

LITIGATION COST ESTIMATE

Lawyers' billing procedures should keep the client informed as to the anticipated costs of legal services. Accordingly, lawyers may wish to prepare a litigation cost estimate to review with their clients prior to commencing or defending any proceeding.

In determining the amounts to charge for fees and disbursements, lawyers should refer to [rule 2.08](#), Fees and Disbursements, of the [Rules of Professional Conduct](#). Lawyers should routinely review the litigation cost estimate with their client during the course of the litigation, and advise the client of any circumstances that may affect it.

Lawyers who provide a litigation cost estimate to their clients should ensure that the client understands that it is

- an estimate only
- not binding
- may be subject to change
- for information only

Lawyers are still expected to docket their time, keep the client informed of their progress and bill the client at regular intervals.

LITIGATION COST ESTIMATE TEMPLATE

The Litigation Cost Estimate Template ("Template") may be used by litigation lawyers as a tool for providing clients with meaningful information about the cost of legal services. It is not mandatory.

The Template forms the basis of a task-based litigation cost estimate that enables lawyers to plan for expenditures and, if they wish, to bill by litigation task. The Template does not take into consideration the complexity of the issues, the time required to complete each task, or whether special skills or services are required. Litigation cost estimates assist clients and lawyers to understand and agree on the steps to be taken and the related cost consequences. It can be an effective risk management tool.

The goals of the task-based litigation cost estimate are as follows:

1. enable the client and the lawyer to plan and maintain an efficient and effective litigation strategy
2. facilitate effective communication of the tasks and costs of litigation, and any variations from the expected or the norm
3. provide each client and law firm with a means to understand and compare the costs of litigation
4. provide a foundation for the use of alternative billing arrangements

The Template is divided into five phases of litigation:

1. Assessment of the Matter, Development and Administration
2. Pre-trial Pleadings and Motions
3. Discovery
4. Trial Preparation and Trial
5. Appeal

Each phase consists of a number of tasks. For example, “Examinations for Discovery” consists of all time spent on discoveries, including issuing Notices of Examination, scheduling, planning, and preparing for the examination. The intent is to provide the lawyer and the client with a true picture of the labour cost of each task. Out-of-pocket expenses, such as transcripts, are treated under “Disbursements.”

For each billing period, the lawyer or other professional’s charges are recorded by task. The time charges will accumulate, allowing the lawyer and client to compare at a glance the cost of each phase and each task for the month or for a specified period, and cumulatively for the litigation. Expenses can also be reported on a period and cumulative basis on request.

Lawyers may use the Template to provide minimum cost estimates, or to provide a range of estimated costs.

Lawyers may wish to customize the Template to reflect the area of law in which they practise.

The Template can be prepared for each phase and each task for the whole case (and/or by quarter or other time period). The monthly invoices to clients would then compare that month’s bill and the cumulative total with the cost estimate.

Lawyers may choose to use either the long form Template, which includes definitions of each task, or the short form Template, which sets out the tasks but omits the definitions. Depending on the nature of the matter and the client’s needs, either template can be modified to best serve individual needs.

The following Templates are based on the Uniform Task-Based Management System, jointly developed by the American Bar Association Section of Litigation, the American Corporate Counsel Association, and a group of corporate clients and law firms coordinated and supported by Price Waterhouse LLP.



*Legal information and support
designed for you*

Please note that this information is not a substitute for the member’s own research, analysis and judgment. The Law Society of Upper Canada does not provide substantive legal advice or opinions.

- 2) how witnesses deliver their evidence at trial
 - 3) whose evidence the trial judge prefers, and
 - 4) principles of law.
7. The fees and disbursements are payable regardless of the result unless a special arrangement has been made between the lawyer and the client. Lawyers and clients may make special arrangements for
- 1) fees driven in whole or in part by the result
 - 2) reduction of fees in the case of an unsatisfactory result, and
 - 3) a success bonus in the case of a satisfactory result

ASSESSMENT OF THE MATTER, DEVELOPMENT AND ADMINISTRATION

Fact Investigation	\$ _____
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All actions to investigate and understand the facts of a matter, including

