadian Egg Marketing Agency v. Richardson* [1998] N.W.T.R. 58, Wachowich J. (as he then was)). Therefore, an ex parte application for service ex juris, an application for garnishment prior to judgment, or such other applications which pre-date the commencement of proceedings are recoverable notwithstanding they precede the action.

A broader view was taken in *Spiess Earth Construction Ltd. v. Cominco Ltd.* [1978] A.J. No. 669 (S.C.T.D.) where Moore J. (as he then was) allowed, on a consent basis, significant costs incurred for "claim preparation and negotiation" prior to commencement of the proceedings. The decision does not clarify if this conclusion was possibly due to some contractual obligation of indemnification. NEW As well, in *Mar Automobile Holdings Ltd. v. Rawlusyk*, 2001 CarswellAlta 855, 2001 ABQB 516, 93 Alta. L.R. (3d) 141 (Q.B.), Clarke, J. concluded, "As to the period prior to Ellis being named as a party in the litigation, to the extent that the expert report work related to the issue of the audit prepared by Ellis then I have concluded that is properly taxed as a disbursement."

A contrary and more predominant view is taken in *Chicago Blower Corp. v. 141209 Canada Ltd.* [1986] M.J. No. 443; [1986] 6 W.W.R. 143, 43 Man.R. (2d) 130, Wilson, J., followed in *Alberta v. Alberta (Labour Relations Board)* [1998] A.J. No. 1310; 240 A.R. 81 wherein Veit J. said, at para. 14, "Usually, costs incurred before an action is brought are not allowable: *Chicago Blower Corp.*" *Chicago Blower* relied in its reasons on *Re Matton and Township of Toronto* [1965] 2 O.R. 792 wherein the Taxing Officer was directed to allow only those costs which were incurred subsequent to the commencement of the proceedings. In *Re Matton* the Taxing Officer and the Chief Justice relied upon the Manitoba Court of Appeal decision in *Weston Bakeries Ltd. v. Baker Perkins Inc. and Canadian Petersen Oven Co. Ltd.* (1960), 23 D.L.R. (2d) 122, 31 W.W.R. 200 which refused certain costs because that Province's equivalent to our **Rule 600(1)(a)** was much more restrictive. Indeed, the Manitoba Court of Appeal made specific reference to our **Rule** and that its wording would have given that Court jurisdiction to allow the costs in question:

> "In England and in other jurisdictions Rules have been formulated to deal with outlays and expenses not generally considered as being included in the term 'costs'. Counsel for defendants cited British Columbia and Alberta cases but those jurisdictions have, by their Rules, covered the matter."

The wording of the relevant costs rule in that jurisdiction permitted costs "of and incidental to all proceedings" while ours contemplates "all . . . expenses which any party has paid or become liable to pay for the purpose of carrying on or appearing as party to any proceeding".

A number of other Ontario decisions take a similarly contrary view: *Re Magee and Ottawa Separate School Board* [1962] O.W.N. 83, 32 D.L.R. (2d) 162, a decision of McRuer, C.J.H.C.; *Hazelton v. Quality Products Ltd. and Heywood* [1971] 1 O.R. 1 (Ont. C.A.); and *Erco Industries Ltd. v. Allendale Mutual Insurance Co.* (1984) 47 O.R. (2d) 589 (Ont. H.C.J.). In *Bunkowsky* (above) McBride T/O explains the flaw in the court's reasoning in *Re Magee* and it is interesting that, as Mark M. Orkin explained in his ***The Law of Costs*** (2nd e., 13th rel. 1998) at 103.0, footnote 50:

> On appeal the item was disallowed on other grounds . . ., the court specifically leaving open whether Magee ought to be followed in all cases.

A more recent Alberta decision, *Kha v. Salhab* [2001] A.J. No. 61, 2001 CarswellAlta 53, 2001 ABQB 44 (Q.B.), Kenny J. considered the cost of hiring interpreters to aid the Plaintiff's lawyer in determining whether the Plaintiff had a case worth pursuing. In reluctantly concluding that **Rule 600(1)(a)** is not broad enough to include costs incurred prior to commencement of the "proceeding" the court considered the following decisions:

> *Ukrainian (Edmonton) Credit Union Ltd. v. 258753 Alberta Ltd.* (1984) 60 A.R. 148 (Q.B.) - the court upheld the taxing officer's decision to disallow the cost of demand letters sent prior to commencement of the action. The Court of Appeal affirmed. The demand letters had, says Kenny J. no "direct connection to whether or not a legal action could or would be commenced."
>
> *Bow Island (Municipal District) v. Wortz* [1921] 2 W.W.R. 153 (Alberta A.D.S.C) - the plaintiff conducted an audit of the accounts of the defendant after he left his position as secretary-treasurer of the municipality. The Court of Appeal concluded that since this audit occurred prior to the commencement of the action the costs related to it could not form part of the costs of the action because the wording of the relevant rule did not extend that far.
>
> *Erco Industries Ltd. v. Allendale Mutual Insurance Co.* (above), affirmed (1987) 62 O.R. (2d) 766 (Ont. C.A.) - at the trial level the court expressed its desire to allow the costs of an insurer, incurred prior to commencement of the action, to investigate the claim against the defendant but concluded that they did not fall within the intent of that jurisdiction's rules allowing for "costs of and incidental to" the trial. The Court of Appeal said that on such matters the trial judge's discretion should prevail.

Kenny J. concluded, at paragraph 9, as follows:

> "From a public policy prospective, it does seem somewhat unjust that minority groups in the position of the plaintiffs are liable to incur added expense in hiring an interpreter in order to access justice in the Province. Nevertheless, this seems to be the case in light of the decision in Wortz . Unless there is a wording change in Rule 600 of the Rules of Court that would encompass expenses such as interpreter costs or a re-examination of the law as it currently stands by the decision of the Court of Appeal of Alberta in Wortz , there appears to be nothing this Court can do to assist. Therefore, although it may not be the fairest result, I find I have no choice but to abide by the current law and Rules of Court in Alberta. The application for costs for interpretive services incurred prior to the commencement of the action is hereby dismissed."

English courts have long taken the view that costs incurred before the commencement of an action are recoverable if

> (a) they were or would have been "of use and service in the action",
>
> (b) were or would have been "of relevance to an issue" in the action, and
>
> (c) were "attributable to the conduct of the" opposing party(s)

(see *Pêcheries Ostendaises (Société Anonyme) v. Merchants' Marine Insurance Company* 138 L.T. Rep. 532, (1928) 1 K.B. 750; *Frankenburg v. Famous Lasky Film Service Ltd.* (1931) 144 L.T. 534, (Eng. C.A.); *British United Shoe Manufacturing Co., Ltd. v. Holdfast Boots, Ltd.* [1936] 3 All E.R. 717 (Ch D); *Re Gibson's Settlement Trusts Mellors and another v. Gibson and others* [1981] 1 All ER 233 (Ch D).

There is no question but that the English equivalent to our **Rule 600(1)(a)** allowing for "costs of and incidental to" a proceeding is, to quote Stevenson & Côté, ***Civil Procedure Guide*** (1996) at page 1938, "broader than costs 'of' a proceeding"; our **Rule 600** does not specify costs "incidental to" a "proceeding". A reading of *Re Gibson's* (above) illustrates the distinction between the two regulations and just how much "broader" the English is as compared to ours. But, as noted in *Weston Bakeries* (below), our **Rule 600(1)(a)** is sufficiently "broad" as to permit pre-action expenses which fall within the guidelines delineated in *Frankenburg* (above). Following the lead of *Frankenburg and British United* was taxing officer McBride of Ontario in *Gioberti v. Gioberti* [1972] 2 O.R. 263; *Bunkowsky v.*

Bunkowsky [1973] 1 O.R. 320; and *Singer v. Singer* (1976) 11 O.R. (2d) 234. Likewise Justice Keith in *Waters et al. v. Smith et al.* [1973] 3 O.R. 962. These decisions would allow the costs of collecting evidence while it was still fresh (such as an accident report or an investigator's services to locate witnesses); the cost of experts' reports incurred to attempt to negotiate a failed settlement but which prove useful to the action (frequently the case in personal injury actions); corporate, PPR, court house, and Land Titles searches to ascertain who or what to sue or the proper description; etc.

Summary: Costs incurred prior to the commencement of an action are not recoverable, with one exception. They are recoverable if they are necessary to give "regularity" to the originating document (Statement of Claim, Originating Notice, etc.). Even costs of securing evidence ultimately used at trial or which is instrumental in settling the action are not recoverable if incurred prior to the commencement of the actions.

Expense May Be Allowed Even If it is Unpaid At Time of Taxation

Rule 601(1)(a) provides that "costs" include "all expenses which any party has paid or become liable to pay".

McCready Products Ltd. v. Sherwin-Williams Co. of Canada Ltd. [1986] A.J. No. 172; 43 Alta.L.R. (2d) 269; 68 A.R. 342; reversed on appeal on a different issue, [1986] A.J. No. 414; 45 Alta.L.R. (2d) 228, (Q.B.) Wachowich J. (as he then was) accepted the rationale in *Barlee v. Capozzi* [1976] 5 W.W.R. 110 (B.C.S.C.) that a disbursement may be properly taxable even if it remains unpaid at the time of taxation, so long as its liability is established. Quoting Bouck J.:

> "In this province we have a vigorous, honest and well disciplined Bar. Of course exceptions exist, and occasionally a member of the profession fails to meet the high standard set by the Law Society. But that is no reason to condemn all the members as a group. For these reasons I do not think the rule in Freeman v. Rosher is applicable in British Columbia. So long as a litigant proved by affidavit evidence or otherwise that he has incurred a disbursement as a result of the proceeding, then that amount may be allowed on a taxation. He does not have to show it was paid before calling on the other side to compensate him for this contingent debt. If the costs are paid to the solicitor he is a trustee of the moneys on behalf of the unpaid witnesses."

The decision distinguishes the prior decision of the Alberta Supreme Court in *Mulcahey v. Edmonton, Dunvegan and B. C. R. Company* (1919) 46 D.L.R. 654 as the wording of the relevant Rules of Court of the time specifically allowed only for fees and charges "paid" and made no provision for "liability to pay".

Must Establish Proof of Payment Or Liability to Pay

Rule 642 states:

> "**(1)** No disbursements other than fees paid to officers of the court shall be allowed unless the liability therefor is established either by the certificate of the solicitor conducting the matter, or by affidavit.
>
> **(2)** The certificate or affidavit shall state how the amount of any witness fees claimed is calculated."

In *Herman v. McConnell* (1910) 3 A.L.R. 136 (Alta. C.A.) the court held that a party making an affidavit of disbursements may be cross-examined on the affidavit, and the application for such an examination should be made before the Clerk has completed the taxation. It follows that the same applies to a Certificate of Disbursements since they are treated interchangeably. Stevenson & Côté, ***Civil Procedure Guide*** (1996) p. 2051 notes that *Westco Storage Limited v. Inter-City Gas Utilities Ltd.* [1988] 4 W.W.R. 396, (Man.Q.B.) stands for the same entitlement, but questions its application in Alberta given Rule differences between Alberta and Manitoba.

Cabre Exploration Ltd. v. Arndt [1988] A.J. No. 952 (Q.B.) is an example of the court relying upon an Affidavit of Disbursements and the examination on that affidavit in satisfying itself of the liability for a disbursement and, in that case, legal fees.

The practice of this office is to recognize the right to examine on any Affidavit or Certificate of Disbursements.

