

1/1/04

STATUTORY RULES 2003

S.R. No. 138/2003

County Court Act 1958

**County Court (Chapter I Amendment No. 12) Rules
2003**

A majority of the Judges of the County Court makes the following Rules:

1. Object

The object of these Rules is to substitute an increased scale of costs to the Principal Rules.

2. Authorising provisions

These Rules are made under section 78 of the **County Court Act 1958** and all other enabling powers.

3. Commencement

These Rules come into operation on 1 January 2004.

4. Principal Rules

In these Rules, the County Court Rules of Procedure in Civil Proceedings 1999¹ are called the Principal Rules.

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5. Substitution of Appendix A

For Appendix A to the Principal Rules substitute—

APPENDIX A

SCALE OF COSTS

Scale of Fees and costs to be paid to Counsel and Practitioners between party and party and between Practitioner and Client.

The Judge, Registrar or other taxing officer shall have full discretion to allow any fee, cost or disbursement in full, or in part.

In appropriate cases should the Judge, Registrar or other taxing officer consider the fee, cost or disbursement provided by the scale to be inadequate to compensate for the work actually done, the Judge, Registrar or other taxing officer may allow an appropriate fee which in the circumstances is considered to be fair and reasonable.

	A	B	C	D
	<i>Up to and including</i>	<i>Over \$7500 up to and including</i>	<i>Over \$20 000 up to and including</i>	<i>Over \$50 000</i>
	\$7500	\$20 000	\$50 000	\$50 000
	\$	\$	\$	\$

Institution of proceedings

- Instructions to sue including letter before action, preparation of brief to and attendance on counsel, preparation of originating process, statement of claim, notice of defence and copies, filing, attending to service, and affidavit of service

	357.00	466.00	511.00	564.00
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- If Statement of Claim exceeds 10 folios for each additional folio such additional fees pursuant to item 26 as appropriate

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	A	B	C	D
	<i>Up to and including \$7500</i>	<i>Over \$7500 up to and including \$20 000</i>	<i>Over \$20 000 up to and including \$50 000</i>	<i>Over \$50 000</i>
	\$	\$	\$	\$
Consent of litigation guardian including, preparation of memorandum copies and obtaining signature of litigation guardian	105.00	139.00	142.00	151.00
2. Instructions to defend, including perusal of statement of claim, and filing of appearance	170.00	228.00	235.00	263.00
3. Instructions to institute or defend any original proceeding or to appeal or oppose an appeal where not elsewhere provided for	273.00	341.00	377.00	415.00
4. Instructions to institute or oppose any interlocutory proceeding, or instructions for special affidavit where not elsewhere provided for	47.00	72.00	72.00	72.00
Issues and Particulars				
5. (a) Counterclaim or third party notice including preparation of brief to and attendance on counsel, copies, filing and service	191.00	253.00	273.00	301.00

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	<i>Up to and including \$7500</i>	<i>Over \$7500 up to and including \$20 000</i>	<i>Over \$20 000 up to and including \$50 000</i>	<i>Over \$50 000</i>
	\$	\$	\$	\$
If counterclaim or third party notice exceeds 10 folios for each additional folio, such additional fees pursuant to item 26 as appropriate				
(b) Perusal of counterclaim or third party notice and making copies	34.00	47.00	47.00	47.00
Defence				
6. (a) Any necessary further pleading, notice claiming contribution or indemnity, including preparation of brief to and attendance on counsel, copies, filing and service	114.00	157.00	170.00	191.00
If defence, any necessary further pleading or any Notice claiming contribution or indemnity exceeds 8 folios, for each additional folio such additional fees pursuant to item 26 as appropriate				

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	A	B	C	D
	Up to and including \$7500	Over \$7500 up to and including \$20 000	Over \$20 000 up to and including \$50 000	Over \$50 000
	\$	\$	\$	\$
(b) Perusal of Defence, any necessary further pleading, notice claiming contribution or indemnity and making copies	34.00	47.00	47.00	47.00
7. Request for further particulars including special damages or preparation of further particulars or special damages including preparation of brief attendance on counsel, copies, filing, service, perusal of further particulars, or special damages, or request, and making copies thereof	156.00	191.00	201.00	226.00
Discovery				
8. (a) Notice for discovery including copies, filing, service, perusal of affidavit of documents, and making copies thereof	84.00	114.00	140.00	151.00

