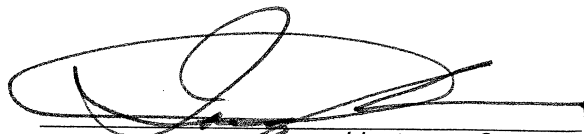


ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 212


, Approved and Ordered **MAR 17 2005**

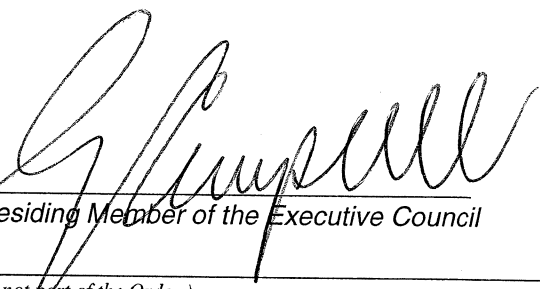


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 18, 2005, the attached Expropriation Proceeding Costs Regulation is made.



Attorney General and Minister Responsible for
Treaty Negotiations

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Expropriation Act, R.S.B.C. 1996, c. 125, s. 54

Other (specify):- _____

EXPROPRIATION PROCEEDING COSTS REGULATION

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SCHEDULES 1 AND 2

Definitions

1 In this regulation:

“**Act**” means the *Expropriation Act*;

“**board**” means the Expropriation Compensation Board;

“**board proceeding**” means a proceeding that was brought by filing an application with the board under section 2 of the Expropriation Compensation Board Practice and Procedure Regulation, B.C. Reg. 452/87, before March 18, 2005;

“**compensation decision**” means a determination under section 26 (1) of the Act, and includes a determination of the entitlement to, and the scale of, the costs that are or may be payable in relation to the proceeding in which the determination is made;

“**compensation hearing**” means a hearing for the purpose of arriving at a compensation decision, but does not include

- (a) a pre-hearing conference,
- (b) an interlocutory hearing, or
- (c) a hearing under section 45 or 48 of the Act;

“**costs**” means real estate appraisal costs or legal costs;

“**court**” means the Supreme Court;

“**in-progress board proceeding**” means a board proceeding if one of the following applies:

- (a) the board held a compensation hearing in the board proceeding after August 1, 2004 and before March 18, 2005 and the board has not yet rendered its compensation decision in that proceeding;
- (b) there has been an appeal to the Court of Appeal in relation to the board proceeding and the appeal has been heard, in whole or in part, before March 18, 2005;
- (c) before March 18, 2005, a hearing in the board proceeding was scheduled to commence after March 17, 2005 and before January 1, 2006;

“**reviewer**” means, in relation to a determination of the amount of costs under section 45 of the Act or a review of costs under section 48 of the Act, the registrar of the court who is making the determination or conducting the review;

“**tariff**” means the tariff of costs set out in the Appendix;

“unset board proceeding” means a board proceeding that is not an in-progress board proceeding.

Application

- 2 This regulation applies to costs payable under section 45 or 48 of the Act but only,
- (a) in the case of legal costs, if those costs
 - (i) were incurred on or after June 28, 1999, and
 - (ii) are payable in relation to an unset board proceeding, and
 - (b) in the case of real estate appraisal costs, if those costs
 - (i) were incurred on or after June 28, 1999, and
 - (ii) are payable in relation to an unset board proceeding or in relation to a compensation action, within the meaning of the Compensation Action Procedure Rule, brought under subrule (7) or (10) of that rule.

Tariff of costs

- 3 (1) If legal costs and real estate appraisal costs are payable under the Act, they must be assessed as follows:
- (a) legal costs must be assessed under Schedule 1;
 - (b) real estate appraisal costs must be assessed under Schedule 2.
- (2) When making an assessment of legal costs under section 45 or 48 of the Act, the reviewer must allow those costs under the tariff in Schedule 1 that were proper or reasonably necessary to conduct the board proceeding.
- (3) If costs are payable under section 45 of the Act, the court may fix the scale, from Scale 1 to 3 in section 4 (1), under which the costs will be assessed.
- (4) The court may order that legal costs be assessed on a different scale from real estate appraisal costs, and may order that one or more steps in the board proceeding be assessed under a different scale from that fixed for other steps.

Scale of costs

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

- (3) Subject to section 3 (3), if
- (a) costs are payable under section 45 or 48 of the Act, or
 - (b) payment of assessed costs has been agreed to on a settlement but no scale has been fixed or agreed to,
- the costs must be assessed under Scale 2 unless a party, on application, obtains an order of the court that the costs be assessed under another scale.
- (4) For the purpose of determining legal costs under Schedule 1, the value allowed on an assessment is as follows:
- (a) Scale 1 - \$100 for each unit;
 - (b) Scale 2 - \$140 for each unit;
 - (c) Scale 3 - \$180 for each unit.
- (5) For the purpose of determining real estate appraisal costs under Schedule 2, the value allowed on an assessment is as follows:
- (a) Scale 1 - \$80 for each unit;
 - (b) Scale 2 - \$100 for each unit;
 - (c) Scale 3 - \$120 for each unit.
- (6) If an item in a tariff provides for maximum and minimum numbers of units, the reviewer has the discretion to allow a number within that range of units, and must have regard to the following principles when assessing costs:
- (a) one unit is for matters on which little time should ordinarily have been spent;
 - (b) the mid-point of the range is for matters on which an average amount of time should ordinarily have been spent;
 - (c) the maximum number of units is for matters on which a great deal of time should ordinarily have been spent.
- (7) If an item in a tariff provides for
- (a) an amount for each day but the time spent during the day is less than 2 ½ hours, only ½ of the amount is allowed for that day,
 - (b) an amount for each day but the time spent during the day is more than 5 hours, the amount allowed for that day must be increased by ½ of the amount, or
 - (c) an amount for preparation for an attendance but the time spent on the attendance is less than 2 ½ hours, only ½ of the amount for preparation is allowed.

