

Costs and Fees Act

CHAPTER 104 OF THE REVISED STATUTES, 1989

as amended by

Costs and Fees Committee April 6, 1990; O.I.C. 1990-558;
O.I.C. 1990-649; Costs and Fees Committee July 13, 1990; O.I.C. 1990-1039;
O.I.C. 1991-448; Costs and Fees Committee April 21, 1993; O.I.C. 1994-333;
O.I.C. 1994-572; O.I.C. 1994-873; 1994-95, c. 7, ss. 17-20, 150; O.I.C. 1995-9;
O.I.C. 1995-696; O.I.C. 1996-87; O.I.C. 1997-622; O.I.C. 1998-455;
O.I.C. 1998-526; 1999 (2nd Sess.), c. 1, ss. 1, 2; O.I.C. 2000-261;
O.I.C. 2000-551; O.I.C. 2001-411; 2001, c. 42; O.I.C. 2002-128;
O.I.C. 2002-441; O.I.C. 2002-581; 2004, c. 3, ss. 6-15



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An Act to Amend and Consolidate the Acts Relating to Costs and Fees

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Short title

1 This Act may be cited as the *Costs and Fees Act*. R.S., c. 104, s. 1.

MARCH 30, 2007

PART I

Fees and allowances and party and party costs

2 (1) The Governor in Council may determine, by regulation, fees and allowances for the departments, officials or persons set out below in respect of services provided by those departments, officials or persons, except party and party costs, or in respect of other related services or any combination of services:

- (a) departments;
- (b) Supreme Court of Nova Scotia and Nova Scotia Court of Appeal;
- (c) Supreme Court of Nova Scotia (in matrimonial matters);
- (d) courts of probate;
- (e) City Civil Court of the City of Sydney;
- (f) fees to be taken under the *Summary Proceedings Act*;
- (g) fees to be taken by an administrative justice of the peace;
- (h) constables' fees before justices of the peace under the *Collection Act* and the *Summary Proceedings Act*;
- (i) fees for a registrar of deeds;
- (j) fees of a jailer;
- (k) fees on distress for rent;
- (l) fees under the *Collection Act*;
- (m) fees under the *Indigent Debtors Act*.

(1A) The Governor in Council may make regulations respecting the waiver or reduction of any fee or allowance otherwise payable pursuant to subsection (1) or the regulations, including, without restricting the generality of the foregoing, regulations prescribing the circumstances under which the fee or allowance may be waived and designating a person or a class of persons who may waive or reduce the fee or allowance.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) or (1A) shall be regulations within the meaning of the *Regulations Act*.

(3) Party and party costs in respect of the services mentioned in the regulations, or in respect of other related services or any combination of services, shall be determined by the Costs and Fees Committee.

- (4)** The Costs and Fees Committee shall be composed of
- (a) the Chief Justice of Nova Scotia or that judge's nominee;
 - (b) the Chief Justice of the Trial Division of the Supreme Court or that judge's nominee;

(c) the Chief County Court Judge of Nova Scotia or, where there is no Chief County Court Judge, the senior county court judge of the Province, or that judge's nominee; and

(d) three barristers appointed by the Council of the Nova Scotia Barristers' Society.

(5) The party and party costs determined pursuant to subsection (3) are subject to the approval of the Attorney General and shall come into force and be effective upon publication in the Royal Gazette or at such other time subsequent to publication as the Costs and Fees Committee may determine. R.S., c. 104, s. 2; 2001, c. 42, s. 1; 2004, c. 3, s. 6.

Penalty for improper billing

3 Every person taking any other or greater fee or allowance shall, for each offence, forfeit to the person aggrieved forty dollars, which sum, with such excessive fee or allowance, may be recovered by him in an action of debt. R.S., c. 104, s. 3.

Commencement of action

4 Any action for any such forfeiture shall be brought in the county in which the offence was committed, and within six months next after the date of such offence. R.S., c. 104, s. 4.

Fees payable to General Revenue Fund

5 The fees taken at any of the departments of the Government shall be paid into the General Revenue Fund of the Province and shall be accounted for in the annual account of such department. R.S., c. 104, s. 5; 2010, c. 2, s. 84.