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	<i>Up to and including \$7500</i>	<i>Over \$7500 up to and including \$20 000</i>	<i>Over \$20 000 up to and including \$50 000</i>	<i>Over \$50 000</i>
	\$	\$	\$	\$
<p>(b) Affidavit of documents including instructions for affidavit, copies, swearing, filing and service</p> <p>If affidavit exceeds 10 folios for each additional folio such additional fees pursuant to item 26 as appropriate provided that the Judge, Registrar or other taxing officer is satisfied in all the circumstances that it is fair and reasonable to do so.</p>	235.00	303.00	341.00	377.00
Interrogatories				
<p>9. (a) Interrogatories for examination of one party including instructions for interrogatories, preparation of brief to and attendance on counsel, copies, filing, service, perusal of answers to interrogatories and making copies thereof</p>	235.00	303.00	341.00	377.00

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	\$	\$	\$	\$
(b) Answers to interrogatories of one party including perusal of interrogatories, instructions for answers, preparation of brief to and attendance on counsel, swearing, copies, filing and service	477.00	613.00	679.00	751.00
Setting Down				
10. (a) Certificate of readiness including letter requesting certification, setting down and service of sealed copy	84.00	114.00	140.00	151.00
(b) Perusal of certificate of readiness, certification and letter returning certificate	38.00	64.00	73.00	77.00
11. (a) Notice of Trial, copies, service and filing	47.00	72.00	72.00	72.00
(b) Affidavit in support of setting down, swearing and filing	72.00	84.00	105.00	111.00

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	\$	\$	\$	\$
Notices				
12. (a) Notice to Admit including preparing of brief to and attendance on counsel, copies, filing, service, perusal of admissions and making copies thereof	84.00	114.00	140.00	151.00
(b) Admissions (including perusal of notice to admit and making copies thereof), preparation of brief to and attendance on counsel, copies, filing and service	170.00	225.00	235.00	263.00
13. Notice of payment into Court, offer of Compromise, or notice of acceptance including copies, filing and service	72.00	105.00	105.00	105.00
14. Any necessary notice (including notices before proceeding, notice to Transport Accident Commission, Incorporated Nominal Defendant and any other statutory notice when required),				

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	\$	\$	\$	\$
memorandum or undertaking including copies, filing or service, where not elsewhere provided for	72.00	105.00	105.00	105.00
Preparation and Trial				
15. Callover—				
Solicitor's attendance	72.00	84.00	105.00	105.00
Clerk's attendance	46.00	72.00	72.00	72.00
Subpoena				
16. (a) Including filing, copy for service attending to service	46.00	72.00	72.00	70.00
(b) Each additional copy for service	2.90	2.90	2.90	2.90
Expert Witnesses				
17. (a) Arranging examination or inspection by an expert witness and notifying party	46.00	72.00	72.00	72.00
(b) Notifying party of examination or inspection arranged by opposite party	13.00	34.00	34.00	34.00
Advice of Counsel				
18. Including brief, attendance on counsel, perusal and advice	114.00	156.00	170.00	191.00

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	\$	\$	\$	\$
Conference with Counsel				
19. Appointing and attending—				
(a) Solicitor's attendance— per hour	114.00	156.00	170.00	191.00
(b) Clerk's attendance— per hour	72.00	84.00	105.00	105.00
Brief to View				
20. Including arranging view, attendance on counsel and attendance at view	114.00	156.00	170.00	191.00
If attendance on view exceeds half an hour for each quarter hour thereafter	13.00	34.00	34.00	34.00
Mediation and Case Conference				
20A. Counsel or solicitor appearing at mediation or case conference—				
(a) Half day (3 hours or part thereof)	491.00	716.00	825.00	872.00
(b) Hourly rate beyond half-day	126.00	160.00	179.00	210.00
(c) Daily maximum or if case settles within the day	893.00	1324.00	1468.00	1541.00

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	\$	\$	\$	\$
Solicitor appearing to instruct at mediation or case conference—				
(d) Half day (3 hours or part thereof)	236.00	303.00	341.00	377.00
(e) Hourly rate beyond half-day	112.00	138.00	158.00	184.00
(f) Daily maximum	566.00	739.00	822.00	914.00

