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FAIR TRADING COMMISSION



Consultation Paper

COSTS ASSESSMENT GUIDELINES

These Guidelines may be cited as *The Fair Trading Commission Costs Assessment Guidelines 2005*.

1. Definitions:

1.1 In these guidelines, words have the same meaning as in the Fair Trading Commission Act, the Utility Regulation Act and the Utility Regulation (Procedural Rules) 2003, unless otherwise defined in this section.

1.2 “Act” means the Fair Trading Commission Act CAP. 326B of the Laws of Barbados;

1.3 “Applicant” means a person who is a party to a Commission Proceeding and who applies to the Commission for a costs award;

1.4 “Costs Assessment Officer” means a person designated by the Commission as the Costs Assessment Officer;

1.5 “Commission” means the Fair Trading Commission as established by section 3 of the Act;

1.6 “Regulated service” means
(a) a statutory corporation;
(b) a company incorporated under the Companies Act; or
(c) any other entity
which provides a utility service and with respect to which a Ministerial order has been made under the Utilities Regulation Act or the Telecommunications Act;

2. Costs Powers

2.1 In the exercise of the discretion conferred on the Commission by section 46 of the Act, the Commission may order any one or all of the following:

(a) by whom and to whom a costs award is to be paid;

(b) that a costs award be paid to a party which;

(i) the Commission has determined to be eligible for a costs award;

- (ii) participates responsibly in the proceeding; and
- (iii) contributes to a better understanding of the issues by the Commission;

3. Costs Eligibility

3.1 The Commission may determine whether a party is eligible or ineligible for a costs award.

3.2 The burden of establishing eligibility for a costs award is on the party applying for a costs award.

3.3 A party in a Commission proceeding is eligible to apply for a costs award where the party:

(a) primarily represents the direct interest of consumers or ratepayers) in relation to regulated services; or

(b) is a person who is granted intervenor status by the Commission pursuant to the Utility Regulation (Procedural) Rules. 2003.

3.4 The Commission may, in special circumstances, find that a party who does not fall into one of the categories listed in section 3.3 hereof is eligible for a costs award in a particular proceeding.

4. Principles to be Observed In Determining Costs Eligibility

4.1 In determining whether an applicant is eligible for a costs award and without prejudice to the generality of section 2.1 hereof the Commission may consider whether the applicant in the course of the Commission proceeding:

- (a) asked questions on cross examination which were unduly repetitive of questions already asked by other parties;
- (b) made reasonable efforts to ensure that his evidence was not unduly repetitive of evidence presented by other parties;
- (c) made reasonable efforts to co-operate with other parties in order to reduce the duplication of evidence and questions on cross examination;
- (d) made reasonable efforts to combine his intervention with that of similarly interested parties;
- (e) contributed to a better understanding by the Commission of one or more of the issues addressed by the party;
- (f) addressed issues in his written or oral evidence, in questions on cross examination or in argument which were not relevant to the issues determined by the Commission in the proceedings;
- (g) engaged in any other conduct that tended to lengthen unnecessarily the duration of the proceedings; or
- (h) engaged in any other conduct which the Commission found was inappropriate or irresponsible.

4.2 In making a determination whether a party is eligible or ineligible for a costs award, the Commission may also consider any other factor arising out of the proceeding in question that it views as relevant in the public interest.

5. Awarding Costs

- 5.1 The Commission may either at the close of the particular Commission proceeding or on a date to be set, receive oral or written submissions from an applicant for the purposes of showing why a costs award ought to be made in his favour.
- 5.2 A regulated service or any other party which has been unsuccessful in a Commission proceeding may make submissions to the Commission showing cause why a costs award ought not to be made against it.
- 5.3 The Commission will after considering the submissions and replies, if any, issue an interim Decision with Reasons, detailing the party or parties to whom costs are to be awarded.
- 5.4 After the verification process as hereinafter set out has taken place, the Commission shall issue a final Costs Order directing the amount of the costs award and may direct a date by which the costs award is to be paid.
6. Verification
- 6.1 Once the Commission has determined that a costs award is to be paid to a party to a Commission proceeding, that party shall file a detailed account of its proceeding related expenses, recorded on Summary Sheets, and the applicable forms together with the original invoices and receipts to support this claim. These documents shall together be referred to as the "Costs Claim". The Applicant shall also file an Affidavit, verifying the costs claim.
- 6.2 The costs claim and Affidavit shall be served on the party by whom the costs are to be paid.

