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LEGAL PRACTITIONERS ACT 1893

**LEGAL COSTS COMMITTEE
DETERMINATION**

**WORKERS' COMPENSATION
COSTS SCALE 1993**

LEGAL COSTS COMMITTEE

DETERMINATION

WORKERS COMPENSATION COSTS SCALE 1993

The Committee last made a Determination with respect to the Workers Compensation Costs Scale on 28 March 1991, which Determination was published in the Government Gazette of 27 March 1991 at page 1283.

That Determination and earlier Determinations simply made adjustments by adjusting the Scale by a specified percentage. It is not satisfactory to adjust the Scale by a percentage, because the validity of the original basis for fixing each of the amounts specified in the Scale is not then examined.

The Committee accepts that the Scale has for some time contained many items which do not allow reasonable remuneration for the work involved. The consequence is that lawyers tend to charge, not by reference to the Scale but by reference to a cost agreement. As a result, the successful party will usually recover from the other party substantially less than the legal costs incurred by the successful party. Such a result leads to dissatisfaction with the legal process.

In this Determination, the Committee has completely reviewed the whole Scale and all the descriptive items in it. It is now a Scale which clearly recognises that lawyers in providing their services, have only their time to sell, and that being so the cost scales should be time-based. Some may criticise time costing as a basis for lawyers' fees, but the view of the Committee is that the only reasonable criticism which can be raised is if there is an abuse of such a system. Time costing is abused if lawyers charge for more time than is reasonably necessary to perform the work at hand or at an excessive hourly rate. The Scale which is published in this Determination prevents any such abuse by specifying what reasonable practitioners regard as the time reasonably necessary to perform the work involved and by specifying a reasonable hourly rate. The steps taken by the Committee before making this Determination were as follows.

1. To enquire of a sample of practitioners practising in the area, whether the items in the Scale correctly described the services performed by lawyers conducting workers compensation litigation. This resulted in very little change to the descriptive items, although some changes do occur.

2. To enquire of a sample of practitioners practising in the area as to the time taken to perform the services so described in the Scale. In asking practitioners to provide estimates, they were asked not to include those special cases which involve an unusual amount of work, involve unusual complexity, or involve difficult questions of law. Respondents were asked to assume that 5% of cases fell into that category.

The survey provided a substantial degree of agreement about the amount of time which was necessary to perform each of the services. The Scale, with the new descriptive items and the time which the survey revealed was necessary to perform the tasks based on the assumptions set out above, is set out below in Schedule A of this Determination.

3. The most difficult task was then to ascertain the hourly rate in dollar terms which should be applied to the estimate of time. The Committee decided that if there were competition within the section of the profession which provides workers compensation legal services, then market forces would determine that the hourly rates charged were reasonable. The Committee considered, and decided, that there were many factors indicating the existence of workable competition. For example, the Committee was satisfied that there was no barrier to lawyers wishing to begin practice in the area, that large numbers of practitioners do provide their services in this area, that practitioners in competition with each other are, of course, independent, and that there was no evidence of any predatory or preclusive practices.

In identifying respondents for this and the other surveys, the Committee made sure that some of the respondents were firms which handle a large amount of work for insurance companies, and that some were firms which handle a large amount of work for plaintiffs who have close connections with trade unions. The Committee felt that the influence of insurers and unions in the market ensures that fees charged by the lawyers associated with these institutions are the subject of scrutiny by entities capable of assessing the reasonableness of charges made. This provides some comfort to the Committee that the charge rates revealed in the survey of market rates, are reasonable rates.

4. Once satisfied as to the existence of competition, then came the task of surveying a sample of practitioners to secure information about hourly rates charged within the profession. The survey covered a range of large, medium and small firms and sole practitioners, some of whom carried out a large amount of plaintiff work and some of whom carried out a large amount of defence work.

Based on the survey, the Committee is satisfied that reasonable rates for practitioners, articled clerks and unqualified clerks (who the Committee describe as para legals), are as follows.

Senior Practitioner (admitted for more than 5 years)	\$195 per hour
Junior Practitioner (admitted for less than 5 years)	\$140 per hour
Articled Clerk (supervised by a practitioner)	\$110 per hour
Para legal (supervised by a practitioner)	\$75 per hour

5. The final step was then to apply the hourly rates to the time referred to in Schedule A. Schedule A shows the precise method of arriving at the amounts set out in the Scale which is contained in Schedule B. The initials "SP", "JP", "AC" and "PL" indicate the hourly rates referred to above.

