

TREASURY BOARD DIRECTIVE

TO ALL: MINISTERS
DEPUTY MINISTERS
ASSOCIATE DEPUTY MINISTERS
ASSISTANT DEPUTY MINISTERS, CORPORATE SERVICES
SENIOR FINANCIAL OFFICERS

DIRECTIVE: 2/11

SUBJECT: Remuneration Guidelines for Appointees to Administrative
Tribunals

AUTHORITY: This Directive is issued pursuant to Sections 4 and 27 of the
Financial Administration Act and other applicable
enactments.

APPLICATION: This Directive applies to appointees to Administrative
Tribunals.

POLICY: SEE APPENDIX 1

**REPEAL OF
EXISTING POLICIES:** Treasury Board Directive 1/10

EFFECTIVE DATE: Date signed below.



Honourable Colin Hansen
Chair, Treasury Board

DEC 16, 2010

Date

TREASURY BOARD DIRECTIVE

APPENDIX 1

**REMUNERATION GUIDELINES
FOR APPOINTEES TO
ADMINISTRATIVE TRIBUNALS**

1. POLICY OBJECTIVES

This Directive on remuneration and reimbursement of expenses for appointees to administrative tribunals has the following objectives:

- Enhance the accountability, openness and transparency of the administrative tribunal system;
- Assist in determining appropriate and consistent remuneration and expense reimbursement for appointees;
- Provide a comprehensive framework for remuneration and reimbursement of appointees;
- Affirm the importance and professional nature of the work administrative tribunal appointees perform;
- Ensure remuneration is sufficient to attract and retain highly skilled and qualified individuals; and
- Establish and maintain proportionality between:
 - Full-time and part-time appointees' remuneration rates,
 - Appointees to administrative tribunals and excluded classifications in the public sector, and
 - Appointees to administrative tribunals and marketplace competitors, where necessary in exceptional and appropriate circumstances.

2. DEFINITIONS

“Administrative tribunal” means those independent entities established by legislation to make quasi-judicial decisions or to resolve disputes that are listed on Schedule 1 of these Remuneration Guidelines, and includes any such newly created entity that is referred to in paragraph 4.2 (a) of these Guidelines.

“Appointee” means a person appointed to an administrative tribunal by the Lieutenant Governor in Council, the Minister, or another person with delegated authority, and includes in the case of the Workers Compensation Appeal Tribunal a person appointed by the administrative tribunal chair.

“Appointee Remuneration Committee” means the committee established by Treasury Board to administer these Remuneration Guidelines and classify administrative tribunals within the Classification Grid;

“Chair” means the person who is appointed as the chair of an administrative tribunal under the administrative tribunal's enabling legislation and who is responsible for the management and operation of the administrative tribunal.

“Member” means an appointee, other than the chair or a vice chair as defined in these Remuneration Guidelines, and for the purposes of these Remuneration Guidelines includes:

- An appointee who may preside at a hearing conducted by a multi-person panel of the administrative tribunal,

- A vice chair of the Labour Relations Board, and
- A vice chair of the Workers Compensation Appeal Tribunal.

“Minister” means the Minister who is accountable to government for the administration of the administrative tribunal’s enabling legislation.

“Ministry” means the ministry from which the administrative tribunal receives administrative, policy or operational support.

“Vice chair” means a member who is designated as a vice chair by the Lieutenant Governor in Council, the Minister, another person with delegated authority, or the administrative tribunal chair to exercise significant management or administrative responsibilities on behalf of the administrative tribunal and includes:

- The associate chair of the Labour Relations Board,
- The registrar of the Labour Relations Board, and
- The senior vice chairs of the Workers Compensation Appeal Tribunal.

3. **GENERAL POLICY**

An appointee may be paid remuneration or reimbursed for expenses in accordance with these Remuneration Guidelines and the following general principles:

- 3.1 All administrative tribunals are classified as Group 1, 2, 3 or designated as an exception under Other. The criteria on which administrative tribunals are classified and the specific administrative tribunal classifications and exceptions are set out in Schedule 1 to these Remuneration Guidelines.
- 3.2 An appointee may be paid an amount of remuneration up to the maximum set for the appointee’s position (that is, as chair, vice chair or member as defined by these Remuneration Guidelines) within the classification level of the administrative tribunal to which the appointee is appointed. The classification level of the administrative tribunal is determined by the Appointee Remuneration Committee. There is no requirement that the maximum be paid.
- 3.3 If the rate set for a vice chair or a member is less than the maximum, then the rate may be increased at such time and in such increments up to the maximum, following consultation with the chair, and having regard to the responsibilities, skills, experience and knowledge of the appointee.
- 3.4 Remuneration and reimbursement are to be paid to the appointee only in his/her personal capacity and not to a professional or other corporation or business.
- 3.5 Government employees may be appointed to administrative tribunals only if the appointment is authorized under the administrative tribunal's enabling legislation or, in rare circumstances, if the appointment is required to assist in transition to a different delivery model or a wind-up process. A government employee appointed to an administrative tribunal in his or her capacity or as part of his or her duties as an employee is not entitled to be paid any additional remuneration by virtue of the appointment. The employee is entitled to be reimbursed by the ministry for travel

expenses at the rate of reimbursement to which the employee is entitled as an employee.