- interviews with clients and potential witnesses
- identification and verification of all appropriate parties, including identification, corporate searches and letters of authority
- review of documents to learn the facts of the case
- consultations with investigators
- all related communications and correspondence, including e-mails and teleconferences

Case Analysis, Development of Case Strategy	\$ _____
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The thinking, strategizing, and planning for a case, including

- discussions, writing, and meetings on case strategy
- legal research for case assessment purposes, for developing an initial theory of the case, and basic case strategy
- preparation of written opinion, if required or appropriate

Experts and Consultants	\$ _____
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Identifying and interviewing experts and consultant, whether testifying or not testifying, consulting with them, developing expert reports, reviewing and understanding expert reports, reviewing opposing party's expert reports, and

- identifying the required experts and selecting the best expert for each issue, including conducting research to find the best expert
- identifying the scope of each expert's potential evidence

Offers to Settle, Settlement, and Alternative Dispute Resolution (ADR) \$ _____

Note: Efforts to settle can take place at any time during the case.

All settlement activities, including

- advising on alternative dispute resolution options
- planning for and participating in formal and informal settlement discussions, four-way meetings, conferences, and hearings
- pursuing and participating in mediation and other non-binding (ADR) procedures
- pre-litigation demand letters and ensuing discussions
- drafting offers to settle, reviewing offers to settle from opponents
- implementing a settlement
- drafting minutes of settlement

Disbursements \$ _____

PRE-TRIAL PLEADINGS AND MOTIONS

Pleadings \$ _____

Developing, drafting, editing, and reviewing Claims, Statements of Claim, Counter-Claims, third party Claims, Statements of Defence, Applications, Answers

Developing, responding to, and arguing motions directed at pleadings such as motions to dismiss, motions to strike, demands for particulars, and jurisdictional motions

Interim and Interlocutory Motions and Motions without Notice \$ _____

Developing and discussing strategy for interim remedies, including motions to vary interim orders (note: some interlocutory motions are much more complicated than others)

Motions for interlocutory injunctions, Mareva injunctions and Anton Piller Orders, where appropriate, require special considerations

Assessment as to whether or not a motion without notice, such as a Certificate of Pending Litigation, Mareva injunctions or an Anton Piller Order is appropriate

Conducting legal research for interim and interlocutory motions

Preparing motions, affidavits and motion records

Reviewing opponent's motion documents

Responding to opponents' motion documents

Cross-examinations on affidavits in support of motion

Cross-examinations of non-party witnesses

Preparation of factum and oral argument

Preparation of Brief of Authorities

Attending to settlement discussions meetings and communications to settle interim motion

Preparing Offer to Settle interim motion

Preparing for and attending at hearing of motion

Attending to and effectuating any remedy or implementing terms of interim order, including

- drafting or reviewing order
- attending to issuing and entering order
- implementing procedures to enforce order

Court Mandated Conferences, Case Management and Mandatory Mediation	\$ _____
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Preparing for and attending hearings and conferences required by court order or procedural rules and preparation of supporting documents, such as mediation briefs, case conference briefs or settlement conference briefs

Motions for Final or Summary Judgment	\$ _____
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Developing and discussing strategy for remedies

Conducting legal research for motion for final judgment

Preparation of factum and oral argument

Preparation of Brief of Authorities

Preparing for and attending hearing of motion

Attending to and effectuating any remedy or implementing terms of interim order, including

- drafting or reviewing order
- attending to issuing and entering order
- implementing procedures to enforce order

Disbursements	\$ _____
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Appeals from Interim, Interlocutory or Summary Judgment Motions \$ _____

Considering reasons for decision of motion

Assessment of potential grounds and prospects for success on appeal

Where required, assessment of prospects of success on motion for leave to appeal

Preparation and service of Notice of Appeal

Assessment of whether a motion for stay is required and, if so, preparation of Notice of Motion, Affidavit and factum and attendance for oral argument on the motion

Assessment of whether any new evidence is required on appeal and the test for introducing it

Preparation of factum and oral argument on appeal

Preparation of Brief of Authorities

Preparation of Offer to Settle the results of the motion

Discussion with clients and opposing counsel as possibilities of settlement of the result of the motion

Preparing for an attending at hearing of motion

Attending to effectuating any remedy or implementing terms of interim order, including

- Drafting or reviewing order
- Attending to issuing and entering order
- Implementing procedures to enforce order

DISCOVERY

Documentary Disclosure and Production \$ _____

Attending to disclosure and production of documents in accordance with court rules, including,

- gathering of documents, including electronic records
- reviewing and identifying documents for production
- reviewing documents for privilege, making and responding to privilege claims
- preparation of Affidavits of Documents
- responding, objecting to, and negotiating requests for production of documents.