Notes

- (i) Sub-items (a), (b) and (c) are all inclusive and include preparation, conference and appearance
- (ii) Despite anything to the contrary in item 29, the Registrar may allow a higher fee for counsel or solicitor appearing at mediation or case conference
- (iii) In circuit cases a circuit fee may be allowed by the Registrar in accordance with the First Schedule if in his

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	\$	\$	\$	\$
opinion, having regard to all the circumstances, the fees in item 20A are insufficient				
Directions hearing				
20B. Counsel or solicitor appearing at directions hearing	136.00	227.00	227.00	227.00
Instructions for Brief				
21. For work necessarily and properly done in preparing for trial or hearing and not otherwise provided for, including—				
(a) taking instructions for examination of any party or witness;				
(b) considering the facts and the law;				
(c) attending on and corresponding with client;				
(d) interviewing and corresponding with witnesses and taking proofs of their evidence;				

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	\$	\$	\$	\$
(e) arranging to obtain reports or advice from experts and maps, plans, photographs and models;				
(f) making search in any public office and elsewhere for relevant documents;				
(g) inspecting any property or place material to the proceeding;				
(h) perusing relevant documents;				
(i) the general care and conduct of the proceeding—not exceeding	1872.00	3745.00	5340.00	7633.00

Notes

- A. This item should begin with a short statement of—
- (i) the main issues;
 - (ii) any particular difficulties of fact or law;
 - (iii) any special skill, knowledge or responsibility required

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	\$	\$	\$	\$

B. This should be followed not by a chronological narrative, but by an analysis of the work done separated on the main headings appropriate to the subject matter. Under a heading, for example, "Attendances on and correspondence with client" there should be included a statement of the number of attendances on the client, the total time occupied and the number of letters sent, but not the details of every attendance or of every letter.

However, where objection is lodged to the stated number of letters or attendances, the practitioner lodging the bill for taxation must remove from his file the attendance notes and copy letters claimed, and be in a position to produce same in chronological order at the taxation.

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	\$	\$	\$	\$
<p>If a Judge or Registrar in respect of a party-party bill of costs or the Taxing Master on the taxation of a solicitor-client bill of costs considers that the maximum amount provided for in this item is not sufficient remuneration for the care and conduct including skill and responsibility involved throughout the course of proceedings and in obtaining instructions for brief or briefnotes then the Judge, Registrar or Taxing Master may allow such amount in excess of the scale or give such directions that in all the circumstances are fair and reasonable</p>				
Brief to counsel to appear				
22. Including attendance on counsel	72.00	84.00	105.00	105.00
Attending court				
23. (a) (i) Solicitor or managing clerk with counsel—per half day	235.00	303.00	341.00	377.00

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	\$	\$	\$	\$
(ii) Clerk with counsel—per half day	180.00	228.00	253.00	279.00
(iii) Solicitor without counsel—per day	711.00	915.00	1009.00	1117.00
(iv) If proceeding in list for hearing but not reached	84.00	114.00	140.00	151.00
(v) Additional Solicitor or managing clerk (if certified by trial Judge)—discretionary fee				
(b) Pre-Trial Conference—				
(i) solicitor or managing clerk with counsel	235.00	303.00	341.00	377.00
(ii) solicitor without counsel	357.00	461.00	510.00	562.00
Solicitor or managing clerk attending trial at a Court more than 50 kilometres from his place of business for				

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	<i>Up to and including \$7500</i>	<i>Over \$7500 up to and including \$20 000</i>	<i>Over \$20 000 up to and including \$50 000</i>	<i>Over \$50 000</i>
	\$	\$	\$	\$
each day of absence from office— discretionary additional fee				
Brief to hear judgment				
24. (a) Including receiving advice of date fixed, attendance on counsel and attendance to hear judgment	114.00	156.00	170.00	191.00
(b) Brief (or brief notes for solicitor) for any unopposed application or adjournment (where not otherwise provided for) including attendance to apply	114.00	156.00	170.00	191.00
Costs of the Day				
25. Including—				
(a) Practitioner for attending Court where no counsel employed	289.00	377.00	414.00	452.00
(b) Attending with counsel—				
(i) Clerk	140.00	191.00	201.00	226.00
(ii) Practitioner or managing clerk	203.00	272.00	303.00	336.00