How detailed must the Affidavit or Certificate be? In *Wilson v. Moulds* (1867) 4 Ont. P.R. 101 it was held that items should be verified by vouchers or other proof. Morrison, J. stated:

> "The Deputy Clerk of the Crown ought not to allow any item for which there is not before him some authority or evidence to justify the allowance, and upon the taxation he should require all proper vouchers or affidavits produced for that purpose.. . . It is obvious that if allowance are taxed . . . without filing some authority or evidence to justify the charge, parties interested would in many cases be deprived of an opportunity of satisfying themselves of the propriety or correctness of the charges, . . . such a practise is open to many other irregularities that might be suggested.
>
> ". . . in future, Deputy Clerks of the Crown and attorneys must see that all necessary vouchers are filed in the first instance."

The Alberta Court of Appeal, in *Watts v. Wakerich* 2001 CarswellAlta 1000, 2001 ABCA 207, gave some sound advice to taxing officers to use reason when requiring proof of disbursements beyond the solicitor's certification that the claimed disbursements were necessary to the proceedings. At paragraph 4:

> "The successful respondent will of course also recover reasonable disbursements. We do not wish a repetition of the extreme difficulty experienced earlier in taxing the disbursements in the Surrogate Court or the Court of Queen's Bench in this and related litigation. Therefore, we direct that whoever taxes these costs may dispense with vouchers or sworn proof of any disbursements which are:
>
> > (a) comparatively small, or
> >
> > (b) appear to the taxing officer to be reasonable, in light of common practice, or his or her other experience."

This accords with an earlier decision in *Sprung Enviroponics Ltd. v. Calgary (City)* (1990), 103 A.R. 131 (C.A.) at p. 137 where Côté J.A said:

> "In my view Masters or judges should decide what evidence (if any) they need of amount, case by case, looking at what is practical and fair in each case. Often they will need no sworn evidence to show Schedule C items or fairly common disbursements, such as witness travel expenses. Had the defendants here asked for (say) $5,000.00 security for experts' fees, I doubt they would have needed any more evidence to support that than they gave. The Chambers judge approached the question conscientiously, and made his own independent estimate, and halved the amounts sought for experts."

The latter quote was accepted and relied upon by the Court of Appeal in *Sidorsky v. CFCN Communications Ltd.* 1997 CarswellAlta 772, 53 Alta. L.R. (3d) 255, [1998] 2 W.W.R. 89, 206 A.R. 382, 156 W.A.C. 382, 15 C.P.C. (4th) 174, 40 C.C.L.T. (2d) 94 (C.A.) in which an "investigatory fee" of roughly $200,000.00 for keeping track of witnesses and their changes of address was reduced to $10,000.00 on account of a lack of evidence as to its necessity and reasonableness. At paragraphs 44 & 45 the Court explains its reasons:

> "44 . . . We must emphasize the definition of "costs" in Rule 600(1)(a), "all the reasonable and proper expenses." In justifying the disbursement, the witnesses were identified as people who were transient and difficult to locate. In this case, it is unknown how many of these witnesses were transient, unwilling, or failed to notify the respondents of any change of address. A $200,000 award represents a significant sum. While judges must often, for practicable purposes, award disbursements on the basis of counsel's representations, when the award is of this magnitude it should not be awarded without evidence as to its necessity and reasonableness. . . . Frequently, keeping a list of the current addresses of witnesses is simply part of the overhead of a law firm and should not be the subject of a separate disbursement. As such, it should be included as part of the party and party costs award.
>
> "45 We accept that some amount can be awarded without evidence. In that regard we refer to the comments of Côté J.A. in case of Sprung Enviroponics Ltd. v. Calgary (City) [quoted above] . . . Given the absence of evidence to justify an investigatory fee of $200,000, we would award $10,000 for these claimed disbursements."

This office does not require the production of receipts, vouchers, cancelled cheques or the like "in the first instance". In the case of large Bills of Costs parties who have serious concerns about disbursements are encouraged to examine on the Affidavit or Certificate of Disbursements, whereat such verifications of payment or liability to pay may be produced and later addressed in the taxation hearing. In the taxation of less significant Bills of Costs which do not warrant the expense of an examination it is suggested that concerns be brought to the opposing party's attention prior to the taxation hearing in order that the party can come to the taxation prepared to address and justify those particular expenses. In light of *Watts v. Wakerich* the issue of what disbursements must or must not be "proven", even during the course of an Examination on Affidavit of Disbursements, would appear to be in the discretion of the taxing officer (see too **Rules 628** & **635**); and always in the discretion of the Court.

Note that under **Rule 628(b)** the taxing officer can "direct the production of books, papers and documents".

A sample Affidavit of Disbursements is attached, at D-?.

Disbursements Paid in Foreign Currency

If a litigant has incurred an expense in a foreign currency and the cost must be converted to Canadian dollars the important question of when and at what rate of exchange (the latter being determined by the former) can be of significant importance.

In *Dillingham Corporation Canada Ltd. v. "Shinyu Maru "* 1979 CarswellNat 12, 13 C.P.C. 38, [1980] 1 F.C. 303, 101 D.L.R. (3d) 447 (F.C. T.D.) it was concluded that the conversion was to be ascertained and calculated as of the date of the taxation. This conclusion was followed in *Capitol Life Insurance Co. v. R.* 1987 CarswellNat 369, [1987] 1 C.T.C. 394, 10 F.T.R. 247, 87 D.T.C. 5208 (F.C.T.D.); in *Chicago Blower Corp. v. 141209 Canada Ltd.* 1986 CarswellMan 348, [1986] 6 W.W.R. 143, 43 Man. R. (2d) 130 (Man. Q.B.).

There is no obvious issue when the payment was made in Canadian dollars and the cost of conversion to the foreign currency can be verified by a receipt or statement.

Interest on Costs Generally

Clerks of the Court do not concern themselves, in the course of taxing a bill of costs, with claims of or awards of interest on costs. Such matters are either addressed specifically by the Court in its judgment or by the default application of the provisions of the **Judgment Interest Act** c. J-0.5 at the time the terms of the Judgment are settled (**Rule 318**), or when the Writ of Enforcement is submitted for filing.

Why? Aside from circumstances in which the Judgment Interest Act would not apply, it specifically provides that pre-judgment interest cannot be awarded on costs in the action (disbursements, interest on disbursements, financing of the litigation):

> "Pre-judgment Interest
>
> "2(2) The court shall not award interest under this Part
>
> (d) on an award of costs in the action;
>
> (e) on money, or interest on that money, borrowed by a party to pay for expenses which are claimed as special damages;"

Furthermore, the Judgment Interest Act dictates what rate of interest is to be applied, and from when, on the "judgment debt" which includes the costs and expenses flowing from the judgment:

> "Post-judgment Interest
>
> "6(1) In this section, "judgment debt" means a sum of money or any costs, charges or expenses made payable by or under a judgment in a civil proceeding.
>
> "(2) Notwithstanding that the entry of judgment may have been suspended by a proceeding in an action, including an appeal, a judgment debt bears interest from the day on which it is payable by or under the judgment until it is satisfied, at the rate or rates prescribed under section 4(3) for each year during which any part of the judgment debt remains unpaid."

This would seem to accord with the common law which favors interest as running from the date costs are awarded, not from the date of taxation: see *Andree v. Pierce* 1986 CarswellMan 212, 41 Man. R. (2d) 262 (Man. Q.B.).

Interest on Disbursements Incurred During Course of Litigation

In circumstances where the Judgment Interest Act applies the foregoing suggests that not even the Court, much less the taxing officer, can award interest on costs incurred in getting to the point of judgment. Outside the parameters of the Judgment Interest Act there appear to be differing approaches.

In *Dillingham Corporation Canada Ltd. v. "Shinyu Maru "* (above) at p. 453, the Court concluded:

> "Many expenditures are incurred in the course of an action which can eventually be taxed as part of a bill of costs, but there is as far as I am aware no precedent allowing any interest on them from the time of expenditure to the date of taxation, and I do not believe that it is desirable that this should be allowed on this one type of disbursement included in a bill of costs, however substantial it may be."

However, in Stevenson & Côté, ***Alberta Civil Procedure Handbook 2001***, at p. 476, see the reference to *Armada Lines v. Chaleur Fertilizers* [1997] 2 S.C.R. 617 which concluded otherwise.

As noted in Stevenson & Côté, ***Civil Procedure Guide*** (1996) at p. 1940, "interest to finance a litigant's expenses during a suit is not recoverable as part of party-and-party costs: *Hunt v. R.M. Douglas (Roofing)* (HL) [1988] 3 WLR 975, 3 All ER 823, [1990] 1 AC 398."

GST and Disbursements

Canada Customs & Revenue Agency, GST/HST Policy Statement, P-209 Lawyers Disbursements, Date of Issue: March 11,1997, Final Version: October 7, 1998: requires lawyers to charge clients GST on disbursements for which no GST was paid. On account of this obligation the Clerk of the Court is allowing GST on all **search fees**, on the cost of obtaining a **municipal compliance certificate**, on **witness fees**, and on **experts' charges** (even when GST is not claimed by the expert).

In unique circumstances the charges of a **non-resident lawyer** retained to assist in or run an action, when deemed by the Court to be recoverable as a disbursement above and beyond **Schedule C** fees, may be subject to GST.

As of January 2004 a copy of the Policy Statement could be found on the CCRA's web site at ***http://www.ccra-adrc.gc.ca/E/pub/gl/p-209/README.html***.

Common Disbursements Reviewed

The following are comments on some of the most common disbursements allowed and disallowed (listed alphabetically):

Accommodation - **Schedule E**, **Number 3**, **Item 3** allows for the reasonable cost of accommodating a witness. In some circumstances parties to the litigation and their solicitor(s) may be entitled to recover the costs of accommodation.

The amount will no doubt vary from venue to venue, but in Edmonton a survey of downtown hotels is undertaken yearly and a mean rate established (no pun intended). In 2003 the Taxing Officer in Edmonton is allowing $100.00 per night plus Federal Hotel tax and GST.

Note: room service and beverages are allowed to the limit addressed in "Meals", below.

Note too: dry cleaning, laundry, pay-per-view T.V., video rentals, massages, and the like are considered luxuries, not necessities. In long trials some exceptions may be made.

(See also: Conduct Money, Meals, Travel, Witness Fees & Expenses)

Agent's Charges - **Rule 600(1)(a)(iii)** allows for "the charges of legal agents". Process servers, interpreters, Civil Enforcement Agencies, sometimes private investigators, etc. are examples of "agents" whose reasonable charges may be allowed.

However, with one notable exception (see "Civil Enforcement Agencies"), to the extent that an "agent" is performing legal services compensable by **Schedule C** such "agent's" fees will be disallowed, though the agent's reasonable disbursements may be allowed. In this regard see *Walcer v. Shmyr and Shmyr* (1982) 15 Sask. R. 239, MacLeod J., at p. 291:

> "For an appearance in chambers the appropriate tariff item may be claimed. The unsuccessful party may not be charged a further or higher amount by engaging another counsel to provide the service and showing this account as a disbursement on the party and party bill of costs. Its treatment in the solicitor and client account is, of course, another matter."

Walcer was cited in *Western Canadian Shopping Centres Inc. v. Dutton* [1996] A.J. No. 1006, by Veit J. who concluded, at para. 15, in referring to **Rule 600(1)(a)**, "that paragraph (iii) should be treated as excluding fees for legal services" because

> (a) the specific reference in paragraph (i) to "the charges of barristers and solicitors" overrides the general reference to "legal agents" in (iii),
>
> (b) paragraph (i) is all inclusive so far as the charges of barristers and solicitors, and
>
> (c) to rule otherwise, "The cost of litigation would increase immeasurably."