Fees paid over to Attorney General

6 Every prothonotary, clerk of the Crown, sheriff, county court clerk, registrar of deeds and registrar of probate shall on the first day of each month pay over to the Attorney General for the use of the Province all fees that are paid to him under the regulations and under any other Act of the Legislature in virtue of his office during the preceding month except

- (a) fees taken or paid to sheriffs for travel;
- (b) fees paid by the Attorney General or the Minister of Finance or by the treasurer of any municipality or by a municipal council;
- (c) *repealed 1999 (2nd Sess.), c. 1, s. 1.*

and

- (d) fees taken by or paid to registrars of deeds for any documents registered under the provisions of the *Farm Credit Act (Canada)*. R.S., c. 104, s. 6; 1999 (2nd Sess.), c. 1, s. 1; 2004, c. 3, s. 7.

Required returns

7 Every prothonotary, clerk of the Crown, county court clerk, registrar of deeds and registrar of probate shall make such return or returns at such time or times and verified in such manner as the Attorney General from time to time requires for the purpose of giving full effect to the provisions of this Act or any of the provisions. R.S., c. 104, s. 7.

Penalty for non-compliance

8 If any prothonotary, clerk of the Crown, sheriff, county court clerk, registrar of deeds or registrar of probate makes default in complying with any of the requirements of this Act, he shall be liable to a penalty not exceeding one thousand dollars. R.S., c. 104, s. 8.

Fees recoverable as debt

9 The amount of any fees required to be paid over to the Attorney General as aforesaid shall be recoverable with full costs as a debt due to His Majesty in right of the Province from the person required as aforesaid to pay over such fees. R.S., c. 104, s. 9.

Determination of amount payable

10 In determining the amount payable

- (a) under the *Prothonotaries and Clerks of the Crown Act* to prothonotaries;
- (b) under the *Sheriffs Act* to sheriffs;
- (c) under the *County Court Clerks Act* to county court clerks;
- (d) under the *Registry Act* to registrars of deeds; or
- (e) under the *Probate Act* to registrars of probate,

the amount of fees required as aforesaid to be paid over to the Attorney General shall not be regarded as fees either collected or uncollected. R.S., c. 104, s. 10.

Fees not charged by registrar

11 No fees shall be taken by any registrar of deeds for searches made by the officers of any city, town or municipality for city, town or municipal purposes and no fees shall be taken by any registrar of probate for searches made by, or for documents filed by, the officers of any city, town or municipality for city, town or municipal purposes. R.S., c. 104, s. 11.

Replacement of Attorney General

12 The Governor in Council may from time to time designate some other member of the Executive Council in the place and stead of the Attorney General mentioned in Sections 6, 7, 9 and 10 and upon such designation being made, all returns and payments required to be made under the provisions of said Sections shall be to such member of the Executive Council. R.S., c. 104, s. 12.

PART II

FEES PAYABLE FOR THE ADMINISTRATION OF JUSTICE

AMOUNT OF FEES

13 and 14 *repealed 1994-95, c. 7, s. 18.*

Fees allowed constables

15 (1) Every constable receiving or entitled to receive any salary or other remuneration in that capacity from any source whatsoever, including the Crown in right of the Province, or otherwise, shall, for executing or, when due diligence has been used, for attempting to execute process or warrants of commitment in case of a person charged with an indictable offence, be allowed such reasonable disbursements as the prosecuting officer having cognizance of the case deems proper.

(2) Every other constable shall, for executing or, when due diligence has been used, for attempting to execute process or warrants of commitment in case of a person charged with an indictable offence, be allowed the fees in that behalf, prescribed in the regulations or in lieu of those fees, he may be allowed such reasonable disbursements and such sum for each day necessarily spent by him in executing or so attempting to execute such process or warrant of commitment as the prosecuting officer having cognizance of the case deems proper. R.S., c. 104, s. 15; 2004, c. 3, s. 8.

Fees allowed witnesses

16 (1) Every person who attends before a justice of the peace, a judge of the provincial court, county court judge's criminal court or the Supreme Court as a witness for the prosecution in respect of an indictable offence shall be allowed the fees prescribed in the regulations for his travel and actual attendance.