4. ROLES AND RESPONSIBILITIES

4.1 **Treasury Board** establishes and may revise these Guidelines.

- a) **Treasury Board Staff** informs the Appointee Remuneration Committee of the decisions and reasons of Treasury Board concerning requests for exceptions to these Remuneration Guidelines or appeals of classification decisions of the Appointee Remuneration Committee.

4.2 **The Minister Responsible**, or another person with delegated authority, for an administrative tribunal:

- a) Must request the Appointee Remuneration Committee to make a determination of the classification of any new administrative tribunal that may be established by legislation to make quasi-judicial determinations or resolve disputes, if the chair and/or a majority of the members are appointed by the Lieutenant Governor in Council, the Minister, or another person with delegated authority.
- b) May request the Appointee Remuneration Committee to change the classification of an administrative tribunal listed in Schedule 1.
- c) May request a reconsideration by the Appointee Remuneration Committee of a classification determination if not satisfied with the decision. The request for reconsideration must set out the reasons for the request and provide supporting documentation.
- d) May seek a further reconsideration by Treasury Board of a classification determination if the decision of the Appointee Remuneration Committee upon reconsideration does not meet the Minister's expectations. If this action is taken, the Minister must:
 - i. Inform the Appointee Remuneration Committee of the action; and
 - ii. Include in its submission to Treasury Board a statement on the request from the Appointee Remuneration Committee.
- e) In extraordinary circumstances, may make application to the Appointee Remuneration Committee for special time-limited remuneration arrangements if the Minister Responsible or another person with delegated authority requires an administrative tribunal or its chair to contribute time over and above the "ordinary" expected commitment. The Appointee Remuneration Committee will expedite the application to Treasury Board.
- f) Provides actual remuneration information to the Public Sector Employers' Council Secretariat by a date set by the Appointee Remuneration Committee. Makes available on the ministry website if there is no tribunal website, by a date set by the Appointee Remuneration Committee each year, the actual amount of compensation paid to appointees subject to the maximum permitted under the Classification Grid and according to the classification determination of the Appointee Remuneration Committee.

4.3 The Administrative Tribunal

- a) Administers the remuneration, benefits, and expenses payable to appointees:
 - i. In accordance with these Remuneration Guidelines;
 - ii. Within the maximum amount payable under the Classification Grid at paragraph 5.3 of these Remuneration Guidelines;
 - iii. In accordance with the classification determination of the Appointee Remuneration Committee; and,
 - iv. In accordance with any determinations of the Minister Responsible, or another person with delegated authority, if it is elected to limit remuneration to an amount lower than that provided for in the Classification Grid as per section 3 of these Remuneration Guidelines.
- b) Ensures actual amount of compensation paid to appointees is provided to the Minister Responsible, or another person with delegated authority, and is publicly available on the administrative tribunal or ministry website by a date set by the Appointee Remuneration Committee each year.

4.4 **The Board chair** oversees the remuneration paid, benefits provided, and expenses paid to appointees in accordance with paragraph 4.3 of these Remuneration Guidelines.

4.5 The Appointee Remuneration Committee

- a) Classifies administrative tribunals in accordance with these Remuneration Guidelines, including requests for a reconsideration of a previous classification determination.
- b) Reviews these Remuneration Guidelines and may make recommendations to Treasury Board as required or at least every three years.
- c) May post a single remuneration disclosure document on the Public Sector Employers' Council Secretariat website on a date set by the Appointee Remuneration Committee each year.

4.6 **The Public Sector Employers' Council Secretariat** acts as the Secretariat to the Appointee Remuneration Committee and ensures remuneration and classification information (including these Remuneration Guidelines, lists of administrative tribunals by classification level, links to other relevant provisions such as the Terms and Conditions of Employment for Excluded Employees / Appointees, and other relevant documents and information) is publicly available.

5. REMUNERATION FRAMEWORK FOR FULL-TIME APPOINTEES

5.1 Full-time appointees are classified as Category C unless otherwise specified by the appointing authority under the definition of "Order in Council Appointees" in Part 1, Section 3 of the British Columbia Government Terms and Conditions of Employment for Excluded Employees / Appointees. See http://www.bcpublicserviceagency.gov.bc.ca/policy/terms_conditions/index.htm.

