

DEALING WITH THE TIME LIMIT FOR A REVIEW

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About this publication and its use

This publication:

- Explains a Rule of Court that imposes a time limit on a client's request for a review of a lawyer's invoice for legal services (also called an "account"),
- Explains case law that governs the application of the rule where two or more accounts are sent to a client for the same legal matter,
- Should help you to determine if an account or number of accounts for the same matter are in or out of time for a review,
- Explains how you may be able to overcome a time limit problem; and
- Provides detailed information on the options available, which might best suit your circumstances and how each may and should be exercised.

Before you continue reading this publication, you should understand what a review is, how reviews are conducted and what a review can accomplish. Reading the Review Office publication entitled *Review Office FAQs* should give you a good understanding of reviews and the review process. It and other Review Office publications that might be of interest to you can be found on our website at <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>.

If you are reading a hard copy of this publication and you have access to the Internet, then you should check the "current version date" of the electronic copy that is posted on our website. You will find this date on the title page of the publication. If it is more current than the date on your hard copy, then you should use the electronic copy. Rules and procedures change from time to time and the publications on our website are updated to reflect these changes. If you do not have access to the Internet, then you should ask a friend with Internet access to print a current version of this publication for you, if required.

Understanding the Time Limit Rule

Rule 10.10(2) of the *Alberta Rules of Court* imposes a one-year time limit for a request to have a lawyer's "charges" reviewed by an appointed officer of the Court, known as a "Review Officer". The Rule reads, as follows:

10.10(2) A lawyer's charges may not be reviewed, whether at the request of the lawyer or the client, if one year has passed after the date on which the account was sent to the client.

The term “charges” refers to the things that a lawyer may bill her or his clients for. Charges fall into two main categories: fees and disbursements – but also include GST. Everything that a client is billed for will fall into these categories, so everything in a lawyer’s bill may be reviewed by a Review Officer.

The term “account” refers to a lawyer’s bill or invoice. It is an abbreviated form of “statement of account”, which is the traditional term for a lawyer’s bill. The traditional term is still used but, for the purpose of this publication, we will use the abbreviated form, which is the form used in the *Rules of Court*.

The one-year time period specified in Rule 10.10(2) begins on the date on which an account is sent to a client. In the absence of evidence as to when the account was actually sent (e.g. mailed or emailed to the client), the date of the account is presumed to be the date on which it was sent. In some cases, the account may have been sent days or even weeks after the account was prepared and dated. Where this occurs, the date on which it was sent may be proved by evidence, like a Canada Post date-stamp on an envelope, an email message or handwritten notes indicating that the account was handed to the client during a meeting that took place on certain date. Once the presumed or actual date is determined, the end date for the one-year period can be easily determined. It will be the same day of the same month, one year later.

What must occur within the one-year period is not what it seems to be from a plain reading of Rule 10.10(2). The Rule seems to suggest that the account must be reviewed within the one-year period – but if this were so, then the period could expire due to factors beyond a party’s control. A review might be delayed due to the party’s sudden illness or some other unforeseen factor. Moreover, the scheduling or rescheduling of a review will always depend on the Review Officer’s availability. For these reasons, the Rule has been interpreted so as to require that review proceedings be commenced within the one-year period. Review proceedings are commenced by filing a Form 42, *Appointment for Review of Retainer Agreement / Lawyer’s Charges*, with a court clerk at the appropriate courthouse. The form may be filed by or on behalf of a client on any regular business day (i.e., most weekdays during the year). Filing the form opens a court file for the review and thus “commences” the review proceedings.

From the foregoing, it should be apparent that an account is in time for a review if a Form 42 for its review is filed within one year of the date on which the account was sent to the client. Booking a date for a review or preparing a Form 42 for filing has no relevance to the Time Limit Rule. A client could book a date and prepare a Form 42 before the one-year period expires but not file the Form until the period expires. In such a case, the account would be out of time for review.

Detailed information on preparing and filing a Form 42 can be found in the Review Office publication entitled *How to Request a Review*. You may want to read this publication to gain an appreciation of how much time it might take to prepare and file a Form 42. You should always allow sufficient time to prepare and file your form so that it can be filed before the time limit for a review expires.

