

RULE 58
ASSESSMENT OF COSTS

GENERAL

58.01 Where a rule or order provides that a party is entitled to the costs of all or part of a proceeding and the costs have not been fixed by the court, they shall be assessed in accordance with Rules 58.02 to 58.10.

WHO MAY ASSESS COSTS

General Rule

58.02 Costs shall be assessed by the Prothonotary.

ASSESSMENT AT INSTANCE OF PARTY ENTITLED

By Filing Bill of Costs and Obtaining Appointment

- 58.03** (1) A party entitled to costs may obtain a notice of appointment for assessment of costs (Form 58A) from the Prothonotary on filing a bill of costs and a copy of the order or other document giving rise to the party's entitlement to costs with the Prothonotary.
- (2) The notice and the bill of costs shall be served on every party interested in the assessment at least seven days before the date fixed for the assessment.

ASSESSMENT AT INSTANCE OF PARTY LIABLE

By Obtaining Appointment and Serving Notice

- 58.04** (1) Where a party entitled to costs fails or refuses to file or serve a bill of costs for assessment within a reasonable time, any party liable to pay the costs may obtain a notice to deliver a bill of costs for assessment (Form 58B) from the Prothonotary.
- (2) The notice shall be served on every party interested in the assessment at least twenty-one days before the date fixed for the assessment.

Delivery of Bill of Costs

- (3) On being served with the notice, the person required to deliver a bill of costs shall file and serve a copy of the bill on every party interested in the assessment at least seven days before the date fixed for the assessment.

Failure to Deliver Bill of Costs

- (4) Where a party required to deliver a bill of costs for assessment fails to do so at the time set out in the notice and thereby

prejudices another party, the Prothonotary may fix the costs of the defaulting party at an appropriate sum in order to prevent further prejudice to the other party.

ASSESSMENT IN ACCORDANCE WITH TARIFFS

Generally

- 58.05** (1) If costs are to be assessed, the Prothonotary shall assess and allow,
- (a) lawyers' fees and disbursements in accordance with subrule 57.01(1) and the Tariffs; and
 - (b) disbursements for fees paid to the court, a court transcriber, or a sheriff.

Students-at-Law and Law Clerks

- (2) No other fees, disbursements or charges shall be assessed or allowed unless the court orders otherwise.

Disbursements

- (3) No disbursements other than fees paid to the court shall be assessed or allowed unless it is established by affidavit or by the lawyer appearing on the assessment that the disbursement was made or that the party is liable for it.

Directions

- (4) The Prothonotary may direct production of books and documents and give directions for the conduct of an assessment.

Set Off of Costs

- (5) Where parties are liable to pay costs to each other, the Prothonotary may adjust the costs by way of set off.

Costs of Assessment

- (6) The Prothonotary may, in his or her discretion, award or refuse the costs of an assessment to either party, and fix those costs.

FACTORS TO BE CONSIDERED ON ASSESSMENT

- 58.06** (1) In assessing costs the Prothonotary may consider,
- (a) the amount involved in the proceeding;
 - (b) the complexity of the proceeding;
 - (c) the importance of the issues;
 - (d) the duration of the hearing;

- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
 - (f) whether any step in the proceeding was,
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
 - (g) a party's denial of or refusal to admit anything that should have been admitted; and
 - (h) any other matter relevant to the assessment of costs.
- (2) In assessing costs the Prothonotary is bound by the court's direction or refusal to make a direction under Rule 57.02, but is not bound where the court declines to make a direction and leaves the matter to the Prothonotary's discretion.

COSTS OF ABANDONED PROCEEDING

58.07 The costs of a motion, application, action or appeal that is abandoned or deemed to be abandoned may be assessed on filing in the office of the Prothonotary,

- (a) the notice of motion or application served, together with an affidavit that the notice was not filed within the prescribed time or that the moving party or applicant did not appear at the hearing; or
- (b) the notice of abandonment served; or
- (c) a copy of the order dismissing the action or appeal as abandoned.

COSTS OF PARTICULAR PROCEEDINGS

Passing of Accounts

58.08 (1) The costs of passing the accounts of a trustee, committee, guardian, attorney under a power of attorney or other representative having similar duties shall be fixed in accordance with the schedule to the *Probate Act*, subject to increase where the tariff appears to be inadequate.

Costs out of Fund or Estate

(2) Where costs are to be paid out of a fund or estate, the Prothonotary may direct what parties are to attend on the assessment and may disallow the costs of the assessment of any party whose attendance is unnecessary because the interest of

the party in the fund or estate is small, remote or sufficiently protected by other interested parties.