NEW
See too *Hetu v. Traff* 1999 CarswellAlta 1006; 74 Alta. L.R. (3d) 326, 252 A.R. 304 (Q.B.) wherein Johnstone, J. disallowed the disbursement of an out-of-province law firm used to locate expert witnesses for two reasons:

> “Firstly, if allowed, this would have the demonstrated effect of increasing the total legal fees taxable against the other party above the amount prescribed by the legislature for those fees. Secondly, the professional service for locating and retaining experts is a normal task of counsel in preparation for a trial and I accept it as common practice for counsel to seek such experts from outside its own city or province without utilizing an agent.”

The charges of runners / document processors are not compensable (see “Runner's Charges”, below)

(See also: Civil Enforcement Agencies, Computer Research, Interpreters, Private Investigators, Process Servers, Runners)

Appeal Books - In *Goudreau v. Falher Consolidated School District No. 69* [1993] 6 W.W.R. 767 (Alta. C.A.), the

Court awarded costs of the appeal to the appellants "including charges for Appeal Books privately prepared by the appellants at a rate equal to what the court reporters would have charged for preparation of the Appeal Books". However, the same Court considered *Goudreau* in *Huet v. Lynch* [2001] A.J. No. 145, 2001 ABCA 37 and said a "disbursement" means to expend money and concluded that the self-represented litigant, having prepared the appeal books herself, was only entitled to 15 cents a page. This figure was applied on the basis of lack of evidence of the actual cost of photocopying and relied upon *Reese v. Alberta (Ministry of Forestry, Lands and Wildlife)* (1992), 5 Alta. L.R. (3d) 40 (Q.B.) McDonald, J. at 56:

> "In the present case, without benefit of any evidence as to the actual cost of photocopying, I am prepared to recognize a cost of 15 cents a page."

and on *Sidorsky v. CFCN Communications Ltd.* (1997), 206 A.R. 382 (C.A.) (see "Photocopies", below). The *Huet* decision did note that the Q.B. reporters rate for preparation of Appeal Books was $4.76 per page in 2001. The practice of this and other taxing officers has been to allow the going Q.B. Reporters rate for self-represented litigants and law firms alike. In light of the *Huet v. Lynch* decision taxing officers may be restricted to allowing 15 cents per page to self-represented litigants.

Binding Charges - Disbursements incurred for the purpose of binding written submissions, case authorities, undertakings, exhibits, etc. may be allowed where it is deemed to be of assistance to the Court to have incurred the expense. No allowance is made for extravagance (leather binding with gold leaf trim). Binders used for this purpose which will not be recovered for re-use are also reimbursable.

Normally nothing extra is allowed for time and labour in collating and binding, it being deemed part of the overhead expense covered by **Rule 605(3)** as compensated for by **Schedule C** fees. See *Ukrainian Credit Union Ltd. v. 258753 Alberta Ltd., Gourdine and Olsen* (1984) 39 Alta. L.R. (2d) 310; *Reese et al. v. HMQ Alberta & Daishowa Canada Co. Ltd.* (1992) 133 A.R. 127; *Samsonite Canada Inc. v. Entreprises National Dionite Inc.* [1995] F.C.J. No. 849 (F.T.D.) Reinhardt, Taxing Officer at para. 55; and *Dableh v. Ontario Hydro* [1998] F.C.J. No. 491 (F.C.A.) Stinson, Taxing Officer at paras. 66 & 67. Exception is made relative to the preparation of Appeal Books: this is a task normally performed by a 3rd party and to the extent that the in-house preparation does not exceed in cost that normally charged by the 3rd party (normally Court Reporters up to now) it is allowed (see "Appeal Books", above).

Civil Enforcement Agencies (CEA) - The **Civil Enforcement Act of Alberta**, Chapter C-10.5 provides, in sub-section 9 (1) & (3), that a CEA is permitted to:

(a) carry out seizures of property pursuant to writ proceedings or the right of distress;

(b) carry out evictions;

(c) sell property seized pursuant to writ proceedings or the right of distress;

(d) distribute the proceeds of such sales; and

(e) carry out any other function or duty provided for or permitted by the Act, which includes the preparation of papers necessary to issuing a garnishee summons.

NEW

Additionally, the ***Alberta Rules of Court*** - Part 47 - Costs - Civil Enforcement Agency Fees - **Rule 587** provide that

> "In addition to the amount recovered by the judgment, there may be levied under any writ of enforcement
> (a) the fees and expenses of enforcing the writ of enforcement, and
> (b) interest on the amount recovered."

UPDATED

Therefore, the **Civil Enforcement Act of Alberta** creates an exception to the general rule enunciated above in "Agents Charges" in that the legislation, explicitly or implicitly, authorizes a Civil Enforcement Agency to perform legal services otherwise considered to be within the purview of "barristers & solicitors" (**Rule 600(1)(a)(i)**). Therefore, for performing these *authorized* services a CEA is entitled to bill an enforcement creditor or an enforcement creditor's legal counsel for performing these legal services. It follows that the enforcement creditor is entitled to recover, as a *disbursement*, the reasonable cost of employing a CEA to perform these legal services. If an enforcement creditor employs a CEA to provide services not contemplated in the **Civil Enforcement Act** the enforcement creditor may only recover the CEA's reasonable and necessary out-of-pocket expenses, but no fee (see examples below).

UPDATED

Therefore, caution must be taken to avoid duplication of effort and expense. Note the following breakdown of how

fees and expenses are recovered for the performance of particular services:

Service Provided or Step Taken	By Whom?	Mode of Cost Recovery
Issue and Register Writ of Enforcement	Enforcement Creditor	Out-of-pocket expenses only. No fee.
	Civil Enforcement Agency	Out-of-pocket expenses only. No fee.
	Lawyer	**Item 18(1)** & out-of-pocket expenses.
Renewals / Amendments / Status Reports	Enforcement Creditor	Out-of-pocket expenses only. No fee.
	Civil Enforcement Agency	Out-of-pocket expenses only. No fee.
	Lawyer	**Item 18(2)** & out-of-pocket expenses.
Request and review of financial report from enforcement debtor	Enforcement Creditor	Out-of-pocket expenses only. No fee.
	Civil Enforcement Agency	Out-of-pocket expenses only. No fee.
	Lawyer	**Item 19(1)** & out-of-pocket expenses.
Examination in Aid of Enforcement	Enforcement Creditor	Out-of-pocket expenses only. No fee.
	Civil Enforcement Agency	Not Applicable.
	Lawyer	**Item 19(2)** & out-of-pocket expenses.
Instructions for and preparing all papers leading to seizure[1]	Enforcement Creditor	Out-of-pocket expenses only. No fee.
	Civil Enforcement Agency	Out-of-pocket expenses only. No fee.
	Lawyer	**Item 20** & out-of-pocket expenses.
Issuing each Garnishee Summons, Notice of Continuing Attachment[2]	Enforcement Creditor	Out-of-pocket expenses only. No fee.
	Civil Enforcement Agency	Fee and out-of-pocket expenses. Fee not to exceed amount permitted by Item 21.
	Lawyer	**Item 21** & out-of-pocket expenses only.
Instructions for and preparing all papers leading to sale of lands under Order or Judgment (including attendance at sale whether aborted or not)[3]	Enforcement Creditor	Out-of-pocket expenses only. No fee.
	Civil Enforcement Agency	Out-of-pocket expenses only. No fee.
	Lawyer	**Item 22** & out-of-pocket expenses only.

[1] The actual **seizure** must be performed by a CEA. It's reasonable charges and expenses related to attempting to or actually effecting the seizure would be recoverable as an out-of-pocket expense, regardless who issues the instructions and prepares the papers.

[2] A CEA is authorized to issue a Garnishee Summons / Notice of Continuing Attachment and may recover a fee for doing so. However, the fee is recoverable as a *disbursement* to the Bill of Costs and not as Item 21. Moreover, a party cannot recover both Item 21 and the CEA's fee.

[3] The actual **sale** must be performed by a CEA. It's reasonable charges and expenses related to attempting to or actually effecting the sale would be recoverable as an out-of-pocket expense, regardless who issues the instructions and prepares the papers.

NEW

Note that **Schedule E.1**, which dictated what a CEA could recover as fees for certain services rendered, was repealed "AR 16/2002 s13", effective February 2002. Therefore, a CEA's fees are dictated by the marketplace and

the taxing officer's discretion as to reasonableness.

Conduct Money - Conduct money is, at the least, payable in the following circumstances:

Examination for Discovery of a party, officer of a corporate party, or former or present employee of a party to the action - **Rule 204(2, 5 & 6)** requires the tendering of conduct money.

Production of Document by a person pursuant to a direction of the court under **Rule 209(1)** - **sub-rule (2)** entitles the person "to receive such conduct money as the person would receive if examined for discovery."

Attendance for Examination or to Produce Document(s) per Rule 270 Order - **Rule 286** entitles any person so required to "conduct money in payment for expenses and loss of time as upon attendance at a trial in court".

Compelling Attendance of Opposite Party at Trial - **Rules 292** & **295** require payment, together with the notice of intention to examine, of "the amount proper for conduct money".

Witness At Hearing or Trial of Any Action or Proceeding - **Rules 293** & **295** require that the notice to attend and/or produce documents be accompanied by "the proper amount of conduct money".

Examination on Affidavit of a person who made the affidavit, including an affidavit of documents - **Rule 314(5)** requires the payment of the "proper conduct money", though **sub-rule (4)** permits the court to dispense with the tender of conduct money.

NEW *Examination in Aid of Enforcement* - Part 28, Division 5 - **Rules 371 to 376** provide for examination of various individuals but make no specific mention of conduct money. However, **Rule 379** provides that unless "otherwise provided for under this Division, the Rules relating to examination for discovery apply . . . to examinations under this Division;" which takes one back to **Rule 204**.

NEW *Examination of Debtor* - Part 36, Extraordinary Remedies, Additional Interpleader Rules for Civil Enforcement Agencies and Others - **Rule 460.1** provides for a "secured party" under the PPSA serving a notice on the debtor to attend for examination as to the location of the collateral related to the security interest. No specific mention of conduct money. However, sub-rule (3) provides that unless "otherwise provided in this rule, the Rules relating to examination for discovery apply . . . to examinations under this Rule." Which takes one back to **Rule 204**.

(See too, **Rules 158.6(2)(g)**, **216.1(2)(g)**, **294(1)(c) & (5)**, **600(1)(a)(vi)** and **612**)

Conduct Money is defined in **Rule 5(d)** - "'conduct money' means the sum to which a person is entitled in accordance with the allowances prescribed in Schedule E hereto, and when the term is used in reference to a payment before actual attendance, means such amount as is calculated he would be entitled to upon completion of his attendance."

This definition is clarified by **Rule 612(1)** - "When a person is provided with conduct money before actual attendance he is entitled to receive such additional sum as may be determined to be payable upon the completion of his attendance." Determination of "such additional sum" is usually addressed at the conclusion of the action: Stevenson & Côté, ***Civil Procedure Handbook 2000*** p. 468.

To expedite proceedings ***Rule 612(2)*** allows for an ex parte fixation of the amount to be paid, subject to adjustment at the conclusion of the action: "When any party is permitted or compelled to pay or tender conduct money, he may have the amount thereof fixed ex parte, by the taxing officer in the first instance, subject to adjustment upon completion of the actual attendance."

