

## *Navigating the new tariff of costs*

### **CHANGES TO APPENDIX B AS OF JANUARY 1, 2007 AND RELATED COSTS ISSUES**

*Presented to the Victoria Bar Association*

*March 26, 2007*

#### **1. The Policy**

- Rules Committee project, with input from the Bar and registrars
- attempt to address the recommendation of the *Hughes Committee* calling for 50% indemnity for costs
- absent empirical evidence of the actual indemnity, the Rules Committee made certain recommendations to the Lieutenant Governor-in-Council which are now incorporated in the new (2007) tariff
- changes appear to provide for greater indemnity for steps taken early in the proceeding-units for trial preparation and attendance have not been increased
- changes also recognize integral role of mediation in the resolution of legal disputes

#### **2. Practice Implications**

- may require a different form of file management and organization
- will necessitate legal arguments on various issues including scale, “increased” costs, whether certain fees are “proper or reasonably necessary” to conduct the particular proceeding
- length of assessments will increase
- consider requesting a clerk or court reporter if you wish to have a record of the legal arguments made and/or oral decision of the registrar

#### **3. Application of the “new” tariff**

- applies to costs orders made and settlements reached after December 31, 2006: s. 11 of the Appendix B
- the “old” Appendix B/tariff applies to
  - a. orders for costs made before January 1, 2007
  - b. settlements reached before January 1, 2007 under which payment of assessed costs is agreed to,
  - c. costs payable on acceptance of an offer to settle made under Rule 37, if that offer to settle was made before January 1, 2007, and
  - d. all assessments related to those orders, settlements and costs

At common law, the “form of Rule that existed at the time of acceptance must prevail” with respect to costs consequences on an offer to settle: ***Icecorp International Cargo Express Corp. v. Nicolaus*** 2006 BCSC 25

-on offers to settle made after December 31, 2006, scale B applies to any costs payable on acceptance: s. 2(6) of Appendix B

-the old tariff applies if judgment is granted before January 1, 2007, but the issue of costs for the proceeding is determined after January 1, 2007: ***Gook Country Estates Ltd. v. Quesnel (City)*** 2007 BCSC 171

#### 4. Changes to Scales and values

s. 2(1) of Appendix B: Scales are now “A”, “B” and “C”

Scale A= matters of little or less than ordinary difficulty-\$60

Scale B= matters of ordinary difficulty-\$110

Scale C=matters of more than ordinary difficulty-\$170

s. 2(4)-(substitution) where order or settlement does not specify, Scale B applies, unless party obtains order for costs to be assessed under another scale

s. 2(4.1) and 2 (4.2) (new)- after fixing scale, the court may order that value for each allowed or for any step in the proceeding be 1.5 times the value that would otherwise apply

TEST: as a result of unusual circumstances, an award of costs on that [fixed] scale would be grossly inadequate or unjust

but, an award is not grossly inadequate or unjust merely because there is a difference between the actual legal expenses of a party and the costs to which that party would be entitled under the fixed scale

Query what are “unusual circumstances” and see ***Monenco Ltd. v. Commonwealth Insurance Co.*** 1999 BCCA 0133 @ paras 10 and 11 and: ***Rieta v. North American Air Travel Insurance Agents Ltd.*** (1998), 52 B.C.L.R. (3d) 114 (C.A.)

This provision is addressed under “Increased Costs in Unusual Circumstances” in ***Practice Before the Registrar (2006)*** although it is not intended to have the same meaning and purpose as the former Increased costs provision in s. 7 of Appendix B which has been repealed.