Application of the Rule to more than one account for the same matter

Understanding Rule 10.10(2) is only part of what is required to determine whether or not an account is in time for a review. Where a lawyer or law firm has sent a client more than one account for the same legal matter, all of the accounts might be in time if one year has not passed since the most recent account was sent. This, however, will depend on the nature of the lawyer's accounts.

Case law, including a decision of our Court of Appeal, classifies lawyers' accounts into two categories: "final accounts" and "interim accounts". If a lawyer's accounts are "final", then each of the accounts is subject to the one-year time limit. Thus, only those of the accounts that are less than one year old when a Form 42 is filed may be reviewed. If the accounts are "interim", then the time limit applies only to the last account sent by the lawyer. If the last account is less than one year old when a Form 42 is filed, then all of the accounts may be reviewed, regardless of how old they are.

So how can a client tell if an account is final or interim? The answer to this question lies in the agreement that was made between the lawyer and the client with respect to the lawyer's method of billing for the legal services provided by him or her. If the agreement (traditionally called a "retainer agreement") provides for fees based solely on time spent multiplied by hourly rates, then all of the lawyer's accounts will be final. If the retainer agreement allows the lawyer to adjust fees based on factors or circumstances that could arise during the matter handled by the lawyer, then the lawyer's accounts will be interim.

Examples of the factors or circumstances that are most often provided for in a retainer agreement that creates interim accounts are; unforeseen complications; the urgency of a matter; the importance of a matter; and the results achieved by the lawyer. These and other similar factors or circumstances could change as a matter progresses. Because the lawyer's fees may be increased as a result of any change related to them, it would be difficult, if not impossible, for a Review Officer to determine if the lawyer's fees are reasonable until the last account has been sent to the client. This account (and possibly some other accounts that were sent to the client) could contain fee adjustments for things that happened as the matter progressed and the Review Officer would need to know everything that happened and the total amount billed for everything that was done by the lawyer. For this reason, the time limit for a review of interim accounts applies only

to the last account sent for a matter. This allows for a proper review of the accounts, as a whole.

A final account can be properly reviewed without waiting for any further accounts. Because the fees charged in a final account are based solely on time spent by the lawyer (and possibly others in the lawyer's office) multiplied by hourly rates, it does not matter what might happen after the account is sent. In such a case, the Review Officer can determine the reasonableness of the fees charged based on: what was done during the period covered by the account; how much time was actually spent by the lawyer (and possibly others in the lawyer's office) during the period; whether any of the steps taken by the lawyer were unnecessary or unreasonable; whether the services provided by the lawyer during the period are worth the fees charged; and any other relevant factor or factors. Because this can be done, each of the lawyer's final accounts is subject to the one-year time limit specified in Rule 10.10(2).

Finally, it should be noted that retainer agreements needn't be in writing. Where there is no written retainer agreement and no solid evidence of a verbal agreement with regard to how the client would be billed, the lawyer's accounts will be considered to be final.

Determining if accounts are in or out of time for a review

The steps for determining whether or not an account is in time for a review will depend on which of the following circumstances applies to your situation:

1. The lawyer-client relationship ended and only one account was sent by the lawyer.
2. The lawyer sent more than one account for a matter handled by her or him and the lawyer's accounts are final.
3. The lawyer sent more than one account for a matter handled by her or him and the lawyer's accounts are interim.

These circumstances and the steps that should be taken to determine the time limits with respect to them are explained below.

The lawyer-client relationship ended and only one account was sent.