CERTIFICATE OF ASSESSMENT

58.09 On the assessment of costs, the Prothonotary shall set out in a certificate of assessment of costs (Form 58C) the amount of costs assessed and allowed.

OBJECTIONS TO ASSESSMENT

- 58.10** (1) On request, the Prothonotary shall withhold the certificate for seven days or such other time as he or she directs, in order to allow a party who is dissatisfied with the decision of the Prothonotary to serve objections on every other interested party and file them with the Prothonotary specifying concisely the grounds for the objections.
- (2) A party on whom objections have been served may, within seven days after service or such other time as the Prothonotary directs, serve a reply to the objections on every other interested party and file it with the Prothonotary.
- (3) The Prothonotary shall then reconsider and review the assessment in view of the objections and reply and may receive further evidence in respect of the objections, and the Prothonotary shall decide on the objections and complete the certificate accordingly.
- (4) The Prothonotary may, and if requested shall, state in writing the reasons for his or her decision on the objections.

APPLICATION TO HAVE A LAWYER'S ACCOUNT ASSESSED

- 58.11** (1) An application for assessment of a lawyer's account to his or her client shall be commenced by notice of application in Form 14E.
- (2) No notice of application under this subrule shall be issued unless brought within 12 months from the date of the rendering of the account.
- (3) The application may be made by either the client or the lawyer.
- (4) The Prothonotary has jurisdiction to hear the application under this Rule.
- (5) An application shall be accompanied by either Form 58C or a completed affidavit which should include relevant facts, including:
- (i) a copy of the lawyer's account(s);

- (ii) certification that disbursements were made;
 - (iii) a copy of any Retainer Agreement and/or Engagement Letter;
 - (iv) a copy of any document routinely used to outline fees payable by a client;
 - (v) any estimate of fees and disbursements;
 - (vi) any discussion about what, if anything, was required or expected to be done or provided by the client and the lawyer and by other persons not associated with the lawyer;
 - (vii) any discussion of a timetable of the conduct of the matter with appropriate milestones identified, if appropriate;
 - (viii) any discussion of the method and frequency of communications between the parties;
 - (ix) any discussion of ownership of the work product and the client's right of access;
 - (x) any discussion of the basis on which fees will be set in regard to the payment of costs outside services and disbursements;
 - (xi) any discussion of the frequency of billing of fees and disbursements and time of payment;
 - (xii) any discussion of the charging of interest on accounts more than 30 days overdue.
- (6) A hearing date must be obtained from the Registrar before the notice of application is issued.
- (7) The notice of application shall be served at least ten clear days before the date of the hearing, except where the notice is served outside Prince Edward Island, in which case it shall be served at least 20 clear days before the date of the hearing.
- (8) Proof of service of the notice of application and affidavit or Form 58C must be filed at least three clear days before the hearing date.
- (9) A respondent who has been served with a notice of application shall serve the applicant, a notice of appearance in Form 38A

and a completed Form 58C, or an affidavit described in subrule (5), at least three clear days before the date of the hearing.

- (10) Proof of service of the respondent's notice of appearance and the affidavit or Form 58C must be filed at least one clear day before the date of the hearing.
- (11) In assessing costs, the Prothonotary may consider:
 - (a) the amount involved in the matter or proceeding;
 - (b) the complexity of the matter or proceeding;
 - (c) the importance of the issues;
 - (d) the duration of the hearing, if any;
 - (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the matter or proceedings;
 - (f) whether any step in the matter or proceeding was,
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
- (12) On the hearing of the application, the Prothonotary may:
 - (a) decide any issue of fact or law;
 - (b) grant the relief sought or dismiss or adjourn the application, in whole or in part and with or without terms;
 - (c) impose sanctions for the failure of a party, to attend, including
 - (i) the award of costs;
 - (ii) dismissal of part or all of the application; and
 - (iii) noting the respondent in default.
- (13) The Prothonotary shall provide brief written reasons for his or her decision.

APPEAL FROM ASSESSMENT

58.12 The time for and the procedure on an appeal under section 10 of the *Judicature Act* from a certificate of the Prothonotary on an issue in respect of which an objection was served is governed by Rule 62.

Lewis v. Prince Edward Island (1993), 112 Nfld. & P.E.I.R. 111 (P.E.I.S.C.T.D.)

The Court will not enter into a new hearing and will not interfere with the prothonotary's assessment unless it is so unreasonable as to suggest an error in principle. The prothonotary properly considered and applied all the factors to be considered on an assessment. The prothonotary has the jurisdiction to include GST in a taxation award unless the judge who ordered costs gave some other direction.

