

## **Appendix B – Party and Party Costs**

### **Application**

- 1 Unless a special tariff is provided for in an enactment, this Appendix applies to the assessment of costs that are payable as between party and party in all appeals, applications for leave to appeal and all other proceedings in the Court of Appeal commenced after September 5, 1995.

### **Scale of costs**

- 2 (1) If a party is entitled to costs, the costs must be assessed under Scale 1 unless the court or a justice otherwise orders.
  - (2) In fixing the scale of costs, the court or a justice must have regard to the following principles:
    - (a) Scale 1 is for matters of ordinary difficulty;
    - (b) Scale 2 is for matters of more than ordinary difficulty or importance;
    - (c) Scale 3 is for matters of unusual difficulty or importance.
  - (3) In fixing the appropriate scale under which costs will be assessed, the court or a justice may take into account the following:
    - (a) whether a difficult issue of law, fact or construction is involved;
    - (b) whether an issue is of importance to a class or body of persons, or is of general interest;
    - (c) whether the result of the proceeding effectively determines the rights and obligations as between the parties beyond the relief that was actually granted or denied.

### **Value of units**

- 3 (1) The value for each unit allowed on an assessment is as follows:

- (a) Scale 1 - \$60 for each unit;
  - (b) Scale 2 - \$80 for each unit;
  - (c) Scale 3 - \$100 for each unit.
- (2) If maximum and minimum numbers of units are provided for in an Item in the Tariff of Costs, the registrar has the discretion to allow a number within that range of units.
- (3) If the Tariff of Costs indicates a range of units in relation to costs to be assessed, the registrar must have regard to the following principles:
- (a) the fewest number of units is for matters on which little time should ordinarily have been spent;
  - (b) the maximum number of units is for matters on which a great deal of time should ordinarily have been spent.

#### **Discretion as to costs**

- 4** (1) The court or a justice may order, under section 2 (1), that
- (a) costs be awarded in an amount fixed by the court or justice, or
  - (b) no costs be awarded against a party.
- (2) Without limiting subsection (1), the court or a justice may,
- (a) with the consent of the parties, fix a lump sum as the costs of the whole proceeding, either inclusive or exclusive of disbursements and expenses, and
  - (b) on application by a party, or by consent, fix a lump sum as the costs of an application within the proceeding, either inclusive or exclusive of disbursements and expenses.
- (3) Without limiting subsection (1), if anything is done or omitted improperly or unnecessarily by or on behalf of a party, the court or a justice may order

(a) that any costs arising from the act or omission not be allowed to the party, or

(b) that the party pay the costs incurred by any other party by reason of the act or omission.

### **Apportionment if appeals heard together**

5 If 2 or more appeals have, by order, been heard at the same time or heard one after the other and no order has been made to apportion costs, the registrar may

(a) assess 2 or more bills as one bill,

(b) allow an item once or more than once, or

(c) apportion the costs of an item or of the whole bill between the appeals.

### **Preparation if activity does not take place**

6 If, in the Tariff of Costs, units may be allowed for preparation of a record or for preparation for an application, conference or hearing, the registrar may allow units, up to the maximum number allowable, for that preparation even though the record is not ultimately required or the application, conference or hearing does not take place or is adjourned.

### **Offer to settle bill of costs**

7 (1) A party to an assessment may deliver to another party an offer to settle the amount of the bill of costs in Form 32 and, after the assessment has been completed, may produce the offer to the registrar.

(2) If an offer is produced to the registrar under subsection (1), the registrar must determine whether the offer should have been accepted and, if so, may do one or more of the following as appropriate:

(a) disallow, to the party presenting the bill, items of the tariff that relate to the assessment;

(b) allow the party making the offer, by way of set off, items of the tariff that relate to the assessment;

(c) allow to the party presenting the bill and making the offer double the value of items of the tariff that relate to the assessment.

### **TARIFF OF COSTS**

<b>Item</b>	<b>Description</b>	<b>Units</b>
1	Advising appellant or respondent on appeal, application for leave to appeal or cross-appeal.	Minimum 5 Maximum 20
2	Preparation and settlement of appeal book and transcript.	5
3	Preparation of motion book including written argument.	5
4	Preparation of factum.	Minimum 10 Maximum 50
5	Preparation of written argument if specifically ordered by the court or a justice or directed by the registrar.	5
6	Preparation for a pre-hearing conference and for each application, including leave to appeal applications, and each review under section 9 (6) of the Act.	5
7	Attendance at a pre-hearing conference and for each application, including leave to appeal applications, and each review under section 9	5

	(6) of the Act.	
8	Preparation for cross-examination on affidavits under Rule 37, per 1/2 day for the party conducting the cross-examination for the party being examined.	2 1
9	Attendance at cross-examination on affidavits under Rule 37, per 1/2 day for the party conducting the cross-examination for the party being examined.	4 2
10	Preparation for hearing of appeal, per 1/2 day.	Minimum 10 Maximum 30
11	Attendance at hearing of appeal, per 1/2 day.	10
12	Preparation and settlement of judgment.	2
13	Preparation and assessment of bill of costs.	Minimum 1 Maximum 3