

## Review Office FAQs

### FEQUENTLY ASKED QUESTIONS ABOUT REVIEWS OF LAWYER'S CHARGES

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### **What is a review of lawyer's charges?**

A review is a procedure for determining the reasonableness of the amounts charged by a lawyer for the lawyer's legal services. The reasonableness of the amounts is determined in a hearing conducted by a Review Officer. The lawyer and the client are parties to the hearing and each may present his or her case at the hearing. The Review Officer listens to the parties, considers the evidence provided by them and makes a decision on the reasonableness of the lawyer's charges. If the Review Officer finds that the charges are unreasonable, then the Review Officer may disallow or reduce them. Subject to the parties' right to appeal from a Review Officer's decision, the Review Officer's decision is binding on the parties.

### **Do the lawyer's charges have to be for a particular type of legal service?**

No. The charges may be for any legal service. Charges for the preparation of a Will may be reviewed, as would charges for acting in a real estate transaction or for representing a client in a criminal or civil court. Where litigation services are provided, the court or [administrative tribunal](#) in respect of which the services were provided is irrelevant to the right to a review. Charges for representing a client before any Alberta court or administrative tribunal may be reviewed.

### **Who can request a review?**

A review may be requested by a "client" or a lawyer. For the purpose of a review, the term "client" includes a former client. It also includes any other person who is liable to pay a lawyer's [statement of account](#). A father could, for example, agree to pay a lawyer for the lawyer's representation of his son, in which case the father would be considered to be a client for the purposes of a review. However, where a person is liable to pay a lawyer's charges because lawyer acted for another party in litigation and the other party was awarded costs equal to what its lawyer charged it, the person would not be entitled

to a review of the lawyer's charges. In such a case, the person may request another procedure, known as an "assessment of costs".

### **Can more than one statement of account be reviewed in the same hearing?**

There is no limit to the number of [statements of account](#) that may be reviewed in a review hearing. However, the accounts must be from the same lawyer or law firm and they must have been paid or be payable by the same client. A person who requests a review must complete and file a [Form 42](#) for the review. In addition, he or she must file all of the accounts that he or she has and wishes to have reviewed. Instructions for completing a Form 42 and for filing it and the lawyer's accounts can be found in the Review Office publication entitled *How to Request a Review*. This publication, which can be found at <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>, also explains how a Form 42 should be served and how a client who has lost or misplaced a statement of account may require that it be filed by the lawyer so that it may be reviewed.

### **Why would a lawyer request a review?**

A lawyer may use the review process to obtain a judgment against a client for an unpaid account. The lawyer could sue the client and obtain a judgment in the court action but this would take considerable time and effort and could be expensive for both sides. The review process offers a more expeditious and less costly method of determining if the lawyer is entitled to a judgment. Because a review gives both sides an opportunity to present their cases and because it results in a decision on how much, if anything, a lawyer is owed, the Review Officer's decision may be entered as a judgment of the Court of Queen's Bench. Where more than one account is [presented for review](#) in the same hearing, the Review Officer's decision and any judgment based on it will be for all of the accounts reviewed.

### **How long does it take to enter a judgment after a review is completed?**

Where a Review Officer finds that there is money owing by a client to a lawyer, the lawyer may apply to a Master of the Court of Queen's Bench to have the Review Officer's decision entered as a judgment of the Court. However, this can only be done after the period for an appeal from the Review Officer's decision has expired. The appeal period begins when the Review Officer's decision is announced (usually at the end of a review hearing) and ends on the same day of the next following month (e.g. if the decision was announced on May 3, 2019, then the appeal period would expire on April 3, 2019). If a Notice of Appeal is filed within the appeal period, then a judgment cannot be entered until the appeal is concluded (assuming that the Judge hearing the appeal also finds that client owes money to the lawyer). Depending on the availability of

a court date for an appeal, it could take months before the appeal is heard and concluded.

### **What happens if I “win” at a review?**

If a lawyer’s account has not been paid and the lawyer’s charges are reduced by the Review Officer, then you would be obliged to pay only the reduced amount. If the lawyer’s account has been paid and the lawyer’s charges are reduced, then the lawyer would be obliged to pay you an amount equal to the reduction. If the lawyer does not pay you, then you would be entitled to apply to the Court for an order requiring the lawyer to do so. However, such orders are rarely, if ever, required. This is because the Law Society of Alberta’s *Code of Conduct* requires that the payment be made “as soon as practically possible”. A lawyer who fails to comply with this requirement risks disciplinary action by the Law Society.

