

COURT OF QUEEN'S BENCH COSTS MANUAL

TAXATION OF A LAWYER'S BILL with Sample Forms

April 2006

DISCLAIMER

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

This document has been prepared primarily to assist clients who are desirous of knowing more about the taxation process. Its presentation is purposefully basic and non-comprehensive. It does not constitute legal advice. It does not represent policy of Alberta Justice or any other Government Department.

Changes Since October 2001 Edition

Page #	Heading	Change
5	Filing the Appointment	Filing fee increase from \$25.00 to \$100.00 effective April 1, 2002
5	Serving the Appointment	Alberta Rules of Court references have been added
6	What Will a Taxation Cost?	Filing fee increase from \$25.00 to \$100.00 effective April 1, 2002 (above)

Substantive Changes Since October 2002 Edition

Page #	Heading	Change
2	Who May Tax a Lawyer's Bill?	Added two notable exceptions to right to tax: beneficiary of an estate & Legal Aid bills. Authorities provided.
6	Can a Taxation Hearing Be Adjourned?	Emphasis that as officers of the Court lawyers are subject to the vicissitudes of litigation and may have good cause for seeking the adjournment of a taxation hearing they had agreed to attend.
9	Is the hearing recorded?	Addresses of Transcript Management have been updated.
10	How Does The Taxing Officer Reach A Decision?	The factors for consideration have been updated and authorities provided.
11	Relevance of a Retainer Agreement?	Repositioned in Manual to enhance understanding and relevance of retainer agreements to the taxation process.
	Copy of Retainer Agreement to Be Provided to the Taxing Officer	New. Emphasizes the obligation Rule 646(1) obligation to provide the taxing officer a copy of any written retainer agreement 7 days prior to the date of the taxation.
	Terms of A Retainer Agreement Must Be "Fair and Reasonable"	New. Clarifies the Rule 646(2) provision that a retainer agreement will be allowed only to the extent that it is "fair and reasonable." Addresses the "point in time" that the test is applied, with authorities.
14	Right to Review of Retainer Agreement	Repositioned text and added heading, for greater clarity.
17	Sample Form: Appointment for Taxation of a Lawyer's Bill	Inserted "Name of the Clerk of the Court" in the Notice. Inserted "business" in the phrase "clear <i>business</i> days" in the Directions.

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TAXATION OF A LAWYER'S BILL OF COSTS

This booklet has been prepared in an attempt to answer frequently asked questions about the process of taxing a lawyer's fees and charges.

“ACCOUNT”/ “INVOICE”/ “STATEMENT OF ACCOUNT”/ “BILL OF COSTS”

All the above terms are commonly used interchangeably to refer to the written statement prepared by a lawyer to describe to his/her client the legal services rendered, the lawyer's charges or fees for providing those services, and the disbursements or out-of-pocket expenses incurred by the lawyer on the client's behalf. The *Alberta Rules of Court*, in referring to such a statement, almost invariably describes it as a “bill of costs”, hence the use of that term throughout this booklet.

WHAT IS TAXATION?

Unique to the legal profession, the *Alberta Rules of Court* provide any eligible party the right to have a lawyer's bill of costs reviewed by a taxing officer, who has the authority to allow, reduce or disallow the fees and charges if he or she sees fit.

Why are lawyers' bills of costs “taxed”? Why are there “taxing officers”? The etymology of the word “tax” comes from Middle English *taxen* meaning “to estimate, assess, tax” which came from the Latin *taxare* meaning “to feel, estimate, censure” (*Webster's Ninth New Collegiate Dictionary* (1986)).

WHO MAY TAX A LAWYER'S BILL OF COSTS? WHERE? WHEN?

There are four (4) stages to answering these questions:

(1) Is the applicant a “client”?

Rule 643(a) defines a “client” as,

- (i) any person from whom a barrister and solicitor has demanded any sum for costs;
- (ii) any person who may be liable for costs;
- (iii) any person who, not being chargeable as the principal party, is liable to pay or has paid any solicitor and client bill of costs or part of that bill of costs.

(2) Is the bill of costs taxable in Alberta?

Rule 643.1 provides that the bill of costs of a barrister and solicitor may be taxed in Alberta

- (a) at the request of a client if
 - (i) the barrister and solicitor resides in Alberta,
 - (ii) the barrister and solicitor's principal office is in Alberta,
 - (iii) the barrister and solicitor's account specifies an Alberta address for the barrister and solicitor or the law firm of the barrister and solicitor,
 - (iv) most of the services were performed in Alberta,
 - (v) the services were performed in connection with legal proceedings commenced in Alberta in which the barrister and solicitor was a barrister and solicitor of record,
or
 - (vi) the retainer agreement between the barrister and solicitor and the client so provides.
- (b) at the request of the barrister and solicitor if

- (i) the client resides in Alberta,
- (ii) the principal office or place of business of the client is in Alberta,
- (iii) most of the services were performed in Alberta and the barrister and solicitor has no office in the jurisdiction where the client resides or carries on business, or
- (iv) the retainer agreement between the barrister and solicitor so provides.

(3) If taxable in Alberta, who taxes the bill of costs and in which Judicial Centre?

Rule 643(b) responds:

- (i) where the barrister and solicitor carries on business in Alberta, the clerk or deputy clerk of the judicial centre nearest to where the solicitor carries on business,
- (ii) where the barrister and solicitor does not carry on business in Alberta, the clerk or deputy clerk of the judicial centre nearest to where the client resides, or
- (iii) notwithstanding subclauses (i) or (ii), any other clerk or deputy clerk as may be designated by the Court.

(4) Is the bill of costs within the time limitations?

Rule 647 provides:

Unless the court otherwise orders no bill of costs is subject to taxation

- (a) after judgment has been obtained in respect thereof, or,
- (b) if it is unpaid after one year from the date of delivery thereof, or
- (c) if it was fully paid before the completion of the services for which it was rendered, after six months from the date of completion or the delivery of the bill, whichever is later, or,
- (d) if it was fully paid following the completion of the services, after six months from delivery.

There are 11 "judicial centres" in Alberta. To determine the boundaries of any given 'centre' you may inquire at any Queen's Bench court house in Alberta (addresses and phone numbers are listed below at p. 39 of this document).

