

# Broadcasting Participation Fund (BPF) Inc.

## Guidelines for the Assessment of Costs

26 February 2013 (amended 8 December 2015)

### I. INTRODUCTION

1. These Guidelines have been adopted by the Broadcasting Participation Fund (BPF) and will continue to be employed in the assessment of costs applications submitted to the BPF on or after 26 March 2012. The BPF's costs processes, criteria, rates, policies, and forms are intended to be as consistent as possible with those used in the assessment of costs with respect to costs awards by the Canadian Radio-television Telecommunications Commission (CRTC) in telecommunications proceedings. The telecommunication costs awards practices and procedures are set out in Telecom Regulatory Policy CRTC Policy 2010-963.

#### Interpretation

2. In these Guidelines, as well as in Appendix A and the related Forms and Schedules, the following words or expressions have the following meanings:
  - (a) "Applicant" means a person who has applied to the BPF for an award of costs;
  - (b) "Legal assistant" means a qualified law clerk or paralegal;
  - (c) "Consultant" or "analyst" means a person who participated in a proceeding, but who was not a person who acted as legal counsel or an expert witness;
  - (d) "Expert witness" means a person who provides an independent professional opinion or judgment on a matter in a proceeding by filing evidence in his or her name, or by testifying as an expert witness, and who is not an in-house analyst/consultant or in-house legal counsel of the applicant; and
  - (e) "Claimant" means a legal counsel, an articling student, a legal assistant, an expert witness, a consultant, or an analyst who provided services to the applicant, and in respect of whom the applicant is claiming recovery of fees. It also includes an applicant who is an individual who has applied for an award of costs.
3. These Guidelines are intended to implement the following principles:
  - (a) costs awarded shall not exceed those necessarily and reasonably incurred by the applicant in connection with its participation in the relevant proceeding;
  - (b) the costs assessment process should be fair to all parties concerned;
  - (c) the costs assessment process should be efficient and effective for the parties and for the BPF;
  - (d) to the extent possible and advisable, the costs assessment process should be well defined and objective; and
  - (e) the costs assessment process must take into account financial assistance received from government or other sources for the purpose of participating in Commission proceedings under the *Broadcasting Act*.

## **Process for Costs Submission**

4. All applicable forms and schedules (as detailed later on) must be submitted either in electronic format sent by email to the Costs Officer or in paper format delivered by surface mail or courier to the BPF. An application for costs will not be considered “received” until it is received in a complete format with the relevant information required for the Costs Officer to assess the application having been provided.

## **General Principles and Verification**

5. The applicant shall file, as part of its application for final costs, detailed and accurate accounts of the costs claimed, recorded on Form 1 – Summary Statement of Fees and Disbursements, as applicable, and in Schedule A (for legal counsel, articling students and legal assistants), Schedule B (for expert witnesses), Schedule C (for consultants and analysts) and Schedule D (for various other disbursements), together with invoices and receipts necessary to support those costs. The applicant for final costs shall also file Schedule E, an affidavit of fees and disbursements. Applications for final costs will generally not be processed unless and until these forms, completed in full, have been filed with the BPF.
6. Provided the applicant’s claim is within these Guidelines, it will normally be accepted as presented. Where, however, there appears to have been a departure from these Guidelines or from their intent, the BPF may reduce the claim to a level that it deems appropriate.
7. In the event that an applicant believes that exceptional circumstances exist to warrant a departure from these Guidelines, then a brief written submission showing cause why the Guidelines should be departed from and the specific nature of the departure requested must be filed with that party’s application for costs. If such a submission is not so filed by the applicant then the BPF may disallow a departure from these Guidelines without receiving further submissions.
8. The BPF may request further documentation or submissions to substantiate a disputed claim, a questionable claim, or an application for interim costs. In the event that the documentation or submissions are not filed with the BPF in accordance with the request, the applicant’s claim in respect of those costs will generally be disallowed in its entirety.

## **Interim Costs**

9. An applicant that considers that they do not have sufficient financial resources to participate effectively in a proceeding may file an application with the BPF for interim costs to be awarded.
10. In the application for interim costs, the applicant must:
  - (a) demonstrate that they:
    - i) have, or represent a group or class of subscribers that has, an interest in the outcome of the proceeding,
    - ii) can assist the CRTC in developing a better understanding of the matters to be considered, and
    - iii) do not have sufficient financial resources to participate effectively in the proceeding without an interim costs award, including other financial assistance that the applicant has or will receive;

## **Interim Costs – cont'd**

- (b) undertake to participate in the proceeding in a responsible way;
  - (c) indicate the amount and nature of costs requested, with receipts or detailed estimates and where appropriate quotations from suppliers of services. The calculation of the interim costs requested must comply with the other applicable provisions of these Guidelines; and
  - (d) provide a completed Direction (BPF Form D1) if the applicant has been retained by a Qualified Payee (see BPF Form D1) as its representative in the proceeding.
11. An applicant that has been awarded interim costs is required to file an application for final costs with the BPF in accordance with these Guidelines. In the application for final costs, the applicant must provide an explanation of any difference between the interim costs and the final costs for which they are applying.