(2) The presiding judge may, on the application of any such person, direct that there be paid to such person, in addition to the fees prescribed in the regulations

(a) a further sum not exceeding one dollar and fifty cents for each day's actual attendance; or

(b) a sum not exceeding the amount by which the expenses necessarily and reasonably incurred by such person for such attendance, exceeds the fees and allowances payable to such person under this Part.

(3) All sums directed by the presiding judge to be paid pursuant to the provisions of subsection (2) shall be paid out of the General Revenue Fund of the Province. R.S., c. 104, s. 16; revision corrected 1999; 2004, c. 3, s. 9; 2010, c. 2, s. 84.

Additional fees for medical testimony

17 The presiding judge may, in his discretion, direct that any duly qualified medical practitioner who has given medical testimony for the prosecution be entitled to a fee or allowance in addition to the ordinary witness fees prescribed in the regulations and the amount of such additional fee or allowance shall be fixed by the judge. R.S., c. 104, s. 17; 2004, c. 3, s. 10.

Poor witness allowance

18 If a witness is a poor man who is obliged to attend a sitting of any court on recognizance or subpoena, the court or judge may direct that such person shall be paid, in addition to such fees, such allowance as the court or judge, after examining such poor person on oath, thinks reasonable for his time, trouble and expense as a witness. R.S., c. 104, s. 18.

Fees allowed crier

19 Every crier shall be allowed in criminal cases the fees prescribed in the regulations. R.S., c. 104, s. 19; 2004, c. 3, s. 11.

Fees allowed interpreters

20 (1) Interpreters where necessary on the hearing of any criminal matter shall be allowed such fees as are certified by the prosecuting officer, not exceeding five dollars per day.

(2) Such fees shall be paid by His Majesty in right of the Province on the production of a certificate from the prosecuting officer certifying that an interpreter was necessary in the matter, and that the amount certified for such fees is reasonable and proper in the circumstances. R.S., c. 104, s. 20; 1994-95, c. 7, s. 19.

Changes to fees and allowances

21 (1) Notwithstanding anything contained in this Act, the Governor in Council may

- (a) prescribe fees and allowances for the purpose of this Act and change the fees and allowances;
- (aa) prescribe the forms to be used under this Act;
- (b) authorize a person to determine the fees and allowances or the circumstances in which additional fees and allowances shall be paid;
- (c) determine the responsibility for payment of new or additional fees and allowances.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 104, s. 21; 2004, c. 3, s. 12.

VERIFICATION OF ACCOUNT

22 and 23 *repealed 1994-95, c. 7, s. 20.*

Certification of witness' account

24 (1) A witness or prosecutor shall be entitled to the payment of his fees and allowances when they are certified to be correct

- (a) by the prosecuting officer, if any, and by the judge of the provincial court or justice of the peace in the case of which he has cognizance, whether there is such prosecuting officer or not; or
- (b) by the prosecuting officer and the clerk of the Crown, or clerk of the court, in a case before the Supreme Court or a county court judge's criminal court.

(2) Persons giving medical testimony shall be entitled to payment of any additional allowance fixed by a judge as hereinbefore provided, upon presentation of a certificate in the following form:

I hereby certify that is entitled to an additional allowance as witness fees for medical testimony given on behalf of the Crown in the case of the Queen vs at the sittings of the Court at

I have fixed such additional allowance at dollars.

Dated

Judge presiding at the said trial.

R.S., c. 104, s. 24.

Necessity of witness certified

25 The certificate shall state that there was reasonable ground for instituting the proceedings, that the witness was a material and necessary witness for the prosecution, and that he attended expressly to give evidence in the same. R.S., c. 104, s. 25; 2004, c. 3, s. 13.

Affidavit for Section 25 certificate

26 Before signing such certificate an affidavit may be required from any such prosecutor or witness, stating the facts required to be stated in such certificate, or he may be examined on oath in respect to such facts. R.S., c. 104, s. 26.

27 to 29 *repealed 1994-95, c. 7, s. 20.*

Schedule to Part I *repealed 2004, c. 3, s. 14.*

Schedule to Part II *repealed 2004, c. 3, s. 14.*
