

## Costs

### Costs Basics

Last Reviewed: March 2023

Reviewed by: JES



### Costs Basics

Costs are usually awarded to the party who is successful at a hearing. They cover out-of-pocket expenses and provide some compensation for the time and expense of going to Court. However, they rarely cover the full actual expense of the hearing.

The rules that govern costs are set out in **Rule 14-1** and **Appendix B** of the Supreme Court Rules. Read these carefully before preparing your documents.



#### Read the Rules

**Rule 14-1** and **Appendix B** Costs

### What Are Costs?

“Costs” is a legal term that means an order that one party pay money to the other party to compensate for the expense and time of litigation. Generally, costs are awarded to the successful party at a trial or other hearing.

The thinking behind costs is that they:

- Provide some compensation
- Encourage parties to settle their disputes
- Encourage people not to bring hopeless lawsuits

There are different kinds of “costs” awards.

- **Part and Party Costs:** The most common costs. These are calculated based on the tariff set out in **Appendix B of the Supreme Court Rules**
- **Special Costs:** Occasionally, if there has been reprehensible conduct in the course of the action, such as fraud, the court may order that “special costs” be paid to the successful party. Special costs are higher and approximate actual legal fees. You can apply for special costs even if you are not represented by a lawyer. However, there must be a very good reason for the Court to order special costs

## Getting an Order for Costs

You can get an order for costs in all sorts of proceedings. You can get an order for costs if you are successful in a chamber application, a trial, or a petition.

It does not matter whether you are the plaintiff or defendant, the applicant or respondent, the petitioner or petition respondent. If you successfully make or successfully defend, a claim to the Court you may be awarded costs.

However, in order to get an award for costs, you have to ask for it. Make sure you include a request for costs in the “Relief Sought” portion of your notice of civil claim, application, petition, response to a civil claim, application response, or petition response.

Further, even if you have already made a request for costs in your pleadings or chambers application, you should also ask for costs as soon as the judge or master hears the application or the trial rules in your favor.

## When Does the Court Assess Costs?

Usually all costs are assessed at the end of your case. This means that if you have success on a chambers application along the way, you will not immediately get a cheque from the other side. Rather, all costs awards are dealt with at the end.

There is one exception to this rule. If the costs award is made “forthwith” then it can be assessed, and must be paid, right away.

Costs may be assessed:

- When the court orders costs to be assessed
- If a settlement agreement provides for the payment of costs to be assessed
- When a party has obtained default judgment
- By the party whose formal offer to settle has been accepted
- By the defendant when the plaintiff discontinues the action
- By the plaintiff when the defendant withdraws their defence

If you obtain an order for costs after a trial, you can take out an appointment with the registrar to assess the costs as soon as the order providing for costs is entered.

### Learn More



You will also find detailed information about costs in resources that can be found in the courthouse library. These include *Practice Before the Registrar* published by the Continuing Legal Education Society of BC and *The Conduct of Civil Litigation in British Columbia* by Fraser, Horn, and Griffin.

## Preparing a Bill of Costs

If you are entitled to your costs of the action, you must prepare a bill of costs using **Form 62**. Assessing “party and party” costs is based on “units”. **Appendix B to the Supreme Court Rules** contains a table called the “Tariff”. The Tariff table assigns different steps in litigation to different numbers of units that might be claimed.

For example, if you have prepared a notice to admit, (labeled as item 14 in the Tariff) you can claim 1-5 “units”. The number of units that you can claim depends on how complex the step was. The more complex the task the more units that can be claimed. So, if you prepared one notice to admit with only a few admissions, this might only be one unit. However, if you prepared extensive notices to admit which attached many documents, you might claim 4 or 5 units. To determine what unit to claim you may need to get legal advice or do **Legal Research**. For more information see **Get Help**.