Schedule E, **Number 3** allows for the following (each item is addressed more thoroughly under its respective title in this manual):

Witness Fee - Item 1: An ordinary witness is entitled to $10.00 (not the $50.00 erroneously published by the Queen's Printers a few years back) "for each day or part of a day necessarily spent . . . in going to, staying at and returning from the place of trial." Note: includes days of travel.

Witness Fee - Item 6: "A professional . . . called in consequence of professional services rendered or to

give expert evidence" is entitled to $75.00 "per day . . . that he is in attendance". This sum is, after the fact, usually increased by the court to allow for all reasonable charges, but this is all that must be tendered as a fee to ensure the professional's or expert's attendance. Note: though it does not say it, includes days of travel.

Accommodation - Item 3: "Where the witness . . . does not reside within reasonable commuting distance of the place of trial, a reimbursement of such amount paid for his accommodation as the taxing officer considers reasonable." Reasonableness varies from venue to venue. For more details see "Accommodation", above.

Meals - Item 4: "For meals purchased by a witness . . . a reimbursement of such amounts paid for the meals as the taxing officer considers reasonable." Most taxing officers use the Subsistence, Travel and Moving Expenses Regulation under the Public Service Act as their guide. For the present allowances see "Meals", below.

Travel - Item 5: "For every kilometer necessarily traveled by a witness . . . in going to and returning from the place of the trial (a) by train, bus or other public transportation, a reimbursement of the actual fare paid; (b) by private automobile, the amount set out in section 6(2) of the Subsistence, Travel and Moving Expenses Regulation under the Public Service Act." Note: the numbering of the sections has changed in the Regulation - the appropriate section is now number 16. For the present rate per kilometer see "Travel", below. For a discussion of what form of transportation is appropriate see "Travel", below.

The **Schedule** allows for nothing more. However, it is prefaced by the notice that "allowances to witnesses . . . may be increased under special circumstances by a judge." As noted above, the courts traditionally allow reasonable and proper expenses of the experts referred to in **Rule 600(1)(a)(ii)**.

FAQs Relating to Conduct Money (by no means comprehensive):

Are there hard and fast rules for fixing conduct money?

In *Pacific Engineering Ltd. v. Pine Point Investments Ltd.* (1968), 66 W.W.R. 244, a NWT decision by Moore J. (as he then was) using Alberta Rules of Court concluded that the fixation of conduct money is discretionary:

> "The Alberta Rule [now Rule 204] is declaratory of the common-law principles governing the securing of the attendance of witnesses: *Horne v. Smith* (1815) 6 Taunt 9, 128 ER 935, and *Re Working Men's Mutual Society* (1882) 21 Ch. D 831, 51 LJ Ch. 850.
>
> "In using the phrase "proper conduct money" it would appear to be leaving the question of amount open for the exercise of discretion. What is proper would appear to depend on the circumstances in each case, to resolve itself into a question of degree: 13 Halsbury, 2nd ed., p. 740; *Vice v. Anson* (1827) 3 C & P 19, 172 ER 304, and *Horne v. Smith*."

If a party to the action moves out of the jurisdiction during the course of the action, is conduct money payable from the new residence or the old?

NEW In *F.G. Bradley Co. v. Maxwell Taylor's Restaurant Inc.* 1984 CarswellAlta 493; 53 A.R. 79 Master Breitkreuz concluded that (to quote the head-note), "For the purposes of conduct money for attendance on a cross-examination in interlocutory proceedings, a corporation is required to make its officers available as of the place of its head office. Where the company changes the address of its head office after the commencement of the transactions giving rise to the lawsuit, it is entitled to conduct money from the new address."

If an affiant is from out of the jurisdiction, from where is conduct money payable?

In *Canada (Attorney General) v. Sandford* [1995] A.J. No. 847, 34 Alta.L.R. (3d) 170, 175 A.R. 118, 41 C.P.C. (3d) 162 (Edmonton Q.B.) S took out student loans from a bank, ceased full time schooling, made no payments on the loans, whereupon the bank assigned the loans to C. S defended on the grounds that there was no proof of assignment to C and that C was statute barred. C brought an application for summary judgment, the deponent of its supporting affidavit being from Ontario. Ordered that S only had to pay conduct money from C's office in Calgary because the loan transactions took place in Calgary and there was no information to suggest that there was no Federal Employee in Edmonton or Calgary who could do the same thing the Ontario deponent did with the defendant's file and swear the same affidavit.

In *Peckford Consulting Ltd. v. Akademia Enterprises Inc.* (1997) 205 A.R. 239, 52 Alta. L.R. (3d) 324, 12 C.P.C. (4th) 145 (Q.B.) the applicant wanted to examine a deponent in Singapore and was ordered to pay for the return trip to Canada or the cost of a teleconference or a conference call.

In *Total Client Recovery (ALB) Ltd. v. Oxford Development Group Inc.* [1999] A.J. No. 41, 240 A.R. 387 (Q.B.) Master Quinn understood Canada v. Sandford to mean that "where the party relying on an affidavit insists that the deponent, who does not reside at the site of the action, is the only person who can swear a proper affidavit, that party will have an onus of satisfying the court on that point. If they do not satisfy the court, proper conduct money will be determined on some basis more amenable to the party being required to pay the conduct money." T was an Ontario company registered and carrying on business in Alberta. O leased from T and commenced the action for a declaration that it was entitled to carry on its lease notwithstanding T's termination of it. T's president, a resident of Ontario, filed an affidavit. Ordered that O must pay conduct money for T's president's from Ontario as he was the one who had done all of the dealings and negotiations with O of the lease - no one else could properly answer really important questions in dispute.

If a party wishes to examine an officer of a corporation, from where is conduct money payable?

In *Pacific Engineering* (above) PE's corporate head office was in Calgary, PP's head office was in Edmonton, the subject matter of the litigation was property in the NWT, and the officer of PE which PP wished to examine lived in B.C. Ordered that "the ends of practical justice are better served to require a corporation to make its officers available as of the place of the head office, in this case Calgary."

Can the wage loss of factual witnesses constitute part of the conduct money to be paid?

NEW In *Sidorsky v. CFCN Communications Ltd.* 1995 CarswellAlta 86; 27 Alta. L.R. (3d) 296, 35 C.P.C. (3d) 239, [1995] 5 W.W.R. 190, 167 A.R. 181, [1995] 5 W.W.R. 190 (Q.B.) McMahon J. - reversed in part on unrelated matters [1997] A.J. No. 880; 53 Alta.L.R. (3d) 255; 206 A.R. 382; 40 C.C.L.T. (2d) 94, (C.A.) - permitted this, but only after the conclusion of the action and for unique circumstances. The Court concluded that the tenant witnesses “had been poorly treated by the plaintiffs. They have suffered enough loss without having to incur further loss as a consequence of giving testimony.” A taxing officer will not be allowing this expense without some direction from the court.

NEW ***Is a witness who attempts to but for reasons beyond its control is unable to attend a hearing entitled to its conduct money?***

In Union Investment Co. v. Pullishy; 1908 CarswellAlta 45; 1 Alta. L.R. 489, 8 W.L.R. 530; Alberta Supreme Court (Trial Division) Harvey, J. considered and allowed conduct money in a circumstance in which,

> “The plaintiffs attempted to examine some of the defendants for discovery. Owing to snow blockades, or other interruptions of train service, they were not able to attend at the time appointed, but having attended as soon after as they were able they claimed a further sum than had been paid them for conduct money. The plaintiffs refused to pay this and abandoned the examination. It is contended that, having failed to appear at the proper time, they are not entitled to this sum.”

NEW ***If you have tendered conduct money for examinations for discovery or on affidavit are you entitled to an immediate accounting of the use of those monies or, if the recipient of the conduct money, to the provision of any deficiency in the conduct money?***

The most succinct answer is found at page 500 of the **Alberta Civil Procedure Handbook 2003**:

> "Conduct money is only an estimate of the fees and disbursements which a witness will be entitled to [see R. 5(1)(d)]. In most cases that estimate must be paid to the witness in cash before the witness is obliged to attend. . . . But, *once the case is over*, there has to be an accounting: the witness will have to refund any excess (says judge-made law), and will be entitled to be paid any shortfall (says R. 612(1)). Costs taxable by a winning party against a losing party at the end cover everything payable to the witnesses, and so include full witness fees and expenses, not merely what was tendered as conduct money." *[Emphasis is added]*

This does not accord with the strict wording of **Rule 612(1)**, which makes reference to a review "upon completion of his attendance". However, a review of Alberta case law suggests that unless (a) a significant disparity exists and (b) you can convince a court to hear your application for an accounting or directing the matter to taxation for an accounting, you must await the conclusion of the action to obtain an accounting.

NEW

Consulting Experts - In *Mar Automobile Holdings Ltd. v. Rawlusyk*, 2001 CarswellAlta 855, 2001 ABQB 516, 93 Alta. L.R. (3d) 141 (Q.B.), Clarke, J. allowed the cost of an expert hired for consulting purposes only:

> 28 Mr. Herman was an accountant practising in a private firm. He accepted an appointment as the auditor of the Plaintiff companies. He was not put forward in this case as an expert in the sense of having prepared either any primary or rebuttal expert reports. However, he was hired by one of the Plaintiffs' experts to do an analysis of the Defendants' records on the basis that Mr. Herman was more likely to understand those records given his knowledge of the business than would a person from the expert's firm. In those circumstances I am satisfied that his accounts should be included for taxation purposes.

NEW

Likewise, see *Sidorsky v. CFCN Communications Ltd.* 1995 CarswellAlta 86, 27 Alta. L.R. (3d) 296, 35 C.P.C. (3d) 239, [1995] 5 W.W.R. 190, 167 A.R. 181, [1995] 5 W.W.R. 190 (Q.B.) - reversed in part on unrelated issues, [1997] A.J. No. 880; 53 Alta.L.R. (3d) 255; 206 A.R. 382; 40 C.C.L.T. (2d) 94, (C.A.) :

> 16 There is no doubt that a court has the discretion to allow costs of experts for investigations and inquiries and for assisting counsel at trial even though the experts do not testify. See *Nova, an Alberta Corp. v. Guelph Engineering Co.* (1988), 89 A.R. 363 [60 Alta. L.R. (2d) 366] (Q.B.). See also *Petrogas Processing Ltd. v. Westcoast Transmission Co.*, supra.

Courier Charges - Considered by the Court in *Gainers v. Pocklington* (1996) 182 A.R. 78 to have "become an ordinary and accepted part of the practice of litigation." However, note less enthusiasm for such charges in *Dornan Petroleum v. Petro-Canada* [1997] A.J. No. 21 wherein the same Court considered courier or delivery charges as "luxuries" which "should not be allowed unless it can be shown . . . that the circumstances of their use was necessary to facilitate the orderly disposition of the litigation." The rationale given for the position taken in the latter decision was that delivery charges "are taking the place of ordinary mail and traditionally we have not taxed postage as a disbursement." However, in *Mar Automobile Holdings Ltd. v. Rawlusyk* 2001 CarswellAlta 855, 2001 ABQB 516 (Q.B.) Clarke J. revisited the issue, considered *Dornan*, and stood by his previous conclusion, noting that he was not aware of any Court of Appeal decision to the contrary. This is curious, because his decision, relative to QuickLaw, does consider *Standquist v. Coneco Equipment* [2000] A.J. No. 554; 2000 ABCA 138 (C.A.) which, while specifically addressing fax charges, made the following ruling:

> "We have never seen a case disallowing postage, and Dornan Petr. v. Petro-Can. (1997) 199 A.R. 334 does not either. Maybe what is referred to here is delivery charges. In principle, one should show why the post office would not do, or would be as expensive. But the amount is small here, and the slowness and expense of mailing appeal books could well be imagined. We allow the $20.48 disbursement, even if it was for a courier service."