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	\$	\$	\$	\$
(c) Counsel's fees	497.00	746.00	835.00	918.00

Note: These allowances shall be in addition to other items thrown away

Documents

26. (a) Drawing any necessary documents where not otherwise provided for—per folio	9.20	9.20	9.20	9.20
(b) Engrossing or typing any necessary document where not otherwise provided for—per folio	7.20	7.20	7.20	7.20
(c) Copies—any necessary carbon, photo or machine made copy—where not otherwise provided for—per page	1.80	1.80	1.80	1.80
(d) Perusals of any necessary letter, document or part of a document (not otherwise provided for)—per folio	3.70	3.70	3.70	3.70

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	\$	\$	\$	\$
(e) Examination or scanning any document which it is not necessary to peruse (not otherwise provided for)—per page	2.80	2.80	2.80	2.80
(f) Applications including copies, issuing and filing	84.00	105.00	105.00	105.00
(g) Affidavit of service including swearing, copies and filing	34.00	34.00	34.00	34.00
(h) Any necessary affidavit (not otherwise provided for) including preparation, copies, swearing, filing and service	235.00	303.00	341.00	377.00
(i) Fax or e-mail transmission or receipt if urgent and necessary in the discretion of the Registrar	9.70	9.70	9.70	9.70
Letters				
27. (a) Any necessary letter (including agency letters)	22.00	28.00	32.00	34.00
(b) For each circular letter after the first	11.00	11.00	11.00	11.00

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	\$	\$	\$	\$

Attendances

28. Any necessary attendance not otherwise provided for (including attendance on witness to arrange appearance without subpoena, or to cancel such appearance)—				
(a) Which is capable of being made by a clerk—per quarter hour	15.00	26.00	28.00	30.00
(b) Which requires the personal attention of the solicitor or managing clerk and involves the exercise of skill or legal knowledge—per quarter hour	32.00	34.00	34.00	40.00
(c) Service by post	15.00	34.00	34.00	34.00
(d) Personal service	53.00	53.00	53.00	53.00
Service of any document where necessary, and not able to be served by post.				
Where it is judged appropriate, the Registrar may allow additional proper costs having				

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	\$	\$	\$	\$
regard to the time taken, the distance travelled and any other necessary expense incurred				
(e) Attempted service				
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, for each necessary attendance	32.00	32.00	32.00	32.00
(f) Service by leaving				
Service of a document on party by filing or leaving at the office of his solicitor or other address for service, where that mode of service is necessary	24.00	24.00	24.00	24.00

Fees to Counsel

29. (Note: No fee to counsel is to be allowed unless vouched by the signature of counsel or his clerk)—

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	\$	\$	\$	\$
(a) For drawing pleadings or settling any necessary document including Statement of Claim, Defence, Interrogatories, etc.	129.00	160.00	179.00	210.00
(b) (i) To advise on evidence or for opinion	129.00	195.00	210.00	235.00
(ii) Advice on Pre-Trial Conference	195.00	288.00	313.00	355.00
(c) Conference on view—per hour	129.00	160.00	179.00	210.00
(d) Pre-Trial Conference with Registrar	363.00	472.00	525.00	579.00
(e) Brief to hear Judgment or for any application in a proceeding	275.00	314.00	345.00	345.00
(f) Brief on Trial—				
(i) Property, Personal Injuries	893.00	1324.00	1468.00	1541.00
(ii) Commercial Causes			1541.00	
(g) Refresher fee—				
(i) Property, Personal Injuries	594.00	876.00	975.00	1026.00

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	\$	\$	\$	\$
(ii) Commercial Causes			1026.00	
Any allowance for a refresher fee is to be calculated in the manner set out in Rule 63A.82(3)				
(h) (i) In circuit cases, a circuit fee may be allowed and the amount thereof fixed by order of the Judge, in accordance with the First Schedule of this scale, if, in his opinion (having regard to all the circumstances, including travelling expenses, living expenses and absence from Chambers) the scale fee is insufficient but the total amount of the scale fee and the circuit fee shall not exceed the fee marked on the brief.				