After you have figured out how many “units” you are entitled to under the Tariff, you multiply them by the “unit value”. **Appendix B to the Supreme Court Rules** s.3 sets out three different possible “unit values”: Scale A, Scale B, and Scale C. Unless the Court otherwise orders, you are to use “Scale B”. You multiply the number of units claimed by the unit value to determine the total award claimed.

# of units x unit value = amount claimed

Using the example above if you claim 4 units for preparing notice to admit and the court didn't order the use of a particular scale you would do the following calculation.

$$4 \times \text{Scale B rate of } \$110 = \$440$$

The following tips will help you prepare your own bill:

- **Review the rules:** Appendix B of the Rules tells you the categories and items that you can include in your bill of costs
- **Item number:** For each item fill in the number of units on the far right or leave the item blank if it does not apply to your case. Do not change the item numbers
- **Calculate:** Add up your claim for tariff item units to get a total number of units. Multiply the total number of units by the unit value according to the scale of costs
- **The scale:** When the judge or master made the order for costs, they may have "fixed the scale" from A to C, which is the scale you will use to calculate your costs. For example, if the case was not very difficult, the scale may have been fixed at Scale A, which means that you are entitled to claim \$60 per unit. However, if the case was very difficult, the scale may have been fixed at Scale C, which means that you may claim \$170 for each unit. The value for the scales is set out in section 3 of Appendix B. If the judge or master did not make an order about the scale of costs in your case, the units are assessed as scale B, which is \$110.00 per unit
- **Minimum and maximum units:** For the items that have a minimum and maximum number of units that can be claimed, select a number of units that you feel is appropriate in light of the amount of time that would ordinarily be spent on the activity
- **Flat rates:** Some items are set at a flat rate (that is, they are assigned a specific number of units). The units reflect a full day's work. If the activity took a half day or less, the units should be divided in half. If the activity took more than a day, the units should be multiplied by the number of days it took to complete the activity
- **Taxes:** You can add tax to your tariff costs if you retained a lawyer during the action and had to pay tax on the lawyer's legal fees



### Find the Form

**Form 62** Bill of Costs



### Read the Rules

**Appendix B of the Supreme Court Rules** Costs

## Calculating Disbursements

In addition to the items under the tariff, you may claim for your disbursements (out-of-pocket expenses). Generally, this includes things like court filing fees, photocopying, faxes, long-distance telephone calls, amounts paid to experts for expert reports or testimony in court, witness fees, and postage. You should prepare an itemized list of your disbursements, with a total.

You may need to prove these claims, so keep your receipts. If you cannot find receipts, look for credit card statements, bank statements, or other evidence of the expenses.

## Costs in Fast Track Litigation

Fast-track litigation restricts the number of costs you can claim after trial. This means that even if you win, you will only get a very limited amount of money for costs, not including disbursements:

- If the trial is one day or less, you can claim \$8,000 in costs
- If the trial is 2 days or less, but more than one day, you can claim \$9,500 in costs;
- If the trial is more than 2 days, you can claim \$11,000 in costs.
- The court can order an increased amount of costs if there are special circumstances. For example, courts may order an increased amount where

there has been an offer to settle for more than the final award (**Rule 15-1(16)**). This does not happen in every such case, however, and will depend on factors like the timing of the offer, the difference between the amount and terms of the offer and the result at trial, and whether the trial was heard within the three-day time frame. See **Fast Track Litigation**

## Send Bill of Costs to the Other Party

Once you have a total of the disbursements and the amount claimed for the tariff items, you should send your bill of costs to the opposing party who has been ordered to pay your costs. Ask the other party to state whether they agree with the amounts you have claimed or, if not, which items or disbursements are in dispute.

The other party may agree to pay the costs that you have claimed or an amount that you agree is acceptable. They might also ask to see your receipts for the disbursements you have claimed. If the other party does not agree to pay the costs, you will need to make an appointment to have your costs assessed by the registrar.

## Assessment of Costs

You may have your costs assessed (reviewed and calculated) by a Registrar of the Supreme Court. This is also known as having your bill of costs “taxed”.

