

Supreme Court (Chapter I Amendment No. 16)
Rules 2009
S.R. No. 144/2009

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STATUTORY RULES 2009

S.R. No. 144/2009

Supreme Court Act 1986

**Supreme Court (Chapter I Amendment No. 16)
Rules 2009**

The Judges of the Supreme Court make the following Rules:

1 Object

The object of these Rules is to amend the Supreme Court (General Civil Procedure) Rules 2005 to increase the scale of costs and expenses in Appendix A and Appendix B to those Rules.

2 Authorising provisions

These Rules are made under section 25 of the **Supreme Court Act 1986** and all other enabling powers.

3 Commencement

These Rules come into operation on 1 January 2010.

4 New Appendices A and B

For Appendices A and B to the Supreme Court (General Civil Procedure) Rules 2005¹ substitute—

"APPENDIX A

SCALE OF COSTS

Instructions

- | | |
|--|----------|
| 1. To institute or defend any proceeding or appeal | \$272.00 |
| 2. To make or oppose any interlocutory application | \$65.00 |
| 3. For statement of claim whether indorsed on writ or third party notice or served separately, or counterclaim | \$134.00 |
| 4. For any other pleading, particulars in lieu of pleading or amended pleading | \$65.00 |
| 5. For counsel to advise or give an opinion | \$65.00 |
| 6. For counsel to make an interlocutory application where no other brief | \$65.00 |
| 7. For witness statements, summaries of evidence or like documents, interrogatories, answers to interrogatories, oral examination for discovery, affidavit or other document for filing on an interlocutory application other than a short, formal affidavit or other document | \$134.00 |
| 8. For a necessary document not otherwise provided for, such fee as may be reasonable in the circumstances | |

No allowance for instructions shall be made under the above items where an allowance for the work is claimed in detail and allowed on that basis

Instead of the fees for instructions above, such larger sum may be allowed as the Costs Court thinks reasonable in the circumstances

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|---|--|
| 9. Instructions for brief on trial of proceedings, including an assessment of damages or value or a trial before special referee, or an appeal, such allowances as the Costs Court thinks reasonable in the circumstances | |
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Originating Process

- | | | |
|-----|--|----------|
| 10. | Writ or originating motion or summons
(where filed as originating process) | \$157.00 |
| 11. | If any of the above exceed three folios
(when not drawn by counsel) for each extra
folio | \$29.00 |

The above allowances include all indorsements of claim, copy for filing and one copy for service and attendance to file, but not Court fees

Corporations Short Form Bill

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|------|--|-----------|
| 11A. | Costs of obtaining a winding-up order up to and including authentication, filing and service of the order under section 470 of the Corporations Act and the obtaining from the Costs Court of an order as to costs | \$3132.00 |
|------|--|-----------|

Additional costs are allowable for any adjournment in accordance with item 34 or 35 in respect of which costs have been reserved by the Court

Interlocutory Process

- | | | |
|-----|--|----------|
| 12. | Summons before Judge of the Court or Associate Judge | \$134.00 |
| 13. | Subpoena | \$79.00 |
| | If a subpoena exceeds three folios, for each extra folio | \$10.30 |

These allowances include preparation of document, copy for filing and one copy for service and attendance to file

Execution Process

- | | | |
|-----|----------------------|----------|
| 14. | Warrant of execution | \$157.00 |
|-----|----------------------|----------|

This allowance includes preparation of the warrant, copy for filing and one copy for service and attendance to file

Notices and Memoranda

15. Notice to produce or any other necessary or proper notice or memorandum not otherwise provided for, or any demand \$54.00

This allowance does not apply to a short notice or memorandum indorsed on another document, but an allowance may be made therefore as part of the allowance for the document

16. If the notice is special, or necessarily exceeds three folios, for each folio
The above allowances include preparation of the notice and one copy for filing or service \$29.00

