



LAW SOCIETY OF NEW BRUNSWICK
BARREAU DU NOUVEAU-BRUNSWICK

Solicitor-Client Review Hearings

This document has been prepared to provide clients and lawyers with general information regarding the processes involved with Solicitor-Client Review Hearings. It is not intended to provide legal advice. Parties may seek legal advice and/or representation for any such hearings.

1. Purpose of Solicitor-Client Review Hearings

The purpose of a Solicitor-Client Review is to determine if a lawyer's bill to a client is fair and reasonable. Sections 85 to 87 of the *Law Society Act, 1996* authorize and describe in general the procedure for the review of a lawyer's bill to a client. This is a link to the *Law Society Act, 1996* where sections 85 to 87 can be read:
<http://www.lawsociety-barreau.nb.ca/emain.asp?129>

In addition, there are general *Rules for the Review of Lawyers' Bills* under the *Law Society Act, 1996*. This is a link to those general rules:

<http://www.lawsociety-barreau.nb.ca/emain.asp?153>

2. Matters before a Hearing Takes Place

The client or the lawyer must file a Notice of Review with the Law Society to start the process. The Notice of Review (Form 1) can be printed from this link:

<http://www.lawsociety-barreau.nb.ca/emain.asp?153>

The client or the lawyer must file the Notice of Review, together with a copy of the bill or bills. If the review is requested by the client, the Law Society must receive the Notice of Review within 120 days of receipt or payment of the bill. Further details in relation to time limits for filing the Notice of Review can be found at section 85(9) of the *Law Society Act, 1996*.

When the Notice of Review is filed, the Law Society of New Brunswick will name a Reviewing Officer. Reviewing Officers are New Brunswick lawyers who are appointed by the government, and who are authorized to conduct Solicitor-Client Review hearings and make decisions about a lawyer's account. A deposit of \$150.00 will be requested by the Law Society and forwarded to the Reviewing Officer.

The Reviewing Officer will contact the client and the lawyer to arrange a time and location for the hearing. The hearing will normally take place in the town or city in which the Reviewing Officer is located. This is usually NOT the town or city in which the client and the lawyer are located, and is arranged this way in order to ensure that the Reviewing Officer is not in a conflict of interest with respect to the client or the lawyer. The hearing will usually take place in the Reviewing Officer's boardroom or in a meeting room.

3. Notice of Hearing and Disclosure of Documents

The Reviewing Officer will send a Notice of Hearing to the lawyer and the client. The Notice of Hearing will specify the date, time and location for the hearing. The duration of the hearing will depend upon the complexity of the issues and the number of witnesses. Most hearings can be completed in a half-day, while others will require a full day or more.

At least five days before the date of the hearing, the party requesting the review shall provide the reviewing officer with copies of any documents to be presented at the hearing, and shall provide the opposite party with copies of any documents that may not already be in that party's possession, and which are intended to be used at the hearing.

4. Preliminary Matters

At the beginning of a hearing, the Reviewing Officer may have a number of preliminary matters that need to be determined. This can include matters such as the 120-day time limit noted above, the number of witnesses to be called, and the facts that the parties agree upon. To assist with narrowing the issues and to help expedite the time required for a hearing, the parties are asked to inform the

Reviewing Officer in advance if there are any such preliminary matters.

5. The Hearing in General

A Solicitor-Client Review Hearing is a legal process. Each party presents its own case and looks out for its own interests. There is no mandatory procedure for a hearing. Each Reviewing Officer will conduct a hearing as he or she determines, but will conduct the hearing as informally as possible. The Reviewing Officer understands that the client is usually not a lawyer.

The client and the lawyer can expect the procedure will generally be as set out below.

The parties and the witnesses may be sworn or affirmed by the Reviewing Officer as to the truth of their evidence before they are permitted to commence giving their evidence. Any documents presented will be entered as exhibits. The hearing will NOT be recorded on audio or video. The Reviewing Officer will make notes during the hearing.