The Edmonton taxing officer tends to follow the *Gainers* decision and allows such charges, within reason.

Court Reporter's Fees - Rarely disallowed, unless it can be established that they were unnecessary (eg. daily transcripts of a trial are allowed on a case by case basis).

Debt Recovery Network - Such is the phrase Master Funduk utilized to describe a disbursement claimed in a foreclosure bill of costs for the "provision of electronic data transfer services for communications between client and law firm." A new trend in electronic collaboration between financial institutions and their out-sourced law firms, the former are, for a fee, providing law firms with software and license to a form of intra-net connection to the institution's e-mail and data-base networks in order to simplify and expedite the exchange of information regarding any particular debtor. This disbursement claim is an attempt to recoup the cost to the law firm.

In a memorandum from Master Funduk to Chambers Clerks in Edmonton, dated July 27th, 2000, he advised that this disbursement "is <u>not</u> to be allowed in any foreclosure lawsuit <u>unless</u> the Master or Judge granting the order directs that it be allowed."

If it is not to be allowed in a Bill of Costs for full indemnity costs, it follows that it will not be allowed in a Bill of Costs for partial indemnity costs.

NEW

Document Production - (See too “Report, Opinions or Briefs”, below) - ***Alberta Rules of Court*** - Part 13 - Division 1 - Discovery of Records provides a right of inspection of records not objected to in an Affidavit of Records (**R. 188 & 193**) and a mechanism for obtaining a Court Order for inspection of those same records (**R. 191 & 195**).

R. 193 & 194 entitle a party to "take copies of the record when so produced", but give no direction as to which party bears the cost of making the copies. In Stevenson & Côté, ***Alberta Civil Procedure Handbook (2002)***, commenting on **R. 194**, clarifies:

> "Usually, the solicitor possessing the [producible] records makes an empty office or boardroom available for examining the records and will make photocopies in return for reasonable payment of the cost of copying."

In Mark M. Orkin, ***The Law of Costs*** (2nd e., 16th rel. 2001) adds, at 219.6(3):

> "Normally the cost of producing documents or information should be borne by the party requiring their production, the expense thereof to be considered when costs are assessed at the conclusion of the litigation."

Alberta Rules of Court - Part 1 - Definitions and Introductory Matter - **R. 5.11** makes provision for copies in an electronic format of *computer generated documents* to be made available to "a party to a proceeding" upon request and upon "payment of the actual disbursements for the production and delivery". Subrule **(4)** addresses disputes over the cost:

> "If a dispute arises over the costs referred to in subrule (3), a sum may be fixed ex parte by the taxing officer, on application by either party, subject to adjustment by the Court at a later date."

The fact that we have yet to conduct one of these ex parte hearings is either a testament to the congeniality of the members of the Bar or to the ease of providing such documents at no expense by means of e-mail.

Expert Witness Fees and Expenses - Are limited by **R. 600(1)(a)ii)** to the amounts found in **Schedule E** as to witness fees and related expenses, unless otherwise ordered, and may not include steps taken by experts for investigations, inquiries and assisting at trial, unless otherwise ordered by the Court. Where such directions have been received from the Court, reasonableness of the fees and expenses is dependant upon the circumstances and the nature of the services performed. Reference can often be made to trade standards for fees, hourly rates, and billing practices. *(See too "Witness Fees & Expenses" / "Reports & Briefs", below.)*

See *Nova, an Alberta Corp. v. Guelph Engineering Co.* [1988] A.J. No. 611 at page 18; 60 Alta.L.R. (2d) 366; 89 A.R. 363, Brennan J.; *Petrogas Processing Ltd. v. Westcoat Transmission Co.* [1990] A.J. No. 317; [1990] 4 W.W.R. 461: 73 Alta.L.R. (2d) 246; 105 A.R. 384, at page 28; *Woelk v,.Halvorson* (1979) 14 A.R. 28 cited in *Dezwart v. Misericordia Hospital* [1989] A.J. No. 341(Q.B.) at p. 7

NEW

On claiming as a disbursement the charges of a "legal expert" as a consultant see *Sidorsky v. CFCN Communications Ltd.* 1995 CarswellAlta 86, 27 Alta. L.R. (3d) 296, 35 C.P.C. (3d) 239, [1995] 5 W.W.R. 190, 167 A.R. 181, [1995] 5 W.W.R. 190 (Q.B.):

> 16 There is no doubt that a court has the discretion to allow costs of experts for investigations and inquiries and for assisting counsel at trial even though the experts do not testify. See *Nova, an Alberta Corp. v. Guelph Engineering Co.* (1988), 89 A.R. 363 [60 Alta. L.R. (2d) 366] (Q.B.). See also *Petrogas Processing Ltd. v. Westcoast Transmission Co.*, supra.

Fax Charges - Telecopy Charges - Considered by the Court of Queen's Bench in *Gainers v. Pocklington* (1996) 182 A.R. 78 (Q.B. / Clarke J.) to have "become an ordinary and accepted part of the practice of litigation." However, in considering the Gainers decision in *Dornan Petroleum v. Petro-Canada* [1997] A.J. No. 21 (Murray J. / Q.B.) the same Court considered fax charges as "luxuries" which "should not be allowed unless it can be shown . . . that the circumstances of their use was necessary to facilitate the orderly disposition of the litigation." The rationale given for this position in the latter decision was that facsimile transmissions "are taking the place of ordinary mail and traditionally we have not taxed postage as a disbursement." However, in *Mar Automobile Holdings Ltd. v. Rawlusyk* 2001 CarswellAlta 855, 2001 ABQB 516 (Q.B.) Clarke J. revisited the issue, considered *Dornan*, and stood by his previous conclusion, noting that he was not aware of any Court of Appeal decision to the contrary. This is curious, because his decision, relative to QuickLaw, does consider *Standquist v. Coneco Equipment* [2000] A.J. No. 554; 2000 ABCA 138 (C.A.) which, while specifically addressing fax charges, made the following ruling:

> "We have never seen a case disallowing postage, and Dornan Petr. v. Petro-Can. (1997) 199 A.R. 334 does not either. Maybe what is referred to here is delivery charges. In principle, one should show why the post office would not do, or would be as expensive. But the amount is small here, and the slowness and expense of mailing appeal books could well be imagined. We allow the $20.48 disbursement, even if it was for a courier service."

The Edmonton taxing officer tends to follow the *Gainers* decision and allows such charges, within reason, at the rate of 15 cents per page, in or out, plus the long distance charges.

Both writers allow postage related to advancing the proceeding (see "Postage," below).

NEW

Filing Fees (Court) - The filing fees for the Court of Queen's Bench and the Court of Appeal are, by **Rule 585(1)**, those authorized by the "tariff of fees in Schedule E." **Schedule E, Number 1** addresses Clerk's Fees (Q.B.) and **Number 2** addresses Registrar's Fees (C.A.). The filing fees for the Provincial Court vary by Division of the Court and are governed by **Alberta Regulation 18/91** found, as of October 2003, at page 15.1.1 of the ***Alberta Rules of Court***.

Filing Fee for Provincial Court Civil Appeals Under The Residential Tenancies Act - The ***Residential Tenancies Act***, **Part 5**, permits the initiation of claims in Provincial Court by means of a written notice and affidavit requiring the Clerk of the Provincial Court to issue a "Notice of Application". **Alberta Regulation 18/91**, Civil Division, 1(b) prescribes the filing fee associated with that process. **N/B:** The Clerk of the Court of Queen's Bench charges a $200.00 filing fee for the Originating Notice of Motion which must be filed for an appeal from the Provincial Court, that fee arises from the application of **Schedule E**, **Number 1**, **Item 1**.

Interpreter Fees & Expenses - The practice across Alberta is to allow a minimum charge of 2 hours for interpreter fees.

Interpreters are, with greater frequency, being used outside actual discovery and court time; they assist the party in consultations with its lawyer, with experts, etc. Some of this expense is properly recoverable so far as it is for the "purpose of carrying on or appearing as party to" the proceeding. However, consideration should be given to the amount of time claimed and the purposes for which interpreters are used.

Note the ruling in *Kha v. Salhab* [2001] A.J. No. 61, 2001 CarswellAlta 53, 2001 ABQB 44 (Q.B.), Kenny J. that the cost of hiring interpreters to aid the Plaintiff's lawyer in determining whether the Plaintiff had a case worth pursuing could not be allowed because **Rule 600(1)(a)** is not broad enough to include costs incurred prior to commencement of the "proceeding".

Legal Counsel's Expenses - In question are expenses for meals, accommodation and travel. When allowed they are very similar to the amounts allowed to a witness, the exception being mileage which, instead of 12 cents per kilometer is allowed at 38 cents per kilometer. Airfare is expected to be the same as that afforded any normal witness - economical, but not restrictive (like standby). The treatment of these expenses varies depending upon the context in which they occur - *the use of local vs. outside counsel* and *interviewing or briefing of witnesses*.

Local v. Outside Counsel: For outside counsel to attend *examinations on affidavit or discovery*, *interlocutory applications*, *trial* and *appeal*.

The general rule is that a client is responsible for placing his/her solicitor at the place of hearing at his/her own expense: *Dennis v. Northwest Territories (Commissioner)* (1990) 39 C.P.C. (2d) 41 (N.W.T.S.C.); *Reference re Electoral Divisions Statutes Amendment Act 1993 (Alta.)* (1993) 17 C.P.C. (3d), [1993] 6 W.W.R. 148 (Alta. C.A.); *Fayerman v. Sears Canada Inc.* (1994) 163 A.R. 172 (Alta. Prov. Ct.)) From a transcript of oral reasons given by Côté, J.A. in *The Matter of a Reference by the Lieutenant Governor in Council . . . Respecting the Electoral Divisions Statutes Amendment Act, 1993* on May 12, 1993:

> "I believe the other loose end is the question of paying for travel expenses for Mr. Price to and from Calgary. The other parties all appear to be based in Edmonton or Northern Alberta and indeed I think maybe Lac La Biche is the only other one that is not from Edmonton. All the others have retained Edmonton counsel. I do not see that there is anything so peculiar about this type of litigation that one cannot find local counsel to do it and, therefore, I am not going to direct that the government pay for travel expenses to or from Calgary or anywhere else."

In *Kennett Estate v. Manitoba (Attorney General)* [2001] M.J. No. 342, [2001] CarswellMan 384, 2001 MBQB 204 (Man. Q.B.) the court disallowed the travel expenses of esteemed legal counsel with expertise in Jehovah's Witnesses cases. The Court noted a lack of evidence that the Attorney General could not have found competent Manitoba counsel for the areas of law involved

There are exceptions, such as were addressed in *Garthwaite and Another v. Sherwood* [1976] 1 W.L.R. 705, wherein Kerr, J. concluded that the taxing officer's practice of outright disallowing a solicitor's travel expenses to

trial or appeal when an agent could have been employed was too stringent and that ". . . The correct practice should be for the taxing master to ask himself in each case, on the basis of the passages which I have read, what was or would have been the proper course for the solicitor to adopt in the particular circumstances."