This circumstance could arise as a result of: (a) the lawyer completing the services that he or she was retained to provide; (b) the client terminating the lawyer-client relationship before an account is sent or after an account has been sent but before additional legal services are provided; or (c) the lawyer terminating the relationship and thereafter, sending an account for the services provided by her or him. Regardless of how the circumstance arose in your case, there should be no need to classify the lawyer's

account as interim or final. Instead, take the following steps to determine if the account is in time for review:

1. Look for evidence of the date on which the account was actually sent to you (e.g., an email message from the lawyer that attaches the account for its delivery to you). If you can't find evidence of the actual date, then assume that the account was sent to you on the date of the account.
2. If one year has not passed since the date determined in step 1 and you are able to book an appointment and file a Form 42 before the end of the one-year period, then you should have no time limit problem and no need to read the rest of this publication. However, you must file your Form 42 before the one-year period expires.
3. If one year has passed since the date determined in step 1 or you will be unable to book an appointment and file a Form 42 before the end of the one-year period, then you have a time limit problem. Go to the section of this publication entitled "Options for dealing with a time limit problem" to see what options are available to you - and continue reading the publication to find out how you might be able to overcome your time limit problem.

The lawyer sent more than one account for a matter and the accounts are final.

As previously explained:

- (a) a lawyer's accounts for a matter handled by the lawyer will be classified as "final" where, under an agreement between the lawyer and the client, the lawyer's fees are to be based solely on time spent multiplied by an hourly rate or rates; and
- (b) where the accounts are final, each account will be subject to its own one-year time limit.

If your lawyer has handled more than one matter for you (e.g., an estate matter and a divorce), then you must classify the accounts for each matter by referring to the retainer agreement for that matter. A retainer agreement for one matter could provide for a different method of billing than the retainer agreement for another matter. If you find that the accounts for a matter are final, then you should use the instructions below to determine which, if any, of the accounts are out of time for a review.

If you find that the accounts for a matter are interim, then you should follow the instructions under the next subheading in this publication ("The lawyer sent more than one account and the accounts are interim").

Once you have determined that the accounts for a matter are final accounts, take the following steps to determine which, if any, of the accounts are in time for review:

1. Arrange the accounts in date order, from the oldest to the most current.
2. Use today's date to establish the "cut-off-date" for the accounts that should be in time for review (e.g. The cut-off-date will be same day of the same month, one year ago. All of the accounts that were sent by the lawyer prior to the cut-off date will be out of time – and all of the accounts that were sent after the cut-off date should be in time. However, you must allow time to book an appointment and file a Form 42. If you cannot file a Form 42 within one year from the date of the earliest account that was sent after the cut-off date, then that account should be added to the out-of-time accounts.
3. If all of your accounts are in time for review, then there should be no need to read the rest of this publication. However, you must file your Form 42 within one year of the date of your oldest account.
4. If any of your accounts are out of time for review, then you should read the rest of this publication to see what options are available to you and to find out how you might be able to overcome your time limit problem.

The lawyer sent more than one account for a matter and the accounts are interim.

Where a lawyer's accounts for a matter are interim, the time limit imposed by Rule 10.10(2) will apply only to the last account sent by the lawyer. If this account is in time for review, then all of the accounts will be in time. If it is out of time, then all of the accounts will be out of time.

You can determine if the last account is in time by following the steps provided under the subheading "The lawyer-client relationship ended and only one account was sent" (beginning on page 8). If you are reading an electronic copy of this publication, then you can click [here](#) to go directly to these steps.

Options for dealing with a time limit problem

If one or more of your lawyer's accounts is out of time for review, then you may:

- (a) Request a review of only those of the accounts that are in time;
- (b) Seek the lawyer's agreement to have the out-of-time accounts reviewed; or
- (c) Ask the Review Officer to extend the time limit for a review of the out-of-time accounts.

Each of these options is explained below.

A. Request a review of only those of the accounts that are in time

Where some of your accounts are in time and others are not, you might wish to limit your review to the in-time accounts. You can do this by filing only the in-time accounts or by advising the Review Office, by email, that you do not wish to pursue a review of any out-of-time accounts that have already been filed. Information on how to file accounts can be found in the Review Office publication entitled *How to Request a Review*.

If you decide to limit your review to your in-time accounts, the Review Officer may still consider the total amount that you were billed for the matter handled by the lawyer, including the total of the accounts that are not being reviewed. However, the Review Officer would be unable to examine the out-of-time accounts to determine whether or not:

- (a) any unnecessary or unreasonable work was done;
- (b) the time spent by the lawyer or lawyer's staff was reasonable, having regard to what was done;
- (c) the time recorded by the lawyer was accurately and properly recorded;
- (d) you were billed for things that you should not have been billed for; and
- (e) other similar factors.

