

Costs in the Supreme Court

This guidebook provides an overview of the procedure for assessing costs in a Supreme Court action. Costs are usually awarded to the party who is successful at trial. They are intended to be a partial indemnity for legal fees and time spent, plus a reimbursement of proper out-of-pocket expenses that the successful party incurred in starting or defending the lawsuit. 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.

You will also find detailed information about costs in two books that can be found in the courthouse library: *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. You should also consider talking to a lawyer about the issue of costs.

What are costs?

The court may award costs to compensate, at least in part, the successful party for disbursements (out-of-pocket expenses) paid during the action, plus time spent, or legal fees relating to the action. They are called “party and party” costs. Therefore, if you are a party to a Supreme Court action and are successful on a chambers application or at trial, you may request that the other party pay your costs.

The general rule is that the amount of costs is based on the tariff set out in Appendix B of the Supreme Court Rules, plus disbursements. 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.

Getting an order for costs

You must make a claim for costs in your notice of civil claim, or in your notice of application, when you make an application in chambers. If you are defending an action or application, you must make a claim for costs in your response or in your response to an application in chambers. Although you have already made a request for costs in your pleadings or chambers application, you should ask for costs as soon as the judge or master hearing the application or the trial rules in your favour.

When does the court assess costs?

Usually all costs are assessed at the end of your case, even if you have been successful on a chambers application before trial. In other words, the costs from the chambers application will not be assessed until the end of the action unless the court orders that the costs are to be paid “forthwith” (immediately).

This Guidebook provides general information about civil, non-family claims in the Supreme Court of BC. It does not explain the law. Legal advice must come from a lawyer, who can tell you why you should do something in your lawsuit or whether you should take certain actions. Anyone else, such as court registry staff, non-lawyer advocates, other helpers, and this guidebook can only give you legal information about how to do something, such as following certain court procedures.

Standards are in effect for the filing of all Supreme Court civil and Supreme Court family documents, except divorce and probate. When you submit your completed documents, registry staff will check to make sure they meet the minimum standards before accepting them for filing. It is your responsibility to include all other information required by the court and ensure it is correct.

For information about how to get help with your case, see the last page of this document.

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; or
- ✦ 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 (see the following discussion). Instructions on how to make an appointment with the registrar are explained later in this guidebook.

Entering a court order

The party who is successful in a chambers application or at trial is responsible for:

- ✦ drafting the order of the court;
- ✦ sending it to the other parties for their signatures. (Note that by signing the order, you are agreeing that the order accurately sets out the terms of the order made by the judge or master. It does not mean that you necessarily agree with the order that was made against you. See the guidebook, *Drafting Court Orders.*); and
- ✦ submitting the order to the court so that it can be entered.

An order is “entered” when it has been signed by the parties and processed and stamped by the court registry. The order must be in the form set out in the Supreme Court Rules (see Rule 13-1(3) and Forms 34, 48, and 35). You can find more information about drafting court orders in the guidebook, *Drafting Court Orders.*

Once an order is entered, a copy will be given to the party who submitted it for entry. That party is responsible for providing a copy of the entered order to the other parties.

Preparing a bill of costs

If you are entitled to your costs of the action as described above, you must prepare a bill of costs using Form 62 of the Supreme Court Rules. Appendix B of the Rules also gives you important information about preparing your bill of costs.

Tips for preparing your bill of costs

Appendix B to the Supreme Court Rules gives you information about completing your bill of costs. The following tips will help you prepare your own bill of costs:

- ✦ Use Form 62.
- ✦ Review the list of tariff items in Appendix B of the Rules. It tells you the categories and items that you can include in your bill of costs.
- ✦ For each item number, fill in amount 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.
- ✦ 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.

- ✦ When the judge or master made the order for costs, he or she 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.
- ✦ 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.
- ✦ 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.
- ✦ 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.

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’s reports or testimony in court, witness fees, and postage. You should prepare an itemized list of your disbursements, with a total.

Costs in fast track litigation

Fast track litigation restricts the amount 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.

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 by the registrar

You may have your costs assessed (reviewed and calculated) by a registrar of the Supreme Court. 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. A sample Form 64 is set out at the end of this guidebook.

Getting a hearing to assess your costs

You can make an appointment for a hearing with 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 that is more convenient.

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.

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)).

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. 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; and
- copies of any documents for which you are making a claim on your bill of costs, such as the notice of civil claim, response to 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, he or she is addressed as Mr. Registrar or Madam Registrar.

The party claiming costs must prove that he or she is 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; and
- disputed tariff items. You must show that you performed 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 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 amount of units that you claimed.

The registrar will make a decision about the amount of costs to which you are entitled. You should provide the registrar with a certificate of costs (Form 64) for his or her signature at the conclusion of the hearing. File the signed certificate of costs in the court registry. A filing fee is required.

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 amount 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.