Expenses and disbursements

- 5 (1) In addition to the costs allowed on a review under a tariff, the reviewer may allow a reasonable amount for expenses and disbursements that were necessarily and properly incurred in the conduct of the board proceeding.
- (2) Subject to subsection (4), if tax is payable by a party in respect of legal costs or real estate appraisal costs, the reviewer must allow an additional amount

calculated on the monetary value of the units assessed equal to the percentage rate of tax payable.

- (3) Subject to subsection (4), if tax is payable by a party in respect of expenses or disbursements, the reviewer must allow an additional amount to compensate for that tax, which additional amount must be determined by multiplying the percentage rate of the tax by the monetary value of the expenses or disbursements as assessed.
- (4) If a person claims an additional amount under subsection (2) or (3) for goods and services tax payable on legal costs or real estate appraisal costs or on expenses or disbursements, that person must provide proof that
 - (a) the person is not a registrant under the *Excise Tax Act* (Canada), and
 - (b) the person is not entitled to and cannot claim reimbursement of any goods and services tax paid in respect of the costs, expenses or disbursements to which the additional amount claimed relates.
- (5) In the absence of the proof required by subsection (4), no additional amounts for goods and services tax payable on costs, expenses or disbursements is allowed under subsection (2) or (3).
- (6) An allowance must not be made for interest on legal costs or real estate appraisal costs or expense or disbursement claims.

APPENDIX

Tariff of Costs

Schedule 1 – Legal Costs

Item	Description	Units	
Instructions and investigations			
1	Correspondence, conferences, instructions, investigations or negotiations by a claimant relating to a board proceeding, whether before or after commencement, for which provision is not made elsewhere in this tariff	Minimum	1
		Maximum	20
2	Reviewing and advising in relation to an agreement under section 3 of the Act if		
	(a) no agreement entered into		1
	(b) agreement entered into		3
3	Reviewing and advising in relation to a payment made under section 20 of the Act, for each payment		2
4	Instructing expert witness if witness prepares a report, for each expert (maximum of 3 witnesses, without leave)	Minimum	1
		Maximum	5
5	Every process for commencing and prosecuting a board proceeding before the board or the court	Minimum	1
		Maximum	10
Discovery			
6	Process for obtaining discovery and inspection of documents	Minimum	1
		Maximum	10

Item	Description	Units	
7	Process for giving discovery and inspection of documents	Minimum	1
		Maximum	10
8	Process for delivering interrogatories	Minimum	1
		Maximum	10
9	Process for answering interrogatories	Minimum	1
		Maximum	10
	Examinations		
10	Preparation for examination of a person coming under Item 11 for each day of attendance		
	(a) by party conducting examination		3
	(b) by party being examined		2
11	Attendance on examination of a person for discovery, on affidavit, for each day		
	(a) by party conducting examination		6
	(b) by party being examined		5
	Applications		
12	Preparation for an application referred to in Item 13, for each day of hearing, if the hearing has commenced		
	(a) unopposed		2
	(b) opposed		3
13	Interlocutory application or other application for which provision is not made elsewhere in this tariff, for each day		
	(a) if unopposed		4
	(b) if opposed		5
14	Preparation for attendance referred to in Item 15, for each day of attendance		2
15	Attendance before the board, the court or a reviewer to settle an order or to assess costs, for each day		4
16	Preparation for attendance referred to in Item 17, for each day of attendance		2
17	Attendance at a pre-trial conference, for each day		3
	Hearing		
18	Preparation for trial, if board proceeding set down, for each day of trial, to a maximum of 30 units		5
19	Attendance at trial or of an issue in a board proceeding, for each day		10
20	Written argument, if requested or ordered by the board or the court	Minimum	1
		Maximum	10
	Miscellaneous		
21	Process for setting board proceeding down for trial		1
22	Negotiations, mediation and process for settlement, discontinuance, or dismissal by consent of any board proceeding if settled, discontinued, or dismissed by consent as a result of the negotiations, for each day, to a maximum of 60 units		15
23	Travel by a solicitor to attend any trial, hearing, application, examination or other analogous proceeding if held more than 40 km from the place where the solicitor carries on business, for each day of travel by the solicitor		2

Item	Description	Units
	In addition, reasonable travelling and subsistence expenses must be allowed as a disbursement	

Schedule 2 – Real Estate Appraisal Costs

Item	Description	Units
	Instructions	
1	Correspondence, conferences, instructions or meetings with a claimant and counsel relating to a board proceeding, whether before or after commencement, for which provision is not made elsewhere in this tariff	Minimum 1 Maximum 20
	Inspection and research	
2	Inspect and research subject property	Minimum 1 Maximum 30
3	Market research, including all necessary attendances	Minimum 1 Maximum 20
4	Inspection of comparable properties	Minimum 1 Maximum 20
	Analysis and report preparation	
5	Analysis of data and preparation of a report or reports	Minimum 1 Maximum 60
	Hearing	
6	Preparation for trial, if board proceeding set down, for each day of necessary attendance of appraiser, to a maximum of 30 units	5
7	Attendance at trial of board proceeding or of an issue in an board proceeding, for each day of necessary attendance of appraiser	10
8	Travel by an appraiser for necessary attendance at any trial, hearing, application, examination or other analogous proceeding if held more than 40 km from the place where the appraiser carries on business, for each day of travel by the appraiser	2
	In addition, reasonable travelling and subsistence expenses must be allowed as a disbursement	