There are two notable exceptions to the entitlement to tax a lawyer's bill of costs:

1. *The beneficiary of an estate who desires to tax the estate solicitor's bill of costs.* The Court of Queen's Bench has ruled that a beneficiary has no standing to either initiate or participate in the taxation of an estate solicitor's bill of costs, that only the executor or administrator of the estate has standing to tax an estate's legal bills.¹ A beneficiary's rights relative to an estate lawyer's bill(s) of costs may be fully explained by a competent legal advisor.
2. *Legal Aid bill of costs is not subject to taxation by a Queen's Bench taxing officer.*² If your lawyer acted for you under a Legal Aid Certificate and you take exception to the amount

¹ See *Cruickshank Phillips v. Taras Illkiw, Beneficiary of the Estate of John Illkiw, Deceased* unreported, April 26th, 1988, J.D. of Edmonton, Q.B. 8703 26964, then Mr. Justice A.H. Wachowich, a reference from taxation asked the following:

1. "Does the beneficiary of an estate have standing to require the taxation of solicitor's account when that solicitor is retained by the executor(trix)/administrator(trix) to act on behalf of the estate?" Court ruled: "Negative."
2. "Would it make a difference if the services performed and billed for were of a litigious nature?" Court ruled: "Negative."

See too: *Steers v. Szameitat* (B.C. 1915) 8 W.W.R. 1081; *Re Hague, Traders Bank v. Murray* (1887) 12 P.R. 119; *Re Gilray Estates* [1954] O.W.N. 305; D.W.M. Waters, *Law of Trusts in Canada*, 2nd ed. (1984) pps. 983-985.

² See *P., Barristers & Solicitors v. Legal Aid Society (Alberta)* (1994) 26 Alta. L.R. (3d) 107 at paras. 38-43.

charged to you under the terms of that Certificate, your only recourse is to have the Legal Aid Society review the bill of costs (they have a process somewhat like the Court of Queen's Bench taxation process).

Any individual, corporation or other entity who meets the criteria to tax a legal bill may be represented by an agent or proxy, and need not appear or participate in person. But, proof of authorization may be required of the proxy. And, before having someone appear on your behalf you might want to consider the section entitled "What kind of evidence?", at p. 9.

For more information on the time limitations please refer to the section entitled "Is there any time limit to taxing a bill of costs?", at p. 4.

WHO TAXES THE BILL OF COSTS?

A clerk or deputy clerk (taxing officer) of the appropriate judicial centre (refer to "Who may tax a lawyer's bill of costs and where", at p. 1).

WHAT LIMITS ARE THERE TO A TAXING OFFICER'S AUTHORITY?

The *taxing officer has the authority* to:

1. allow a lawyer reasonable compensation (**Rule 613**) for legal services performed,
2. take evidence in writing (Affidavit) or orally (**Rule 628**),
3. direct any party to produce for the taxation hearing alone any books, papers and documents relevant to the taxation hearing (**Rule 628**) - however, note number "16" below,
4. require notice of the taxation to be given to any or all interested parties (**Rule 628**),
5. give directions as to the manner of service of notices relating to the taxation (**Rule 628**),
6. require a party to be represented by a separate lawyer (**Rule 628**),
7. enlarge or abridge the time allowed for service of documents relating to taxation proceedings (**Rule 628**),
8. allow or disallow costs of the taxation proceedings (**Rule 629**),
9. approve, vary, modify or disallow any agreement or contract between a lawyer and a client relative to fees for services performed (**Rules 619 and 646**),
10. direct that a lawyer has forfeited his/her right to fees and expenses on account of having failed to bring in his bill for taxation (**Rule 648**).

The *taxing officer does not have the authority* (unless otherwise directed by the court) to:

11. tax a bill of costs or bill which has already been taxed (**Rule 652**),
12. tax a bill of costs after judgment has been obtained in respect of it (**Rule 647**, see p. 4),
13. tax a bill of costs which exceeds the time limits prescribed in **Rule 647** (see p. 4),

14. award costs against a client in a taxation initiated by the lawyer whose bill of costs is being taxed (**Rule 629**),
15. dispense with service of any notice of taxation (**Rule 628**),
16. order any lawyer to deliver up to the client any documents or papers of the client but which are in the lawyer's possession, custody or power (**Rule 649**),
17. order any lawyer to repay any monies paid to or retained by the lawyer on account of his fees (**Rule 648**),
18. increase the fees or expenses of a lawyer whose bill of costs is the subject of taxation,
19. resolve disputes between lawyer and client as to
 - the existence of or terms of an agreement as to fees or compensation,¹

¹ See: *In re E., a Solicitor* [1922] 2 W.W.R. 1324 (Alta. S.C. A.D. / Scott, Stuart, Beck, Hyndman & Clarke, JJ.A.); *In re a Solicitor and Taxation of Costs* [1924] 2 W.W.R. 1135 (Alta. S.C. A.D. / Scott, Stuart, Beck, Hyndman & Clarke, JJ.A.); *Peterson, Ross v. Kirwood* (1984) 52 A.R. 284 (Q.B. / Funduk, M.); *Rusnak v. Commodity Investors et al.* (1982) 48 A.R. 311, at 315 (Q.B. / Cormack, J.); *Lennie, DeBow and Martin v. Richter* (1984) 55 A.R. 26 (Q.B. / Funduk, M.); *Gibson v. Bassie, Kantor & Plupek* [1985] J.D. of Edmonton, 18846, A.U.D. 923 (C.A. / Kerans, Irving & Hetherington, JJ.A.); *Field and Field v. Hys and Ostolosky* (1989) 101 A.R. 31 (Q.B. / Quinn, M.); *Beresh Professional Corp. v. Schneider and Schneider* (1990) 106 A.R. 251 (Q.B. / Funduk, M.); *Anderson v. Ben Vanden Brink Professional Corp.* [1990] 107 A.R. 143 (C.A. / Haddad, Hetherington and Irving JJ.A.); *Bhojani v. Ruff* [1997] A.J. 240 (C.A. / McClung, O'Leary and Hunt JJ.A.); *Linton v. Prusak* [1999] A.J. No. 347 (Q.B. / Wilson, J.).

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- the client's obligation to pay interest on overdue legal bills of costs,²

² See: *Urichuk v. Code Hunter* [1986] A.J. No. 111, 68 A.R. 128 (C.A.) - taxing officer has no jurisdiction to rule on the entitlement to, nor the quantum of interest a lawyer might claim on his/her charges.

CAN I GET AN OPINION WHETHER TO TAX OR NOT?

Not from the taxing officer or his/her staff. The Rules of Court clearly specify the procedure to be followed for taxing a legal bill of costs. Opinions offered by a taxing officer or staff prior to the taxation hearing would compromise the taxing officer's obligation to remain unbiased and impartial.

If an opinion is desired one might seek the counsel of an independent lawyer.

IS THERE ANY TIME LIMIT TO TAXING A BILL OF COSTS?

Yes. **Rule 647** provides:

Unless the court otherwise orders no bill of costs is subject to taxation

- (a) after judgment has been obtained in respect thereof, or,
- (b) if it is unpaid after one year from the date of delivery thereof, or
- (c) if it was fully paid before the completion of the services for which it was rendered, after six months from the date of completion or the delivery of the bill, whichever is later, or,

- (d) if it was fully paid following the completion of the services, after six months from delivery.