Tariff A

TARIFF A

Part 1 B FEES

1. The fee for any step in a proceeding authorized by the Rules of Civil Procedure and the counsel fee for motions, applications, trials, references and appeals shall be determined in accordance with section 60(1) of the *Judicature Act*, R.S.P.E.I. Cap. J-2.1, and the factors set out in subrule 57.01(1).
2. Where students-at-law or law clerks have provided services of a nature that the Law Society of Prince Edward Island authorizes them to provide, fees for those services may be allowed.

PART II - DISBURSEMENTS

Item	Amount
3. Attendance money actually paid to a witness who is entitled to attendance money, to be calculated as follows:	
1. Attendance allowance for each day of necessary attendance	\$ 50
2. Travel allowance, where the hearing or examination is held,	
(a) in a city or town in which the witness resides, \$3.00 for each day of necessary attendance;	
(b) where the witness resides outside the town or city where the hearing or examination is held, 24cts a kilometre each way between his or her residence and the place of hearing or examination;	
(c) where the witness resides outside the Province of Prince Edward Island and is required to attend a hearing or examination in Prince Edward Island, the minimum return airfare plus 24cts a kilometre each way from his or her residence to the airport and from the airport to the place of hearing or examination.	
3. Overnight accommodation and meal allowance, where the witness resides elsewhere than the place of hearing or examination and is required to remain overnight, for each overnight stay.....	\$ 75
4. Reasonable fees or expenses actually paid to a court, court reporter, official examiner or sheriff.	
5. For service or attempted service of a document,	

Tariff A

- (a) in Prince Edward Island, the amount actually paid, not exceeding the fee payable to a sheriff;
 - (b) outside Prince Edward Island, a reasonable amount;
 - (c) that was ordered to be served by publication, a reasonable amount.
6. For an examination and transcript of evidence taken on the examination, the amount actually paid, providing it was a reasonable sum.
 7. For the preparation of a plan, model, videotape, film or photograph reasonably necessary for the conduct of the proceeding, a reasonable amount.
 8. For experts' reports that were supplied to the other parties as required by the Evidence Act or these rules and that were reasonably necessary for the conduct of the proceeding, a reasonable amount.
 9. The cost of the investigation and report of the Official Guardian.
 10. For an expert who gives opinion evidence at the hearing or whose attendance was reasonably necessary at the hearing, a reasonable amount not exceeding \$350 a day, subject to increase in the discretion of the Prothonotary.
 11. For an interpreter for services at the hearing or on an examination, a reasonable amount not exceeding \$100 a day, subject to increase in the discretion of the Prothonotary.
 - 11.1. Where ordered by the presiding judge, for translation into English or French of a document that has been filed, a reasonable amount.
 12. Where ordered by the presiding judge or officer, such travelling and accommodation expenses incurred by a party as, in the discretion of the Prothonotary, appear reasonable.
 13. For copies of any documents or authorities prepared for or by a party for the use of the court and supplied to the opposite party, a reasonable amount.
 14. For copies of records, appeal books and factums, a reasonable amount.
 15. The cost of certified copies of documents such as orders, birth, marriage and death certificates, abstracts of title, deeds, mortgages and other registered documents where reasonably necessary for the conduct of the proceeding.
 16. The cost of transcripts of proceedings of courts or tribunals,
 - (a) where required by the court or the rules; or
 - (b) where reasonably necessary for the conduct of the proceeding.
 17. Where ordered by the presiding judge, for any other disbursement reasonably necessary for the conduct of the proceeding, a reasonable amount in the discretion of the Prothonotary.
 18. Any applicable taxes actually paid or payable on the lawyer's fees and disbursements allowable under Rule 58.05.

Tariff B

TARIFF B Lawyers' Fees and Disbursements Allowable Under Rule 58.05

Fees Payable to Witness

1. Each half day of necessary attendance \$ 25
2. Mileage to attend courts and return 25¢/km.
3. Medical practitioner, attorney, engineer, chartered or certified public accountant, surveyor, architect, veterinarian or other professional man or woman, other than parties to the cause, when called upon to give evidence for each half day of necessary attendance \$ 75
4. Witness attending court from a place beyond the province, actual travelling expenses paid to attend court and return together with living expenses if witness is required to remain in the province over night.
5. An allowance may be made to an interpreter not exceeding the fee payable to a professional witness.

Jury Fee in Civil Cases

1. As per the *Court Fees Act Regulations*.

Filing Fees Payable in the Supreme Court

1. As per the *Court Fees Act Regulations*.