

**Ministry of the
Attorney General**

Assessment Court Office
Court Services Division
161 Elgin Street, 2nd Floor
Ottawa, Ontario
K2P 2K1

Telephone: 613-239-1054
613-239-1407

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**Ministère du
Procureur général**

Greffe de liquidation des dépens
Division des services aux tribunaux
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SOLICITOR & CLIENT ASSESSMENTS
(Pursuant to the Solicitor's Act)

QUESTIONS AND ANSWERS

This Questions/Answers document does not provide legal advice. It is recommended that all parties in the Civil Court seek legal advice where possible.

1. I want to file a general complaint against my solicitor (lawyer) in relation to his/her actions, where can I do this?

If you have a complaint about your lawyer's conduct, it must be filed with the Law Society of Upper Canada using the prescribed form. Please refer to the following website for additional information:
<http://www.lsuc.on.ca/public/a/complaints/making-a-complaint/>

Or if you wish, you may contact the Law Society of Upper Canada Complaints Department by phone at (416) 947-3310 or outside Toronto at 1-800-268-7568. You can also write the Complaints Department at the following address: Complaints Department, The Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N6.

2. I don't agree with my Solicitor's bill. What can I do?

If you think your lawyer's bill is too high, you can talk it over with your lawyer. If you're still not satisfied you can start a process through the Civil Court Office to have the bill assessed by an Assessment Officer. The process is governed by timelines set out in the *Solicitor's Act*.

3. How do I start the process to have my Solicitor's bill assessed?

You need to obtain an order authorizing the bill to be referred to an Assessment Officer to be assessed. If you are within one (1) month of receipt (delivery) of the bill, you can obtain an Order for Assessment by attending the Civil Court Office, counter number 4, at the Ottawa Courthouse located at 161 Elgin Street, Ottawa and completing the following forms which are available at the Civil Court Office counter and paying the appropriate filing fee (Refer to Question 9)

- Requisition by Client for Assessment of Solicitor's Bill
- Order for Assessment – Client's Application

You must bring four (4) copies of all bills you want to be assessed.

Note: The Requisition by Client for Assessment of Solicitor's Bill indicates the retainer of the Solicitor is not being disputed. If the Solicitor's retainer is in dispute, an Application must be brought before a Judge to decide the issue of a disputed retainer before the bills can be referred to an Assessment Officer. An Assessment Officer has no authority (jurisdiction) to deal with this issue.

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4. What can I do if it has been more than one (1) month since I received my Solicitor's bill?

If it has been more than one (1) month since you received your Solicitor's bill, you will have to file an Application before a Judge to ask for permission (leave) to have the bill assessed by an Assessment Officer.

5. What can I do if I haven't received my Solicitor's bill?

You should contact your solicitor and request a bill. If the bill is not received and you want to have the bill assessed, you can obtain an Order for Delivery and Assessment of the bill by attending the Civil Court Office, counter number 4, 161 Elgin Street, Ottawa and completing the required forms and paying the appropriate filing fee (Refer to question 9). The forms are available at the Civil Court Office.

6. I already paid my Solicitor's bill or part of the bill. Can I still obtain an Order for Assessment?

Yes. You can have the bill assessed whether it has been partially paid or paid in full. The payment of a bill does not preclude the court from referring it for assessment if the special circumstances of the case, in the opinion of the court, appear to require the assessment.

7. What is an Order for Assessment – Solicitor's Application?

A Solicitor can also have a bill assessed when a client has not paid the Solicitor's bill and the Solicitor wishes to have it assessed in order to try and collect any amount owing. The Solicitor can obtain an Order for Assessment – Solicitor's Application when it has been longer than 30 days since the Solicitor delivered the bill to the client.

8. Where can I get access to the proper forms?

The forms to assess your Solicitor's bill are available at the Civil Court Office. Other forms can be accessed at the Ministry of the Attorney General Website at: www.attorneygeneral.jus.gov.on.ca

9. What are my options if I can't pay the filing fee?

Pursuant to amendments to the *Administration of Justice Act*, and a new regulation under the Act (O. Reg. 2/05), effective January 28, 2005, persons who might otherwise be denied access to justice due to their financial circumstances may request the waiver of certain court and enforcement fees. The fee waiver applies to most fees in civil, family and small claims court cases. It should be noted that fee waiver does not apply to certain cases, as per Section 3 of *O. Reg. 2/05*. Contact court office personnel for more information.

You can also refer to the Ministry of the Attorney General website for more information on court fees at: http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_920293_e.htm

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10. How do I obtain a court date for my assessment hearing?