### **Could the Review Officer award costs against me if I “lose”?**

Where a review is requested by a client, a Review Officer may award costs against a client only if the client’s request was unreasonable or the client acts improperly or unreasonably at the review. A client who had genuine concerns about a lawyer’s charges and who follows all directions given by the Review Officer will not be penalized by costs, even if the lawyer’s charges are allowed in full. Where the review is requested by a lawyer, costs may be awarded against the client only if the client acts improperly or unreasonably at the review and the award is subsequently approved by the Court. These rules, however, do not apply to applications to the Court to have a Review Officer’s decision entered as a judgment or to appeals from a Review Officer’s decision. In either of these events the Judge who hears the application or appeal may award costs of the review against the client. Because of this, a client who is found, by a Review Officer, to owe money to the lawyer may want to pay or settle with the lawyer before the lawyer applies to have the Review Officer’s decision entered as a judgement, since doing this would avoid the risk of an award of costs against the client.

### **Is the Review Officer a judge?**

Review Officers are not judges. They are specially appointed lawyers that are selected on the basis of their legal experience, their familiarity with the law related to lawyer’s charges and their analytical and judgment skills. Like judges, they control the proceedings before them and are authorized to: receive evidence; direct the production of documents; direct how a review hearing is to be conducted; deal with issues concerning the service of documents for a review; make findings of fact; and, subject to some limitations imposed by the *Rules of Court*, award costs at the conclusion of a review.

### **How can I be sure that a review requested by me will be fair?**

Reviews are conducted according to “principles of procedural fairness”. These principles are derived from case law and apply to hearings before [administrative tribunals](#) and other [quasi-judicial authorities](#). They are designed to ensure that hearings will be impartial and fair. As an added safeguard, either party to a review may appeal from the decision made by the Review Officer. An appeal from a decision of a Review Officer is to a Judge of the Court of Queen’s Bench. The right to appeal to a Judge ensures that any issues concerning the fairness of a review can be fairly and effectively addressed.

### **How do I request a review?**

There are 4 basic steps that must be completed to request a review and obtain a hearing for it:

1. Book a date and time for the review;
2. Complete a court document – Form 42, *Appointment for Review of Retainer Agreement / Lawyer’s Charges*;
3. File the Form 42, the lawyer’s accounts and other evidence with a clerk of the Court of Queen’s Bench; and
4. Serve copies of the filed documents on the Lawyer.

While these steps are not difficult, each involves procedures that must be followed. Detailed instructions for completing all required steps and procedures can be found in the Review Office publication entitled *How to Request a Review*. It can be found at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>. You should refer to this publication and follow the instructions provided in it.

### **Is there a fee for a review?**

There is no fee or charge for a review. However, there is a \$100 fee for filing the court document that opens a court file for the review (Form 42). This fee will be charged when you file your Form 42. The Court may also charge you \$1.00 per page for photocopies. To avoid this charge you should bring two copies of each document that you will need to file for your review when you attend at the Court House to file them. If you do not do this, then the clerk will make the copies and charge you for them.

### **Is there a time limit for requesting a review?**

Rule 10.10(2) of the *Alberta Rules of Court* imposes a one year time limit for requesting a review of lawyer's charges. The time limit begins on the date on which the [account](#) containing the charges is sent to the client. In the absence of evidence of when the account was sent, the date of the account will be presumed to be the date on which it was sent. To comply with the rule you must file a [Form 42](#) within one year of this date. However, there are ways in which you may be able to overcome a time limit problem. For more information on the time limit for a review and what may be done if it is missed, see the Review Office publication entitled *Dealing With The Time Limit For A Review*. This publication can be found at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

### **Do I have to attend a lawyer-requested review?**

You are not legally obliged to attend a review hearing that was requested by your lawyer or former lawyer but if you were served with a Form 42 and fail to attend, then the hearing may proceed in your absence. In such a case, the Review Officer may make a decision about the reasonableness of the lawyer's charges without hearing from you.

### **Could I participate by telephone?**

There are only two Review Offices in Alberta: one in Calgary and one in Edmonton. The parties to a review that is scheduled to be heard in Calgary or Edmonton are expected to attend at the scheduled Review Office. Review hearings that are scheduled to be heard in courthouses outside of Calgary and Edmonton are conducted by closed circuit television (CCTV) with the Review Officer in Edmonton. A party to such a review may attend at the scheduled location or at the Review Office in Edmonton. However, regardless of where a review is scheduled to be heard (which will be shown on the Form 42 for the review), a party who cannot attend by CCTV or in person may request permission to attend by telephone. This may be done by sending an email request to the Review Office in Calgary (for reviews scheduled to be heard in Calgary) or to the Review Office in Edmonton (for reviews scheduled to be heard at any other location). Email addresses for the Review Offices can be found on the Review Office website at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>. A request for permission to participate by telephone should be sent as early as possible and should explain why participation by telephone is required. If permission is granted the Review Office will provide instructions for the requester's participation by telephone.