In that decision, Kerr, J. deemed the expense "proper" and allowable. He considered the following factors in reaching that determination:

a/ **Time Involvement** - the Plaintiff's solicitor had been personally concerned with the case for over five years;

b/ **Client's Reliance on the Solicitor** - the Plaintiff "relied heavily on [the solicitor's] personal advice and moral support";

c/ **Importance of the Matter to the Client / Monetary Value** - there was a possibility of a 'last-minute offer' from the Defendant in which £12,000 were at stake and the Plaintiff had confidence in the solicitor's judgment in dealing with any doorstep-of-the-courthouse negotiations for settlement;

d/ **Cost of Instructing Agents** - Plaintiff would have incurred considerable expense in instructing agents to handle the appeal of which they would know nothing and would have difficulty in familiarising themselves; and

e/ **Level of Assistance to the Party and Court** - the Plaintiff's solicitor was in a position to be of "far greater assistance" to the Plaintiff and to the Court of Appeal than agents could ever have been.

Other notable exceptions include *Petrogas* [1990] A.J. No. 317; [1990] 4 W.W.R. 461: 73 Alta.L.R. (2d) 246; 105 A.R. 384, (Q.B.); *Begro Construction Ltd. v. St. Mary River Irrigation District* [1995] A.J. No. 1046, (Q.B.).; *Waterous Investments Inc. v. Liberton Holdings Inc.* [1996] A.J. No. 334; (1996) 183 A.R. 229, (Q.B.).

Interviewing or Briefing of Witnesses: Legal counsel's travel expenses for the purpose of *interviewing and briefing a witness* have been addressed in a number of the above-noted decisions as well. In proceedings of some significance in which the choice is between a key witness traveling to the lawyer or the lawyer to the witness it has been deemed appropriate to allow counsel's travel expenses: *Mar Automobile Holdings Ltd. v. Rawlusyk* 2001 CarswellAlta 855, 2001 ABQB 516 (Q.B.) at paragraph 30.

Life Insurance Premiums (on the life of the Judge) - A life insurance premium paid on the life of a trial judge was deemed to not be a disbursement necessary and reasonable to proving a litigant's case and was disallowed on taxation, *Emil Anderson Const. Co. v. B.C. Railway Co.* (1989) 39 C.P.C. (2d) 105. However, see *Westco Storage Ltd. v. Inter-City Gas, et al.* [1988] 4 W.W.R. 396, (Man. Q.B.), Schwartz, J., at p. 407.

NEW

Letter of Credit - The Court of Appeal has, on a number of occasions, permitted the recovery of the fee paid to a bank for obtaining a letter of credit as security for the repayment of a trial judgment pending the hearing of an appeal.[1] The cost of obtaining the letter is recoverable because it represents the interest the appellant would have lost in having paid out and then recovered the judgment amount upon succeeding on its appeal. The one condition imposed by the court appears to be that the cost for the letter of credit should not exceed a rate of 6% per year of the lump sum being secured.[2]

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1 See *Sylvan Lake Golf & Tennis Club Ltd. v. Performance Industries Ltd.* [1998] A.J. No. 26, 1998 ABCA 12, 212 A.R. 57 (C.A.); *Beller Carreau Lucyshyn Inc. v. Cenalta Oilwell Servicing Ltd.* [1999] A.J. No. 936, 1999 ABCA 243 (C.A.); *Eagle Resources Ltd. v. MacDonald* [2002] A.J. No. 66, 2002 ABCA 12 (C.A.); *Madge v. Meyer* [2002] A.J. No. 344, 2002 ABCA 73, [2002] 5 W.W.R. 50, 100 Alta. L.R. (3d) 1, 303 A.R. 41 (C.A.).

2 See *Eagle Resources Ltd. v. MacDonald* (above).

Meals - **Schedule E**, **Number 3**, **Item 4** provides an allowance for meals to witnesses and jurors.

In Calgary and Edmonton it has become the practice of the taxing officers to apply the meal allowance set out in the **Subsistence, Travel and Moving Expenses Regulation under the Public Service Act** - Part 4 - S. 8. As of April 2003 it was the following (add on GST):

Breakfast	**$7.50**
Lunch	**$9.50**
Dinner	**$17.00**
Per Diem for Meals	**$34.00**

The regulation may be found at ***http://www.pao.gov.ab.ca/legreg/travel/index.html*** and clicking on "Part 4", or by giving the local taxation officer a call.

NEW

Mediation - *Mar Automobile Holdings Ltd. v. Rawlusyk*, 2001 CarswellAlta 855, 2001 ABQB 516, 93 Alta. L.R. (3d) 141 (Q.B.), Clarke, J. disallowed any claim for costs associated with mediation:

> 31 The Plaintiffs had a number of complaints about the way they felt Ellis participated in the mediation process. It was on the basis of those complaints that they claimed that their share of the mediation costs should be a taxable disbursement.
>
> 32 One of the fundamental principles of the mediation process is that it is confidential and without prejudice to the rights of the parties if the mediation is not successful. Normally costs of the mediation are shared equally by the parties involved. I see no reason to disturb that principle nor would I be prepared to open up the mediation process to make judgments about the conduct of the parties for the purposes of determining if that conduct was warranted by the punishment of taxable costs or disbursements. Mediation costs are not an item that should be included in taxable costs or disbursements.

Models - **Rule 600(1)(a)(iv)** provides for the "expenses for the preparation of ... models, ...;" The allowance of this expense as a taxable disbursement is in the *discretion of the taxing officer*, it does not require the approval of the Court.

Ordinary Witness Fees & Expenses - (See "Witness Fees & Expenses", below.)

Para-legal Services - Because of the "block tariff" utilized in **Rule 605** and **Schedule C**, and because a para-legal is performing services of a barrister and solicitor which are limited to the fee Items in the **Schedule**, no extra allowance can be made for a para-legal's services in a party/party Bill of Costs. It is not appropriate to include any para-legal services as a disbursement in a Bill of Costs.

Parking - For **witnesses** and **jurors Schedule E** only provides 12 cents per km for travel by private automobile. This rate is inadequate to compensate them for the cost of parking. Therefore, they should recover their reasonable parking expenses.

Allowed for **legal counsel** otherwise entitled to travel expenses (see "Legal Counsel's Expenses", above) and obliged to incur reasonable parking expenses for the purpose of attending examinations or court.

Party to the Action - A party to the action is entitled to claim a witness fee (*Smith v. Bartlett* (1920) 3 W.W.R. 313 (Alta. S.C.)) and expenses, but only for his/her participation as a witness and not for simply monitoring the trial proceedings.

In larger, more complicated cases, the courts have been showing leniency in this regard, allowing the party all its reasonable expenses for attending at trial, other hearings and for consulting with its legal counsel: *Petrogas Processing Ltd. v. Westcoat Transmission Co.* [1990] A.J. No. 317; [1990] 4 W.W.R. 461: 73 Alta.L.R. (2d) 246; 105 A.R. 384, at p. 41; *Begro Construction Ltd. v. St. Mary River Irrigation District* [1995] A.J. No. 1046, (Q.B.)).

Photocopying -

UPDATED - Significant Change of Policy

What photocopied documents may be recovered? *Past Policy:* In *Ukrainian Credit Union Ltd. v.*

258753 Alberta Ltd., Gourdine and Olsen (1984) 39 Alta. L.R. (2d) 310, at p. 311, and in *Reese et al. v. HMQ Alberta & Daishowa Canada Co. Ltd.* (1992) 133 A.R. 127 D.C. McDonald, J. took the position that photocopying was an overhead expense compensated for by the fee portion of **Schedule C** by application of the reasoning in **Rule 605(3)**. As a consequence taxing officers have limited cost recovery to photocopying of such items as *case authorities*, *undertakings*, *exhibits*, *experts' reports*. The photocopying of the typed portion of pleadings, written submissions, briefs, or of correspondence and other typed material has been disallowed.

Present Policy: In *Millott (Estate) v. Reinhard* [2002] A.J. No. 1453, 2002 ABQB 998, [2003] 3 W.W.R. 484 (Q.B.) Fraser, J. considered Justice D.C. McDonald's treatment of photocopying and expanded upon what documents can be claimed under "photocopying." He concluded, at para. 72:

> "The cost of producing copies of documents required for use in the trial including expert reports, exhibits, and arguments and other documents which must be served, is in my view a cost which can be passed on. However, the cost of repeated photocopying of drafts of documents prepared for use in the action such as arguments, or of other miscellaneous documents such as letters, is not."

At para. 78 he also, in assessing a reasonable charge for photocopying, appears to have taken into consideration copies of transcripts of examinations for discovery provided to expert witnesses, briefs tendered at trial, Rule 218.1 reports, final arguments and the pleadings record.

In summary, at the very least, recoverable photocopying includes the following:

- arguments (final)
- briefs tendered to the court
- case authorities
- documents required to be served (pleadings, notices of motion, affidavits, etc.)
- exhibits
- experts' reports
- pleadings record
- transcripts provided to experts
- undertakings

Not recoverable would be the following:

- drafts of documents
- miscellaneous documents, such as letters

At what cost per page? Cost per page depends upon the circumstance in which the copies were produced. Consider the following:

1. **Photocopying by the Court:** If a party has been charged $1.00/page for obtaining photocopies at any level of our court system (Provincial, Queen's Bench or Court of Appeal), that amount is recoverable in full as a disbursement incurred either by themselves or their lawyers.

We speculate that the clerk/registrar charges $1.00/page in an effort to offset other costs for which the clerk/registrar cannot, at present, obtain recovery. The cost of photocopying, exclusive of labour, is somewhere close to 8.0 cents per page, so $1.00 per page provides a significant margin of profit.

2. **Photocopying by a 3rd Party Provider:** If a litigant were to take documents to a photocopy provider to obtain copies and was charged, for the sake of argument, 9.5 cents per page, the provider is in the business of making a profit from its photocopying business and the litigant is permitted to recover that cost . . . providing that the photocopying was necessary and relevant to the proceeding. If the litigant should choose to go to a provider who bills more per page than the "market" generally allows - say 30.0 cents per page - then the taxing officer would reduce the amount to a reasonable amount based upon his or her experience.

3. **Photocopying by Litigant's Lawyer:** A bit more confusing is the recovery of photocopying charges made by a lawyer to its litigant client.

It must be understood that, in our humble but somewhat informed opinion, if a litigant pays a lawyer 25.0 cents per page for photocopying the lawyer is making a profit, as that figure is not representative of its actual cost. The fact that lawyers are charging that much is a topic of discussion irrelevant to a discussion of costs between parties. However, it is important to distinguish a 3rd party provider from a lawyer / law firm whose business is to provide

legal services, not to provide photocopying services; the former is in the business of making a profit (whatever the margin) for providing such services, the later is not.

The courts have recognized, of late, that the lawyer-represented-litigant is only entitled to recover the actual "cost" to the lawyer of photocopying, and that cost cannot include a "time and effort" or labour component.

Past Policy: Until recently, the practice of the taxing officers has been to allow 25 cents per page for *allowable* photocopying.

Present Policy: However, recent rulings by the Court of Appeal have rendered that practice untenable:

In *Sidorsky v. CFCN Communications Ltd.* [1997] A.J. No. 880; [1995] 5 W.W.R. 190; 27 Alta.L.R. (3d) 296; 167 A.R. 181; 35 C.P.C. (3d) 239, the Court of Appeal (Bracco, Conrad and Hunt JJ.A.), refused to address an argument that 25 cents per page is not a true disbursement:

> "Finally, the appellants argued that the photocopy charge of 25 cents per page is not a true disbursement. They argued that the true cost of photocopying should be in the neighbourhood of 3 to 5 cents, and that any amount above this should be included in overhead costs. Unfortunately, there was no evidentiary basis for the argument and accordingly we leave it to another day whether a 25 cent charge for such disbursements is excessive. The trial judge allowed this amount as a disbursement and we do not disturb this portion of the award."