Get Help With Your Case

Before you start your claim, you should think about resolving your case without going to court (see the guidebook, *Alternatives to Going to Court*). If you do not have a lawyer, you will have to learn about the court system, the law that relates to your case, what you and the other side need to prove, and the possible legal arguments for your case. You will also need to know about the court rules and the court forms that must be used when you bring a dispute to court.

Legal Information Online

All *Guidebooks for Representing Yourself in BC Supreme Court Civil Matters*, along with additional information, videos and resources for Supreme Court family and civil cases are available on the Justice Education Society website: www.SupremeCourtBC.ca.

Clicklaw gives you information about many areas of law and free services to help you solve your legal problems: www.Clicklaw.bc.ca.

The Supreme Court of BC's website has information for people who are representing themselves in court: www.Courts.gov.bc.ca/supreme_court/self-represented_litigants/

Legal information services

The Vancouver Justice Access Centre's, Self-help and Information Services includes legal information, education and referral services for Supreme Court family and civil cases. It is located at 290 - 800 Hornby Street in Vancouver (open Monday to Friday): www.SupremeCourtSelfHelp.bc.ca.

For information about other Justice Access Centre services in Vancouver and Nanaimo, see: www.JusticeAccessCentre.bc.ca.

Legal advice

You may be eligible for free (pro bono) legal advice. Access ProBono Society of BC's website gives you information about the legal assistance that is available to you: www.AccessProBono.ca.

Legislation

BC Legislation (statutes), regulations, and Rules of Court can be found at: www.BCLaws.ca.

Court rules and forms

Supreme Court forms can be completed in 3 ways:

1. Completed online and filed at: www.CourtServicesOnline.gov.bc.ca
2. Completed online, printed and filed at the registry
3. Printed, completed manually and filed at the registry

Court forms that can be completed online are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm

Printable court forms are available at: www.SupremeCourtBC.ca/civil/forms

Common legal terms

You can find out the meaning of legal terms at: www.SupremeCourtBC.ca/glossary

Family law

For information about family law claims, see: www.FamilyLaw.LSS.bc.ca.

This guidebook is part of a series:

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NOTES

Form 49

(Rules 13-1 (12), 14-1 (21), (24) and (25) and 18-1 (6))

1

[Style of Proceeding]

APPOINTMENT

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

I appoint:

Time:

Date:[dd/mmm/yyyy].....

Place:

as the time and place for the: [Check the correct box(es) and complete any required information.]

[] assessment of the bill of costs of[party(ies)].....

[] review of the bill of[name of lawyer or law firm].....

[] examination of the agreement between[lawyer]..... and[client].....

[] settlement of the terms of the order of[Mr. Justice, Madam Justice or Master]..... made
.....[dd/mmm/yyyy].....

[] passing of accounts of[executor, administrator, receiver or other].....

[] reference under the *Court Order Enforcement Act*

[] reference ordered by.....[Mr. Justice, Madam Justice or Master].....

[] assessment of sheriff's fee

[] other

Attached to this Appointment[is/are]..... the [] bill(s) of costs [] lawyer's bill(s) [] sheriff's bill(s) []
agreement(s) [] order(s) that[is/are]..... the subject of this Appointment.

Date:[dd/mmm/yyyy].....
Master, Registrar or Special Referee

2

To:[name].....

TAKE NOTICE of the above appointment.

The person seeking appointment believes the matter for which this appointment was sought:

[Check all of the following boxes that are correct and complete the required information.]

[] is [] is not of a time consuming or contentious nature

[] will require approximately[time estimate]..... to complete

Date:[dd/mmm/yyyy].....

Signature of [] person seeking appointment []
lawyer for person seeking appointment

.....[type or print name].....

Address and telephone number of person seeking appointment or lawyer for person seeking appointment:

Name:

Address:

.....

Telephone:

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

File this form in the court registry and serve it on the other parties specified in the rule you are applying under.

1. The style of proceeding is the part at the top of the document that identifies your case within the court system. You will use the style of proceeding on every one of your documents, whether they are filed in the court registry or not. Insert the court number, the location of the registry (e.g., Vancouver), as it is part of your style of proceeding. Write in the names of the plaintiff and defendant in capital letters (not addresses) in the style of proceeding.
 2. Put the name of the party that you would like to attend the appointment.
-

NOTES

1

Form 62

(Rule 14-1 (20))

2

[Style of Proceeding]

BILL OF COSTS

3

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

This is the bill of costs of:[name(s)].....

Tariff scale Unit value \$.....

TARIFF ITEMS

Item #	Description	# of Units Claimed	# of Units Allowed	
.....	
.....	
.....	
	Total number of units:	.....	.....
	Multiply by unit value:	.....	.....
	Subtotal:	\$.....	\$.....	
	Tax imposed under the <i>Social Service Tax Act</i> :	\$.....	\$.....	
	Tax imposed under Part IX [Goods and Services Tax] of the <i>Excise Tax Act</i> (Canada):	\$.....	\$.....	
	Total:	\$.....	\$.....	\$.....

