

# **Schedule 1**

## **Scale of Costs**

### **1. Definition**

In this Scale of Costs, “participant” refers to both an applicant and intervener in a proceeding.

### **2. Application of Scale of Costs and Purpose**

2.1 This Scale of Costs applies to applicants and interveners participating in a proceeding commenced after April 1, 2012.

2.2 This Scale of Costs represents a fair and reasonable tariff to provide any participant with adequate, competent, and professional assistance in making an effective submission before the Board. In a case where a participant can advance persuasive argument that the scale is inadequate given the complexity of the case, the Board may award an amount greater than stated in this scale to address such unique circumstances.

2.3 The onus is on the eligible claimant to provide sufficient information for the Board to effectively assess its claim and must address the specifics of the proceeding.

### **3. Costs claims**

3.1 A participant may apply in writing to the Board within 30 days after the issuance of a Board decision in a proceeding for an award of costs incurred in that proceeding by filing a costs claim which explains:

- (i) what interests they represent.
- (ii) what tasks they have undertaken,
- (iii) why they appeared before the Board
- (iv) what efforts were expended to avoid duplication as between participants or as between counsel, experts, and consultants, and
- (v) why the costs submitted are reasonable.

3.2 A costs claim must include statement(s) of account reflecting the professional fees being claimed and legible receipts for certain expenses where required.

3.3 The onus is on the applicant or intervener to provide sufficient information for the Board to effectively assess its claim and must address the specifics of the proceeding.

3.4 A costs claim must include the following completed forms which are available on the Board’s website:

- Form 1 – Summary of total costs claimed
- Form 2 – Summary of professional fees claimed
- Form 3 – Summary of disbursements claimed
- Form 4 – Affidavit of fees and expenses claim which may be signed by the applicant or intervener or counsel for the applicant or intervener.

#### 4. Allowable Fees and Expenses

A participant may only claim the following costs at the rates equal to or lesser than those set out below:

##### 4.1 Professional fees

This scale of costs provides a sliding scale for professional fees; as the professional's experience increases, so will his or her value and wage. The Board emphasizes that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Board will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed. **The Board allows professionals only half of their hourly rate for travel time.**

Claims for professional fees must be accompanied by a statement of account that must include the following:

- The date of activity undertaken;
- A description of the activity undertaken with sufficient detail to allow the Board to understand the nature of the activity and how it relates to the issues being advanced by the eligible participant; and
- The time incurred with respect to each described service.

##### a. Legal fees

Articling students: \$140 per hour  
One to four years at the bar: \$240 per hour  
Five to seven years at the bar: \$280 per hour  
Eight to 12 years at the bar: \$320 per hour  
More than 12 years at the bar: \$350 per hour

Legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. The Board will not award legal fees for secretarial or support staff work.

##### b. Fees of consultants, analysts, and experts and support staff

One to four years of experience: \$120 per hour  
Five to seven years of experience: \$160 per hour  
Eight to 12 years of experience: \$230 per hour  
More than 12 years of experience: \$270 per hour  
Secretarial or support staff who are not part of the office staff of the consultants, analysts or experts: \$45 per hour.

The Board will not recognize claims for overhead based upon percentages of the fees or expenses claimed.

## 4.2 Expenses

The Board will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and clearly identify the date upon which the receipt was issued. **Unless otherwise stated, the Board will not request clarification for receipts that do not satisfy these requirements, and the related claim may not be approved.**

### a. Office expenses

The Board will consider claims for the following office disbursements incurred throughout the eligible participant's involvement in the proceeding:

- courier charges
- long-distance telephone calls
- photocopies or printing charges (10 cents per page)
- postage
- transcripts (must be accompanied by a receipt)

The Board does not require eligible claimants to submit receipts for the above disbursements (other than transcripts) with their initial costs claims. Eligible claimants should, however, retain receipts for such expenses, in the event the Board requests the receipts.

Office expenses other than those listed above may be listed as miscellaneous, with a short explanation of the expenses claimed and receipts attached.

### b. Personal expenses

The Board will consider claims for the following personal expenses that are incurred during an oral hearing:

#### Meals

The maximum allowable daily claim for meals is in accordance with current Government of Yukon rates. Claims for meals are restricted to the duration of an oral hearing. Tips are not claimable. Receipts are required for all meals claimed, with the date of the meal marked on the receipt.

#### Accommodation

The maximum daily claim for accommodation will be based on the allowable rates for accommodations as specified in the most current Accommodation and Car Rental Directory published by Public Works and Government Services Canada (or a renamed successor document). Claims for accommodation are restricted to the duration of an oral hearing. Receipts must accompany all claims for accommodation.

## **Travel**

The Board's mileage rate for automobile travel in accordance with current Government of Yukon rates. This portion of a claim is restricted to travel distances of 50 km or greater from the hearing venue.

The Board will recognize claims for airfare at economy rates or less. Claims for airfare are restricted to an oral hearing. Receipts are required and must clearly identify the date of departure and arrival.

## **Taxi**

Taxi claims are restricted to an oral hearing. Taxi receipts need not accompany the claim. Tips are not claimable. However, a participant should retain such receipts in the event that the Board requests the receipts.

## **Parking**

Parking claims are restricted to an oral hearing. Parking receipts need not accompany the claim. However, an eligible claimant should retain such receipts in the event that the Board requests the receipts.

### **4.3 Fees and Honorarium of Unrepresented Intervener**

An intervener who has not hired legal counsel or a consultant may claim for the number of hours spent in preparing its evidence and submissions in a proceeding. The hourly rate of an intervener shall not exceed \$100 per hour and will be determined by the Board when assessing the costs claim.

### **4.4 Attendance Honorarium**

An unrepresented intervener may claim an honorarium of \$50 for each half day of attendance at an oral hearing.

## **5. Comments on Costs Claims**

Participants may comment on costs claims filed by other participants within 14 days of the filing with the Board of a costs claim.

## **6. Costs Award**

6.1 In exercising its discretion to award costs, the Board may award costs, in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:

- (a) the costs are reasonable, prudent, and directly and necessarily related to the proceeding, and
- (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

6.2 In determining the amount of costs to be awarded to a participant, the Board may consider whether the participant did one or more of the following:

- (a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by the relevant witness;
- (b) made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by another participant;
- (c) made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine its submission with that of similarly interested participants;
- (d) presented in oral evidence significant new evidence that was available to it at the time it filed documentary evidence but was not filed at that time;
- (e) failed to comply with a direction of the Board, including a direction on the filing of evidence;
- (f) submitted evidence and argument on issues that were not relevant;
- (g) needed legal or technical assistance to take part in the proceeding;
- (h) engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to other participants;  
and
- (i) failed to comply with the Rules of Practice.

## **7. Costs Order**

7.1 Where the Board has awarded costs in a proceeding, the Board shall issue a cost order setting out the amount awarded and to whom and by whom the payment must be made.

7.2 An applicant named in a cost order shall pay the amount awarded to an intervener within 30 days of the issuance of the cost order.

7.3 A cost order may state whether an applicant named in the order is authorized to record the costs in its hearing costs reserve account.