After you have obtained an Order for Assessment from the Civil Court Office, you can obtain a hearing date by attending the Assessment Office at the Ottawa Courthouse, 161 Elgin Street, Room 5300, 5th Floor, Ottawa, Ontario, between the hours of 8:30 a.m. to 5:00 p.m. Assessment Office Staff will issue a Notice of Appointment – Solicitor/Client Assessment, which sets out the date and time of the Assessment Hearing.

11. Do I need to serve my Solicitor with any documents?

Yes. It is your responsibility to serve the documents on your Solicitor. You must serve your Solicitor with a copy of the following documents after they have been issued by the Court Office:

- i. Notice of Appointment – Solicitor/Client Assessment
- ii. Order for Assessment – Client's Application and bill(s) thereto attached

Note: You must file proof of having served the above-noted documents on your Solicitor. This must be done through an Affidavit of Service, or through an acknowledgment by the Solicitor inscribed on the back of the original documents to be filed with the Court at/or before the hearing date.

12. What is the time limitation for serving the documents for an assessment hearing?

In Ontario, the Notice of Appointment and the Order for Assessment – Client's Application with the attached bill(s) must be served at least **10 calendar days** before the assessment hearing date. Proof of service must be provided.

13. If I am unable to attend the assessment hearing, what can I do?

You can request that the hearing date be adjourned to another date, but the Solicitor must agree (consent) to the adjournment. You or your Solicitor will have to contact the Assessment Office at (613) 239-1054/or 1407 to make the arrangements.

14. If I settle this matter with my Solicitor, can I cancel the assessment hearing date?

Yes. If the matter is settled, you or your Solicitor can immediately notify the Assessment Office that the issue has been resolved and you want the assessment hearing cancelled. A letter confirming that the matter has been settled will have to be received by the Assessment Office prior to the hearing date. The letter can be faxed to (613) 239-1322 or delivered to the Assessment Office, 2nd floor, counter #4, 161 Elgin Street, Ottawa, Ontario K2P 2K1.

15. What legislation should I refer to for my case?

The assessment of a Solicitor's bill is pursuant to the Solicitor's Act, R.S.O. 1990, c. S-15.

Other statutory authorities include:

- i. Courts of Justice Act, R.S.O. 1990, c. C-43 (CJA)

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- ii. Rules of Civil Procedure, R.R.O. 1990, reg. 194
- iii. Evidence Act, R.S.O. 1990, c.E-23.

16. Where can I get access to the legislation?

Federal, Provincial and Municipal legislation can be found at your closest municipal library or you can access them on-line at the following websites:

Ontario Ministry of the Attorney General Web Site at:
<http://www.attorneygeneral.jus.gov.on.ca/english/legis/default.asp>

The County of Carleton Law Association Web Site at:
http://www.ccla.ottawa.on.ca/links/links_legis.html

17. What will happen in court? How will my case be heard?

The Assessment Officer will give an overview of the hearing process and your role in it. He/She will explain that regardless of who commenced the hearing, it is always up to the Solicitor to “prove” the bill. To do this, the Solicitor gives evidence, under oath, to try and convince the court that the bill is appropriate under all the circumstances. Following the Solicitor’s testimony, the client has the opportunity to cross-examine (question) the Solicitor about the evidence or any aspect of the account. The client can then offer sworn evidence to support his/her case, which is, in turn, subject to cross-examination by the Solicitor. Following all the evidence, the Solicitor and then the client has an opportunity to give closing arguments to the court.

The Assessment Officer will then be in a position to decide the amount of the bill and will give reasons for his/her decision. In a lengthy or complicated case, those reasons may be given in written form at a later date. In coming to a decision, the Assessment Officer will consider various factors that have been held through the years to constitute the framework within which a Solicitor’s fee should be assessed. These include:

- i. The time expended by the Solicitor
- ii. The legal complexity of the matters dealt with
- iii. The degree of responsibility assumed by the Solicitor
- iv. The monetary value of the matters in issue
- v. The importance of the matters to the client
- vi. The degree of skill and competence demonstrated by the Solicitor
- vii. The results achieved
- viii. The ability of the client to pay
- ix. The reasonable expectation of the client as to the amount of the fee
- x. Credibility of the parties

The Assessment Officer will also advise the parties that, depending on the outcome of the hearing, there may be an award of costs to one of the parties. It should be noted that the costs are solely at the discretion of the Assessment Officer and are not always awarded. Questions about costs should be addressed to the Officer at the commencement of the hearing.