This means that you and the other party will go to a hearing and go through the bill of costs with the Registrar. At the end of the assessment the Registrar will sign a certificate of costs (**Form 64**) that you can file in the court registry and enforce as if it were a judgment.



### Find the Form

**Form 64** Certificate of Costs

## Getting a Hearing to Assess Your Costs

You can make an appointment for a hearing by calling the court registry where the action was started and asking the Supreme Court scheduler for a date for an assessment of costs. As a courtesy to the opposing party, you should set the hearing date at a time when the opposing party is available. If you do not, the opposing party may apply for an adjournment to a time when they are available.

When you call the registry to set the date for the assessment of costs, you will need to know the name of your action and the Supreme Court file number. After the registry has given you a date for the assessment of costs, file an appointment in **Form 49** of the Supreme Court Rules (which must attach your bills of costs in **Form 62**) at the court registry to confirm the date.



### Find the Form

**Form 49** Appointment

File the original appointment (with bill of costs attached) with the court, plus one copy for yourself and the party who has been ordered to pay your costs.

A filed copy of the appointment and any affidavits relating to the items must be served on the other party at least five days before the date scheduled for the assessment (**Rule 14-1(21)**).



### Read the Rules

**Rule 14-1(21)** Appointment to review a bill

## Preparing for the Assessment Hearing

If the party required to pay costs disagrees with any disbursements or items you have claimed, you should prepare an affidavit setting out the basis for your claim. See **Affidavits**. For disbursements that are in dispute, attach a copy of the invoice or bill, and a receipt showing that you have paid for them.

Take these documents to the assessment hearing:

- The entered order awarding you your costs (from a chambers application or trial)
- A copy of the appointment and your bill of costs
- A copy of your affidavit
- A certificate of costs (**Form 64**), with the name of the case filled in for the registrar to sign at the completion of the hearing
- Receipts in support of all your disbursements
- Copies of any documents for which you are making a claim on your bills of costs, such as the notice of civil claim, response to a civil claim, list of documents, notices to admit, medical expenses, discovery transcripts, and interrogatories.

## The Assessment Hearing

You should stand when the registrar enters or leaves the hearing room. When you speak to the registrar, they are addressed as Registrar. The party claiming costs must prove that they are entitled to the costs and that the costs are reasonable.

The party claiming costs must prove:

- **Entitlement to claim costs:** Such as the entered order awarding the costs
- **Disputed disbursements:** Bring receipts showing that you paid the disbursements and be prepared to show that they were reasonable and necessary expenses
- **Disputed tariff items:** You must show that you did the listed activities. For items that are set at a flat rate, you should prove the length of the activity. For example, an examination for a discovery transcript often shows the amount of time that the discovery took. For items that have a minimum or maximum value that can be claimed, you must explain the work that you did in order to justify the number of units that you claimed

The registrar will make a decision about the number of costs to which you are entitled. You should provide the registrar with a certificate of costs (**Form 64**) for their signature at the conclusion of the hearing. File the signed certificate of costs in the court registry. A filing fee is required. For more information on what to expect and how to act in Court, see [At Court](#).



## Responding to an Assessment of Costs

You can object to the other party's claim for costs if:

- The court has not ordered them
- The case has not concluded yet, and the costs were not ordered payable "forthwith, or
- You disagree with any claimed items or disbursements

Prior to the assessment hearing, you should request, in writing, copies of the receipts for any disbursements that you believe are unreasonable or unnecessary. You may also negotiate with the opposing party to settle the number of costs. In other words, you can agree on an amount that you are willing to pay for costs. In that case, you may be asked to sign a consent certificate of costs, which means that you are agreeing to pay the amount set out in the consent certificate. When the consent certificate is filed with the court, the other party may enforce the certificate as if it were an order of the court if you don't pay.

At the assessment of costs hearing, the registrar will ask you what items you are disputing on the bills of costs. You should be prepared to explain why you disagree with the other party's claim for costs.