Therefore, by way of example, item 1(a) in the Scale contained in Schedule B assumes (as can be seen in Schedule A) that instructions might be taken by a junior practitioner or a senior practitioner, and that it might take as little as 1 hour or 2 hours, but that if carried out by a junior practitioner in 1 hour the charge would be \$140, and if carried out by a senior practitioner in 2 hours the amount would be \$390.

The upper figure in the range in relation to counsel fees item 12(a) assumes that counsel fee will be the fee on brief charged by a senior junior counsel. That figure assumes that the fee on brief is for a full day in Court and a full day in preparation. It is expected that the Registrar or Taxing Official may make an adjustment in those cases where the solicitor getting the case up for trial also acts as counsel at trial and if the getting up case for trial does partially cover the work in item 12(a).

This Determination will provide guidance to the Registrar or Taxing Official about what the profession and this Committee regard as a reasonable amount of time to perform the work involved in each item in the Scale, and about what the profession and this Committee regard as a reasonable hourly rate.

The Scale also assumes that in cases involving an unusual amount of work, involving unusual complexity or involving difficult questions of law, the party entitled to costs will make an application to the Board for a special order as to costs which would involve lifting the limits in the relevant items in the Scale.

In accordance with Section 58W of the *Legal Practitioners Act 1893*, the Committee makes this Determination, which applies from 1 August 1993.

Dated 20 July 1993

Daniel O'Dea, Chairman.
Chris Pullin, Member.
Michael Megaw, Member.
John Syminton, Member.
Ron Barrett, Member.
Jerroldine Gilbert, Member.

4

SCHEDULE "A"

1. (a) Substantive application, including instructions	1-2 hours	JP-SP	\$140 to \$390
(b) Statement of claim, defence or reply	½-2 hours	JP-SP	\$70 to \$390
2. Appointment of legal representative for impaired party (Next friend or guardian <i>ad litem</i>)	1 hour	JP	\$140
3. Payment into or out of the Board and offer to consent to judgment or offer to compromise	¼-½ hour	PL-SP	\$20 to \$100
4. Answer to application or to third party statement of claim	1 hour	JP	\$140
5. (a) Third party notice including instructions	1-2 hours	JP-SP	\$140 to \$390
(b) Third party statement of claim, defence or reply	1-2 hours	JP-SP	\$140 to \$390
6. (a) Request for particulars	½-2 hours	JP-SP	\$70 to \$390
(b) Providing particulars	1-2 hours	PL-SP	\$75 to \$390
7. (a) Notice requiring discovery	¼ hour	PL	\$20
(b) Giving discovery of documents	½-2 hours	JP-SP	\$70-\$390
(c) Inspection—per hour		JP	\$140
8. (a) Delivery of interrogatories	1-2 hours	JP-SP	\$140 to \$390
(b) Answer to interrogatories	1-3 hours	JP-SP	\$140 to \$585
9. Examination of witness before trial by counsel or solicitor pursuant to order	1-2 hours	JP-SP	\$140 to \$390
10. Pre-trial and mediation conferences and callover including preparation therefor	1-3 hours	JP-SP	\$140 to \$585
11. Getting up case for trial (includes taking statements from witnesses, research and preparation of brief to counsel)	10-15 hours	PL-SP	\$750 to \$2925
12. (a) Counsel fee on trial (includes preparation and first day of trial)	5-18 hours	JP-SP	\$700 to \$3510
For Queen's Counsel (where 2 or more counsel are certified for) add 50%			
(b) Counsel fee for the second and each successive day of hearing (includes preparation)	2-9 hours	JP-SP	\$280 to \$1755
For Queen's Counsel (where 2 or more counsel are certified for) add 50%			