Before deciding whether or not you might wish to limit your review to in-time accounts, you should consider the following questions. Your answers to them should help you decide if this option should be pursued:

- (a) Is the total of the amounts billed in the out-of-time accounts significant in relation to the total of the amounts billed in the in-time accounts? Example: Where the out-of-time accounts total \$1,000 and the in-time accounts total \$33,000, it is probably not worth pursuing a review of the out-of-time accounts.
- (b) Are you generally satisfied with the out-of-time accounts but dissatisfied with the in-time accounts?
- (c) Are any of your out-of-time accounts more than two years old? In addition to the time limit there is also a limitation period prescribed by Alberta's *Limitations Act*. If any of your out-of-time accounts are more than two years old (counting back from the date on which you filed, or will file, your Form 42), then these accounts cannot be reviewed without the lawyer's consent. Neither the Court nor a Review Officer can extend the time for a review of an out-of-time account that is more than two years old. However, a lawyer can waive the limitation period, which would otherwise serve as a defence that may be asserted by the lawyer.

- (d) How likely is it that the lawyer might agree to a review of the out-of-time accounts? If you believe that the lawyer might agree, then option (b) would be worth pursuing, even if the total of the amounts billed in the out-of-time accounts is relatively small. Information that might help you determine the likelihood of obtaining an agreement from the lawyer is provided under subheading B, below.
- (e) How likely is it that you would be successful in obtaining an extension of time from the Review Officer? Information on this option is provided later in this publication. Reading it should help you to determine your likelihood of success.
- (f) How important is it to you that the review be completed without delay or, put another way, would you be concerned if the review is delayed? Options (a) and (b) are unlikely to cause a delay but asking the Review Officer to extend time for a review of your out-of-time accounts (option (c)) could delay the completion of your review, as explained under subheading C, below.

If you are still uncertain as to whether or not option (a) would work best for you, then you should file all of your accounts so that options (b) and (c) may be more easily pursued should you subsequently decide to do so. As previously suggested, you can always exercise option (a) at a later date by advising the Review Office, by email, that you no longer wish to pursue a review of some or all of your out-of-time accounts.

Finally, it goes without saying that option (a) is not available if all of your accounts are out of time. Where this is so, you would have to get the lawyer's agreement or a Review Officer's extension of time before any of the accounts can be reviewed.

B. Seek the lawyer's agreement to have your out-of-time accounts reviewed

Pursuant to Rule 13.5(1) of the *Alberta Rules of Court*, the parties to a review may agree to extend the time limit imposed by Rule 10.10. Thus, if your lawyer were to agree to have your out-of-time accounts reviewed, then you would have no time limit problem and your review could proceed, as though all of your accounts were in-time.

While this option is simple and efficient, many clients are reluctant to pursue it. Some are uncomfortable corresponding with their former lawyers while others doubt that they would get an agreement. Yet, because there is virtually no risk in asking a lawyer for an extension of time, this option should never be dismissed simply because the client is uncomfortable corresponding with his or her lawyer or former lawyer.

In considering this option you should know that many lawyers agree to extend the time for accounts that are less than two years old. There are several reasons for this. First, most lawyers believe that their accounts are reasonable and are confident that a review will prove this. Second, many believe that accommodating a client or former client is the

right thing to do. Finally, many lawyers are aware that client requests for extensions of time by a Review Officer are often successful. Since time spent before a Review Officer is not billable, many would rather spend their time working on billable matters than on possibly time-consuming and tenuous arguments before a Review Officer.

Before moving on, a cautionary note should be added. A lawyer's refusal to agree to an extension of time should not be taken to suggest that the lawyer lacks confidence in the reasonableness of her or his accounts. There are a number of reasons why a lawyer might not agree, including a genuine belief that a Review Officer is unlikely to grant an extension of time or would be unable to do so because of the limitation period, explained above.

Although the lawyer's agreement to have out-of-time accounts reviewed needn't be in writing, a written record of it would be useful and could be extremely valuable. Disagreements concerning what precisely was agreed to are not uncommon and written evidence of the lawyer's agreement would help the Review Officer resolve the issue. Email correspondence is often used for this purpose. An email message from the lawyer that reads: "I have no objection to a review of all of the accounts that are less than 2 years old" would be sufficient.