The two most common factors preventing taxation are that the bill of costs has been paid for more than six months or remains unpaid for more than one year. An application may be made to the Court for an extension of the time limit (see "Sample Forms" at p. 16).

HOW DO I BEGIN THE TAXATION PROCESS?

Taking Out the Appointment

The *Alberta Rules of Court* require the party wishing to tax a bill of costs to book an appointment date for a taxation hearing, and to prepare, file and serve a document entitled "Appointment for Taxation" (**Rule 630**) (see "Sample Forms" at p. 16).

Filing the Appointment

Once you have prepared the Appointment for Taxation, and have attached to it each bill of costs to be taxed, the Appointment must be filed with the Clerk of the Court. There will be a **\$100.00** filing fee payable in cash, certified cheque, or money order made payable to the "Minister of Finance of Alberta". Most locations are also equipped to accept payment by bank or credit card.

Orderlies, located at the entrances to all Court Houses, will be able to give you directions to the proper counter for filing your Appointment. You will need to file the original Appointment, plus three copies. The Clerk will keep one copy and return three to you. The copy on which the Court Seal has been embossed in the paper should be saved for use in the Affidavit of Service you will prepare (see "Sample Forms" at p. 16). A copy that is rubber stamped "seal" must be served on the law firm or lawyer. You will likely want one copy for your reference at the taxation hearing.

Serving the Appointment

Rule 631 requires that a copy of the Appointment, together with a copy of each bill of costs to be taxed, is to be served on the lawyer / law firm. If you have lost your bills, or if you never received them, the backer of the Appointment for Taxation should indicate that the lawyer is to produce, at the taxation hearing, all bills rendered to you (**Rule 648**).

You must give the lawyer at least five clear working days' notice prior to the taxation hearing date (**Rule 631**). In counting the five days do not include weekends or holidays (**Rule 545**), nor the day of service of the Appointment or the day of the taxation (**Rule 546(2)**). It is a good idea to serve the Appointment as soon as possible, to minimize the chance of the lawyer already being otherwise engaged in Court or elsewhere. Service of the Appointment for Taxation on the lawyer or law firm may be accomplished in one of four ways:

- 1/ **Deliver Personally & Obtain An Admission of Service** – Leave a copy of the Appointment, in the following order of priority,
 - 1st with your lawyer, *or*, if your lawyer is not available or willing,
 - 2nd with a partner of the law firm, *or*, if no partner is available or willing,
 - 3rd with your lawyer's or the partner's assistant/secretary, *or*, if neither of them is available or willing,
 - 4th with the law firm's receptionist,

and request that individual to admit service on the copy bearing the imprinted/embossed Court Seal (your copy);

eg. March 1, 2010
 Service hereby admitted

"Jane Doe"
per Smith & James, Barristers & Solicitors

- 2/ **Deliver Personally & File An Affidavit of Service** – Leave a copy of the Appointment, in the following order of priority,
- 1st with your lawyer, *or*, if your lawyer is not available or willing,
 - 2nd with a partner of the law firm, *or*, if no partner is available or willing,
 - 3rd with your lawyer's or the partner's assistant/secretary, *or*, if neither of them is available or willing,
 - 4th with the law firm's receptionist,
- and, if they will not admit service, prepare and file your own Affidavit of Service (see "Sample Forms" at p. 16).
- 3/ **Registered Mail** – Serve by registered mail, obtain a copy of the recipient's signature from Canada Post, and prepare and file an Affidavit of Service (see "Sample Forms" at p. 16); or,
- 4/ **Process Server** – Have a process server serve the lawyer and provide you with an Affidavit of Service, which you can then file with the Clerk of the Court – keep your receipt.

An Affidavit of Service will not be required if (a) the lawyer or his/her agent has admitted service on the Appointment, or (b) the lawyer or his/her agent appears at the taxation hearing and acknowledges that s/he was served on time.

CAN A TAXATION HEARING BE ADJOURNED?

Both clients and lawyers are subject to illness, previously scheduled engagements, or scheduling by the Courts. Sometimes, even when a lawyer has pre-approved his/her availability for a particular date and time, the lawyer's schedule may render his/her ability to appear at that time unworkable or impossible: eg. when a trial scheduled for two weeks is extended to three weeks, when an application before the Court is directed by the Court to be put over to and heard at the same time as the appointment for taxation. As an officer of the Court the lawyer is subject to the direction of the Court and will have no choice but to adjourn the taxation. In such circumstances it is suggested:

- 1/ **Contact & Agree** – The party seeking the adjournment try to contact the other party (a) to advise of the need for the adjournment, and (b) to attempt to work out a mutually agreeable alternate date.
- 2/ **Telephone Conference Call** – Arrange a telephone conference call with the taxing officer who may,
- (i) decide whether an adjournment will or will not be granted; and,
 - (ii) settle upon a mutually acceptable or peremptory date for the taxation hearing.
- 3/ **Apply in Person** – Failing either (1) or (2) the party seeking the adjournment must have a representative/agent appear at the taxation hearing and apply for an adjournment.

It is not acceptable to simply write the taxation office to demand an adjournment. The party seeking the adjournment must comply with either (1), (2), or (3) above. The taxation office will not act as a go-between for parties who refuse to speak to each other or through their own agents. The taxation hearing will proceed in the absence of either (1) consent of opposing party to an adjournment, (2) a pre-hearing ruling by the taxing officer by way of conference call, or (3) the attendance at the taxation hearing of the individual or his/her agent to speak to an adjournment.

Note that an unreasonable refusal to consent to an adjournment may result in an **award of costs** against the unreasonable party.

IS IT PROPER TO DISCUSS THE BILL OF COSTS WITH YOUR LAWYER?

Most concerns regarding billing or the amount billed can and are resolved by way of an open discussion between solicitor and client. Initiation of and participation in an open dialogue about legal fees and billings is strongly encouraged.

If you settle the matter with your lawyer at any time before your appointment for taxation please phone the taxation office and cancel your hearing.

WHAT WILL A TAXATION COST?

There is a **\$100.00** fee for filing of the Appointment for Taxation with the Clerk of the Court payable in cash, certified cheque, or money order made payable to the "Minister of Finance of Alberta". Most locations are equipped to also accept payment by bank or credit card. There is no additional charge by the taxing officer for taxing the bill of costs, even if a written decision is prepared.

Rule 629 permits a taxing officer to award costs against a party taxing a lawyer's bill of costs, but only if "...the taxing officer is of the opinion that the client has acted unreasonably in applying for taxation."

