

RULE 60 – COSTS

How costs assessed generally

- (1) Where costs are payable to a party under these rules or by order
 - (a) by another party,
 - (b) out of a fund of other parties, or
 - (c) out of a fund in which the party whose costs are being assessed has a common interest with other persons,they shall be assessed as party and party costs under Appendix B, unless the court orders that they be assessed as special costs.

Costs to be reasonable

- (2) On an assessment of party and party costs, the clerk shall allow those fees under Appendix B that were proper or reasonably necessary to conduct the proceeding.

Review of an assessment

- (3) Where the court orders that costs be assessed as special costs, the clerk shall allow those fees that the clerk considers were proper or reasonably necessary to conduct the proceeding to which the fees relate, and, in exercising that discretion, the clerk shall consider all of the circumstances, including
 - (a) the complexity of the proceeding and the difficulty or the novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the amount involved in the proceeding,
 - (d) the time reasonably expended in conducting the proceeding,
 - (e) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the proceeding,
 - (f) the importance of the proceeding to the party whose bill is being assessed, and the result obtained, and
 - (g) the benefit to the party whose bill is being assessed of the services rendered by the lawyer.

Expenses and disbursements

- (4) In addition to determining the fees that are to be allowed on an assessment under subrule (1) or (3), the clerk must
 - (a) determine which expenses and disbursements have been necessarily or properly incurred in the conduct of the proceeding, and
 - (b) allow a reasonable amount for those expenses and disbursements.

Estate Administration Act

- (5) Unless the court on application otherwise orders, where costs are payable for any non-contentious business under Rule 64, those costs
 - (a) shall be assessed as special costs, and
 - (b) may be assessed without an order of the courtand subrules (3) and (4) apply.

Assessment officer

- (6) The officer before whom costs are assessed is the clerk and a judge may perform any function assigned to the clerk under this rule.

Assessment before clerk

- (7) Where the court has made an order for costs,
 - (a) any party may, at any time before the clerk issues the certificate under subrule (29), apply for directions to the judge who made the order for costs,
 - (b) the judge may direct that any item of costs, charges or disbursements be allowed or disallowed, and
 - (c) the clerk is bound by any direction given by the judge.

Tax in respect of legal services and disbursements

- (8) If tax is payable by a party in respect of legal services or disbursements, the clerk must, on an assessment under subrule (1) or (3), allow an additional amount to compensate for that tax, which additional amount must,
 - (a) if the tax is payable in respect of legal services, be determined by multiplying the percentage rate of the tax by,

(i) in the case of a judgment entered on default of appearance or of pleading, the costs allowed under Item 1 or 2, as the case may be, of Schedule 1 of Appendix B,

(ii) in the case of a writ of execution, a garnishment or an enforcement process, the costs allowed under Item 1 or 2, as the case may be, of Schedule 2 of Appendix B, or

(iii) in any other case, the monetary value of the units assessed, or

(b) if the tax is payable in respect of disbursements, be determined by multiplying the percentage rate of the tax by the monetary value of the disbursements as assessed.

Costs to follow event

- (9) Subject to subrule (12), costs of and incidental to a proceeding shall follow the event unless the court otherwise orders.

Costs in cases within small claims jurisdiction

- (10) A plaintiff who recovers a sum within the jurisdiction of the Territorial Court under the *Small Claims Court Act* is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.

Costs where party represented by an employee

- (11) A party is not disentitled to costs on the ground only that the lawyer who represented the party is an employee of the party.

Costs of applications

- (12) Unless the court hearing an application otherwise orders,

(a) the party making an application that is granted, is entitled to costs as costs in the cause, but the party opposing it is not entitled to costs as costs in the cause,

(b) the party making an application that is refused, is not entitled to costs as costs in the cause, but the party opposing it is entitled to costs as costs in the cause, and

(c) where an application made by one party and not opposed by the other is granted, the costs of the application are costs in the cause.