## **II. FEES**

### **General**

12. An applicant who is an individual who has participated in a broadcasting proceeding on his or her own behalf will generally only be compensated for out-of-pocket disbursements and will generally not be compensated for time spent preparing for, or appearing at, a hearing.
13. Costs generally will not be awarded for time spent by the applicant's support staff, administrative staff, officers, and directors, acting as such, in connection with its participation in the proceeding.
14. Fees as billed to the applicant for the services provided by claimants will normally be allowed, provided they are based on (a) the current allowable daily or hourly rates, which are set out in Appendix A; and (b) time, which is not excessive under the circumstances.
15. If the applicant is claiming costs, which are to be calculated on an hourly basis, all persons for whom work is being so claimed must keep hourly records, which may be requested by the BPF. Hourly records must contain at least the following information: the date on which the work was done, the amount of time spent on the work and a brief description of that work. In the event that the BPF requests such records and they are not available, the applicant's claim in respect of that work will generally be disallowed in its entirety.

### **In-house Services**

16. An applicant who employs an in-house salaried legal counsel, articling student, legal assistant, or analyst/consultant will be permitted to recover costs, at the daily rate set out in Appendix A for that person's work, which is necessarily and reasonably undertaken in connection with the proceeding.

## **Legal Counsel Fees**

17. The hourly rate applicable to a particular counsel, other than in-house counsel, will be based on that legal counsel's completed years as a practising lawyer. Years as a practising lawyer shall be calculated as at the date of the commencement of the proceeding.
18. In Schedule A, claimants must attest to the manner in which the claimant reports his or her employment status to any law society of which he or she is a member. For example, a claimant practising in Ontario must attest that he or she reports to the Law Society of Upper Canada as "In Private Practice" in order to claim compensation at an outside-counsel rate.
19. Applicants are encouraged to rely on junior counsel and articling students to the greatest extent possible. When senior counsel is relied on, applicants may be asked to demonstrate with supporting rationale why this reliance was necessary.

## **Expert Witnesses**

20. Expert witnesses may claim the hourly rate set out in Appendix A for all services other than attendance at an oral hearing in order to testify. The daily rate set out in Appendix A may be claimed for attendance at an oral hearing in order to testify.

## **Consultants and Analysts**

21. The hourly rate applicable to a particular consultant or analyst will be based on the number of completed years that person has been acting as a consultant or analyst. Years shall be calculated as at the date of the commencement of the proceeding.

## **Applicable Time Increments**

22. Claimants must use the applicable time increments set out in Appendix A.
23. In the case of rates expressed in daily increments in Appendix A (i.e. those for in-house legal counsel, articling students, legal assistants, analysts/consultants, and expert witnesses), a day shall be deemed to consist of at least seven full hours of work on the proceeding, not including breaks. If fewer than seven hours in a day are worked, then the applicant shall reduce its claim for that day using quarter-day increments. In the case of daily rates, no amount in addition to the daily fee shall be permitted for days in which more than seven hours of work were spent on the proceeding.

## **Time for Travel and Meals**

24. Time spent travelling or eating meals will not per se be allowed. This does not prevent the applicant from being awarded costs for work performed in relation to the proceeding while in transit or while eating meals.

### **III. DISBURSEMENTS**

#### **General**

25. Reasonable disbursements necessarily incurred in connection with the applicant's participation in the proceeding will generally be allowed, subject to these Guidelines.
26. Disbursements incurred by volunteers and by employees of applicants will be allowed in the same manner as disbursements incurred by legal counsel, articling students, legal assistants, consultants, analysts, and expert witnesses.

