

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, increased costs, or awards a lump sum.

Special costs

- (1.1) The court may award special costs when a party's conduct is reprehensible, scandalous or outrageous and the circumstances call for a rebuke.

Increased costs

- (1.2) Where the court is of the view that, as a result of unusual circumstances, an award of costs on a given scale would be inadequate or unjust, the court may order increased costs in accordance with sections 2(e) and (f) of Appendix B.

Lump sum costs

- (1.3) The court may fix a lump sum as the costs of a proceeding, including a trial and an application and may fix those costs, either inclusive or exclusive of disbursements.

Costs to be reasonable

- (2) On an assessment of party and party costs, the court 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 court shall allow those fees that it considers were proper or reasonably necessary to conduct the proceeding to which the fees relate, and, in exercising that discretion, the court 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 lengthen unnecessarily, 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 court 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.

Judge to assess costs

- (6) Costs will be assessed by a judge but a judge may assign an assessment under this rule to the clerk.

Assessment before clerk

- (7) Where the court has made an order for costs and assigns the assessment to the clerk:
 - (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 court 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, it shall 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 of \$600 plus disbursements as per 7(a) of Appendix B;
 - (ii) in the case of a writ of execution, a garnishment or an enforcement process, the costs allowed of \$100 plus disbursements as per 7(b) 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 of Yukon under the *Small Claims Court Act*, RSY 2002, c. 204, 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 of Yukon 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.
- (14) [repealed by O.I.C. 2022/168]

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 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 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 court 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 court may award costs as the court 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*, SY 2017, c. 12, or who seeks to have costs assessed must:
- (a) obtain a date for an appointment before the court or 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 made at the registry in Whitehorse.

Further particulars

- (24) The court or 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 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 court 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 court shall, either by endorsing the original bill or by issuing a Certificate of Costs 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*, SY 2017, c. 12, or where the parties to the review have consented to the amount due under the bill, the clerk shall, by issuing a Certificate of Fees 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 the clerk's 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*, SY 2017, c. 12, 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 their 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 their client has been ordered to pay to another party; or
 - (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 court 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 lawyers, accountants, engineers, actuaries, valuers, merchants and other scientific persons to whom any matter or question is referred by the court shall be determined by a judge.
- (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.

Security for Costs

- (44) The court may make an order for security for costs where it appears that:
 - (a) the plaintiff or applicant is ordinarily resident outside of Yukon;
 - (b) the plaintiff or applicant has another proceeding for the same relief pending in Yukon or elsewhere;
 - (c) the defendant or respondent has an order against the plaintiff or applicant for costs in the same or another proceeding that remains unpaid in whole or in part;

- (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Yukon to pay the costs of the defendant or respondent;
 - (e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has insufficient assets in Yukon to pay the costs of the defendant or respondent; or
 - (f) a statute entitles the defendant or respondent to security for costs.
- (45) An application for security for costs may be made only after the defendant has delivered a statement of defence in an action, or after the respondent has delivered an appearance in an application.
- (46) An application for security for costs shall be made on notice to the plaintiff and every other defendant who has delivered a defence or an appearance in an action, or the applicant and every other respondent who has delivered an appearance in an application.
- (47) The amount and form of security and time for paying into court or otherwise shall be determined by the court. The amount of security required by an order may be increased or decreased at any time.
- (48) A plaintiff or applicant against whom an order for security for costs has been made may not take any step in the proceeding except an appeal from the order, until the security has been given, unless the court orders otherwise.
- (49) Where a plaintiff or applicant defaults in giving the security required by an order, the court may dismiss the proceeding against the defendant or respondent who obtained the order and the stay imposed by Rule 60(48) no longer applies unless another defendant or respondent has obtained an order for security for costs.