You should also be aware that a lawyer's agreement may be obtained at the outset of a review hearing. Where a client was unable or unwilling to seek the lawyer's agreement prior to the commencement of the hearing, the Review Officer will usually ask the lawyer if she or he will agree to have the out-of-time accounts reviewed. If the lawyer agrees, then the review will proceed, as though the out-of-time accounts were in-time. If the lawyer does not agree, then the Review Officer will conduct a "preliminary hearing" to determine whether or not an extension of time should be granted.

Because seeking an agreement from a lawyer typically involves less time and effort than preparing to argue for an extension of time by a Review Officer, it is an exercise that is well worth pursuing. Pursuing it will determine whether or not preparations for extension arguments will be required. Failing to pursue it may result in wasted preparations where the lawyer agrees to an extension at the outset of a review hearing. Moreover, pursuing it could result in a shorter review hearing and less risk that the hearing might be adjourned for lack of time.

C. Ask the Review Officer to extend the time limit

This option would be your best or only option where: (a) a review of your out-of-time accounts is of considerable importance to you; and (b) you cannot contact the lawyer or he or she has refused to have the out-of-time accounts reviewed.

A request for an extension of time by a Review Officer will usually be dealt with at the outset of a review hearing (i.e. on the date and at the time set for the review, as shown on your Form 42, *Appointment for Review of Retainer Agreement / Lawyer's Charges*). No additional paperwork is required but you should be prepared to present evidence and explain why an extension should be granted. Because review proceedings are intended to be client-friendly and expeditious, verbal evidence is rarely given under oath - and documents (e.g., copies of letters, email messages etc.) may be presented without the use of a sworn affidavit. Although your documents needn't be filed prior the review hearing, filing them as "confidential evidence" for your review is always a good idea, as it should save review-hearing time and decrease the likelihood of an adjournment. The process for filing evidence for a review is explained in our publication entitled *How to Request a Review*, which can be found on our webpage at <http://www.albertacourts.ca/qb/areas-of-law/reviews-assessments>. If you do not file your documents prior to the review hearing, then you should bring hard copies to the hearing (one of each for you, the lawyer and the Review Officer).

Depending on the facts of your case, it is possible that no relevant documents exist. When this occurs the Review Officer will made a decision based solely on verbal evidence provided by the parties.

A request for an extension of time by a Review Officer is essentially a preliminary hearing. The Review Officer will usually begin by asking the lawyer if he or she will agree to a review of the out-of-time accounts. If the lawyer does not agree, then the Review Officer will ask you to present your case for an extension. After this, the Review Officer will ask the lawyer to respond and present her or his case. Thereafter, you will be given an opportunity to respond to the lawyer's case. Throughout this process, the Review Officer may question the parties. At the end of the process, the Review Officer will make a decision and give his or her reasons for it.

Depending on the length and outcome of the preliminary hearing:

- (a) the review proceedings may be dismissed (where all of the accounts were out-of-time and an extension is refused);
- (b) a review of the in-time accounts and all of the out-of-time accounts for which an extension is granted will proceed, often without delay; or
- (c) the review, itself, may be adjourned to a new date and time.

To properly prepare for an extension-of-time hearing and to give you a better sense of how long the hearing might take, you should first know and understand the factors that a Review Officer is likely to consider. This should help you to identify evidence and

develop arguments that are favourable to your position. It should also help you determine the strengths and weaknesses of your case.

What factors do Review Officers consider in deciding whether or not an extension of time should be granted?

A Review Officer's decision to grant or refuse an extension of time will be based on a number of factors that can be found in case law. The most important of these factors are explained below.