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<i>Up to and including \$7500</i>	<i>Over \$7500 up to and including \$20 000</i>	<i>Over \$20 000 up to and including \$50 000</i>	<i>Over \$50 000</i>
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\$ \$ \$ \$

- (ii) In any case where a refresher is certified for, a further circuit fee may be allowed in accordance with the First Schedule in this scale.
- (iii) Where in any such case the Judge certifies for two counsel, all reasonable and necessary attendances and copies additional to those which would have been necessary had only one counsel been employed shall be allowed.
- (iv) In any proceeding or matter notwithstanding anything contained in the rules or in the scale of costs, apart from item 20A, the

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	\$	\$	\$	\$

- trial Judge ONLY may on application allow such higher fee for counsel (including more than one counsel) as he thinks fit.
- (v) Despite anything contained in these Rules—
 - (A) where a trial has commenced, the Judge ONLY may allow such higher fee for counsel for the trial and may allow fees for more than one counsel as the Judge thinks fit, save that this sub-item does not apply to the allowances set out in item 20A.

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	\$	\$	\$	\$
(B) where no trial has commenced, the Registrar or other taxing officer may allow such higher fee for counsel and may allow fees for more than one counsel as the Registrar or other taxing officer thinks fit				
(vi) Undefended proceedings (see item 38)				
Practice Court				
30. Application for order for substituted service (not including fees of advertising)	414.00	492.00	544.00	599.00
31. Application for Leave to Proceed	156.00	191.00	223.00	243.00
Interpleader				
32. (a) Bailiff—solicitor or counsel appearing	579.00	667.00	722.00	791.00

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	\$	\$	\$	\$
(b) Claimant—solicitor with or without counsel appearing	505.00	591.00	639.00	692.00
(c) Creditor—solicitor with or without counsel appearing	505.00	591.00	639.00	692.00
Other Applications in Proceedings				
33. (a) Applicants costs—solicitor with or without counsel appearing	551.00	651.00	701.00	757.00
(b) Respondents costs—solicitor with or without counsel appearing	505.00	604.00	651.00	707.00
Summons to Debtor				
34. (a) Judgment Creditor on hearing—solicitor with or without counsel appearing	551.00	651.00	701.00	757.00
(b) costs of adjournment—solicitor with or without counsel appearing	400.00	468.00	505.00	542.00
The costs in items 30–34 are inclusive of counsel's fees, where applicable, and disbursements but do not include fees for service or filing fees for an				

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County Court (Chapter I Amendment No. 12) Rules 2003
S.R. No. 138/2003

	A	B	C	D
	<i>Up to and including \$7500</i>	<i>Over \$7500 up to and including \$20 000</i>	<i>Over \$20 000 up to and including \$50 000</i>	<i>Over \$50 000</i>
	\$	\$	\$	\$
application. These costs are subject to increase or reduction at the discretion of the Court. Such costs include the summons, affidavit in support, one affidavit of service, preparation, signing, service and filing of the order where appropriate.				
Miscellaneous				
35. Registration of interstate Judgment	72.00	105.00	105.00	105.00
36. Warrant of execution	72.00	105.00	105.00	105.00
37. Upon entering default judgment, including instructions to sue, letter before action, preparation of originating process and statement of claim, including copies, issuing, arranging for service, affidavit of service and entry of judgment	377.00	482.00	537.00	590.00

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	A	B	C	D
	<i>Up to and including \$7500</i>	<i>Over \$7500 up to and including \$20 000</i>	<i>Over \$20 000 up to and including \$50 000</i>	<i>Over \$50 000</i>
	\$	\$	\$	\$

Undefended proceedings

38. Upon judgment in any proceeding where the defendant has not participated throughout the course of the proceeding, including originating process, statement of claim, issue and service fees, setting down, fixing proceeding for trial, arranging attendance of witnesses at court, witnesses expenses, instructions for and preparing of brief, attending counsel therewith, appointing and attending pre-trial conference, attendance at Court and fees to counsel for both trial and conference
- | | | | | |
|--|---------|---------|---------|---------|
| | 2395.00 | 3253.00 | 3589.00 | 3944.00 |
|--|---------|---------|---------|---------|

For the purpose of this item the fees payable to counsel which are included in the above amounts are:

A	B	C	D
\$	\$	\$	\$
535.00	977.00	1110.00	1176.00

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County Court (Chapter I Amendment No. 12) Rules 2003
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	A	B	C	D
		<i>Over</i> \$7500	<i>Over</i> \$20 000	
	<i>Up to and including</i> \$7500	<i>up to and including</i> \$20 000	<i>up to and including</i> \$50 000	<i>Over</i> \$50 000
	\$	\$	\$	\$

Should any unusual or abnormally large disbursement have necessarily been made in addition to those mentioned above, the Judge may on application made to him at the trial allow an appropriate additional amount.

