



Fleury, Comery LLP
Barristers & Solicitors

STEPS AND COSTS IN A SIMPLE CONSTRUCTION LIEN MATTER

A contractor client has made a very understandable request for an "estimate" for the legal costs of proceeding with a construction lien claim. Although our legal services are mainly billed on a time basis - our hourly rates - there are steps in a simple lien matter that are reasonably predictable. Here is a description of the steps, and our attempt to provide a range of costs for each step.

Preserve and Perfect the Lien

The lien arises as the work is done. However, to preserve the lien, the claim must be registered on title to the property. We need to meet with you and be retained, get your story and, hopefully, all your documents. We must open a file, do a property search and prepare the lien claim document. Another meeting is required to review and sign the lien, and then register it on title. This is not the end of the story.

The lien can be deleted from property title if we do not "perfect" it within a very short period of time by starting a court claim and then obtaining from the court a "certificate of action" confirming that this has been done. That certificate must also be registered on title to the property. We prepare the "Statement of Claim", review it with you, have it issued at the court, obtain the certificate, and then register it. If you wish to retain us for a lien matter, we currently require a deposit of \$3,000.00, which is only a minimum estimate of the cost to this stage. We are not prepared to simply register a lien without security for the costs of perfecting it.

Close of Pleadings

The initial documents served on the parties and filed at court - such as the Statement of Claim and Statement of Defence, and possibly counterclaims and crossclaims and defences - are called "pleadings". It is difficult to predict what will happen at this stage, but on average, the process should not take a vast amount of time. We generally submit a second interim account at this point for somewhere in the area of \$1,500.00, covered usually by the deposit above.

Preparation of Documents

Putting together the documents on either side of a dispute is usually time-consuming, but an absolute necessity. There is a special spreadsheet called a "Scott Schedule" that is almost always required by the court. We ask our clients for their help, but it is really necessary to define and review every disputed issue. The legal cost of such

preparation will vary greatly, and will be based on time spent. Our account could be anywhere from \$1,500.00 to even \$10,000.00.

Time periods/Limitations

Construction lien litigation is subject to strict time periods. The most obvious ones are to register ("preserve") the lien within 45 days of last supply of work or materials, and "perfect" it - another 45 days). However, the lien claim must also be listed for trial within two years of the date the court claim was started.

Pre-trials, Motions and Conferences

Although lien procedures are supposed to be summary, there are issues that arise, particularly as to timetables and document production that require court attendances and directions before the final one, the trial. The pre-trial, for example, requires the preparation and filing of pretrial statements and briefs. Conservatively, for a simple lien, the legal cost for each such attendance would be \$2,500.00 as a minimum.

Trial

The preparation needed for a trial, and the actual trial for a simple lien would be at least \$6,000.00 for a two-day trial. The length of the trial would depend on the issues, of course.

Summary

We do, of course, deliver interim accounts - which may well differ from the estimates here! That is the nature of litigation - we cannot predict, for example, what the other party will come up with. More importantly, there will usually be opportunities for settlement during the process, when both sides must consider their long term interests and prospects. Costs will be a factor in any such process.

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