Appearance

17. Preparing and attending filing notice of appearance (including one copy for service) \$94.00

Drawing Pleadings and Other Documents

18. (a) Pleadings, including petitions, indorsement constituting statement of claim on writ or third party notice, including particulars \$134.00

(b) If exceeding three folios, for each extra folio \$29.00

19. Any other necessary document, per folio \$29.00

No allowance is to be made to a solicitor for drawing a document drawn by counsel, but a fee may be allowed for drawing matter necessary to instruct counsel

In allowing for drawing, the Costs Court may disallow anything which is a repetition or adaptation of matter for the drawing of which allowance has otherwise been made in the proceeding. The Costs Court may increase these allowances if in the circumstances the Costs Court thinks it reasonable to do so

20. For preparing each exhibit \$5.60

Engrossment and Copies

21. Engrossment of documents, per folio \$5.60

22. (a) Copy or photocopy of document, per page \$2.00

(b) Reproduction of document from microfiche, microfilm or like process, per page, the actual cost or \$2.00

23. Where under the Rules or any order of the Court or for other sufficient cause any document is printed out and it would not have been reasonable to send the original to the printer, a copy for the printer shall be allowed, per page \$2.00

24. Where more than ten copies of the same document are required, the amount actually and properly paid to a printer (in addition to all necessary attendances on the printer), or, if reproduced by the solicitor, the equivalent amount or such lesser amount as the Costs Court considers fair and reasonable having regard to commercial rates for similar services, shall be allowed

Where it is necessary to print any part of a document in a foreign language, or as a facsimile, or in any unusual or special manner, or where any alteration in the document printed becomes necessary after the first proof, such further allowance shall be made as the Costs Court thinks reasonable

Perusals

25. Of all pleadings, amendments of pleadings (which exceed three folios), applications by summons, notice or otherwise, third party notices, interrogatories, answers thereto, transcripts of discovery by oral examination, notices, affidavits, draft orders submitted for approval by another party, drafts of documents to be settled by an officer of the Court, orders (unless an allowance has been made previously for

	perusal of a draft), opinions or advices of counsel where requested, bills of costs necessarily perused by the solicitor for the party on whom it was served	\$41.00
	Or per folio	\$5.70
26.	Of all other documents, including deeds, correspondence (including incoming correspondence), exhibits, per folio	\$4.40
	If the solicitor is or ought to be familiar with the contents of the document or if it is not necessary to read all of it carefully, the Costs Court shall allow such smaller amount as it thinks reasonable. No allowance shall be made for the solicitor perusing letters which he or she receives unless the Costs Court considers there are special circumstances for doing so	
27.	Alternatively, for examining a document or checking a proof or print or examining an appeal book	
	Solicitor, per quarter hour	\$65.00
	Clerk, per quarter hour	\$38.00
	<i>Service</i>	
28.	Service of any document where necessary, and not able to be served by post	\$64.00
	Or such charge as is reasonable having regard to the number of necessary attendances, the time taken, the distance travelled and any expense incurred	
29.	Where by reason of the location of the person to be served it is proper to effect service through an agent, instead of an allowance for service—	
	(a) for correspondence with the agent	\$41.00
	(b) the amount actually and reasonably charged by the agent	
	Where more than one attendance is necessary to effect service, or to ground an application for substituted service, the Costs Court may make such further	

allowance under items 28 and 29 as the Costs Court considers reasonable

For service out of Victoria, the Costs Court shall make such allowance as the Costs Court considers reasonable

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|-----|--|---------|
| 30. | Service of document on a party by filing or leaving at the office of the party's solicitor or other address for service, where that mode of service is necessary | \$38.00 |
| 31. | Service of document on a party by post or leaving at document exchange | \$23.00 |
- Only one fee for service shall be allowed where two or more documents are or could have been served together