- 6.3 A party to a Commission proceeding which the Commission determines shall pay costs shall have fourteen (14) calendar days from the date of the service of a costs claim to file an objection on Affidavit to any aspect of the costs claim. One copy of the objection is to be filed with the Commission and one copy served on the applicant.
- 6.4 The applicant shall have seven (7) calendar days from the date of the filing of the objection to file a reply with the Commission and to serve a copy on the party who filed the objection.
- 6.5 The Commission through its costs assessment officer will assess the costs claim as submitted by an Applicant. Where a claim is found to be questionable in the judgment of the Commission, it will be subjected to further review and may be reduced to the level deemed appropriate.
- 6.6 Where the Commission is minded to review a costs claim, the Applicant to whom the costs claim relates shall be given written notice of the Commission's intention to review the claim and the reasons there for. The Applicant shall within seven (7) days of the receipt of the said notice provide to the Commission written reasons why the costs claim should not be reduced.
- 6.7 The Commission may request further documentation from an Applicant to substantiate a disputed or questionable claim.
- 6.8 The Commission shall consider the costs claim along with the Applicant's written reasons as to why the costs claim should not be reduced as well as any objections to the costs claim and any replies and thereafter, proceed to

finally determine whether the costs should be allowed as claimed or reduced.

7. Group Interventions

7.1 In the case where an association or body corporate is an Applicant, costs shall be awarded to that association or body corporate as a single entity and not to respective individuals representing the association or body corporate.

7.2 In a case where a number of persons have joined together for the purpose of a combined intervention, costs will be awarded to that group of persons in the same manner as for an association or body corporate. The Commission will allow reasonable expenses necessary for the establishment and conduct of such a group intervention.

8. Honoraria

8.1 An Applicant who was not represented in a Commission proceeding by legal counsel may, in appropriate circumstances, be awarded an honorarium recognizing efforts in preparing and presenting an intervention or submission.

8.2 The grant of an honorarium is in the discretion of the commission and the amount thereof will be specified by the Commission.

8.3 A party to a Commission proceeding may at the close of those proceedings at his discretion forego an application for costs and apply to the Commission for an honorarium.

9. Loss of Wages

9.1 An Applicant who has incurred an actual wage or salary loss as a result of participating in a Commission proceeding may recover all or part of such wage or salary loss, subject to review by the Commission. The Applicant will be required to submit a letter from his employer showing the exact amount of wages or salary loss, and also swear an Affidavit verifying the loss of wages or salary claimed. In instances where the Applicant is self employed he must show the loss of earnings being claimed by the way of his or her business' accounts verified on Affidavit.

9.2 Compensation for loss of wages shall be made to Applicants who are individuals and not to associations or bodies corporate.

10. Counsel Fees

10.1 Counsel Fees, as billed to an Applicant, may be accepted by the Commission unless the claim for the time expended appears excessive in the circumstances and if the rates used to calculate the said fees do not exceed the current maximum hourly rates set by the Commission. A costs claim will be reduced if the aforesaid hourly rate is exceeded or the time expended is deemed excessive, but not increased if the claim is below the maximum. The scale that will be applied by the Commission is as set out in Schedule I.

10.2 If the rates claimed for senior, intermediate and junior counsel are the maximum rates that may be claimed in the circumstances, the said rates may be reduced by the Commission according to criteria such as:

1. Year of Call;
2. Experience before regulatory tribunals;

3. The complexity of the matters dealt with;
4. The degree of responsibility assumed by the counsel;
5. The conduct of the counsel; and
6. The overall assistance given by the counsel to the Commission.

10.3 No difference will be made between the rates for preparation, attendance and travel time, unless such a distinction was made when invoicing the Applicant.

11. In-house Counsel

11.1 In-house Counsel and supporting employees, including paralegal and articling or intern students of an Applicant will normally not be reimbursed for their services unless in appropriate instances.

12. Paralegal Services, Articling Students/Law Clerks, Experts and Consultants

12.1 The Commission will make a determination as to whether, or what portion of the claimed legal services qualifies as compensable paralegal services. To qualify for consideration as a paralegal service, a paralegal must have undertaken services normally or traditionally performed by legal counsel, thereby reducing the counsel's time spent on client affairs. The current rate for paralegal is shown in Schedule I.

12.2 When appropriate, hourly rates up to the prevailing normal maximum set out in Schedule I may be allowed in the following cases.

- a. The fees for Consultants who are experts in engineering, accounting, finance, economics and other related matters will be assessed in light of the current fee schedules of respective

professional associations in Barbados. These schedules will be used as benchmarks. The qualifications and experience, the hours spent, the hourly rate charged and the quality of the service rendered will be considered. A copy of the expert's curriculum vitae must be included in the Costs claim.

- b. Recovery of costs for experts shall be limited to those experts who appeared before the Commission in the relevant proceeding or whose written reports or Affidavits were tendered in evidence to the Commission.