If the lawyer or client should take any of the following steps the Court will usually award costs to whichever party wins the hearing:

- 1/ Apply to the Court for leave to tax bills of costs which are outside the time limits – **Rule 647** (see "Is there any time limit to taxing a bill of costs?", at p. 4);
- 2/ Appeal the decision of the taxing officer to a Judge pursuant to **Rule 655** (see "Is there the right to appeal?", at p. 14); and,
- 3/ Apply to the Court for an order enforcing the taxed account as contemplated by **Rule 651** (see "What happens if the bill of costs is reduced?", at p. 14).

PREPARING FOR THE TAXATION HEARING

Back up your submissions with admissible evidence and have your witnesses present.

The taxing officer relies on evidence of fact and opinion in reaching a decision. Therefore, it is important to substantiate your claims (e.g. letters, notes, day-timers, telephone bills, a legal expert in the relevant area of law). And, if you have come unprepared, do not *assume* that the taxing officer is going to allow an adjournment to permit you time to adequately prepare.

If you require information (such as time records) from the lawyer, request them from the lawyer well in advance of the taxation. It is helpful to the taxing officer's preparation for the hearing to receive a copy of such material prior to the scheduled taxation.

Be on time.

Most people are not familiar with the parking at court houses, nor with the location of hearing rooms. Arrive early to ensure timeliness. The taxing officer will usually only wait a couple of minutes past the appointed time before proceeding.

Know what you are going to say.

Familiarize yourself with the factors to be considered by the taxing officer (see "How does the taxing officer reach his/her decision", at p. 10). Determine what submissions you wish to make with respect to those factors which are relevant to your concerns. Write down how you will present your submissions and the documents or witnesses you will produce at the hearing.

It is acceptable to read your submissions to the taxing officer.

Keep it simple.

The taxing officer has a number of taxation hearings a day and, on account of experience, does not require lengthy explanations. Be to the point. Be brief. If the taxing officer requires more information or detail s/he will ask for it.

Avoid argument, name calling or emotional outbursts.

Such behaviour is unacceptable, is counterproductive, and may result in a party's expulsion from the hearing.

Stick to the topics or issues over which the taxing officer has jurisdiction.

As noted under the heading "What limits are there to a taxing officer's authority?" (at p. 3), there are matters concerning the bill of costs being taxed over which the taxing officer has no jurisdiction. Raising them only confuses and lengthens the proceedings.

WHAT HAPPENS AT THE TAXATION HEARING?

Who is there?

Neither the lawyer nor the client is obliged to be in attendance at the hearing. Either may send a representative or agent to plead their respective positions before the taxing officer. However, this is not recommended since rules of evidence might make the absence of the parties very counterproductive. (See "What kind of evidence?", at p. 9).

Of course, the taxing officer will be in attendance. The taxing officer is a Clerk or Deputy Clerk of the Court of Queen's Bench, employed by the Alberta Justice Department.

What if a party does not appear?

Rule 632 of the *Alberta Rules of Court* provides:

If a person has served or has been served with an appointment and fails to attend, the taxing officer may proceed with the taxation in his absence upon proof of service of the appointment and any other documents required to be served.

Therefore, if the client does not appear but the lawyer does appear, or vice versa, the taxing officer has the authority to proceed to tax the bill of costs, notwithstanding the absence of one of the parties.

What type of room?

This will vary from court house to court house. In most instances it will be a modest-sized office with both parties sitting at a table opposite each other. The setting is quite informal.

Is the hearing recorded?

All *contested* taxation hearings are recorded.

If you desire a transcript of your taxation hearing you will be responsible for the cost of the transcription. To obtain a transcript consider the following:

- In *Calgary* transcripts of hearings can be ordered through Transcript Management Services, located on the 6th floor of Trimac House, 800 - 5th Avenue S.W., Calgary, AB T2P 3T8 (403-297-7392). **Note:** this address will change when the new Court House opens in 2007 - so call before venturing down there.
- In *Edmonton* transcripts can be ordered through Transcript Management Services, located on the 5th floor of the Brownlee Building, 10365 - 97 Street, Edmonton, AB T5J 3W7 (780-427-6181).
- In order to obtain an estimate of the cost of transcription from Transcript Management Services you will need to know how long the taxation hearing lasted. If you do not know how long the hearing lasted, the taxation office in the judicial district where the taxation hearing occurred can provide you with an estimate based on the recording records.

Who speaks and when?

The taxing officer will begin the proceeding by identifying the parties and the bills of costs to be taxed, by explaining his/her role in the proceedings, and by responding to any preliminary objections (eg. inadequacy of service or a time limitation problem) or applications for adjournment.

When the Appointment for Taxation has been filed by the client, the taxing officer will usually ask the client to present a statement of what objection(s) is being raised to the bill(s) of costs. Then the taxing officer will usually ask the lawyer to give some background to the file and to justify his/her bill of costs. The order of presentation reverses if the Appointment for Taxation has been filed by the lawyer.

It is quite appropriate for either party to read a written statement – some people are more comfortable with this mode of presentation – but it is strongly recommended to keep it brief and to the point.

During either party's presentation the opposing party is advised to keep notes of any objections or observations he/she might have to the other's submissions of fact and opinion. Each party will then be afforded the opportunity, in turn, to respond to the other's submissions.

The taxing officer may, occasionally, interrupt to ask questions or to make observations.

How does one object?

Media courtroom dramas notwithstanding, in taxation hearings objections are reserved until one is "given the floor". Interruptions are usually not tolerated. Keep notes and raise your objections when your turn to present or respond arises.

What kind of evidence?

Taxation hearings are kept quite informal in hopes of encouraging frank and open discussion, and creating an atmosphere of conciliation. Most parties simply state their positions. However, **Rule 628** allows evidence to be presented by Affidavit (a sworn written statement) or orally under oath. Witnesses may be called at the hearing.

Even expert witnesses may be called, who may testify to the complexity of the matters, the conduct of the file and the significance of the results. An expert witness may not testify as to the reasonableness of the fee. It is to be remembered that a taxing officer is not intimately familiar with every area of legal practice and may need to be enlightened as to the complexity of the law in some of the more obscure areas, the amount of time normally expended for certain legal procedures or steps, and the significance of the results achieved. To this end expert witnesses may be very helpful.

While the rules of evidence are relaxed in taxation hearings, a witness is usually only permitted to give direct evidence of what he/she actually saw, said or heard. Assertions that “three other lawyers have told me that this should not have been done this way” are not permitted: if you want to have the benefit of another lawyer’s opinion about the work done, that lawyer must be produced at the taxation hearing for the purpose of giving opinion evidence and of then being cross-examined by the opposing party. Likewise, comparing the bill of costs being taxed to that of another lawyer is not permitted unless that other lawyer is present to answer questions about why he/she billed a given amount, what work it was billed for, . . . and so on.

For many good reasons it is unwise for the lawyer or the client to not attend in person.

How is the decision given?