Attendances

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|-----|--|----------|
| 32. | (a) On counsel with brief on trial of proceeding, including an assessment of damages or value or a trial before a special referee or an appeal | \$80.00 |
| | (b) On counsel with any other brief or papers or to appoint consultation or conference (including all attendances to settle counsel's fees) | \$54.00 |
| 33. | (a) On consultation or conference with counsel | \$134.00 |
| | (b) Where a consultation or conference occupies more than one half hour, if the Costs Court considers it reasonable, for each subsequent half hour | \$134.00 |
| | (c) If the solicitor does not attend personally, the allowance shall be as the Costs Court considers reasonable, but not exceeding, for— | |
| | the first half hour | \$65.00 |
| | each half hour thereafter | \$65.00 |

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|-----|--|-----------|
| 34. | On any application or attendance before a Judge of the Court, an Associate Judge, the Costs Court or Prothonotary, examination of a witness, discovery by oral examination, assessment of damages or value, trial or inquiry, trial of a proceeding or hearing of an appeal, where in list or likely to be heard | \$134.00 |
| 35. | (a) At trial or hearing, for each hour | \$272.00 |
| | But, according to circumstances, not to exceed per day of six hours (including luncheon and dinner adjournments) | \$1305.00 |
| | or, | |
| | If attended by clerk | \$649.00 |
| | (b) To hear reserved judgment, for each half hour | \$134.00 |
| | (c) By appointment or on short or formal application to a Judge of the Court or an Associate Judge, the Costs Court or Prothonotary | \$134.00 |
| 36. | Where in the opinion of the Costs Court the attendance of two principals or of a solicitor and clerk at trial is necessary, an additional allowance may be made not exceeding per day of six hours (including luncheon and dinner adjournments) | \$1305.00 |
| 37. | To settle judgment or order, per half hour | \$134.00 |
| 38. | In addition to reasonable expenses for travel and sustenance, allowance may be made for a solicitor travelling to a place more than 50 kilometres distant from his or her place of residence or business where— | |
| | (a) the journey was necessary and proper for the purpose of the proceeding and what was done by the solicitor could not have been done satisfactorily by an agent; and | |
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(b) the solicitor was necessarily absent from his or her office, and for that time no charge could otherwise be made, and having regard to what other allowances may be made to the solicitor in the proceeding	\$1305.00
Not exceeding per day	
If the journey is not undertaken solely for the purpose of the proceeding, the Costs Court may allow a proportion of the fee as the Costs Court considers reasonable	
39. To file or lodge any document, to obtain an appointment from an officer of the Court, or to insert an advertisement or other attendance of a similar nature capable of performance by a junior clerk	\$38.00
40. If the exercise of skill or legal knowledge is involved so as to require the personal attendance of the solicitor, per quarter hour	\$65.00
Or, if attendance by solicitor's clerk, per quarter hour	\$38.00
Or such larger amount as the Costs Court thinks reasonable having regard to the importance or difficulty of the subject matter of attendance	
41. Making an appointment or similar attendance by telephone, at the discretion of the Costs Court	\$11.40
42. Arranging attendance of a witness or any attendance for which no other provision is made, per quarter hour	\$38.00
43. Sending or receiving telex, telegram or facsimile documents	\$38.00
Or such larger amount as is reasonable in the circumstances having regard to the length	

Correspondence

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|-----|--|---------------------------|
| 44. | Letter making an appointment or forwarding document without explanation or the like | \$20.00 |
| 45. | Letter, ordinary | \$34.00 |
| 46. | Letter, special | \$45.00 |
| | Or such amount as the Costs Court thinks reasonable | |
| 47. | Circular letter, after the first | \$10.30 |
| | For each additional page after the first page, the photocopying charge shall apply | |
| | The above allowances include the standard surface rate of postage, but, if any communication is necessarily made by telex, telegram or transmission of a facsimile, the appropriate statutory charges may be allowed as a disbursement | |
| 48. | Where any agent is employed, for correspondence with the agent which the Costs Court thinks reasonable, per quarter of the year | \$65.00
to
\$272.00 |
| | Or, if special or extensive, in the discretion of the Costs Court. | |
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APPENDIX B