Then in *Huet v. Lynch* [2001] A.J. No. 145, 2001 ABCA 37 (C.A.) the court noted, at para. 22, that:

> "The word 'disbursement' is derived from 'disburse' which means to expend money. One would expect evidence that money was paid to a third party in order to qualify as a disbursement."

And at para. 32:

> "Third party service providers profit from the provision of the[ir] service. The notional compensation for time and effort of the . . . litigant can be reflected in the award of fees, not 'disbursements'"

The Court then allowed, at paragraph 48, "in the absence of evidence" 15 cents per page.

In *Dechant v. Law Society of Alberta* [2001] A.J. No. 373, 2001 ABCA 81 the Court of Appeal stated, at para. 30:

> "Regarding disbursements, Ms. Dechant is entitled to all reasonable disbursements. If she has paid 25 cents per page for photocopying, she should be allowed that expense. If not, we are satisfied that 15 cents per page is an appropriate figure."

Millott (Estate) v. Reinhard (above) considered these decisions, considered evidence given of the actual cost of photocopying being 8.15 cents, apart from labour, considered that in that instance the photocopying "involved a comparatively small number of copies of a great number of documents, rather than a multitude of copies of the same documents," and reduced the total photocopying claim (at 28 cents per page, including GST) of $14,626.92 down to $2,500.00. At 28 cents per page the claim related to 52,239 copies, which, divided by $2,500.00 works out to 4.8 cents per page. The decision does not establish an allowable per page rate for photocopying, but it is clearly not 25 cents per page.

In summary, the *Huet* decision suggest that photocopying should not include a "time and effort" or labour component and, in the absence of evidence as to the actual disbursement cost of photocopying, the court set the per page allowance at 15 cents. The *Dechant* decision suggested that 15 cents per page is an appropriate figure. The Court of Queen's Bench decision heard evidence that the actual disbursement cost per page is 8.15 cents, however it is unclear from the *Millott* decision if that figure was used in its reduction of photocopying to 4.8 cents per page or if the figure arrived at was the consequence of disallowing the number of photocopies claimed. While 15 cents per page no doubt includes a labour component the writers intend to use 15 cents per page as the standard until further clarification has been provided. It is clear that 25 cents per page is no longer recoverable in party and party taxation hearings relative to in-house photocopying by a litigant's lawyer / legal firm.

Conclusions: The writers are allowing 15 cents a page for photocopying generated in-office, but for a broader spectrum of documents than previously allowed.

(See too "Print / Laser Copying", below)

Photographs - Photographs are not provided for specifically in **Rule 600(1)(a)**. However, the wording of the **sub-rule** is broad and photographs fall within "all reasonable and proper expenses" so long as the cost is reasonable and their need proper to advancing the proceeding.

Plans - **Rule 600(1)(a)(iv)** provides specifically for the "preparation of plans". A standard dictionary definition of the noun "plan" includes "a drawing or diagram drawn on a plane: as a: a top or horizontal view of an object b: a large-scale map of a small area". To the extent that the cost is reasonable and the plan(s) was essential to the proceeding the cost ought to be allowed.

Postage - In *Standquist v. Coneco Equipment* [2000] A.J. No. 554; 2000 ABCA 138 (C.A.) the following ruling was made regarding postage:

> "We have never seen a case disallowing postage, and *Dornan Petr. v. Petro-Can.* (1997) 199 A.R. 334 does not either. Maybe what is referred to here is delivery charges. In principle, one should show why the post office would not do, or would be as expensive. But the amount is small here, and the slowness and expense of mailing appeal books could well be imagined. We allow the $20.48 disbursement, even if it was for a courier service."

Therefore, all postage reasonably and properly incurred "for the purpose of carrying on or appearing as party to any proceeding" (**R. 600(1)(a)**) is permitted.

NEW

Print / Laser Copying - It has become common practice for law firms, when making copies of a computer generated document within the firm's office, to simply print off copies of the document from the computer terminal . . . as opposed to printing a copy and walking the original over to the photocopier and making copies of the original. Copies produced in this manner are commonly referred to as "print copies" or as "laser copies" (laser printer??).

This practice of the writers is to allow the cost of such copies, but at 5 cents less than photocopying as the labour component of the cost is significantly reduced.

We presently allow 10 cents per page.

(See too, "Photocopying", above)

Private Investigator Charges - Have been allowed where circumstances called for the skills of a private investigator (*McCann v. Moss* (1984) B.C.L.R. 129 (S.C.)) and where it was necessary or proper for the attainment of justice (*Kenton v. Kenton* (1955) 16 W.W.R. 175 (B.C.S.C.)); as in a private investigator's report of a motor vehicle accident (*Bowers v. White* (1977) 2 B.C.L.R. 355 (S.C.)).

In *Sidorsky v. CFCN Communications Ltd.* [1995] A.J. No. 174; [1995] 5 W.W.R. 190; 27 Alta.L.R. (3d) 296; 167 A.R. 181; 35 C.P.C. (3d) 239, McMahon J. found it reasonable to pay a private investigator to track down, interview & maintain contact with witnesses. On appeal the Court of Appeal ([1997] A.J. No. 880; [1995] 5 W.W.R. 190; 27 Alta.L.R. (3d) 296; 167 A.R. 181; 35 C.P.C. (3d) 239), for the most part, agreed with the role a private investigator might fill of locating and taking witness statements, but said that keeping current addresses of witnesses is normally an overhead expense and not the role of the private investigator. The Court took exception to the extent of the use of the private investigator in this instance. It felt that the party claiming the cost has an obligation to first ask the opposing party to admit the facts involving these witnesses and to then only incur the considerable cost of locating, taking statements and maintaining contact if the opposing party fails to admit. Not having done so the Court greatly reduced the allowance from $200,000 to $10,000.

In *Kenton* (above) private investigator charges were allowed even though incurred before the action commenced.

Process Servers - To the extent that the charge is reasonable it is an allowable disbursement (see *Maclin U-Drive Ltd. v. Western Plastics Ltd.* (Alta District Court) (1963) 42 W.W.R. 64).

NEW

In Edmonton the present practice of the Clerk of the Court is to allow 38¢ per kilometer traveled, to disallow a fee for preparation of an Affidavit of Attempted Service (it is a legal service covered by **Schedule C**, **Item 6** or **7**, Application for Substitutional Service), and to disallow any "Administration Fee."

Professional Witness Fees & Expenses - (See "Witness Fees & Expenses", below.)

NEW

Research (Contract or Computer) - In *Moser v. Derksen* [2003] A.J. No. 231, Rowbotham, J. (Q.B.), at para. 45, in disallowing a claim for a research disbursement, relied on a succinct explanation of what does and what does not constitute a disbursement. "The general principle regarding disbursements is:

> Disbursements should not be used as a means, even unintentionally, of distorting the cost scheme by allowing, as a disbursement, fees for work normally considered part of the cost of litigation to which Schedule C applies. Taken to the extreme, preparation for trial could be subcontracted to another firm and reimbursement of that firm's account sought as a disbursement.
>
> (See *Sidorsky v. C.F.C.N. Communications Ltd.* (1998), 216 A.R. 151 (C.A.).)"

This accords with the courts' general view of computer research as being a technological substitute for a lawyer's time spent in preparing for discoveries or trial or interlocutory applications, for which **Schedule C** applies a fee. In *Standquist v. Coneco Equipment* [2000] A.J. No. 554; 2000 ABCA 138 (C.A.) the court stated:

> "Most courts do not allow a fee for [computer-assisted research] without special circumstances, largely because it is a substitute for lawyers' work and so in theory already covered by the other fee items in Schedule C, such as 'preparation for appeal'. We do not allow it here."

Prior to computer research a lawyer either bought legal reports and research materials, or attended at the law library to make use of the library's resources: he/she was not able to include in a bill of costs the time spent doing the research (that is covered by **Schedule C** fees), could not recover the expense of hiring another lawyer to do it (see "Legal Agents", above), and could not recover the cost of purchasing the books or paying library fees. In *Dornan* (below) Murray J. noted:

> "I am unaware of any Court allowing a successful party to tax as an expense a portion of the depreciation or maintenance of the law firm's library. In any event, R. 605(3) seems to preclude such expense being taxed."

In short, legal research, electronic or otherwise, is <u>not</u> allowable by the clerk as a disbursement without specific direction from the court. Note the following cases.

Cases <u>not allowing</u> it: NEW(some new cases not allowing)

Lee et al v. Leeming (1985) 61 A.R. 18, at 19, (Q.B.)
Argentia v. Warshawski [1990] A.J. No. 340, 106 A.R. 222 (C.A.)
Sidorsky v. C.F.C.N Communications Ltd. (1995), 27 Alta. L.R. (3d) 296 (Q.B.) at p. 304
Dornan Petroleum v. Petro-Canada [1997] A.J. No. 21 (Q.B.)
Lalli v. Chawla [1997] A.J. No. 457; 53 Alta.L.R. (3d) 121; 203 A.R. 27 (Q.B.) at para. 25
Kelly v. Lundgard (1997), 47 Alta. L.R. (3d) 184 (Q.B.)
Atkinson v. McGregor (1998), 66 Alta. L.R. (3d) 289 (Q.B.)
Reid v. Stein [1999] A.J. No. 533; [2000] 2 W.W.R. 349; 73 Alta.L.R. (3d) 311 (Q.B.)
Standquist v. Coneco Equipment [2000] A.J. No. 554; 2000 ABCA 138 (C.A.)
Edmonton (City) v. Lovat Tunnel Equipment Inc. [2002] A.J. No. 1440 (Q.B.)
Milsom v. Corporate Computers Inc. [2003] A.J. No. 895, 2003 ABQB 609, [2003] 9 W.W.R. 269 (Q.B.) at para. 7

Cases <u>allowing</u> it:

Westco Storage Limited v. Inter-City Gas Utilities Ltd [1988] 4 W.W.R. 396, (Man.Q.B.), at p. 407
Holmes (Re) [1991] A.J. No. 462; 80 Alta.L.R. (2d) 373; 121 A.R. 170; 7 C.B.R. (3d) 82; 2 P.P.S.A.C. (2d) 106 (Q.B.M.)

Reports, Opinions or Briefs, cost of . . . - (See too "Experts . . ." & "Document Production", above) - The cost of a Report, Opinion or Brief prepared by an "expert" is permissible if

(a) it was reasonable and proper to have incurred the expense "as at the time it was incurred" (see comments and cases in "Point in Time to Apply the Test", above at page D-2) and

(b) there is compliance with **Rule 600(1)(a)(ii)**.

Non-disclosure of a Report, Opinion or Brief is not fatal to claiming it as a cost of litigation. Consider the following decisions:

> *Hobbs v. Hobbs* [1959] 3 All ER 827, allowed the costs of a privileged "brief", even after the suit was over.
>
> *Dinunzio v. Gill* (1986) 5 B.C.L.R. (2d) 189 (B.C. S.C.) Wong, J. held that "the fact that the report may not have been used by the parties in effecting settlement or at the trial for the judgment finally rendered is irrelevant, . . ."
>
> *Forsythe v. Strader* (1987) 17 B.C.L.R. (2d) 124, Court of Appeal unanimously agreed that non-disclosure of an expert report was not grounds for disallowance of the cost of obtaining it, so long as at the time the expense was incurred it was reasonable and proper to do so.

Runner's Fees - This cost was ruled to not be allowable in *Credit Foncier Trust Company v. Leslie Hornigold* (1984) 35 Alta. L.R. 341, Agrios, J..