#### 5. Foreclosures and Uncontested family law proceedings

Scale A applies

## 6. Lump Sum Costs of Interlocutory Applications- Rule 57(13.1)

Amounts set out in Schedule 3 to Appendix B and (new) Rule 57(13.1) (b) allows for the fixing of “increased” costs for these applications in unusual circumstances

## 7. Tariff- changes and additions

**Item 1-** 3 categories to consider:

before commencement of proceeding: 1 to 10

after commencement to completion of trial or hearing: 1 to 30

after trial or hearing to enforce final order- 1 to 10

*Query 1. what evidence needs to be presented and how file management might change (i.e. correspondence file divided in three parts?)*

*2. when to bring assessment before the registrar (i.e. after enforcement proceedings have been concluded?)*

**Items 6A and 6B** –process for obtaining and supplying particulars- 1 to 3 each

**Items 7 and 8-** discovery of documents, depending on number of documents involved:

(a) 1 to 999- 1 to 10 units

(b) 1000 to 5000-10 to 20 units

(c) over 5, 000-10 to 30 units

*Ensure all lists are available for registrar’s inspection at the assessment and consider whether multiple pages should be indicated for particular document*

**Item 13A** –all process associated with retaining and consulting all experts for the purpose of obtaining opinions for the use in the proceeding- 1 to 10 units

**Item 13B** –all process associated with contacting, interviewing and issuing subpoenas to all witnesses- 1 to 10

*Maximum number of units cannot be exceeded regardless of the number of experts or other witnesses required for the matter*

**Item 19A**-for preparation for hearings which were previously contested but attendance not required due to agreement reached

*Units allowed depends on type of hearing  
Replaces award of units under item 16*

**Item 23**-costs related to JCC -1 to 5 units (60E (15) repealed)

**Item 23A**-process for obtaining comments and recommendations of PGT- 1 to 10 units

*The maximum number of units cannot be exceeded even if there are multiple involvements of the PGT in the proceeding*

**Items 34A, 34B, 34C**-Mediation, including units for preparation (34C) where mediation does not take place for a reason other than the party's refusal, failure of neglect to attend.

*Item 34 still refers to mediation but double recovery is obviously not intended*

*Note that the assessment of costs where the Tariff indicates a range of units is still governed by s. 3(3) of Appendix B. That is, one unit is to be allowed for matters upon which little time should ordinarily have been spent. And, the maximum number of units is for matters upon which a great deal of time should ordinarily have been spent.*

## **8. Taxes are payable on costs under Rule 66**

Rule 66(29.2) is added to conform with common law

## **MISCELLANEOUS PRACTICE AND SUBSTANTIVE COSTS ISSUES**

1. *Scheduling.* Consider time required when setting down assessment under the new tariff. With the additional items and requisite evidence to be presented, time estimated for assessments under the old tariff may not be sufficient. Note, however, that the units allowed under items 20 and 21 have not been increased.

2. *Photocopying.* The cost per page allowance for photocopying and facsimile may not be worthy of argument. The guideline of \$.25 is not determinative of the photocopying charge to be allowed. The determination of a reasonable amount for

photocopying is a rough and ready exercise and not an arithmetic or math one:  
**Sovani v. Jin** 2006 BCSC 855

3. *Long Distance Charges*. The reasonableness of long distance charges might be the subject of more argument in light of **Payless Gas Co. et al v. British Columbia (Minister of Transportation)**, 2006 BCSC 1431 @ paras 87 through 101—see in particular Master Bolton’s comment that he intends to scrutinize this charge more closely on assessments and **Legal Profession Act** reviews. Specifically, you may need to be prove that your long distance plan is the most economical available and the charges are not a disguised profit centre.

4. *Registrars jurisdiction to award special costs*. Registrars do not have the power under Rule 57 (19) to award special costs for any post-judgment proceedings that were conducted before a judge, master or another registrar. However, registrars may award special costs under Rule 57(19), in respect of proceedings which have been conducted before the registrar who is asked to order costs, where it is established that one party has put another party to unnecessary proceedings or expense after judgment and that conduct of the offending party in that proceeding is “reprehensible”: **Vandokkumberg v. H. Meyer Construction Ltd.** 2007 BCSC 239 (dist’g **Aydin & Coe v. Schaber** 2000 BCSC 995 which is often cited for the proposition that a registrar is precluded from ever awarding special costs).

Anyone claiming costs for post-judgment execution steps should review this case.

Registrar C. Bouck  
March, 2007