**WITNESSES' EXPENSES AND INTERPRETERS'
ALLOWANCES**

WITNESSES' EXPENSES

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|---|---|
| 1. Professional person including pharmaceutical and analytical chemists, psychologists, actuaries, valuers and accountants (carrying on business as principals) | per hour or part thereof necessarily absent from professional rooms or place of business (during normal hours of business), \$161–\$321, but not in any event to exceed \$2008 in any one day |
| 2. Person other than a professional person who is engaged in business as a principal on his or her own behalf | \$100 per hour, or such fee as is reasonable in the circumstances but not in any event to exceed \$335 per half day or part thereof or \$602 in any one day |
| 3. Any other witness

But if the witness is remunerated in any employment by wages, salary or fees | per day, \$100

the amount lost by the attendance, but not in any event to exceed \$335 per half day or part thereof or \$602 in any one day |

The Costs Court may allow in addition any appropriate necessary expense incurred by the witness, e.g. child minding expenses

A witness attending in more than one proceeding shall be entitled to a proportionate part only of the expense of the proceeding.

The Costs Court may allow a country witness, in addition to the above expense, a reasonable sum for the actual expense of travel to and from the place of trial or hearing and for maintenance or sustenance. For this purpose a witness who does not reside within 50 kilometres of the place of trial or hearing is a country witness.

Where a witness gives evidence as an expert, the Costs Court may allow an amount reasonably and properly incurred and paid to the witness for qualifying to give that evidence.

Notwithstanding anything in the above scale, the Costs Court may allow to an expert witness a special fee for any attendance at court not covered by the scale when the witness assists counsel or solicitors as an expert for a period during the trial or hearing. Nothing in the scale shall affect the existing practice of allowing qualifying fees to witnesses.

INTERPRETERS' ALLOWANCES

1. Attending professional, scientific or expert witness qualifying to give evidence, attending conference with solicitor or counsel \$47 for each hour or part thereof but not in any event to exceed \$291 in any one day
2. Attending court for absence from place of residence or business \$167 for four hours or less and thereafter \$47 per hour, or part thereof, but not in any event to exceed \$291 in any one day

The Costs Court may allow a country interpreter, in addition to the above allowances, a reasonable sum for the actual expense of travel to and from the place of trial or hearing and for maintenance and sustenance. For this purpose, an interpreter who does not reside within 50 kilometres of the place of trial or hearing is a country interpreter.

Notwithstanding anything in the above scale, the Costs Court may allow an increased amount to a professional interpreter in special circumstances.

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Dated: 26 November 2009

M. L. WARREN, *C.J.*

PETER BUCHANAN, *J.A.*

DAVID ASHLEY, *J.A.*

ROBERT REDLICH, *J.A.*
MARK WEINBERG, *J.A.*
PHILIP MANDIE, *J.A.*
BERNARD D. BONGIORNO, *J.A.*
DAVID BYRNE, *J.*
D. L. HARPER, *J.*
H. R. HANSEN, *J.*
D. J. HABERSBERGER, *J.*
R. S. OSBORN, *J.*
SIMON P. WHELAN, *J.*
KIM HARGRAVE, *J.*
ANTHONY CAVANOUGH, *J.*
ELIZABETH CURTAIN, *J.*
PAUL COGHLAN, *J.*
ROSS ROBSON, *J.*
JACK FORREST, *J.*
LEX LASRY, *J.*
JAMES JUDD, *J.*
PETER VICKERY, *J.*
EMILIOS KYROU, *J.*
DAVID F. R. BEACH, *J.*
JENNIFER DAVIES, *J.*
TERRY FORREST, *J.*
KARIN EMERTON, *J.*
IAIN ROSS, *J.*

ENDNOTES

- ¹ Rule 4: S.R. No. 148/2005. Reprint No. 2 incorporating amendments as at 1 November 2009. Reprinted to S.R. No. 109/2009 and subsequently amended by S.R. Nos 60/2009, 97/2009 and 132/2009.