### **What can I do if I need to change the date or time for a review?**

Regardless of who requested the review, the date and time for it may be changed by the agreement of the parties. If you are unable to attend a review that you or your lawyer booked, you should:

- Contact the appropriate Review Office (Calgary for a review scheduled to heard in Calgary, or Edmonton for a review scheduled to be heard in Edmonton or any other location) and obtain several available dates and times for a rescheduling of the review;
- Contact the lawyer to see if the lawyer will agree to move the review to one of the available dates; and
- If an agreement is reached, send a letter or email message to the Review Office advising it of your agreement with the lawyer.

If you are unable to contact the lawyer, then the Review Office might be able to assist you by providing lawyer contact information or, in exceptional cases, by contacting the lawyer for you. Typically such assistance will only be provided where you have made reasonable but unsuccessful efforts to contact the lawyer and the Review Office Assistant is not occupied with other matters. If you cannot reach an agreement with the lawyer (with or without Review Office assistance), then you should arrange to have someone appear at the review to request an adjournment on your behalf. A request for an adjournment is likely to be successful where there is a medical, employment-related or other important reason for it. The person who you send to represent you should be able to explain the reason for your request. A request is unlikely to be successful if there is no reasonable and believable reason for it.

### **What happens if I request a review and don't show up for it?**

If you fail to attend a review hearing that you requested, your review will be struck. When a review is struck, the review process comes to an end. In some cases, it might be possible start the process over again, as long as the [time limit for a review](#) has not expired. "Starting the process over again" includes booking a new appointment, filing a new [Form 42](#) and re-serving the lawyer. The \$100 that you paid to file your first Form 42 would not be refunded and you would be charged another \$100 to file your new Form 42.

### **How is a review conducted?**

Review hearings are conducted in conference rooms that are equipped with microphones for recording the proceedings. The proceedings are recorded so that transcripts can be prepared in the event that either party wishes to appeal from the

Review Officer's decision. The Review Officer controls the proceedings, which are somewhat less formal than proceedings before a Judge. The client is usually self-represented but may be represented by a lawyer or knowledgeable friend, if desired. Witnesses are not required and are seldom brought to the hearing. The parties provide evidence in the form of documents (e.g., email messages, letters, contracts, court documents, etc.) and/or by explaining what happened. Although the Review Officer may administer oaths, verbal evidence is usually accepted without a party or witness being sworn. The procedure for the review, itself, can vary, depending on the issues or concerns raised by the parties. However, each of the parties will always be given an opportunity to:

- present evidence,
- state his or her position on the reasonableness of the lawyer's charges, and
- comment on the evidence provided by the other party.

Although reviews are conducted in a relatively informal fashion, the Review Officer should be addressed formally ("Sir", "Ma'am", Mr. \_\_\_\_\_" or "Ms. \_\_\_\_\_") and the parties should show respect toward each other. The parties must also follow all directions given by the Review Officer. A party's failure to follow a Review Officer's directions could result in an award of costs against the party. Continually interrupting another speaker after being directed not to do so is an example of conduct that could result in an award of costs against the offending party.

### **Could I bring a friend or family member with me when I attend a review?**

It is not uncommon for clients to bring someone with them for moral support. Review Officers will usually allow such "guests" to be present during a review hearing, as long as they do not misbehave or otherwise interrupt the proceedings. A guest who interrupts the proceedings will be directed to leave. Sometimes a client will be accompanied by someone who can give evidence that is relevant to the review. In such a case, the accompanying person will be treated as a witness and will be given the opportunity to present his or her evidence.

### **How long does a review hearing take?**

Most review hearings are completed in less than 1 ½ hours, but the length of a hearing may depend on the number of accounts [presented for review](#) and the number and complexity of the concerns and issues raised in the review. When you book an appointment for a review, you should provide information on the number of accounts that you wish to have reviewed and the number of concerns or issues that you intend to

raise about the lawyer's charges. Depending on the information provided by you, the hearing for your review could be booked for a half-day or more.

### **Can I complain about my lawyer's conduct?**

Review Officers cannot deal with complaints about a lawyer's conduct unless the conduct is related to the lawyer's fees or billing practices. Charging a client for work that was not done is an example of a complaint that a Review Officer may address. However, a Review Officer cannot make a finding of misconduct, nor may she or he sanction the lawyer for misconduct. In our example, the Review Officer could address the client's complaint by disallowing the fee charged by the lawyer for the work that was not done and, in an appropriate case, by awarding costs against the lawyer. Apart from this, sanctions for misconduct, like intentionally billing for work not done, should be sought through a complaint to the Law Society of Alberta.

