

September 29, 2010

Chief Adjudicator's Guidelines for Legal Fees under the IAP

Early on in the Independent Assessment Process (IAP), there was insufficient data upon which to reliably assess trends in terms of legal fees approved by adjudicators under the Courts' IAP Implementation Orders. However, there is now a statistically significant body of rulings upon which to assess trends in rulings as to fees that adjudicators are generally prepared to approve under the process.

In consideration of this data, the Chief Adjudicator's Office has developed legal fee guidelines for the assistance of Claimant Counsel, Claimants and Adjudicators for the following reasons:

- To promote transparency.
- To provide claimant counsel with benchmarks as to fees that are likely to be approved, so that counsel can gauge and in appropriate circumstances adjust their proposed fees upon receipt of the decision or conclusion of a settlement.
- While recognizing that each case is unique, to encourage consistency among cases that are of similar risk and monetary value.
- To provide counsel with incentive to take on more difficult cases and cases of lower monetary value.
- To ensure that no legal counsel receives less for pursuing higher awards - achieved by the use of a graduated fee percentage.
- To minimize the number of Schedule 2 rulings and legal fee "appeals" that are required, thereby reallocating resources that are presently expended on issues with legal fees by Claimant Counsel, adjudicators and IRSAS staff to the priorities of IAP decisions and settlements.

Note: These Guidelines do not apply to Opportunity Loss Re-openers, where most counsel limit fees to 15 per cent.

The legal fee guidelines are as follows:

On portion of award / settlement that is:	
Less than \$30,000	25%
\$30,000 - \$100,000	20%
\$100,000 - \$150,000	17.5%
Greater than \$150,000	15%

Examples:

Award of \$50,000	
This would produce the following fee:	
First \$30,000 x 25%	\$7,500
Next \$20,000 x 20%	<u>\$4,000</u>
Total Fee:	\$11,500

Award of \$95,000	
This would produce the following fee:	
First \$30,000 x 25%	\$7,500
Next \$65,000 x 20%	<u>\$13,000</u>
Total Fee:	\$20,500

Award of \$165,000	
This would produce the following fee:	
First \$30,000 x 25%	\$7,500
Next \$70,000 x 20%	\$14,000
Next \$50,000 x 17.5%	\$8,750
Next \$15,000 x 15%	<u>\$2,250</u>
Total Fee:	\$32,500

Award of \$200,000	
This would produce the following fee:	
First \$30,000 x 25%	\$7,500
Next \$70,000 x 20%	\$14,000
Next \$50,000 x 17.5%	\$8,750
Next \$50,000 x 15%	<u>\$7,500</u>
Total Fee:	\$37,750

Underlying principles

1. General

These guidelines are not intended to re-write or derogate from the responsibilities reposed in adjudicators by the courts. Instead, they are simply intended to reflect how adjudicators have interpreted and applied those responsibilities in other rulings. The rights of claimants, counsel and adjudicators as provided for in the Implementation Orders remain in place. It will therefore be important for counsel to docket their time, recognizing that if the proposed fees exceed the guidelines, or even if the proposed fees are based on these guidelines, a fee review may be requested by the claimant or initiated by the adjudicator.

2. Rights of Claimants

Even if counsel submits a proposed fee that falls within these guidelines, in all cases where the proposed legal fees exceed 15%, claimants are entitled to request that an adjudicator conduct a Schedule 2 review for fairness and reasonableness.

3. Rights of Claimant Counsel

Subject to the 30% maximum, including Canada's contribution, these guidelines do not restrict counsel from proposing fees that exceed the guidelines. For example, some Complex Track cases may be deserving of higher fees than these guidelines provide. However, in Standard Track cases, unless it is obvious to the adjudicator that the case is deserving of higher fees than the guidelines permit, counsel should expect that the adjudicator is likely to require justification for a departure from the guidelines. In such circumstances, counsel should expect that the risk of a Schedule 2 review being required is substantial.

4. Responsibilities of Adjudicators

Even in cases where the fees proposed by counsel fall within these guidelines, adjudicators retain the ability in all cases to initiate a fee review. It is envisaged that this will occur in circumstances where the adjudicator is of the view that the representation was not of adequate quality to justify the proposed fee, the proposed fee may result in a windfall to counsel, or that factors set out in the Implementation Orders may be engaged.