When costs payable

- (13) If an entitlement to costs arises during a proceeding whether as a result of an order or otherwise, those costs are payable on the conclusion of the proceeding unless the court orders otherwise.

Lump sum costs

- (14) The court may fix a lump sum as the costs of a proceeding, including a trial and an application and may
- (a) fix those costs, either inclusive or exclusive of disbursements, or
 - (b) order that the costs amount be in accordance with Schedule 3 of Appendix B and fix the scale of those costs in accordance with section 2(b), (e) and (f) of that Appendix.

Costs arising from improper act or omission

- (15) Where anything is done or omitted improperly or unnecessarily, by or on behalf of a party, the court or the clerk may order
- (a) that any costs arising from or associated with any matter related to the act or omission not be allowed to the party, or
 - (b) that the party pay the costs incurred by any other party by reason of the act or omission.

Costs of part of proceeding

- (16) The court may award costs that relate to some particular issue or part of the proceeding or may award costs except so far as they relate to some particular issue or part of the proceeding.

Costs payable from estate or property

- (17) Where it is ordered that any costs shall be paid out of an estate or property, the court may direct out of what portion of the estate or property the costs shall be paid.

Set-off of costs

- (18) Where a party entitled to receive costs is liable to pay costs to another party, the clerk may assess the costs the party is liable to pay and may adjust them by way of deduction or set-off or may delay the allowance of the costs the party is entitled to receive until the party has paid or tendered the costs the party is liable to pay.

Costs of one defendant payable by another

- (19) Where the costs of one defendant against a plaintiff ought to be paid by another defendant, the court may order payment to be made by one defendant to the other directly, or may order the plaintiff to pay the costs of the successful defendant and allow the plaintiff to include those costs as a disbursement in the costs payable to the plaintiff by the unsuccessful defendant.

Unnecessary expense after judgment

- (20) Where after pronouncement of judgment a party puts another party to unnecessary proceedings or expense, the clerk may award costs as the clerk thinks proper against the offending party.

Form of bill of costs

- (21) A bill of costs shall be in Form 68, or, if the bill of costs pertains to a judgment under Rule 17, Form 69.

Appointment to review a bill, examine an agreement or assess costs

- (22) Except as provided in subrule (27), a person who seeks a review of a lawyer's bill for costs, fees, charges or disbursements or an examination of an agreement under the *Legal Profession Act* or who seeks to have costs assessed must

(a) obtain a date for an appointment before the clerk,

(b) file an appointment in Form 28, to which is attached the bill to be reviewed, the agreement to be examined or the bill of costs to be assessed, and

(c) subject to subrule (26), at least 5 days before the date of the appointment, serve a copy of the appointment and any affidavit in support,

(i) in the case of a lawyer's bill to be reviewed, on the lawyer whose bill is to be reviewed, on the person who is charged with the bill or on the person who has agreed to indemnify the person charged, as the case may be,

(ii) in the case of an agreement to be examined, on the lawyer who is a party to the agreement to be examined, or

(iii) in the case of a bill of costs to be assessed, on the party against whom costs are to be assessed.

Place for review or examination

- (23) An appointment for review of a bill, examination of an agreement or assessment of costs must be taken out at the registry in Whitehorse.

Further particulars

- (24) The clerk may order further particulars or details of

(a) a bill under review,

(b) an agreement under examination, or

(c) a bill of costs being assessed.

Assessment of sheriff's fees

- (25) If a sheriff who has charged fees for services set out in Schedule 2 of Appendix C or a person affected by those fees wishes to have those fees assessed, the person seeking the assessment shall
- (a) obtain an appointment from the clerk in Form 28 and attach to that appointment a copy of the bill to be assessed, if available, and
 - (b) at least 5 days before the assessment, deliver a copy of the appointment and any affidavit in support to all persons affected by the fees.

Service of appointment

- (26) Service of an appointment for assessment of costs, the bill of costs and an affidavit in support is not necessary where the party against whom costs are to be assessed has not entered an appearance.