Searches -

a/ **Identification of Parties to Action** - searches at Corporate or Personal Property or Vehicle Registry, the Court, Land Titles office etc. for the purpose of identifying or locating parties to an action are generally acceptable.

b/ **Civil Juror Background Investigation** - searches for the purpose of investigating the background of jurors prior to civil jury trial selection are recoverable within reason if to the end of corroborating or challenging any statement a juror might make during the selection process.

Note comments on GST on searches, above at page D-8.

Service Fees - See “Postage” or “Process Server”, above.

Stationary - Letterhead, paper, envelopes and the like are still treated as overhead and not recoverable as separate disbursements. However, see "Binding Charges", above.

Tabs - The cost of tabs used for written submissions or the presentation of case authorities, etc. may be recovered in circumstances where they cannot be reused. Again, within reason.

Telephone **(long distance)** - Usually allowed, subject to ensuring that the calls were for legitimate purposes directly related to the legal proceeding and not just commiserating over the nefariousness of the opposing party.

Transcripts - The costs of transcripts, on a party and party basis, if produced by an **official court reporter**, are governed by **Schedule E**, **Number 8**.

If produced by a **private court reporter** the **Schedule** does not necessarily limit the cost of transcripts, though it is suggested that it be used as a guideline.

Allowance of the cost of transcripts will vary depending upon the circumstance:

> Transcripts of **examinations on affidavit** or **of discovery** would be allowable under most circumstances as being vital to preparing for an application or trial. Usually the costs of transcripts of examinations are only disallowed when the Court has so directed or has expressed specific concern as to the utility of the examinations.
>
> Transcripts of **trial proceedings** may be allowed on an appeal from the trial, but, should not be allowed for merely anticipating an appeal (*Westco Storage Ltd. V. Inter-City Gas Utilities Ltd.* [1988] 4 W.W.R. 396, (Man.Q.B.), Schwartz, J., at p.406).

Transcripts of **trial proceedings on a daily basis**, even when provided to the judge daily, will normally be deemed a luxury and will not be allowed (*Creighton v. Clark* [1935] 2 W.W.R. 649, (B.C.C.C.); *Chicago Blower Corp. v. 141209 Canada Ltd.* [1986] 6 W.W.R. 143, (Man.Q.B.); *Hamelin v. Canada*[1997] A.J. No. 304 (Q.B.) Clarke J. at para. 11-13) unless specifically requested by the Court or agreed to between the parties (*Creighton v. Clark* (above); *Nova* (above) - "Having regard to the length of the trial and the technical nature of most of the evidence, it was virtually imperative that this be done."). NEW In *Elliott v. Hill Bros. Expressways Ltd.* 1999 CarswellAlta 292, 240 A.R. 371 the court acknowledged that daily transcripts may have been useful, but not necessary. Moreover, the lawyer did not share them with opposing counsel or the court, so not allowed.[1]

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[1] See also Mark M. Orkin, ***The Law of Costs*** (2nd e., 16th rel. 2001) at 219.6(2)

Travel Expenses - Mileage for travel by private auto by a witness or juror is, as of April 1, 2001, 12 cents per kilometer (see **Schedule E**, **Number 3**, **Item 5 (b)**). Mileage for a solicitor is 38 cents per kilometer. (See **Subsistence, Travel and Moving Expenses Regulation** under the **Public Service Act** - Part 6 - S. 15 & 16). The regulation may be found at ***http://www.pao.gov.ab.ca/legreg/travel/index.html*** and clicking on “Part 4", or by giving the local taxation officer a call.

One of the **most common queries** made of the taxing officer is, "What form of transportation is reasonable to allow: private vehicle, bus, train or plane?" The answer depends on the circumstances in each situation. To be considered in making this determination are the following:

i/ **Distance between locations** - it is less likely that one would allow plane fare between Vegreville and Edmonton (1 hr. drive) than between Fort McMurray and Calgary (6 hr. plus to drive).

ii/ **Schedules of transporters** - if schedules are such that in order to travel by bus for one day of Discovery the party would have to arrive the day before and leave the day after - thereby taking up two or three days of time and two nights accommodation and meals - it would make more sense and be much fairer to allow airfare which would permit the party to fly in and out in the same day as the Discovery.

iii/ **Cost of the form of transportation** - should be taken into consideration, but, is not necessarily the primary factor to be considered.

iv/ **Convenience to the traveler** - while the objective is to keep costs as low as possible, consider what form of transportation you or any reasonable man or woman, in the position of the traveler, would expect to be provided under the circumstances.

Between Edmonton and Calgary the taxing officers of both jurisdictions have been allowing air fare, as opposed to bus fare or mileage.

Witness Fees & Expenses - Witnesses fall into one of three categories:

1/ **Ordinary Witness** - one who appears not as an expert and not as a result of professional services rendered. Eg: An orthopaedic surgeon who witnessed the defendant's car hitting the plaintiff's car; in which case the witness would be entitled to the $10 per day witness fee plus meals, travel and accommodation (**Rule 600(1)(a)(vi)**, **Schedule E**, **Number 3**, **Item 1**).

2/ **Professional Witness** - one who appears not as an expert, but as a result of professional services rendered. Eg: An orthopaedic surgeon who attended upon the plaintiff's injuries and testifies as to the nature of those injuries and the treatment provided; in which case the witness would be entitled to the $75 per day witness fee plus meals, travel and accommodation (**Rule 600(1)(a)(vi)**, **Schedule E**, **Number 3**, **Item 6**).

3/ **Expert Witness** - one who appears as an expert. Eg: An orthopaedic surgeon who neither witnessed the accident nor attended upon the plaintiff, but who is called upon to provide opinion evidence as to disabling effects of the plaintiff's injuries; in which case the witness would be entitled to the $75 per day witness fee plus meals, travel and accommodation (**Rule 600 (1)(a)(ii)**; **Schedule E**,

Number 3, **Item 6**).

According to the "Note" in **Number 3** of **Schedule E**,

> "Allowances to witnesses . . . may be increased under special circumstances by a judge."

The Clerk/Taxing Officer requires some form of direction from the Court implying the grant of such an increase. The Courts have suggested that simply granting "all reasonable disbursements" serves to negate the strictures of **Schedule E**, **Number 3** so far as expert witnesses are concerned.

On whether costs can be recovered for a witness who was not ultimately called to testify, the consensus is that not being called is not fatal to the recovery of their charges & expenses. Each claim has to be assessed on its own merits. See: *Van Daele v. Van Daele* (1983) 45 C.P.C. 166 (B.C.C.A.); *Monashee Petroleums Ltd. v. Pan Cana Resourses Ltd.* (1988) 85 A.R. 183 at 192-3 (C.A.); *Petrogas Processing Ltd. v. Westcoat Transmission Co.* [1990] A.J. No. 317; [1990] 4 W.W.R. 461: 73 Alta.L.R. (2d) 246; 105 A.R. 384; *Hetu v. Traff* [1999] A.J. No. 1270, 1999 ABQB 826 (Q.B.); *S.F.P v. MacDonald* [1999] A.J. No. 478; and Stevenson & Côté, ***Civil Procedure Handbook 2002***, at page 451 – for more detail refer to "Point in Time", above at page D-2.

NEW
In *Viridian Inc. v. Dresser Canada Inc.* [1998] A.J. No. 947, 1998 ABQB 687, 1998 CarswellAlta 797, 82 A.C.W.S. (3d) 26 (Q.B.) Côté, J.A. sitting in Q.B., in considering whether costs should be allowed for two experts and the level of preparation counsel should be permitted, stated:

> 4 It is trite law that the question is not what was necessary, still less how much hindsight suggests was really necessary. The question is whether what was done, and the money that was spent at the time, were reasonable, given the state of knowledge then existing. It is not appropriate for me to state my own views on the substantive issues, such as whether extrinsic evidence was useful on all these points, as contrasted with a matter of interpreting a document which is often just a matter of law. The law on that subject is not plain, and experts are often called to testify on such topics. Not every judge seems to share the view that a lot of this evidence is unnecessary. Counsel preparing for trial had to be ready to meet any of these viewpoints in whoever turned out to be the judge. And of course counsel had to be prepared to meet unexpected arguments and pieces of evidence and cross-examination.

Stevenson & Côté, ***Civil Procedure Guide*** (1996) p. 1938 notes:

> "If the winning party is legally obliged to pay witness fees they are properly costs even if they were not demanded at the time: U. Inv. Co. v. Pullishy (1908) 8 W LR 530, 1 Alta LR 489."

That is, if you are awarded costs, and a witness of yours was produced at Examinations or Trial without making any demand for conduct money, you are still entitled to recover the proper costs of producing that witness.

On the cost of keeping track of witnesses *Sidorsky v. CFCN Communications Ltd.* 1997 CarswellAlta 772, 53 Alta. L.R. (3d) 255, [1998] 2 W.W.R. 89, 206 A.R. 382, 156 W.A.C. 382, 15 C.P.C. (4th) 174, 40 C.C.L.T. (2d) 94 (C.A.), at paragraph 44 stated:

> "Frequently, keeping a list of the current addresses of witnesses is simply part of the overhead of a law firm and should not be the subject of a separate disbursement. As such, it should be included as part of the party and party costs award."

That is, "included as part of the" **Schedule C** fee (see **Rule 605(3)**).

Word-Processing Charges - Never allowed.

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL DISTRICT OF **[Name of your J.D.**]

IN THE MATTER OF:

[Party's name]

Plaintiff

- and -

[Party's name]

Defendant

CERTIFICATE / AFFIDAVIT OF DISBURSEMENTS (Rule 642)

I, **[Solicitor conducting the proceeding]**, HEREBY CERTIFY that:

1/ All of the disbursements listed in the proposed Bill of Costs, appended to the Appointment for Taxation herein, have been or are liable to be paid on behalf of the **[Plaintiff or Defendant]** herein.

2/ Witness fees are calculated as follows:

i/ for the ordinary witness **[Witness' name]**, resident of **[Witness' residence]**:

$__	witness fee	*[number of days x fee = / if a professional, indicate in what way & how relevant]*
$__	travel allowance	*[itemize air or bus fare, mileage, parking, taxi, etc. / from where to where / economy or 1st class / unavailability of alternate forms of travel / health considerations - need for traveling companion / etc.]*
$__	meal allowance	*[breakfast, lunch or supper x number of days =]*
$__	accommodation allowance	*[charge per night x number of days =]*
$__	total paid;	

ii/ for the expert witness **[Witness' name]**, resident of **[Witness' residence]**, **[Nature of expertise & reports & other assistance provided]**:

$__	witness fee	*[indicate number of days in transit, in waiting or testifying, or in examination, & the hourly rates]*
$__	consultation fee	*[where authorized by the court, detail hours/days & hourly rates]*
$__	cancellation fee	*[indicate nature of practice, # of days notice of cancellation (& day of the week notice given), and charge per half day]*

$__	report fees (see attached invoices)	
$__	travel allowance	*[same as above (i)]*
$__	meal allowance	*[same as above (i)]*
$__	accommodation allowance	*[same as above (i)]*
$__	total paid;	

iii/ etc.

DATED at the City of _____ in the Province of Alberta this [Date].

_____
[Solicitor's name]
Solicitor for the **[Party]**

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF **[Name of your J.D.**]

IN THE MATTER OF:

[Party's name]

Plaintiff

- and -

[Party's name]

Defendant

CERTIFICATE / AFFIDAVIT OF DISBURSEMENTS

Solicitor's Address:

[Street Address]
[City/Town]
[Province (AB)], [Postal Code]

Phone:

[Area Code & Phone Number]