- (a) The limitation period has expired. Section 3(1)(a) of *The Limitations Act (Alberta)* imposes a two-year limitation period for a review of a lawyer's accounts. Like the one-year time limit imposed by the *Rules of Court*, the limitation period does not apply to interim accounts, as long as the lawyer's last (or final) account was sent to the client less than 2 years before a Form 42 is filed. However, unlike the time limit, a limitation period cannot be extended by a Review Officer. This being so, a final account that falls beyond the limitation period can only be reviewed with the lawyer's consent, which is unlikely to be given. Information on the difference between a final and an interim account can be found on page 4 of this publication.
- (b) Possible prejudice to the lawyer. The time limit rule attempts to balance the legitimate competing interests of the client against those of the lawyer. The client's interest is the right to have the reasonableness of the lawyer's accounts determined. The lawyer's interest is to have this determination made within a reasonable period of time in order to prevent or minimize financial difficulties for the lawyer. Accounts are the source of a lawyer's income. Once they are paid the monies received will be used to pay expenses, support the lawyer's practice and provide a source of income for the lawyer. With this in mind, you can imagine that a process that could require a large refund of monies that were paid to the lawyer long ago could cause serious financial difficulties for the lawyer. For this reason, a Review Officer will consider how much was paid to the lawyer on the out-of-time accounts and how long ago it was paid. Where the amount that was paid is large and the payment was made long ago, a finding of potential prejudice would be more likely and the Review Officer would be less likely to grant an extension of time. Where the amount is small and the payment was recently made, there would be less potential for prejudice and the Review Officer would be more likely to grant an extension. In addition to this, the existence of in-time accounts would usually weigh in favour of an extension. Since a possible reduction by the Review Officer in these circumstances would be more likely to result in a return of monies that were only recently received by the lawyer or, perhaps, in the reduction of an amount still outstanding on the in-time accounts, the lawyer would be less likely to suffer financial harm should the Review Officer extend the time for a review of the out-of-

time accounts. This, however, would depend on total of the amounts charged on the accounts in each category (in-time and out-of-time), how much was paid in respect of each, and when the payments were made. Finally, it should be noted that “prejudice to the lawyer” is not confined to financial considerations. Thus, there may circumstances in which the lawyer may argue that some form of non-monetary prejudice would be suffered by the lawyer should the Review Officer permit a review of the out-of-time accounts.

- (c) Evidence of overcharging. This factor is typically weighed against possible prejudice to the lawyer. Where evidence presented by the client raises a strong suspicion of overcharging by the lawyer, the amount that was paid to the lawyer and when it was paid would be of less importance to the Review Officer’s decision. In such a case the Review Officer would be inclined to grant an extension so that the suspicion may be tested through a detailed review. On this point, it is important to recognize that the client’s evidence needn’t prove that the lawyer overcharged. It must merely raise a strong suspicion that the lawyer overcharged. In some cases very little evidence may be required to do this. In other cases, examples of possible overcharging may be required. Where the matter handled by the lawyer is typically routine and uncomplicated (like the preparation of a simple will or a simple real estate transaction) and the lawyer charged a great deal more than would normally be charged, no additional evidence would be required. Where the matter is atypical or complex (like a matrimonial property action or commercial litigation) there would have to be some evidence that the lawyer might have: done work that was not required; spent too much time doing something that was relatively simple or of little importance; worked on matters that the lawyer was not retained to work on; or taken or failed to take some other action, the consequences of which resulted in inflated costs to the client. Here again, the client needn’t prove that any of this actually happened. For the purpose of a request to extend the time for a review, the client must merely raise a strong suspicion that it did.
- (d) Reason for the Delay. A Review Officer will also want to know, and will consider, why the client did not file a Form 42 within the one-year time limit for a review. In many cases the client will have failed to commence the proceedings on time because the client was of unaware of the review process and its availability. While this excuse is often accepted by Review Officers, it unlikely to be accepted where a written retainer agreement, signed by the client, advises the client of the review process and the time limit for it. Of course other explanations for a delay in the commencement of review proceedings may be provided and could be accepted by a Review Officer. A delay caused by the lawyer’s failure or refusal to provide billing information to the client at the client’s request would be an example. In this example, the client should provide evidence of the requests that were made and the lawyer’s refusal or unwillingness to respond to them.