Usually the taxing officer will render a decision at the close of the parties' submissions. The decision will be given orally and a brief certificate stamped on each bill of costs.

Sometimes the taxing officer will reserve a decision. This may be done to allow time to review the law on a point of procedure. Or, to take time to review a lawyer's file: the steps taken, the difficulties encountered, the personalities involved. Or, the taxing officer may simply need time to contemplate a decision. In such circumstances the taxing officer will usually write a decision which is filed at the court house and a filed copy sent to each party.

HOW DOES THE TAXING OFFICER REACH A DECISION?

There are no tariffs or officially established fees for performing legal services. Instead, a taxing officer takes into consideration a number of factors as outlined in the **Rules of Court** and the *Law Society of Alberta's Code of Professional Conduct*, and as discussed in decisions of the courts of Alberta, other Provinces and Territories.

Rule 613 provides a lawyer the right to charge a "reasonable amount" for her/his services.

Barristers and solicitors are entitled to such compensation as may appear to be a reasonable amount to be paid by the client for the services performed having regard to

- (a) the nature, importance and urgency of the matters involved,
- (b) the circumstances and interest of the person by whom the costs are payable,
- (c) the fund out of which they are payable,
- (d) the general conduct and costs of the proceedings,
- (e) the skill, labour and responsibility involved, and
- (f) all other circumstances, including, to the extent hereinafter authorized, the contingencies involved.

Rule 613 and **Rule 635**, considered together with applicable case law,³ detail the following factors as being

³ **Generally:** *Yule v. Saskatoon* 1955 CarswellSask 38, 16 W.W.R. 305 (Sask. Q.B.), affd 1955 CarswellSask 61, 17 W.W.R. 296, 1 D.L.R. (2d) 540 (Sask. C.A.); *Re Solicitors* [1972] 3 O.R. 433 at 436 (T.O.); Mark M. Orkin, *The Law of Costs* (2nd ed., release No. 19) at 311 "Factors on the Assessment."

Expectations as to Fees: *Denecky v. Butkiewicz* (1993) 16 Alta. L.R. (3d) 356; *Price v. Roberts & Muir* (1987) 25 C.P.C. (2d) 166 (B.C.C.A.), McLachlin J.J.A.; *Burnet, Duckworth & Palmer v. Opron Construction Co. Ltd.* (1985) 39 Alta. L.R. (2d) 110 (Q.B.), Sinclair, J.; *Cohen v. Kealey & Blaney* [1985] 26 C.P.C.(2d) 211 (Ontario S.C. C.A.); *Alexander v. McKenzie* [1984] 5 W.W.R. 635 at 637, Jewers, Co. Ct. J.; *Re Solicitors and Kozaroff* (1981) 21 C.P.C. 3 (Ont. T.O.); *Cooper, Peach*

relevant to a lawyer in setting and a taxing officer in assessing a reasonable fee for legal services rendered to a client:

- ▶ The **nature of the matter**: its difficulty and urgency; its importance to the client; its monetary value; and its requirement for special skills or services.
- ▶ The **time** and **effort** expended.
- ▶ The **results** achieved.
- ▶ The **skill and competence** (experience and ability versus negligent and mistaken conduct) demonstrated by the solicitor.
- ▶ The **client's expectations** as to fees (inclusive of estimates given by the lawyer).
- ▶ The client's **ability to pay**.

OF WHAT RELEVANCE IS A RETAINER AGREEMENT OR AGREEMENT AS TO FEES?

A retainer agreement is a contract between a lawyer and client which, if properly drafted, identifies the services to be performed by the lawyer and dictates what, how and when the client will pay him or her for performing those services.

Such agreements are permitted by **Rule 615** of the *Alberta Rules of Court*:

A barrister and solicitor may make an agreement with the client, respecting the amount and manner of payment of the whole or any part of past or future services, fees, charges or disbursements in respect of business done or to be done by the barrister and solicitor either by a gross sum or by commission or percentage or by salary or otherwise and either at the same or at a greater or less rate, than the rate at which he would otherwise be entitled to be remunerated, subject to taxation.

Rule 614 clearly stipulates that the charges of lawyers for services performed by them are subject to taxation, even if there is an agreement which presumes to deny the client that right.

Copy of Retainer Agreement to Be Provided to the Taxing Officer

If lawyer and client have entered into a written retainer agreement, **Rule 646(1)** requires that “a copy of the retainer agreement must be provided to the taxing officer at least 7 days before the date scheduled for [any] taxation.”

The Terms of A Retainer Agreement Must Be “Fair and Reasonable”

Rule 646(b) requires a taxing officer to ensure that the retainer agreement (contingent or non-contingent),

“shall be allowed only to the extent that it is fair and reasonable in the circumstances, and it may be allowed or disallowed, in whole or in part, and as well with respect to sums paid thereunder as to sums unpaid.”

It is well established that the determination of the “fairness and reasonableness” of the terms of a retainer agreement (contingent or non-contingent) is to be reviewed and construed *as at the time it was entered into*, not with hindsight and not with consideration being given to the work actually performed and the

and Gullberg v. England [1974] 7 W.W.R. 345 (NWT S.C.) Vertes, J.

results actually achieved.⁴ The only exceptions to this rule are,

- (a) contingency fee agreements involving minors and
- (b) contingency agreements providing for month-to-month repayments but where the taxing officer / Court determine that a “time cap” should be placed on the payments.

Types of Retainer Agreements

There are two basic types of retainer agreement: contingent and non-contingent.

Contingency Agreements

A contingency retainer agreement is one in which the lawyer's fee is dependent or contingent upon the successful achievement of a specified result. The most common form of contingency agreement stipulates that a lawyer will receive as his/her fee for services a certain percentage of whatever he/she recovers from the opposing party (debt collection, personal injury suits, wrongful dismissal actions, etc.). Usually they are drafted such that if nothing is collected the client will only be responsible for the lawyer's out-of-pocket expenses. Many variations exist.

Such agreements are legal and enforceable in Alberta if they comply with the ***Alberta Rules of Court***. These requirements are (as of May 1st, 2000):

- R. 616(1)** A contingency fee agreement
 - (a) must be in writing, and
 - (b) signed by the lawyer and the lawyer's client, or by their authorized agents.

- R. 616(2)** To be enforceable, a contingency fee agreement must contain the following particulars in precise and understandable terms:
 - (a) name and address of each client;
 - (b) name and address of the lawyer;
 - (c) a statement of the nature of the claim;
 - (d) a statement of the event or contingency upon which legal fees are to be paid to the lawyer;
 - (e) a statement about
 - (i) the manner in which the contingency fee is to be calculated;
 - (ii) the maximum fee payable, or the maximum rate calculated, after deducting disbursements;
 - (iii) whether the client is responsible to pay disbursements and, if so, a general description of types of disbursements likely to be incurred, other than relatively minor disbursements;
 - (f) if the lawyer is to receive any taxable costs that are awarded, a statement

⁴ See *Re Collier and Swingle* (1961-62), 36 W.W.R. 695, (Alta.S.C.) & *McDonald Crawford v. Morrow* [2004] A.J. No. 496, 2004 ABCA 150, (2004) 244 D.L.R. (4th) 144, [2004] 11 W.W.R. 335, (2004) 28 Alta. L.R. (4th) 62, (2004) 348 A.R. 118, (C.A.).