Examinations for Discovery \$ _____

Planning and preparing for examination for discovery of client and opposing parties, including

- preparing and serving notices for examination of discovery

- communicating with opposing or other party's counsel on scheduling and logistics
- reviewing documents and pleadings
- meetings with client or third-party witnesses

Attendance at examination for discovery of client and of opposing parties

Attending to all post discovery matters, including

- reviewing transcripts with client
- answering undertakings

Discovery Motions	\$ _____
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Developing, responding to, and arguing all motions that arise out of the discovery process

Motions for undertakings and refusals to be answered

Disbursements	\$ _____
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TRIAL PREPARATION AND TRIAL

Fact Witnesses	\$ _____
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Preparing for examination and cross-examination of non-expert witnesses

Expert Witnesses	\$ _____
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Preparing for examination and cross-examination of expert witnesses

- review of expert reports and discussion with expert to ensure that facts and assumptions are correct
- service of expert reports at least 90 days before trial
- review of opposing parties' expert reports and conferences with clients and expert witness to assess their impact, including discussion with expert about supplementary or responding report

Other Trial Preparation	\$ _____
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All other time spent in preparing for trial, including

- developing overall trial strategy
- preparing opening and closing arguments
- identifying documents for use at trial
- preparing factum, Book of Authorities, Exhibit Book and Agreed Statement of Facts
- updating research

Pre-trial Hearings \$ _____

Preparing for and attending at pre-trial conferences including preparation of pre-trial conference briefs

Attendance at Trial \$ _____

Preparing for and attending at trial including preparation of trial briefs

Post-Trial Motions and Submissions \$ _____

Developing, responding to and arguing all post-trial matters in trial court including assessment and claims for costs

Preparing Bill of Costs and submissions on costs

Enforcement \$ _____

Enforcing and collecting judgments

Disbursements \$ _____

APPEAL

Appellate Motions and Submissions \$ _____

Note: The services under the retainer with the law firm terminate at the conclusion of the trial or application. All services in connection with an appeal should be subject to a new retainer with a cost estimate. If this is not clear from the retainer, the lawyer may be expected to act to the end of an appeal on one retainer.

Developing, responding to and arguing motions and other filings before a reviewing body, such as motions and other filings for stay pending appeal

Reviewing trial transcripts

Perfecting appeals

Appellate Briefs \$ _____

Preparing and reviewing appellate briefs

Oral Argument \$ _____

Preparing for and arguing an appeal before a reviewing body

Disbursements	\$ _____
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Disbursements incurred by the lawyer
(Note: Not all disbursements are applicable in every case)

- Searches – corporate, title, motor vehicle, drivers licence, *PPSA*
- Filing clerk and agent for searches, filing in court and service of documents
- Court Filing fees Application, Statement of Claim, Statement of Defence, etc.
- Court filing fees for motions
- Photocopies and binding of applications

TOTAL ESTIMATED COST	\$ _____
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GST (and, when applicable, HST) is added to all amounts

The law firm requires a retainer in the amount of \$ _____. Interim accounts are submitted at appropriate intervals and are due within 30 days of receipt. The law firm will request that the retainer be refreshed as the case progresses. The failure to pay outstanding accounts or to provide an additional retainer as requested is a justification for the termination of the law firm’s services. Interest is payable on outstanding accounts 30 days after submission at the rate shown at the bottom of the account.

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 - 3) whose evidence the trial judge prefers, and
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DISCOVERY

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Examinations for Discovery	\$ _____
Discovery Motions	\$ _____
Disbursements	\$ _____

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Expert Witnesses	\$ _____
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Pre-trial Hearings	\$ _____
Attendance at Trial	\$ _____
Post-Trial Motions and Submissions	\$ _____
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