(e) Communications concerning the accounts and payments. Other communications between the lawyer and the client may weaken the client's case for an extension of time. Where the client is found to have made repeated promises to pay the lawyer's accounts without raising any complaints about the amounts charged, the Review Officer would be less likely to grant an extension. Similarly, where the client is found to have paid the lawyer's accounts without any complaints and perhaps with compliments concerning the lawyer's work, the client's case is likely to suffer. This, however, may depend upon the facts in each case and the strength of the evidence provided. There may, for example, be reasonable and credible explanations for a client's promises to pay or for his or her failure to complain about the lawyer's charges. Additionally, there may be conflicting accounts of discussions between the parties and no written communications to corroborate either account. Where there is no written evidence the Review Officer may make a finding based on credibility, give the client the benefit of doubt (where both accounts are credible) or ignore or minimize the impact of the factor (where it would seem just to do so, having regard to other factors).

Although the factors explained above are not the only factors that may be considered by a Review Officer, they are most important and most commonly considered. Applying them to the facts of your case should give you a good understanding of the evidence that you would be required to present in order to obtain an extension of time. They should also give you a sense of how long a preliminary hearing for an extension might take, bearing in mind that the lawyer will likely want to present evidence and make arguments favourable to the lawyer's position.

The above factors are also the ones most often listed in case law. However, any relevant factor may be considered. Thus, if you believe that some other, perhaps unique, factor should be considered in your case, then you should raise it. The worst that could happen is that the Review Officer might find it to be irrelevant, in which case it would not be included in the Review Officer's considerations.

Estimating your likelihood of success

Because Review Officers will consider all applicable factors, the strength of the evidence related to them and the facts in each case, it may be difficult to estimate the likelihood of succeeding with a request for an extension of time. However, the following general principles should assist in arriving at reasonably accurate prediction:

1. Due to the limitation period imposed by *The Limitations Act (Alberta)*, out-of-time accounts that are more than 2 years old when a Form 42 is filed for their review cannot be reviewed without lawyer's consent. This being so, and because Review

Officers cannot extend the limitation period, there is no chance that a Review Officer would grant extension of time for these accounts.

2. It is extremely unlikely that an extension would be granted where:
 - (a) the out-of-time accounts are almost 2 years old;
 - (b) a large amount was paid on them;
 - (c) most of the payments were made long ago;
 - (d) you never complained about the lawyer's charges;
 - (e) there are few, if any, in-time accounts;
 - (f) the total paid on the out-of-time accounts greatly exceeds the total recently paid on the in-time-accounts plus any amount still outstanding;
 - (g) there is no evidence that suggests that you might have been overcharged; and
 - (h) you have no reasonable explanation for failing to file a Form 42 within the one-year time limit imposed by Rule 10.10.
3. It is almost certain that an extension would be granted where none of the circumstances listed in paragraph 2 exist (i.e. where the opposite of each is true).
4. Where only some of the circumstances exist, the Review Officer's decision will depend on the weight given to each applicable factor and the strength of the evidence related to it. In this regard, strong evidence that you might have been overcharged will usually be given greater weight than any other applicable factor, including possible prejudice to the lawyer.
5. Where there is no convincing evidence of possible overcharging, prejudice to the lawyer will usually be given greater weight than other applicable factors but this may depend on the number and nature of the factors that favour your position and the strength of the evidence related to them.

Applying these general principles to the facts of your case should help you to determine whether or not pursuing a request for an extension of time would be worthwhile. It should do so by helping you determine likelihood of succeeding with a request and how much time and effort could be required to prepare for and present a reasonable case for an extension. While these considerations should guide your decision, you may also wish to revisit the questions that should be answered when considering the alternative of limiting your review to in-time accounts. These questions can be found on page 8 of this publication.

Preparing for an extension hearing

Where possible, a Review Officer will attempt to deal with an extension hearing and a review on the same date and within the time originally scheduled for the review. To facilitate this, both parties should be prepared to present their cases as quickly and efficiently as possible and this, of course, requires sufficient preparation.