- (i) that the taxable costs are intended to be a complete or partial reimbursement of the client's legal expenses,
 - (ii) that taxable costs are the property of the client and that the client is waiving his/her right to those "costs",
 - (iii) that "costs" retained by the lawyer will be in addition to the lawyer's percentage, fixed or other form of legal fees, and
 - (iv) that the "costs" to be received by the lawyer are not to exceed the percentage of the judgment or settlement the lawyer is entitled to receive in legal fees;
- (g) a statement that the client has within five days after being served with the signed contingency agreement to terminate the agreement without charge, save for reasonable out-of-pocket expenses, and
- (f) a statement warning the client that the agreement is subject to review by the Clerk of the Court or a Judge of the Court, and that either may determine the fairness and reasonableness of the agreement or the resulting bill, or both.

R. 616(3) The client's signature of the agreement must be witnessed and the witness must swear an affidavit of execution.

R. 616(4) The client must be served with a copy of the signed contingency agreement within 10 days of the date of signing and an affidavit of service must be executed by the person who served the agreement.

R. 617 There is no longer any requirement to file the contingency agreement with the Court. However, any agreement filed with the court for the purposes of enforcing it or reviewing it must remain confidential and not subject to inspection by anyone other than the parties to the agreement, the taxing officer or the court.

R. 618 Failure to comply with the requirements of Rule 616 limits the legal fees recoverable by the lawyer.

R. 619 A contingency agreement may, within 6 months of its making or up to 6 months from the last date on which the lawyer received payment of his fee, be reviewed by the clerk at the client's insistence to determine the fairness and reasonableness of the agreement. The agreement may also be reviewed by a judge of the Court of Queen's Bench, within the same time constraints.

R. 620 A contingency agreement cannot include any clause which,

- (1) relieves any lawyer from liability for negligence or other liability,
- (2) prevents a client from abandoning, discontinuing or settling any proceeding without the consent of the lawyer,
- (3) prevents a client from changing lawyers before the conclusion of the proceeding,

or the offending clause is void.

Non-Contingent Agreements

All other retainer agreements are, under **Rule 646**, to be allowed "to the extent that [they are] fair and reasonable"

Right to Review of Agreement and to Taxation of Bill(s) of Costs

A client who has entered into a retainer agreement (contingent or non-contingent) has the right to have the agreement reviewed to determine whether it is fair and reasonable, *and* always has the right to have the bill of costs rendered by the lawyer taxed to ensure that it complies with the terms of the agreement.¹

¹ See **Rules 619(4), 646(2), 614.**

IS THERE THE RIGHT TO APPEAL?

Yes. Any party with a financial interest in the result of any taxation may appeal (**Rule 655**).

Time limit.

Rule 655 requires that a Notice of Appeal be filed with the clerk of the court no more than **10 days** after the appellant received notice of any certification of taxation.

The Notice of Appeal must be served on the taxing officer and on the opposite party or parties, not less than 7 days before the date set for the hearing of the appeal.

The date chosen for the hearing of the appeal must be within 20 days of the date of filing of the Notice of Appeal.

Before a Justice in Chambers.

An appeal from the decision of a taxing officer is heard by a Justice of the Court of Queen's Bench sitting in open chambers. It is *not* heard by the Court of Appeal of Alberta.

Chambers is held daily starting at 10:00 a.m.. The appeal will be one of many different types of applications being made before the Justice and will be situated on his or her chambers list in the same order that it was filed with the chambers clerk. Even though your appeal may be far down the list, many applications cancel or adjourn, so be in chambers at 10:00 sharp.

What happens in the meantime?

Unless an order has been obtained from the Court preventing the lawyer or client from acting on the taxed bill of costs, a Notice of Appeal does not suspend the conclusiveness of the taxed bill of costs. Therefore, a lawyer may use the taxed bill of costs to obtain judgment and a writ of enforcement, or, a client may obtain a Court order for repayment of monies paid to the lawyer, notwithstanding the existence of a pending appeal.

WHAT HAPPENS IF THE BILL OF COSTS IS REDUCED?

If a bill of costs is reduced and if there has been no appeal, or if the taxed bill of costs is upheld on appeal, one would anticipate that any monies owing to the client would be paid in due course. If such is not the

case the onus remains with the client to commence proceedings to enforce the taxed bill of costs as against the lawyer. Likewise a lawyer must commence proceedings to enforce the bill of costs against a defaulting client. This is done by applying for a Court Order. Such an application is commenced by filing a Notice of Motion and an Affidavit. (see "Sample Forms" below at page 16).

SAMPLE FORMS

The following samples are appended to aid in your preparation of documents used in taxation and related proceedings. "Page" refers to the page number in this document where the Sample Form is located.

Page	Sample Form	Comment
17	Appointment for Taxation of a Lawyer's Bill(s)	To be filed with the Court and served on the law firm.
19	Affidavit of Personal Service	Of the Appointment for Taxation.
21	Affidavit of Service by Registered Mail	Of the Appointment for Taxation.
23	Rule 647 Notice of Motion	To use in an application to extend the time limits in Rule 647 .
26	Rule 647 Generic Affidavit	To present evidence in an application to the Court.
28	Rule 647 Order	Resulting from a Rule 647 application.
31	Rule 651 Notice of Motion	To use in an application to enforce a taxed account.
34	Rule 651 Generic Affidavit	To present evidence in an application to enforce a taxed account.
36	Rule 651 Order	Resulting from a Rule 651(2) application.

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL DISTRICT OF [Name of J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

APPOINTMENT FOR TAXATION

TAKE NOTICE that I, [Name of the Clerk of the Court], hereby appoint [Day of the Week (Monday)], the [Numerical Date (23rd)] day of [Month (December)], 200[Year 200_ (1,2,3, . . .)], at the hour of [Hour (10:30)] o'clock in the ["fore" or "after" (as in "forenoon")]noon, at the *Taxation Office, Law Courts Building (Mezzanine Floor)*, Edmonton, Alberta, as the time and place for taxation of the [Applicant's/Respondent's] Bill(s) of Costs, enclosed herein, and all prior or subsequent Bills of Costs, if any, to be provided by the Law Firm pursuant to **Rule 648** one full day prior to the appointed date of taxation.