12.3 Typical rates for Consultants are as set out in Schedule I.

13. Disbursements

13.1 Reasonable disbursements such as postage, photocopying, travel, secretarial assistance, overseas communication and accommodation directly related to the Applicant's participation in the proceedings will be considered. Receipts substantiating the disbursement should accompany the costs claim. Government of Barbados guidelines for allowable expenses, including meals, will apply as set out in Schedule I hereto and are quoted in Barbados currency.

14. Travel

14.1 Travel by automobile will normally be reimbursed at the Government of Barbados rate as set out in Schedule I hereto quoted in Barbados currency.

14.2 Taxis and airport pickup claims supported by receipts will normally be accepted as filed provided that they do not exceed the rates used by the Barbados Transport Cooperative Society.

14.3 Reimbursements for air travel will be limited to “economy” fare rates for the shortest route to Barbados.

15. Accommodation

15.1 The costs of hotel accommodation will normally be allowed for overseas consultants or witnesses limited to \$300.00 per night Barbados currency.

15.2 Claims for single occupancy rooms at hotels will normally be accepted; however, this does not include “luxury” hotels or suites.

16. Forms for Submission of Costs

16.1 A costs claim shall be in the form designated by the Commission and set out in Schedule II hereto. All fees and claims for time are to be expressed on an hourly basis. Where daily rates are claimed, one day will be calculated as comprising 8 hours for the purpose of assessing costs.

16.1.1 Failure to employ these said forms or to properly complete them may result in delays in processing the costs claim. The Applicant is responsible for obtaining the current forms from the Commission Secretary.



SCHEDULE I

FAIR TRADING COMMISSION

COSTS ASSESSMENT GUIDELINES

Scale of Costs

LEGAL FEES	Maximum Allowed
Senior Counsel	BDS\$210.00 per hr.
Intermediate Counsel	BDS\$165.00 " "
Junior Counsel	BDS\$130.00 " "
Paralegals	BDS\$40.00 " "
Articling Students	BDS\$80.00 " "
TECHNICAL CONSULTING FEES	Typical Rates
Engineering Fees, Principals and Senior Officers:	BDS\$210.00 " "
• on normal assignment	BDS\$110.00 " "
• giving expert testimony	BDS\$150.00 " "
OTHER CONSULTING FEES	Typical Rates
Partners	BDS\$210.00 " "
Principal/Senior Manager	BDS\$165.00 " "
Manager	BDS\$150.00 " "
Senior Consultant	BDS\$135.00 " "
Analyst	BDS\$80.00 " "
DISBURSEMENTS	Current Rates
Travel by Automobile	30¢ per km
Meals	BDS\$40.00 per day
Photocopies	25¢ per copy



SCHEDULE II

FAIR TRADING COMMISSION

COSTS ASSESSMENT GUIDELINES

FORM I - SUMMARY STATEMENT OF HOURS - LEGAL COUNSEL

A separate form is required for each legal counsel

Applicant: _____ Claimant: _____

Is the Claimant an in-house employee of the Applicant?

If no, indicate name of law firm
or chambers:

Commission File No: _____

Claimant's Title: (check one)

Articling Student

Legal Assistant

Date when qualified as a law clerk or paralegal:

Legal Counsel

For legal counsel that are not in-house:

Completed years of practice: _____

Year of Call to the Bar: _____

Has the lawyer practiced continually since Call to the Bar: _____
(If no, provide details and explanations on a separate sheet.)

Rate Claimed: _____

SERVICE	TIME CLAIMED (Use quarter-day increments for in-house services)	FEES
PREPARATION:	DAYS OR HOURS	
Review file		
Prepare interrogatories		
Respond to interrogatories		
Prepare comments		
Prepare evidence		
Prepare for hearing		
Prepare argument		
Consult with client		
Case management		

Other (specify):		
1.		
2.		
3.		
ATTENDANCE:		
Attend hearing		
Other (specify):		
1.		
2.		
PROCEDURAL:		
Costss Application		
Taxation Application		
Other (specify):		
1.		
2.		
3.		
TOTAL TIME CLAIMED	DAYS: HOURS:	
TOTAL FEES:		
Add TAXES VAT @ 15%		
Less TAX REBATE if applicable (Specify type and %:)		
TOTAL CLAIM:		

Note: All claims must be in Barbadian dollars

I certify that the above information is true and accurate.

Date: _____

Signature of Claimant: _____



FAIR TRADING COMMISSION

COSTS ASSESSMENT GUIDELINES

FORM II – SUMMARY OF EXPERT WITNESS FEES

In cases where VAT is being added claimant must provide VAT No.

Applicant: _____

Claimant: _____

VAT # (if applicable): _____

Commission File No: _____

I certify that the above information is true and accurate.