5.2 Full-time appointees are entitled to benefits as set out in Part 10 of the Terms and Conditions of Employment for Excluded Employees / Appointees, Category C, or as otherwise specified in the appointing authority. See http://www.bcpublicserviceagency.gov.bc.ca/policy/terms_conditions/index.htm.

5.3 The ranges for remuneration of full-time appointees are:

Administrative Tribunal Group	Chair	Vice Chair	Member
Group 1	\$118,000 - 135,000	\$90,000 - 108,500	\$74,500 - 85,000
Group 2	\$135,000 - 180,000	\$108,500 - 144,000	\$85,000 - 113,500
Group 3	\$160,000 - 200,000	\$130,000 - 160,000	\$100,000 - 124,000

5.4 Full-time appointees are not eligible for per diems.

5.5 Full-time appointees are entitled to be reimbursed for transportation, accommodation, meal and out of pocket expenses incurred in the course of their duties as a member of an administrative tribunal, in accordance with Group 2 rates, policies, and procedures as outlined in the Terms and Conditions of Employment for Excluded Employees / Appointees, Part 6, Section 39. See http://www.bcpublicserviceagency.gov.bc.ca/policy/terms_conditions/index.htm.

6. REMUNERATION FRAMEWORK FOR PART-TIME APPOINTEES

6.1 Part-time appointees are classified as Category D under the definition of "Order in Council Appointees" in Part 1, Section 3 of the Terms and Conditions of Employment for Excluded Employees / Appointees. See http://www.bcpublicserviceagency.gov.bc.ca/policy/terms_conditions/index.htm.

6.2 Part-time appointees are to be treated as independent contractors and not employees of the public service. Part-time appointees are entitled to those terms and conditions expressly specified under Category D in Part 10 of the Terms and Conditions of Employment for Excluded Employees / Appointees. See http://www.bcpublicserviceagency.gov.bc.ca/policy/terms_conditions/index.htm.

6.3 Subject to any exceptions set out in these Remuneration Guidelines, part-time appointees are entitled to be paid remuneration on a per diem basis, up to the maximum of the rates and in accordance with the directions set out below.

Administrative Tribunal Group	Chair	Vice Chair	Member
Group 1	\$625	\$525	\$400
Group 2	Not applicable	\$625	\$525

6.4 The per diem rate for medical practitioners appointed to an administrative tribunal on the basis of a requirement for their clinical expertise is the equivalent of two of the

applicable sessional rates as a General Practitioner or a Specialist, as negotiated in agreements between the BC Medical Association, the Government of British Columbia and the Medical Services Commission.

- 6.5 Following consultation between the Minister, or another person with delegated authority, and the chair, the chair may be authorized to pay up to the maximum vice chair rate to members:
- a) Who are expressly required by the administrative tribunal's enabling legislation to hold a professional accreditation in order to be appointed to the administrative tribunal;
 - b) With professional qualifications deemed by the chair to be specifically relevant and required to fulfil the administrative tribunal's mandate; or
 - c) When designated by the chair to:
 - i. Preside at a multi-person panel hearing,
 - ii. Conduct a hearing as a single-person panel, or
 - iii. Conduct a dispute resolution process.
- 6.6 Remuneration for part-time appointees is to be calculated in the following manner:
- a) Appointees are only entitled to be paid the maximum of one per diem for each twenty-four hour day in respect of work carried out for an administrative tribunal. An appointee may receive additional remuneration from another administrative tribunal in respect of work carried out during the same day for that other administrative tribunal.
 - b) Appointees may be paid up to the maximum of one half of their per diem rate for attending a hearing of the administrative tribunal or in-person meeting of the administrative tribunal that lasts four hours or less.
 - c) Appointees may be paid up to the maximum of their per diem rate for attending a hearing of the administrative tribunal or in-person meeting of the administrative tribunal that lasts longer than four hours in any one calendar day.
 - d) A hearing of the administrative tribunal includes a final or interim hearing, a pre-hearing conference or a dispute resolution process, and may include a hearing conducted by telephone or video conferencing.
 - e) Appointees may be paid up to the maximum of their per diem rate for undertaking duties on behalf of the administrative tribunal other than a hearing or in-person meeting. These duties may include: conducting hearings by written submissions; preparing for hearings or dispute resolution processes; writing reasons for decisions; preparing policy documents or proposals; and additional duties if the chair establishes guidelines to govern when and how appointees may be paid for additional duties, and the chair or his or her designate requests the appointee to undertake the specific additional duties.
 - f) Appointees may be paid up to the maximum of their per diem rate if a hearing they were scheduled to attend is cancelled on short notice, if the chair establishes guidelines to govern when and how such payments may be made.

In setting such guidelines, chairs are encouraged to consider assigning the appointee additional duties in lieu of the hearing time where possible.