AND I DIRECT that a true copy of this Appointment shall be served upon the Respondent by leaving same at the Respondent's office, or by Registered mail, at least five (5) clear business days before the date of the Taxation.

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

CLERK OF THE COURT

Action No. _____

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF [Name of J.D.]

NOTICE TO SOLICITOR

Rule 648 provides the following:

(1) The service of an appointment on a barrister and solicitor requires him to bring in his bill of costs for taxation at the appointed time.

(2) If a barrister and solicitor fails to bring in his bill he forfeits his right to his costs, unless the taxing officer otherwise directs.

(3) If a barrister and solicitor fails to bring in his bill the court may, on notice to him, on the application of the client or the taxing officer, order that the barrister and solicitor repay the whole or any part of any monies paid to or retained by him on account of the costs, and the order may be enforced as an order of the court.

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

APPOINTMENT FOR TAXATION

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF [Name of your J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

AFFIDAVIT OF PERSONAL SERVICE

I, [Name of Deponent - the person swearing the Affidavit], of the City [or Town] of [Name of city or town], in the Province of Alberta, [Deponent's occupation], MAKE OATH AND SAY THAT I did, on the [Numeric day] day of [Month], 20__, serve [Name of law firm or lawyer] with a copy of the Appointment for Taxation filed in this proceeding, the original of which is attached hereto and marked as Exhibit "A" to this my Affidavit, by delivering the said copy personally to and leaving same with [Name of individual served], a [Individual's position with the law firm - such as partner, manager, associate, legal assistant, secretary, receptionist] with [Law firm's or lawyer's name].

SWORN BEFORE ME THIS _____

day of _____, 20__, at

_____, Alberta.

[Deponent's name]

Commissioner for Oaths for Alberta

Print name & expiry date

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

AFFIDAVIT OF PERSONAL SERVICE

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF [Name of your J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

AFFIDAVIT OF SERVICE BY REGISTERED MAIL

I, [Name of Deponent - the person swearing the Affidavit], of the City [or Town] of [Name of city or town], in the Province of Alberta, [Deponent's occupation], MAKE OATH AND SAY THAT I did, on the [Numeric day] day of [Month], 20__, serve [Name of law firm or lawyer] with a copy of the Appointment for Taxation filed in this proceeding, a true copy of which is attached hereto and marked as Exhibit "A" to this my Affidavit, by enclosing the same in an envelope addressed to [Name of lawyer / law firm] at [Address of lawyer / law firm] and posting same by Registered Mail in the Post Office at [City or town where posted] and attached to this my Affidavit and marked as Exhibit "B" is the receipt from the Postmaster at [City or town of addressee] purporting to be signed by the addressee.

SWORN BEFORE ME THIS _____

day of _____, 20__, at

_____, Alberta.

[Deponent's name]

Commissioner for Oaths for Alberta

Print name & expiry date

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

**AFFIDAVIT OF SERVICE
BY REGISTERED MAIL**

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
 JUDICIAL DISTRICT OF **[Name of your J.D.]**

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

NOTICE OF MOTION

TAKE NOTICE that an application will be made by the Applicant before the presiding Master in Chambers, at the Law Courts Building, in the City of Edmonton, in the Province of Alberta, on **[Day of the week]**, the **[Numeric date]** day of **[Month]**, A.D. 20___, at the hour of 10:00 o'clock in the forenoon, or so soon thereafter as the Applicant may be heard.

AND FURTHER take notice pursuant to Rule 384(2) of the Alberta Rules of Court that the particulars of the motion are as follows:

1. RELIEF SOUGHT BY THE APPLICANT

- (a) an Order pursuant to Rule 647 of the Alberta Rules of Court that the Bills of Costs dated and identified as **[List the dates and invoice numbers of the statements of account sought to be taxed]** shall be subject to taxation notwithstanding the provisions of Rule 647.

2. GROUNDS FOR THE MOTION

- (a) **[List the grounds upon which you rely for making the application]**

3. SUPPORTING EVIDENCE

- (a) Affidavit of **[Name of individual whose Affidavit is being filed in support of this application]**

DATED at the City of Edmonton, in the Province of Alberta, this **[Numeric]** day of **[Month]**, 20___, AND DELIVERED BY **[Client's name]**, whose address for service is **[Client's address]**.

 Applicant

TO: CLERK OF THE COURT

AND TO: **[Law firm or lawyer's name]**

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

NOTICE OF MOTION

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF [Name of your J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

AFFIDAVIT

I, [Name of Deponent - the person swearing the Affidavit], of the City [or Town] of [Name of city or town], in the Province of Alberta, [Deponent's occupation], MAKE OATH AND SAY THAT:

1. I am [Explain who you are, what your relationship is to the Applicant and the Respondent and these proceedings], and as such have personal knowledge of the facts and matters hereinafter deposed to except where otherwise stated to be based upon information and belief.
2. [Proceed to set forth the facts and beliefs upon which your application is based]
3. [Etc.]

SWORN BEFORE ME THIS _____

day of _____, 20__, at

_____, Alberta.

[Deponent's name]

Commissioner for Oaths for Alberta

Print name & expiry date

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

AFFIDAVIT

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
 JUDICIAL DISTRICT OF [Name of your J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

BEFORE MASTER _____
 IN CHAMBERS

AT THE COURT HOUSE,
 IN THE CITY OF [City/town],
 IN THE PROVINCE OF ALBERTA,
 ON [Day], THE ____ DAY OF _____, 20__.

ORDER

UPON THE APPLICATION of the Client (Applicant) for an Order permitting taxation of the solicitor's accounts;
 AND UPON HAVING READ the Affidavit of [Name of party who signed the supporting Affidavit], filed; AND
 UPON HAVING HEARD the representations made by the Client (Applicant); [Insert these following parts if
 the lawyer shows up in court] AND UPON HAVING READ the Affidavit of [Name of person who signed
 the lawyer's Affidavit], filed; AND UPON HAVING HEARD the representations made by Counsel for the Law
 Firm / Lawyer (Respondent);

IT IS HEREBY ORDERED THAT:

[Repeat whatever the Master actually ordered; the following is an *example*]

- The following accounts rendered by the Barristers and Solicitors (Respondent) are to be subject to taxation:

Date of Account	Account No.	Account Amount
-----------------	-------------	----------------

November 15, 2005	271339	\$4,966.36
December 12, 2005	273741	\$298.72
October 31, 2006	355945-1	\$1,946.58
Total		\$7,211.66

Notwithstanding that each of these accounts were fully paid before the completion of the services for which they were rendered.]

M.C.C.Q.B.

APPROVED

BY: _____
[Leave space for the law firm to enter the name of the person who will approve the Order on behalf of the law firm]

ENTERED this ____ day of _____, 20__.