To properly prepare for an extension hearing, you should:

1. Reread the section of this publication that explains the factors that a Review Officer will typically consider when deciding whether or not an extension should be granted and list those that apply to the facts of your case.
2. Check to see if you have email messages, letters or other written material that supports your position on each listed factor, organize them by factor and make copies of them for presentation at the hearing or file and serve the documents in advance of the hearing. For information on filing evidence for an extension hearing, see the first paragraph on page 11 of this publication.
3. Make a point-form outline of what you will want to say with respect to each factor and how your documents, if you have any, support your position. An outline will help you to remember all of your important points and present them in quick and logical fashion. Where potential prejudice to the lawyer is a factor, you may want to include notes on the total amounts paid on your on-time and out-of-time accounts, when the payments were made, how much, if any, was not paid.
4. Try to anticipate the lawyer's arguments and prepare an outline of how you should respond to each.

Don't worry about the process for the hearing. The Review Officer will guide you through it.

Because Review Officers often interrupt presentations to ask questions, you might want to bring a coloured pen or pencil to the hearing so that you can clearly mark spots in your outline where interruptions occur. This should allow you to quickly return to where you left off, thus avoiding the possibility of missing an important point that you wish to make.

Finally, some clients, particularly those who are prone to nervousness, prefer to submit written arguments for extension and review hearings. If you wish to submit a written argument, then you should email it to the Review Office and the lawyer several days in advance of the hearing. Written arguments that are submitted in advance are usually

read in advance, which tends to shorten a hearing. Written arguments that are submitted during a hearing (whether read out loud or silently) tend to have the opposite effect.

Conclusion

Rule 10.10(2) of the *Alberta Rules of Court* imposes a one-year time limit for a review of a lawyer's accounts. The time limit begins on the date on which an account is sent to the client. To have an account reviewed, the client must file an Appointment for Review within one year of this date. However, the time limit does not apply to interim accounts, as long as an Appointment for Review is filed within one year of the date on which the last account sent to the client. This publication explains why this is so and provides guidance on determining whether or not an account is in time for review. In addition, it explains the options that a client will have for dealing with out-of-time accounts. These consist of abandoning a review insofar as it applies to out-of-time accounts (i.e., limiting the review to in-time accounts, if there are any); obtaining the lawyer's agreement to have the out-of-time accounts reviewed; or asking the Review Officer to extend the time for a review of the out-of-time accounts.

Each of the available options has its own advantages and disadvantages. Limiting a review to in-time-accounts has the advantage of speed and ease but it can only be used where there is also at least one in-time account. Moreover, it should only be used where a review of the in-time-accounts could provide a reasonable benefit to the client. Asking the lawyer to agree to a review of the out-of-time accounts is almost as easy but requires communication with the lawyer, which could be difficult or impossible. Where limiting the review to in-time accounts is impractical and communication with the lawyer is possible, this option is almost always worth pursuing. A lawyer's refusal to agree does not prevent a client from subsequently requesting an extension of time from the Review Officer.

Of the three available options, requesting an extension of time from the Review Officer requires the most time and effort. It requires an understanding of the factors that the Review Officer would likely consider; the identification and assembly of written evidence relevant to each applicable factor; and the preparation of notes and materials that should facilitate quick but effective arguments before the Review Officer. However, it is sometimes the only viable option.

This publication provides detailed information on all three options, as well as guidance on selecting the option that should work best for you. In addition, it explains the factors that a Review Officer should or must consider when deciding whether or not an extension of time should be granted. Finally, it provides guidance on preparing for and presenting a case for an extension of time.

While efforts have been made to provide all of the information that you should need to deal with a time limit problem, you might nevertheless be left with some unanswered questions. Answers to questions regarding forms or procedures may be obtained from the Review Office Assistant in Calgary or Edmonton. Contact information for the Review Office Assistants is same as that provided on the title page of this publication.

For reasons related to procedural fairness, questions regarding the merits of your particular case, including your chances of obtaining an extension of time from a Review Officer cannot be answered by a Review Office Assistant. Answers to questions that go beyond forms or procedures should be addressed to a lawyer or a legal service organization. Unfortunately, the Review Office does not have the resources required to refer clients to legal service organizations. However, Court and Justice Services (CJS) may be able to do so. Contact information for CJS can be found at:

<https://www.alberta.ca/court-and-justice-services.aspx>.