6. The Individuals Involved

The parties to a hearing are the client and the lawyer. Many hearings are conducted with just three people in the room – the client, lawyer and Reviewing Officer. Either or both of the parties may be represented by a lawyer at the hearing. Other individuals may be permitted to give evidence at the hearing.

The Reviewing Officer has the responsibility to ensure the hearing is conducted fairly and efficiently, then consider the evidence and ascertain the facts. The Reviewing Officer will determine whether, upon the evidence and the facts so ascertained, the lawyer's bill is or is not fair and reasonable, and render a decision, giving his or her reasons. The decision may be given at the time of the hearing, but it is usually sent to the parties at a later date.

Under section 86(1) of the *Law Society Act, 1996* the Reviewing Officer is directed as follows:

86(1) In reviewing a bill, the reviewing officer shall consider all of the circumstances, including the following:

- (a) the complexity, difficulty or novelty of the issues involved;
- (b) the skill, specialized knowledge and responsibility of the member;
- (c) the member's standing in the profession;
- (d) the amount involved;
- (e) the time reasonably expended;
- (f) where there has been an agreement between the member and the person charged that fixes a fee based on an amount per unit of time spent by the member, whether the rate was reasonable;
- (g) the importance of the matter to the client whose bill is being assessed; and
- (h) the result obtained.

7. Order of Proceedings

The usual order in relation to how and when each party may present their case in the hearing is outlined below. Please note that the Reviewing Officer has complete discretion to decide upon the format. However, generally speaking, the hearing will proceed as described:

1. Once the hearing has been convened, the Reviewing Officer will make opening remarks. Any other preliminary matters will be dealt with at this time. The Reviewing Officer will confirm the documents that he/she has already received from the parties.
2. The Reviewing Officer will ask if the parties wish to have a private discussion, without the Reviewing Officer in the room, in an effort to settle the matter. If both parties wish to do this, the Reviewing Officer will leave the room and will return when notified by one of the parties. If a settlement is reached, the hearing will end. If a settlement is not reached, the Reviewing Officer will continue with the hearing and will NOT want to hear any evidence about what was discussed during the private settlement discussion. This is to enable the parties to speak freely and openly during the private discussion.

3. The person who filed the Notice of Review will present his/her case first. Assuming that the client filed the Notice of Review, the procedure would be as follows:
 - Brief opening statement by the client
 - The Reviewing Officer will have the witnesses swear or affirm, prior to presenting evidence.
 - Witnesses, including the client him/herself, will present oral and/or written evidence. The lawyer may ask questions of the witnesses.
 - The Reviewing Officer may ask questions of the witnesses.

4. The Case for the Lawyer:
 - Brief opening statement by the lawyer
 - The Reviewing Officer will have the witnesses swear or affirm, prior to presenting evidence.
 - Witnesses, including the lawyer him/herself, will present oral and/or written evidence.
 - The client may ask questions of the witnesses.
 - The Reviewing Officer may ask questions of the witnesses.

5. Conclusion of the Hearing:
 - Reviewing Officer asks for submissions.
 - Client makes submissions.
 - Lawyer makes submissions in response.
 - Reviewing Officer asks questions during the submissions.
 - Reviewing Officer gives his/her decision, or advises that the decision will be mailed.

The parties are reminded that the decision of the Reviewing Officer will include a determination of who will pay for the costs of the hearing. The costs are based on the amount of time expended by the Reviewing Officer in preparing for the hearing, conducting the hearing and writing a decision. The time is invoiced at a rate of \$75.00 per hour. The Reviewing Officer may decide that either the client or the lawyer will pay the costs, or may allocate the amount between the two.

8. Additional Concerns for the Parties

- *Who will pay for my expenses?*
You are responsible to pay for all of your own expenses, including but not limited to hotel accommodations, travel costs, photocopies, etc.
- *Can I have a support person attend with me at the hearing?*
You are welcome to bring a friend, relative or other support person with you to the hearing.
- *What should I wear?*
Hearings are informal proceedings. Feel free to wear whatever clothing is comfortable for you. You will not be judged on the basis of the clothing you are wearing.