- g) Any guidelines established under paragraph (e) or (f) must be publicly available.
 - h) Appointees may be paid up to the maximum of their per diem rate for travel time to and from hearings and meetings where the location of the hearing or meeting is more than 32 kms from the appointee's residence. The intention is that time is not remunerated more than once. If a meeting is 3 hours and the travel time is 1 hour, the half day per diem is sufficient to cover the travel time – in this circumstance, the appointee would not get a half per diem fee for the meeting and a half per diem fee for travel.
 - i) An appointee is not entitled to be paid for time spent attending social events, including meals and receptions, including when attending a conference or speaking engagement, as part of their duties.
- 6.7 Part-time appointees are entitled to be reimbursed for transportation, accommodation, meal and out of pocket expenses incurred in the course of their duties as a member of an administrative tribunal, in accordance with Group 2 rates, policies, and procedures as outlined in the Terms and Conditions of Employment for Excluded Employees / Appointees, Part 6, Section 39. See http://www.bcpublicserviceagency.gov.bc.ca/policy/terms_conditions/index.htm.
- 6.8 Part-time appointees are not entitled to be reimbursed for any professional dues, membership fees, insurance or other costs.
- 6.9 Part-time appointees are to be indemnified by the Minister of Finance in accordance with the procedures for indemnification set out in the Guarantees and Indemnities Regulation 258/87 of the *Financial Administration Act*. See <http://www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-F/>.
- 6.10 Remuneration paid to part-time appointees:
- a) Is not to be subject to deductions for the Canada Pension Plan or for Employment Insurance; and
 - b) Is to be reported annually to the Canada Customs and Revenue Agency on a T4A Supplementary Slip.

7. EXCEPTIONAL CIRCUMSTANCES

- 7.1 BC Review Board: The per diem rate for a part-time member designated by the chair of the BC Review Board as an alternate chair under section 672.38(1) of the federal *Criminal Code* (R.S., 1985, c. C-46) is \$650. The Review Board chair may authorize the payment of up to the maximum payable to an alternate chair to members of that board (other than medical practitioners):
- a) Who are expressly required by the administrative tribunal's enabling legislation to hold a professional accreditation in order to be appointed to the administrative tribunal; or
 - b) With professional qualifications deemed by the chair to be specifically relevant and required to fulfil the administrative tribunal's mandate.

- 7.2 Mental Health Review Board: Medical practitioners appointed to Mental Health Review Panels under section 24.1 of the British Columbia *Mental Health Act* (RSBC 1996) may be compensated as follows:
- a) Total payment for all hearings and any approved travel time in any one calendar day will not be less than the negotiated BCMA session rate for one BCMA session of 3.5 hours and will not in any event be more than two BCMA specialist sessions; and
 - b) Subject to the minimum and maximum payments outlined above, the payment will be calculated on the basis of time spent in the hearing, where amounts of a full quarter of an hour will be recognized at the BCMA session rate. Remuneration for travel time shall be based on 50 per cent of total travel time in minutes prorated at the BCMA session rate.
- 7.3 Employment and Assistance Appeal Tribunal: Members appointed to this administrative tribunal are to be paid pursuant to a regulation made under the *Employment and Assistance Act*. Rates specified under that regulation are expected to be consistent with and not to exceed the rates set out in this directive.
- 7.4 BC Securities Commission: Appointee remuneration is established as an exception to the remuneration set out in these Remuneration Guidelines.

8. EFFECTIVE DATE

- 8.1 Changes in remuneration rates take effect as of the effective date a new rate is set by the Minister, or another person with delegated authority, in accordance with these Remuneration Guidelines.
- 8.2 Appointees whose remuneration exceeds the amount authorized in the Remuneration Guidelines will continue to receive remuneration at their current rates until their appointments are renewed. Remuneration for new appointees or appointees who are renewed after the effective date of these Remuneration Guidelines will be set in accordance with these Remuneration Guidelines.

Schedule 1 - Administrative Tribunal Classifications

Classification Criteria

Criteria on which administrative tribunals are to be classified for the purposes of this directive include:

- General complexity of the hearings, including
 - Number of parties to an appeal, including interveners
 - Length of hearings
 - Extent to which cases
 - are primarily fact based, and the complexity of the facts
 - involve expert evidence
 - involve complex issues of law with determinations being required on competing submissions on interpretation and application of legislation and case law
- The professional expertise required of members
- Need or requirement to give detailed reasons for decisions
- Significance of the decisions for the broader public
- Significance of the decisions for the parties and others involved
- Existence of a privative clause, indicating the court is to give deference to decisions
- Management responsibilities of the chair: Size of caseload, budget and staff
- Other non-adjudicative duties or responsibilities (investigations, etc.)

No one criterion will be determinative, but the general expectation will be that administrative tribunals with part-time chairs will be classified as Group 1.