4

DISBURSEMENTS

Description	Claimed	Allowed	
.....	\$.....	\$.....	
.....	\$.....	\$.....	
.....	\$.....	\$.....	
.....	\$.....	\$.....	
Tax imposed under the <i>Social Service Tax Act</i> :	\$.....	\$.....	
Tax imposed under Part IX [Goods and Services Tax] of the <i>Excise Tax Act</i> (Canada):	\$.....	\$.....	
Total:	\$.....	\$.....	\$.....

5

TOTAL ALLOWED

\$..... \$.....

Date:[dd/mmm/yyyy].....

.....

Signature of assessing officer

NOTES

1

Completed Sample: Form 62

(Rule 14-1 (20))

2

[Style of Proceeding]

BILL OF COSTS

3

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

This is the bill of costs of:*Robert Smith*.....

Tariff scale Unit value \$...*110*.....

TARIFF ITEMS

Item #	Description	# of Units Claimed	# of Units Allowed
...1...	<i>Correspondence before proceeding start</i>	.....<i>5</i>.....	.....
...6...	<i>Preparing for trial</i>.....	.....<i>5</i>.....	.....
...34...	<i>Preparing notice of civil claim</i>.....	.....<i>3</i>.....	.....
	Total number of units:	.....<i>13</i>.....	.....
	Multiply by unit value:	.....<i>110</i>.....	.....
	Subtotal:	\$... <i>1430</i>	\$.....
	Tax imposed under the <i>Social Service Tax Act</i> :	\$.....	\$.....
4	Tax imposed under Part IX [Goods and Services Tax] of the <i>Excise Tax Act</i> (Canada):	\$.....	\$.....
	Total:	\$ <i>1601.60</i>	\$..... \$.....

DISBURSEMENTS

Description	Claimed	Allowed
<i>Court filing fee</i>	\$... <i>200</i>	\$.....
<i>Notice of application</i>	\$... <i>80</i>	\$.....
<i>Photocopy 87 pages</i>	\$... <i>87</i>	\$.....
.....	\$.....	\$.....
Tax imposed under the <i>Social Service Tax Act</i> :	\$.....	\$.....
Tax imposed under Part IX [Goods and Services Tax] of the <i>Excise Tax Act</i> (Canada):	\$.....	\$.....
Total:	\$.....	\$..... \$.....

5

TOTAL ALLOWED

\$..... \$.....

Date:*22/Aug/2009*.....

.....
Signature of assessing officer

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

This form is normally attached to an appointment to have the costs assessed; the appointment must be served.

1. This is a sample bill of costs, prepared using Scale B, which allows units at \$110 each. It will give you some guidance as to how to complete your own bill of costs.
 2. The style of proceeding is the part at the top of the document that identifies your case within the court system. You will use the style of proceeding on every one of your documents, whether they are filed in the court registry or not. Insert the court number, the location of the registry (e.g., Vancouver), as it is part of your style of proceeding. Write in the names of the plaintiff and defendant in capital letters (not addresses) in the style of proceeding.
 3. Put your name here if it is your bill of costs.
 4. If the cost was incurred after July 1, 2010, calculate the amount of HST at 12% and modify the form accordingly
 5. Same as note 4.
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NOTES

Form 64

(Rule 14-1 (27))

[Style of Proceeding]

CERTIFICATE OF COSTS

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

1

I CERTIFY

[] by consent of the parties

[] following assessment

that on[dd/mmm/yyyy]....., the costs of[party(ies)]..... have been allowed against[party(ies)]..... in the amount of \$..... .

Consented to:

[If this certificate is filed by consent, a signature line in the following form must be completed and signed by or for each consenting party.]

..... Signature of [] party [] lawyer for[name of party(ies)].....

.....[type or print name].....

..... Signature of [] party [] lawyer for[name of party(ies)].....

.....[type or print name].....

Date:[dd/mmm/yyyy].....

Registrar

3

[This certificate may be set out in a separate document or may be endorsed on the bill of costs.]

NOTES

Court forms are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm.

They can be completed online and filed electronically using Court Services Online:
www.courtservicesonline.gov.bc.ca.

They can also be printed and completed manually; or completed online, printed and filed.

Submit to the court registry for entry; once entered it is returned to the filing party, who send it to the other party.

1. The style of proceeding is the part at the top of the document that identifies your case within the court system. You will use the style of proceeding on every one of your documents, whether they are filed in the court registry or not. Insert the court number, the location of the registry (e.g., Vancouver), as it is part of your style of proceeding. Write in the names of the plaintiff and defendant in capital letters (not addresses) in the style of proceeding.
 2. The other party will have consented to your certificate of costs or the registrar will have made an order about it. Check off the appropriate box.
 3. Note that you can add this certificate to your bill of costs so the registrar can sign it after the hearing, or you can prepare it as a separate document.
-