Date: _____

Signature of Claimant: _____



FAIR TRADING COMMISSION

COSTS ASSESSMENT GUIDELINES

FORM III – SUMMARY OF FEES FOR CONSULTANT AND ANALYST

A separate form is required for each consultant or analyst

Applicant: _____ Claimant: _____

SERVICE	TIME CLAIMED (Use quarter-day increments for in-house services)	FEES
PREPARATION:	Number of hours:	
Review file		
Prepare interrogatories		
Respond to interrogatories		
Prepare comments		
Prepare evidence		
Prepare for hearing		
Prepare expert report		
Consult with client		
Other (specify):		
1.		
2.		
3.		
4.		
ATTENDANCE:	Number of days: (use quarter-day increments)	Days
Attend hearing		
Testifying		
TOTAL TIME CLAIMED	HOURS: DAYS:	
TOTAL FEES:		BD\$
Add TAXES VAT @ 15%		BD\$
Less TAX REBATE if applicable (Specify type and %: _____)		BD\$
TOTAL CLAIM:		BD\$

Claimant's Title: (check one)

Vat Number (if applicable): _____

Commission File No: _____

Is the analyst an in-house employee of the Applicant?

Completed number of years acting as consultant or analyst: _____
(deduct appropriate periods of time if Claimant was not acting continually in this capacity)

Date on which the Claimant first began offering services as a consultant or analyst: _____

Rate Claimed: _____

SERVICE	TIME CLAIMED (Use quarter-day increments for in-house services)	FEES
PREPARATION:	DAYS OR HOURS	
Review file		
Prepare interrogatories		
Respond to interrogatories		
Prepare comments		
Prepare evidence		
Prepare for hearing		
Prepare argument		
Consult with client		
Case management		
Other (specify):		
1.		
2.		
3.		
4.		
ATTENDANCE:		
Attend hearing		
Other (specify):		
1.		
2.		
3.		
TOTAL TIME CLAIMED	DAYS: HOURS:	
TOTAL FEES:		
Add TAXES VAT @ 15%		
Less TAX REBATE if applicable (Specify type and %:)		
TOTAL CLAIM:		

I certify that the above information is true and accurate.

Date: _____

Signature of Claimant: _____



FAIR TRADING COMMISSION

COSTS ASSESSMENT GUIDELINES

FORM IV - SUMMARY STATEMENT OR DISBURSEMENTS

<div style="display: flex; justify-content: space-between; border-top: 1px solid black; border-bottom: 1px solid black; padding: 5px 0;"> Commission File Number Applicant's Name </div>			
	Net Costs BDS \$	VAT	
Photocopies			Grand Total
Printing			
Fax			
Courier			
Telephone			
Postage			
Transcripts			
Travel: Air			
Travel: Car			
Travel: Rail			
Travel: Other ()			
Taxi or Airport Limo			
Accommodation			
Meals			
Other ()			
Sub-totals			
Notes 1. All claims for disbursements must include receipts where practicable. 2. All claims must be in Barbados dollars. If applicable state exchange rate _____ and country of initial currency 3. Travel: car is claimed at \$0.35/km.			



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COSTS ASSESSMENT GUIDELINES

FORM V

AFFIDAVIT IN SUPPORT OF COSTS CLAIM

<div style="border-bottom: 1px solid black; margin-bottom: 10px;"></div> <p style="text-align: center;">Commission File Number</p>	<div style="border-bottom: 1px solid black; margin-bottom: 10px;"></div> <p style="text-align: center;">Applicant's Name</p>
<p>Items Claimed Net of VAT</p> <p>Legal/Counsel Fees + Expert Fees + Disbursements + Lost of wages = Net Sub-Total</p> <p>\$_____ \$_____ \$_____ \$_____ \$_____</p>	
<p>Total Costs Claim</p> <p>Net Sub-Total + Total VAT Claimed = Total Costs Claim</p> <p>\$_____ \$_____ \$_____</p>	
<p>I, (name) _____, of (address) _____ in the</p> <p>(parish) of _____, MAKE OATH AND SAY AS FOLLOWS:</p> <ol style="list-style-type: none"> 1. I am (*the above noted/ a representative of the above noted) applicant (the "applicant") and such have knowledge of the matters attested to herein. 2. I have examined the above Costs Claim and all of the documentation in support of it. 3. The above Costs Claim represents only costs incurred directly and necessarily by the Applicant for the purpose of its participation in the Fair Trading Commission's proceedings whose file number is set out above. 	
<p>SWORN (OR AFFIRMED) BEFORE ME _____,</p> <p>on (date)_____</p>	
<div style="border-bottom: 1px solid black; margin-bottom: 10px;"></div> <p>Signature of Deponent</p>	
<div style="border-bottom: 1px solid black; margin-bottom: 10px;"></div> <p>Justice of the Peace</p>	

*delete where in applicable