(c) Counsel fee on trial for second counsel (if certified for)—an allowance not exceeding two-thirds of the amounts that would have been allowed under item 12(a) or 12(b) if counsel had appeared alone.			
(d) Para legal, articulated clerk or solicitor attending trial, per hour		PL-JP	\$75-\$140
(e) Attending on a reserved judgment	1 hour	JP	\$140
13. Settling and extracting certificate of award or order	½ hour	PL	\$40
14. (a) Drawing bill of costs, copies and service	1-2 hours	PL-JP	\$75 to \$280
(b) Attending taxation—per hour		JP	\$140
15. Re-trial, re-hearing or hearing upon reference back from the Full Court for re-trial, getting up case and re-trial or re-hearing			Scale amounts as are reasonable in the circumstances
16. Chambers applications other than those covered by item 17	½-2 hours	PL-SP	\$40 to \$390
17. Chambers applications concerning commencement, cessation, review or seeking orders affecting weekly payments or medical expenses	2-6 hours	JP-SP	\$280 to \$1170
18. Taking instructions for, negotiating and preparing agreement	1-2 hours	JP-SP	\$140-\$390
19. Allowance for solicitor engaging agent	1-2 hours	PL-SP	\$75-\$390
20. Service of process, service of documents at an address for service, photocopies and allowances to witnesses			As in items 28, 29 and 30 of the Supreme Court Costs Scale

PL = PARA LEGAL AC = ARTICLED CLERK
 JP = JUNIOR PRACTITIONER SP = SENIOR PRACTITIONER

6

SCHEDULE "B"

WORKERS COMPENSATION COSTS SCALE 1993

1. This costs scale constitutes a determination of the Legal Costs Committee under Section 58W of the *Legal Practitioners Act 1893* (WA).
2. This scale applies on and after 1 August 1993.
3. This scale does not relate to costs incurred prior to 1 August 1993, which are governed by previous determinations and scales.
4. Subject to the provisions of the *Workers' Compensation and Assistance Act 1981* (WA) and to the provisions of the *Legal Practitioners Act 1893* (WA) permitting a solicitor to make a written agreement as to costs with a client, the costs of or in relation to a party to an action or other proceeding (inclusive of counsel fees but exclusive of other disbursements):
 - (a) recoverable by one party from another party, or
 - (b) payable by a party to that party's own solicitor,
 shall not exceed the amount set out in this scale.

1. (a) Substantive application, including instructions	\$140-\$390
(b) Statement of claim, defence or reply	\$70-\$390
2. Appointment of legal representative for impaired party (Next friend or guardian <i>ad litem</i>)	\$140
3. Payment into or out of the Board and offer to consent to judgment or offer to compromise	\$20-\$100
4. Answer to application or to third party statement of claim . . .	\$140
5. (a) Third party notice including instructions	\$140-\$390
(b) Third party statement of claim, defence or reply	\$140-\$390
6. (a) Request for particulars	\$70-\$390
(b) Providing particulars	\$75-\$390

7. (a) Notice requiring discovery	\$20
(b) Giving discovery of documents	\$70-\$390
(c) Inspection—per hour	\$140
8. (a) Delivery of interrogatories	\$140-\$390
(b) Answer to interrogatories	\$140-\$585
9. Examination of witness before trial by counsel or solicitor pursuant to order	\$140-\$390
10. Pre-trial and mediation conferences and callover including preparation therefor	\$140-\$585
11. Getting up case for trial (includes taking statements from witnesses, research and preparation of brief to counsel)	\$750-\$2925
12. (a) Counsel fee on trial (includes preparation and first day of trial)	\$700-\$3510
For Queen's Counsel (where 2 or more counsel are certified for) add 50%	
(b) Counsel fee for the second and each successive day of hearing	\$280-\$1755
For Queen's Counsel (where 2 or more counsel are certified for) add 50%	
(c) Counsel fee on trial for second counsel (if certified for)—an allowance not exceeding two-thirds of the amounts that would have been allowed under item 12(a) or 12(b) if counsel had appeared alone.	
(d) Para legal, articled clerk or solicitor attending trial, per hour	\$75-\$140
(e) Attending on a reserved judgment	\$140
13. Settling and extracting certificate of award or order	\$40
14. (a) Drawing bill of costs, copies and service	\$75-\$280
(b) Attending taxation—per hour	\$140

15. Re-trial, re-hearing or hearing upon reference back from the Full Court for re-trial, getting up case and re-trial or re-hearing	Scale amounts as are reasonable in the circumstances
16. Chambers applications other than those covered by item 17 . .	\$40-\$390
17. Chambers applications concerning commencement, cessation, review or seeking orders affecting weekly payments or medical expenses	\$280-\$1170
18. Taking instructions for, negotiating and preparing agreement .	\$140-\$390
19. Allowance for solicitor engaging agent	\$75-\$390
20. Service of process, service of documents at an address for service, photocopies and allowances to witnesses	As in items 28, 29 and 30 of the Supreme Court Costs Scale