Before beginning the formal assessment hearing, the Assessment Officer will ask if you and your Solicitor would like a chance to talk, to determine if any agreement can be reached on the disputed items on the account. He/she will also encourage both parties to make offers to settle the account.

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These discussions are always “off the record” and in the absence of the Assessment Officer. If no settlement is reached, the hearing will proceed as scheduled.

18. What type of results can I expect from the Court?

The Assessment Officer can decide that your lawyer’s bill is fair or that it is too high. If it is too high, the Assessment Officer can reduce it. If the bill is found to be appropriate, it may be allowed in full. The Officer may then ask for submissions from both parties on the issue of costs, or simply decide that neither side will receive costs.

19. Can the lawyer ask for interest?

Yes. A solicitor may claim interest on the unpaid portion of his/her assessed fees.

20. Can I ask for interest?

Yes. You are entitled to interest on any overpayment you have made to the lawyer from the date of the overpayment to the date of the assessment.

21. What do I need to bring to court? How should I prepare myself for court?

You should bring all pertinent information, notes, documents etc. relating to the case and have copies for the Assessment Officer and Solicitor. You should arrange this material so that you present your evidence in a logical and understandable way. You should also prepare a list of questions, which you would like to ask the Solicitor in cross-examination, and notes for your closing arguments. Your evidence should be presented to the Court from your memory and not simply read from a prepared statement, however, you will be allowed to refer to your notes for assistance.

Note: For general information with respect to going to civil court, refer to the Ministry of Attorney General’s website at <http://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/>

22. Can I get another Solicitor to represent me at the hearing?

Yes. You can retain the services of a different Solicitor to represent you at the assessment hearing.

23. Can I represent myself at the hearing?

Yes.

24. Where will the assessment be heard? My Solicitor lives in Toronto but I want the case heard in Ottawa, can this be done?

The Assessment hearing can be held anywhere in the Province of Ontario, but only at the court location where the Order for Assessment/Application has been filed.

25. Can I have my case heard in French?

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Yes. You must advise court office staff and they will make the necessary arrangements to have an Assessment Officer who can speak both English and French. Should there be a requirement for interpretation, court office staff will ensure the booking of an interpreter. There is no cost associated with a French/English interpreter provided by the court.

26. Can I have my case heard in a language other than English or French?

Yes. As a party to a case, you may be afforded the opportunity to express yourself in a language other than French or English. To that end, you may want to bring your own interpreter. It should be noted however, that the Court might deem that the person is incapable of adequately interpreting the proceedings, and as such, it is recommended that you contact the Interpretation Coordinator's Office at 613-239-1015 to obtain the names of interpreters accredited by the Ministry of the Attorney General.

You will need to contact an interpreter and arrange their attendance for your court hearing. You will need to arrange and negotiate payment with the interpreter whose services you retain.

27. Will the session be recorded?

Yes. Evidence is given under oath at all times. The evidence must be recorded in a manner capable of transcription.

28. What is a Report and Certificate of Assessment?

Following an assessment of costs hearing, the Assessment Officer will complete a form called a Report and Certificate of Assessment, which records the original amount of the bill(s) being assessed, the amount allowed by the Assessment Officer, the amount already paid on the bill(s), any interest and costs awarded and the total of all these. The signing of this document represents the conclusion of the hearing. The Report and Certificate of Assessment is available to the parties once it has been properly entered in the court records.

29. If it is determined that the Solicitor owes me money, how do I collect any amount owing?

The *Solicitor's Act* provides that the Report and Certificate of Assessment has to be confirmed in the same manner as a referee's Report under the Rules of Civil Procedure, in order to begin any enforcement proceedings.

30. Can I dispute the Assessment Officer's decision?

Yes. You can dispute the Assessment Officer's decision by completing and filing a Motion to Oppose Confirmation of the Report and Certificate of Assessment to a Judge of the Superior Court of Justice as per s. 6(9) Solicitors Act and Rule 54.09 Rules of Civil Procedure.

31. What happens if I don't attend court on the scheduled hearing date?

The matter may proceed in your absence.

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32. What is an affidavit?

An affidavit is a written declaration or statement of facts confirmed by oath or affirmation.

33. What is an exhibit?

An exhibit is an item of physical/tangible piece of evidence that is to be or has been offered to the court for inspection.

34. What is a motion?

A motion is a request made to the court for the purpose of obtaining a ruling or for an order directing something to be done in the moving party's favor.

35. What is a moving party?

A moving party is a person who makes a motion

36. What is an oath?

An oath is any form of attestation by which a person swears or affirms that he or she is bound by conscience to tell the truth.

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