

BRIEFING NOTE

Review of the Supreme Court Civil Rules Appendix B: Party and Party Costs after over 20 years

The British Columbia Supreme Court Civil and Family Rules Committee (the "**Rules Committee**") provides advice and makes recommendations on changes to the Supreme Court Rules. The Rules Committee is currently reviewing the Supreme Court Civil Rules Appendix B: Party and Party Costs (the "**Civil Tarriff**")

The Civil Tarriff governs awards of costs in the majority of civil proceedings in British Columbia. The Rules Committee is currently reviewing the Civil Tarriff and has produced a consultation paper to present and request feedback on suggested changes. Generally speaking, two proposed areas are identified: increasing the amount of costs payable, and simplifying the tariff.

The paper also comments on the findings of the Justice Reform Committee in 1988, and in particular, its recommendation that the amount of costs payable should, in most cases, approximate 50% of the actual legal costs that would reasonably have been incurred by the successful party. The paper notes that it has been over 20 years since the Civil Tarriff was last reviewed and it has fallen far behind actual legal costs given that the consumer price index has increased by over 54% and actual legal costs have increased by approximately 90% on average over that period.

The review of the cost regime for Supreme Court civil matters, and specifically the Civil Tariff, aims to ensure that it is meeting the objectives of cost awards and reflective of actual legal costs

The recommendations contemplate retaining 3 scales (less than ordinary difficulty, ordinary difficulty, or more than ordinary difficulty), but doing away with units and ranges for individual tariff items. Instead the Committee suggests simplifying the tariff to fewer items, each having a set monetary amount (depending on scale), and increasing the likely overall costs awards to come more in line with the Justice Reform Committees recommendations. Submissions close January 31, 2026.

Existing Civil Tariff System vs. New Civil Tariff System

a) Increasing the amount of costs payable and simplifying the tariff

Unlike some other provinces, where costs are calculated as a function of the amount at issue in the litigation, in BC, they are assessed according to a set tariff. The existing Civil Tariff includes 48 tariff items, many of which have minimum and maximum ranges of units. The number of units allowed for a

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particular tariff item is based on how much time a lawyer would be expected to spend on the work for which the item is claimed. The value of each unit allowed is based on a determination of whether the matter is of: (a) Scale A: little or less than ordinary difficulty; Scale B: ordinary difficulty; or (c) Scale C: more than ordinary difficulty. This model results in highly discretionary disputes over costs. The assessment of costs is itself costly, which can detract from the actual matters in dispute and increase the likelihood that further proceedings will be required to quantify the award of costs.

As mentioned, the proposed recommendations contemplate retaining three scales, however reducing the number of tariff items to 13, and eliminating units and ranges. Instead, each tariff item has a fixed amount for each of the three levels of difficulty. The levels of difficulty for assigning certain tariff item costs appear analogous to the previously used Scale A to Scale C descriptions. For other tariff items, costs are quantified per half-day of attendance, per day or part of a day of attendance, or for each attendance.

The paper includes four sample bills of costs prepared to illustrate the effect of the proposed changes, demonstrating how the adjustments result in higher post-trial cost awards that are consistent with increases in the Consumer Price Index and rising legal costs.

Given the changes to the tariff items and the removal of units used to quantify costs associated with each tariff item, it is difficult to directly map and reconcile the old Civil Tariff system against the new Civil Tariff System. For example, with respect to trial:

- **Item 9 of the New Civil Tariff System:** Awards \$3000 for each day or part of a day of trial, petition, or hearing for up to 5 days for: *“Preparation for and attendance at trial, summary trial, petition hearing or trial of an issue, including retaining and preparing witnesses”*. It awards \$4,000 for each additional day or part of a day after 5 days.
- **Item 34, 35, and 36 of the current civil tariff:** currently, preparation, attendance and written argument at trial are separated into three items. Item 34 awards 5 units per day (\$550 if under scale B) for *“Preparation for trial, if proceeding set down for each day of trial”*. Item 35 awards 10 units per day (\$1,100 if under scale B) for *“Attendance at trial of proceeding or of an issue in a proceeding, for each day”* and Item 36 provides for a minimum of 1 unit and 10 units based on expected time for *“written argument”*.

The new system appears to avoid disputes that would arise from disagreements over the number of units allowed for a particular tariff item. This is only in circumstances where, under the old system, the number of units had to be assigned within minimum and maximum ranges, acknowledging that some tariff items did provide standardization, such as a set number of units for each day of attendance. On the other hand, the new system not only has new tariff items, but some items' costs are also assigned by the three levels of difficulty. Therefore, despite the new system appearing to avoid disputes that would arise from disagreements over the number of units allowed for a particular tariff item, there will likely still be scope for disputes over the deemed level of difficulty a certain item should be assigned. This is also backed by the

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seemingly large variations in costs awarded for the varying levels of difficulty for various items. For example:

- **Item 1 of the New Tariff System:** awards for “*Correspondence, conferences, instructions, investigations, negotiations and preparing, filing and serving of all pleadings or a petition proceeding*” are \$2,000, \$6,000 and \$12,000 for each of the 3 scales.
- **Item 3 of the New Tariff System:** awards for “*Process for giving or obtaining discovery and inspection of documents, serving or answering interrogatories and requiring or making admissions of fact*” are \$1,200, \$4,000 and \$10,000 for each of the 3 scales.
- **Item 12 of the New Tariff system:** awards for “*Written argument at applications or hearings in excess of 2 hours or at trial*” are \$700, \$2,000 and \$5,000 for each of the 3 scales.

b) Other changes

Other changes also generally increase costs awards. These include under Supreme Court Civil Rule 15-1: Fast Track Litigation, on a default judgement entered under Rule 3-8, and where costs are awarded on a writ of execution or garnishing order.

Conclusion

Input is still being collected by the Rules Committee, which has requested that suggestions for potential amendments or changes to the Rules be provided by January 31, 2026. While there is an invitation for feedback on the policy proposal, any legislative changes are ultimately the decision of the Legislative Assembly. The Rules Committee will review the results of this consultation and formulate a recommendation to the Attorney General. Pursuant to the Court Rules Act, the Attorney General will then consult with the Chief Justice of the Supreme Court of British Columbia before any amendments to the Rules are made.

If the proposed changes proceed, the results will be interesting to observe. The current proposals appear to simplify the calculation of costs but also seem to reduce flexibility compared with the existing rules.



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