Costs on default judgment

- (27) On signing a default judgment, the clerk may, without an appointment, fix the costs to which the plaintiff is entitled against the defendant in default, and enter the amount allowed on the judgment, or on a separate certificate.

Notice to person affected

- (28) On an assessment of costs, on review of a lawyer's bill or on an examination of an agreement, the clerk may order notice of hearing to be given to a person whose interest, whether in a fund or estate or otherwise, may be affected.

Certificate of costs

- (29) On the conclusion of an assessment, or where the party charged has consented to the amount, the clerk shall, either by endorsing the original bill or by issuing a certificate in Form 70, certify the amount of costs awarded, and the party assessing costs shall file the certificate.

Certificate of fees

- (30) On the conclusion of a review of a bill under the *Legal Profession Act*, or where the parties to the review have consented to the amount due under the bill, the clerk shall, by issuing a certificate in Form 71, certify the amount due, and either party to the review may file the certificate.

Certificate deemed to be an order

- (31) A certificate of costs and a certificate of fees shall be deemed to be an order.

Review of an assessment

- (32) A party who is dissatisfied with a decision of the clerk on an assessment may, within 14 days after the clerk has certified the costs, apply to the court for a review of the assessment, and the court may make an order as it thinks just.

Form of bill in certain cases

- (33) A bill for special costs or a bill under the *Legal Profession Act* may be rendered on a lump sum basis.

Description of services

- (34) A lump sum bill shall contain a description of the nature of the services and of the matter involved as would, in the opinion of the clerk, afford any lawyer sufficient information to advise a client on the reasonableness of the charge made.

Evidence of lawyer

- (35) A party to an assessment or a review of a lump sum bill may put in evidence the opinion of a lawyer as to the nature and importance of the services rendered and of the matter involved and the reasonableness of the charges made, but no party shall put in evidence the opinions of more than 2 lawyers, and a lawyer giving an opinion may be required to attend for examination and cross-examination.

Disallowance of lawyer's fees and disbursements

- (36) Where the court considers that a lawyer for a party has caused costs to be incurred without reasonable cause, or has caused costs to be wasted through delay, neglect or some other fault, the court may do any one or more of the following:
- (a) disallow any fees and disbursements between the lawyer and the lawyer's client or, where those fees or disbursements have been paid, order that the lawyer repay some or all of them to the client;
 - (b) order that the lawyer pay his or her client for all or part of any costs that the client has been ordered to pay to another party;
 - (c) order that the lawyer be personally liable for all or part of any costs that his or her client has been ordered to pay to another party;
 - (d) make any other order that the court considers appropriate.

Costs may be ordered without assessment

- (37) Where the court makes an order under subrule (36), the court may
- (a) direct the clerk to conduct an inquiry and file a report with recommendations as to the amount of costs, or

(b) subject to subrule (40), fix the costs with or without reference to the tariff in Appendix B.

Notice

- (38) An order against a lawyer under subrule (36) or (37) shall not be made unless the lawyer is present or has been given notice.
- (39) A lawyer against whom an order under subrule (36) or (37) has been made shall promptly serve a copy of the order on his or her client.

Limitation

- (40) An order by the court under subrule (37)(b) in respect of the costs of an application shall not exceed \$1,000.

Refusal or neglect to procure assessment

- (41) If a party entitled to costs fails to assess costs and prejudices another party by failing to do so, the clerk may certify the costs of the other party and certify the failure and disallow all costs of the party in default.

Referrals

- (42) Unless the court otherwise orders, fees to counsel, accountants, engineers, actuaries, valuers, merchants and other scientific persons to whom any matter or question is referred by the court shall be determined by the clerk, subject to an appeal to the court.
- (43) For the purposes of this rule, a party becomes entitled to costs
 - (a) when an order for costs is pronounced, or
 - (b) where a judgment is silent in the matter of costs, from the time that judgment in the proceeding is enteredwhichever date first occurs.