

**Practice Direction 47**  
**(Effective September 1, 2023)**

**COSTS GUIDE**

The purpose of this Costs Guide is to provide guidance to the profession in matters involved in fixing costs of proceedings and steps in proceedings by courts (judges) under the **Rules of Civil Procedure**.

Costs of proceedings is governed by s.60(1) of the **Judicature Act** and Rule 57 of the **Rules of Civil Procedure**. The **Judicature Act** states:

**60. Costs**

*(1) Unless otherwise provided by any Act, the costs of and incidental to a proceeding authorized to be taken in a court are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.*

The **Rules of Civil Procedure** set out general principles applicable to all proceedings:

**INTERPRETATION**

***General Principle***

**1.04** (1) *These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.*

***Proportionality***

(2) *In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.*

**Rule 57** sets out specific directions for fixing costs of proceedings by a court or judge:

- Rule 57.01(1) provides direction for the court (judge) in making decisions at two stages:
  - 1) exercising discretion under s.60 of the **Judicature Act** whether to award costs in the proceeding; and

- 2) fixing the amount of costs.
- When the court exercises its discretion to award costs, the usual practice is for the court to fix the amount of costs (Rule 57.01(3)) and Rule 57.03(1)(a)). In an exceptional case, the court may refer costs for assessment by the Prothonotary under Rule 58 (Rule 57.02).
  - Before fixing costs, the court gives lawyers and parties opportunity to make submissions that address the Rule 57.01 “*Factors of Discretion*” as applicable by filing a Submission on Costs(Rule 57.01(5)), either before or after a hearing.
  - When fixing costs, the court (judge) considers the governing provisions of the ***Judicature Act, Rules of Civil Procedure***, including all 57.01 “*Factors in Discretion*” and submissions made in accordance with Rule 57 and the Costs Guide.
  - The court (judge) employs a summary process for fixing costs. The judge devises and adopts the simplest, least expensive and most expeditious process, after receiving oral submissions, or written submissions without attendance of the parties (Rule 57.01(7)).
  - Fixing of costs by a court under Rule 57 is different and distinct from assessment of costs by the Prothonotary under Rule 58.

**Guidance on Costs Submissions:**

- The Submission on Costs should be brief and should consider any Rule 57.01(1) factors which apply.
- The purpose of maximum rates: A court fixing costs will usually consider the value of time reasonably expended on the proceeding. The judge will normally view the listed hourly rates as maximum rates, in the context of considering the “*Factors in Discretion*” in Rule 57.01(1).
- The maximum rate for each category of lawyer experience is intended to apply only to (i) complicated matters, and (ii) a lawyer more experienced in the kind of proceeding in issue. Lawyers should utilize rates within these categories that are appropriate to the

proceeding or step in the proceeding after due consideration of all the “*Factors in Discretion.*” A court has discretion to exceed the suggested maximum rate in exceptional circumstances as is just.

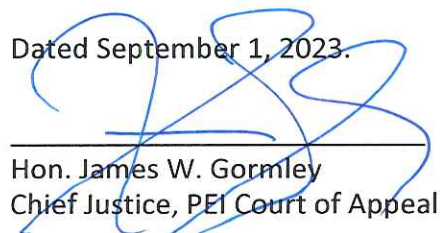
**Rate Table**

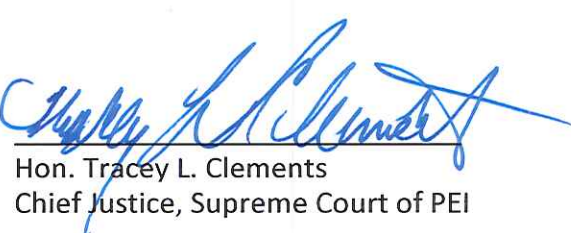
| Lawyer years of experience       | Maximum hourly rate |                       |
|----------------------------------|---------------------|-----------------------|
|                                  | Partial indemnity   | Substantial indemnity |
| Articled clerk                   | \$70                | \$105                 |
| Lawyer – less than 5 years       | \$120               | \$180                 |
| Lawyer 5+ -- less than 10 years  | \$160               | \$240                 |
| Lawyer 10+ -- less than 20 years | \$190               | \$285                 |
| Lawyer 20+ years                 | \$220               | \$330.                |

- A court may allow costs of a proceeding for all steps, attendances and documents reasonably required to carry out or respond to the proceeding or step in the proceeding for which costs are awarded and are being fixed.
- Where an articled clerk has provided services of a kind permitted by the Law Society, a court may allow costs for those services.
- A court may determine disbursements based on the Rule 57 Tariff and/or reasonableness.

This Costs Guide was authorized by the Chief Justices and endorsed by the judges of the Supreme Court and Court of Appeal. It was approved by the Rules Committee on November 7, 2022.

Dated September 1, 2023.

  
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Hon. James W. Gormley  
Chief Justice, PEI Court of Appeal

  
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Hon. Tracey L. Clements  
Chief Justice, Supreme Court of PEI