### **Do I have to prepare for a review and if so, how should I prepare?**

You are likely to be more successful in a review if you prepare for it. Guidance on preparing for a review is provided in Review Office publication entitled *How to Prepare for a Review*, which can be found at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

### **Can I settle with my lawyer before or after a review hearing?**

You can settle the differences that you have with your lawyer at any time. If your lawyer is willing to discuss your concerns before a review is requested, you would be wise to meet with him or her for this purpose. In many cases a client's concerns can be resolved through pre-review settlement discussions and some cases the client could get a better result than might be achieved through a review. Lawyers lose billable time when they attend reviews and many would rather settle with a former client than spend valuable time preparing for and attending a review. Settlement discussions may also take place after a review hearing but the results of these discussions tend to be less favourable to clients. Once a review is completed, the lawyer has little incentive to settle. This is particularly so where the Review Officer's decision favours the lawyer. That said, most lawyers are willing to consider proposals for payments over time, as the entry and enforcement of a judgement against a client also consumes valuable time.

### **How can I appeal from a decision of a Review Officer?**

Either party can appeal from the decision of a Review Officer. A party who wishes to appeal must file a Form 43, *Notice of Appeal of Review Officer's Decision*, within one month from the date on which the Review Officer's decision was announced (usually at

the end of the review hearing). The appealing party must also order and file a transcript of the review hearing. Further information on the appeal process and the procedures for it can be found in the Review Office publication entitled *How to Appeal From a Review Officer's Decision*, which may be found at:

<http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

### **How can I contact a Review Office?**

Contact information for the Review Offices can be found on the Review Office webpage at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

### **Where can I get more information?**

More detailed information on reviews can be found in a number of publications posted on the Review Office website. You may also contact the Review Office in Calgary or Edmonton for information on forms and procedures. However, Review Officers and Review Office Assistants cannot give you advice on your particular matter. Because Review Officers make decisions that affect both parties to a review, they cannot discuss one party's case unless the other party is included in the discussion. This principle of procedural fairness also applies to Review Office Assistants because they work closely with their Review Officers.

If you require advice with respect to your particular case, you might be able to obtain it from a Resolution and Court Administration Services (RCAS) centre. Information about Alberta's RCAS centres can be found at: <https://www.alberta.ca/rcas.aspx#toc-0>. If an RCAS centre cannot help you, it may be able to refer you to an organization that can.

You may also wish to consult the *Alberta Rules of Court* that govern the review process (Part 10, Division 1 of the *Rules*). These rules can be found at: [http://www.qp.alberta.ca/documents/rules2010/Rules\\_vol\\_1.pdf](http://www.qp.alberta.ca/documents/rules2010/Rules_vol_1.pdf), beginning on page 211.

### **Glossary of Terms and Expressions**

**Administrative tribunal** – An administrative tribunal is an agency, board or commission that is created by legislation and is empowered to settle disputes related to government regulated activities or programs. The Workers' Compensation Appeals Commission is an example of an administrative tribunal.

**Form 42** – This is the court document that opens a court file for a review. A person who wishes to have a lawyer's charges reviewed must complete a Form 42 and file it with a clerk of the Court of Queen's Bench. A copy of the Form must also be served on the

other party to the review. Information on how to complete and file a Form 42 can be found in the Review Office publication entitled *How to Request a Review*. This publication can be found at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

**Form 43** – This is the court document that starts the process for an appeal from a Review Officer’s decision. A party who wishes to appeal must complete a Form 43 and file it with a clerk of the Court of Queen’s Bench. A copy of the Form must also be served on the other party to the appeal. More detailed information on appeals and the procedures that must be followed for them can be found in the Review Office publication entitled *How to Appeal From a Review Officer’s Decision*, which may be found at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

**Presented for review** – A statement of account is presented for review when it is filed with a clerk of the Court. This is usually done when the [Form 42](#) is filed. Instructions on how to file accounts and other documents for a review are provided in our publication entitled *How to Request a Review*. It can be found at: <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

**Quasi-judicial authority** – Someone who is not a judge but has powers and functions that are similar to those of a judge and who is obliged to determine facts and make decisions in a similar fashion. A Review Officer is a quasi-judicial authority.

**Statement of account** – This is a traditional term for a lawyer’s bill or invoice. It is still widely used by lawyers and is used in the *Alberta Rules of Court* that govern the review process. Lawyers and the *Rules of Court* also use the shorter term “**account**” to refer to a lawyer’s bill or invoice.