39. In addition to the allowance of any disbursement hereinbefore provided, the Registrar or other taxing officer may allow any disbursements necessarily or properly made in the course of the proceeding.

Rating Appeals

1. As to all items and charges under this heading, as far as practicable Scale "A" shall apply where the annual value appealed against is up to and including \$1000 and Scale "B" where the annual value appealed against is over \$1000.
2. Whenever any rating appeal case is, in the opinion of the presiding Judge, of such a special important nature that the fees above specified would not be a fair and reasonable remuneration for the trouble, care, skill and expense necessarily involved in the proper preparation and conduct of such appeal case he may allow such lump sum, as in his opinion, would amount to such fair and reasonable remuneration.

Providing that nothing herein stated with regard to costs of rating appeals shall prevent the Judge from making such order as to costs of fixing the same at such sum as he shall think fit.

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Witnesses' Expenses

Witnesses giving evidence in an expert or professional capacity, \$136.00–\$272.00 per hour or part thereof, not exceeding \$1701.00 per day.

Persons not referred to in the preceding paragraph who are engaged in business as principals on their own behalf \$284.00 per half day or part thereof but not in any event to exceed \$510.00 in any one day.

Other witnesses—\$85.00 per day, provided that a witness who receives wages, salary, remuneration or fees may be allowed the amount actually lost by reason of attendance not exceeding \$510.00 per day.

Travelling expenses, if witnesses residence or place of business is more than seven kilometres from place of hearing, the sum reasonably and actually paid.

Witnesses attending in more than one case will be entitled to a proportionate part only in each case.

Professional, scientific or expert witnesses, for time necessarily occupied in qualifying to give evidence, to be allowed such reasonable sum as was necessarily and properly incurred.

Meals and Accommodation of Witnesses

A reasonable sum to be fixed by the Registrar.

In cases in which it is considered reasonable to bring heavy or bulky articles to court or the precincts of the court as exhibits or for inspection by Judge or Jury, a reasonable sum may be allowed for costs of conveyance or transport.

Interpreter Allowances

- (a) Attending professional scientific or expert witnesses qualifying to give evidence attending conference with solicitor or counsel \$58.00, or for each hour \$39.00 but not in any event to exceed \$245.00 in any one day.
- (b) Attending court where the period of absence from the place of business or residence is four hours or less, \$141.00, and for each hour or part thereof in excess of four hours, \$39.00, but not in any event to exceed \$245.00 in any one day.

Travelling Accommodation and Meals

A reasonable sum to be fixed by the Registrar.

FIRST SCHEDULE

CIRCUIT FEES

<i>Circuit Town</i>	<i>Fee for first six hours</i>	<i>Further fee for each five hours thereafter</i>
	\$	\$
Bairnsdale	354.00	235.00
Ballarat	227.00	153.00
Bendigo	268.00	178.00
Geelong	193.00	124.00
Hamilton	369.00	246.00
Horsham	369.00	246.00
Mildura	450.00	299.00
Morwell	271.00	178.00
Sale	320.00	211.00
Shepparton	308.00	207.00
Wangaratta	339.00	224.00
Warrnambool	354.00	235.00
Wodonga	369.00	246.00

Note: Any circuit fee allowed under item 29(h)(i) shall be in accordance with this Schedule, provided that not more than one such further circuit fee will be allowed in any one day in relation to any one proceeding or matter.!

Dated: 20 November 2003

MICHAEL ROZENES, <i>Chief Judge</i>	M. HIGGINS
F. G. DYETT	LESLIE C. ROSS
W. M. R. KELLY	E. H. CURTAIN
L. S. OSTROWSKI	R. G. WILLIAMS
J. T. DUGGAN	FRED DAVEY
T. A. NEESHAM	STUART CAMPBELL
J. R. HANLON	M. G. McINERNEY