#### **Travel, Accommodation and Meals**

27. Claims for accommodation will generally only be allowed in connection with hearings or meetings, which take place at a distance greater than 50 kilometres from the regular place of work of the person who makes those disbursements.
28. In respect of accommodation, reasonable disbursements for hotels will normally be allowed, together with reasonable incidental expenses.
29. The daily meal allowance set out in Appendix A will apply where meals are taken in connection with hearings or meetings, which take place at a distance greater than 50 kilometres from the regular place of work of the person who makes those disbursements. Receipts will not be required for this per diem meal allowance.
30. The individual meal allowance set out in Appendix A will apply where meals are taken in connection with hearings or meetings, which take place at a distance of 50 kilometres or less from the regular place of work of the person who makes those disbursements. Receipts will not be required, unless requested by the BPF.
31. In respect of inter-city travel, disbursements will be allowed for the most efficient means of transportation. Automobile travel will be compensated at the rate set out in Appendix A. In respect of air travel, it will be expected that persons purchase a discounted ticket, if available. Best efforts should be made to purchase a ticket as early in advance as possible in order to fully benefit from the discounts available. Penalty fees reasonably incurred because of a change in a person's return schedule will be allowed. Generally, disbursements in excess of economy fares will not be allowed.
32. In respect of intra-city travel, local taxi fares, parking expenses or other local travel disbursements may be claimed provided that such disbursements are necessarily and reasonably incurred, and provided that they would not otherwise normally have been incurred.

#### **Photocopying and Other Disbursements**

33. Disbursements for photocopies made on the applicant's photocopying equipment shall be allowed at the rate set out in Appendix A. Photocopies made using an outside photocopying service shall be recovered as an ordinary disbursement.
34. All other reasonable disbursements may be allowed at the BPF's discretion.

### **Submission of Disbursement Claims**

35. All claims for disbursements shall be submitted in accordance with Schedule D. An affidavit of disbursements in Schedule E, which shall be sworn or affirmed by an officer of the applicant or by its legal counsel, shall also be filed.
36. The applicant shall file receipts for all claims of disbursements relating to hotel accommodation and inter-city air, train, or bus travel. Where receipts are not available, the applicant shall file other evidence of disbursement. Receipts should be photocopied legibly onto numbered pages with a different series of pages for each legal/consulting firm, company, organization or individual that has expended disbursements.
37. All applicants are expected to file receipts for all disbursements claimed. Failure to provide receipts will generally result in the disallowance of the disbursements in question.

### **Financial Assistance, GST, PST, HST, and Costs of the Assessment Process**

38. In its affidavit of disbursements, an applicant shall attest to whether or not it has or will receive financial assistance in connection with its participation in a particular proceeding. This does not include general fundraising revenues or other support.
39. In the event that an applicant has received or will receive financial assistance in connection with its participation, then the amount of allowable costs shall be reduced by that amount. In the assessment of costs, in the event that the BPF has awarded partial costs, then the reduction to take into account financial assistance shall first be applied to the amount of costs that are not recoverable by the applicant under the BPF's costs order.
40. In its affidavit of disbursements and as required in the Forms and schedules, the applicant shall indicate whether or not it is entitled to a rebate or an input credit in connection with the federal Goods and Services Tax (GST), a provincial sales tax (PST), a Harmonized Sales Tax (HST) or any other applicable tax, the extent of the rebate or input credit and the basis of its eligibility. The BPF will take that information into account when assessing the tax payable on the costs claimed.

## Appendix A: Scale of Costs

<b>Legal Fees (Outside Counsel) – Hourly Rates</b>		
<b>Service Provider</b>	<b>Completed Years of Practice</b>	<b>Maximum Hourly Rate</b>
Legal Assistant	-	\$35
Articling Student	-	\$70
Legal Counsel	0-2	\$135
Legal Counsel	3-5	\$165
Legal Counsel	6-10	\$206
Legal Counsel	11-19	\$250
Legal Counsel	20 or more (with at least 10 years of relevant experience)	\$290

<b>Expert Witnesses</b>		
<b>Service Provided</b>	<b>Maximum Rate</b>	
Attendance at an Oral Hearing in Order to Testify	\$1,650/day	
Other Services	\$225/hour	
<b>Consultant and Analyst Fees – Hourly Rates</b>		
<b>Service Provider</b>	<b>Completed Years of Practice</b>	<b>Maximum Hourly Rate</b>
Analyst/Consultant	0-4	\$110
Intermediate Analyst/Consultant	5-8	\$165
Senior Analyst/Consultant	9 or more	\$225

## Appendix A: Scale of Costs – cont'd

In-house Fees – Daily Rates		
Service Provider	Completed Years of Practice	Maximum Daily Rate
Legal Counsel	0-8 years	\$600
Legal Counsel	over 8 years	\$800
Articling Student	-	\$235
Legal Assistant	-	\$175
Analyst/Consultant	-	\$470

### Disbursements

Travel by automobile: \$0.50 per kilometre

Meals:

- *Per diem* rate applies where meals are taken in connection with a hearing or meetings which take place at a distance of more than 50 kilometres from regular place of work:
  - \$48.00 per day
- Meal allowance where meals are taken in connection with a hearing or meetings which take place at a distance of 50 kilometres or less:
  - Breakfast: \$10
  - Lunch: \$12
  - Dinner: \$26

In-house photocopies: \$0.15 per copy