Clerk of the Court

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

ORDER

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
 JUDICIAL DISTRICT OF [Name of your J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

NOTICE OF MOTION

TAKE NOTICE that an application will be made by the Applicant before the presiding Master in Chambers, at the Law Courts Building, in the City of Edmonton, in the Province of Alberta, on **[Day of the week]**, the _____ day of _____, 20__, at the hour of 10:00 o'clock in the forenoon, or so soon thereafter as the Applicant may be heard.

AND FURTHER take notice pursuant to Rule 384(2) of the Alberta Rules of Court that the particulars of the motion are as follows:

1. RELIEF SOUGHT BY THE APPLICANT

- a. an Order pursuant to Rule 651(2) of the Alberta Rules of Court allowing the Applicant(s) to enforce the taxed Bill(s) of Costs in the within matter as against the Respondent(s);
[Adjust the singular or plural as the case may be]
- b. an Order awarding pre-judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 1980 Chap. J-05, as amended; and
[Include where applicable]
- c. Costs of this action. **[Include where & when appropriate]**

2. GROUNDS FOR THE MOTION

[List the grounds upon which you rely for making the application - which may, depending on the circumstances, include some of the following:]

- a. that the taxing officer for the Judicial District of **[District name]** has taxed the Bills of Costs and has allowed them at \$ **[Dollar amount]**;
- b. that the Respondent client(s) has paid the total sum of \$ **[Dollar amount]** towards the taxed amount, leaving a balance owing to the Applicant of \$ **[Dollar amount]**; **[or]**

- c. that the Applicant has paid the Respondent barrister & solicitor / law firm the total sum of \$ **[Dollar amount]** leaving a balance owing to the Applicant of \$ **[Dollar amount]**;
- d. that **[Describe the right to interest, if any]**;
- e. **[Any other ground as properly applicable]**.

3. SUPPORTING EVIDENCE

- a. the Certificate(s) of Taxation, filed;
- b. the Affidavit of **[Name of individual whose Affidavit is being filed in support of this application]**, a copy of which is served together with this Notice
**[An Affidavit is usually necessary to substantiate:
payments made,
balance owing,
entitlement to interest,
entitlement to costs].**

DATED at the City of Edmonton, in the Province of Alberta, this ___ day of _____,
20___, AND DELIVERED BY **[Name]**, whose address for service is **[Address]**.

Applicant

TO: CLERK OF THE COURT

AND TO: **[Respondent's name]**

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

NOTICE OF MOTION

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF [Name of your J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

AFFIDAVIT

I, [Name of Deponent - the person swearing the Affidavit], of the City [or Town] of [Name of city or town], in the Province of Alberta, [State Deponent's occupation], MAKE OATH AND SAY THAT:

- 1. I am [Explain who you are, what your relationship is to the Applicant and the Respondent and these proceedings], and as such have personal knowledge of the facts and matters hereinafter deposed to except where otherwise stated to be based upon information and belief.
- 2. [Proceed to set forth the facts and beliefs upon which your application is based]

[Items that it may be necessary to substantiate could include:
payments made,
balance owing,
entitlement to interest,
entitlement to costs].

SWORN BEFORE ME THIS _____

day of _____, 20__, at

_____, Alberta.

[Deponent's name]

Commissioner for Oaths for Alberta

Print name & expiry date

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

AFFIDAVIT

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

Action No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
 JUDICIAL DISTRICT OF [Name of your J.D.]

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

BEFORE MASTER _____

IN CHAMBERS

AT THE COURT HOUSE,
 IN THE CITY OF [City/town],
 IN THE PROVINCE OF ALBERTA,
 ON [Day], THE ____ DAY OF _____, 20__.

ORDER

UPON THE APPLICATION of the Applicant, [Name of the Applicant]; AND UPON HAVING READ the Affidavit of [Name of party who signed the supporting Affidavit], filed; AND UPON HAVING HEARD the representations made by the Applicant; [Insert the following parts if the Respondent showed up in court] AND UPON HAVING READ the Affidavit of [Name of person who signed the Respondent's Affidavit], filed; AND UPON HAVING HEARD the representations made by the Respondent;

IT IS HEREBY ORDERED THAT:

[Repeat whatever the Master actually ordered; the following is an example]

1. The Applicant be at liberty to enforce the taxed accounts against the Respondent(s), [Name of Respondent(s)], in the amount of \$ [Amount allowed] as a Judgment of this Honourable Court;
2. The Applicant be awarded interest [The court's direction as to the type and amount of interest, if any];

3. The Applicant shall have its taxable costs of this action **[or application, as the case may be, if any]**.

M.C.C.Q.B.

APPROVED

BY:

**[Leave space for the Respondent to enter
the name of the person who will approve
the Order on its behalf]**

ENTERED this ____ day of _____, 20__.

Clerk of the Court

Action No. **[Action #]**

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA

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

IN THE MATTER OF:

[Client's name]

Applicant(s)

- and -

[Law Firm or Lawyer's name]

Respondent(s)

ORDER

Client's Address:

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

Phone:

[Client's Area Code & Phone Number]

HOW DO I GET MORE INFORMATION?

If you have need of more details please call your local Court of Queen's Bench Clerk's office.

District	Address	Phone
Calgary	Court of Queen's Bench, 611 - 4 St. S.W., P.O. Box 2549, Stn. 'M' Calgary, AB T2P 1T5	403-297-2394
Drumheller/Hanna	Court of Queen's Bench, 511 - 3rd Ave., West, P.O. Box 759 Drumheller, AB T0J 0Y0	403-820-7300
Edmonton	Court of Queen's Bench, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2	780-422-1520
Fort McMurray	Court of Queen's Bench, 9700 Franklin Ave., Fort McMurray, AB T9H 4W3	780-743-7136
Grande Prairie	Court of Queen's Bench, 10260 - 99 St., Grande Prairie, AB T8V 2H4	780-538-5340
Lethbridge/Macleod	Court of Queen's Bench, 320 - 4 St. South, Lethbridge, AB T1J 1Z8	403-381-5196
Medicine Hat	Court of Queen's Bench, 460 - 1st St., S.E., Medicine Hat, AB T1A 0A8	403-529-8710
Peace River	Court of Queen's Bench, 9905 - 97 Ave., Bag 900 - 34, Peace River, AB T8S 1T4	780-624-6256
Red Deer	Court of Queen's Bench, 4909 - 48 Ave., Red Deer, AB T4N 3T5	403-340-5220
St. Paul	Court House, 4704 - 50 St., PO Box 1900, St. Paul, AB T0A 3A0	780-645-6324
Wetaskiwin	Court of Queen's Bench, 4605 - 51 St., Wetaskiwin, AB T9A 1K7	780-361-1258

MAP OF JUDICIAL DISTRICTS & CENTRES OF ALBERTA

