

PRACTICE DIRECTION 15: Costs

15.1 OVERVIEW: At the end of any proceedings, the Tribunal must make an order in relation to the costs the parties incur having gone through the legal proceedings. In most proceedings, Section 28 of *Appeal Tribunal Act* will regulate the making of and determination of any application for costs. However, some proceedings have separate cost provisions with different considerations (such as Section 64(12) of the *Land Use Act* and Section 48(5A) of *EMPCA*). Parties are encouraged to take their own private legal advice in relation to the relevant provisions which govern an order for costs before initiating proceedings with the Tribunal. The Tribunal's staff cannot give advice in relation to the likelihood of a costs order being made against a party.

15.2 WHAT ARE COSTS: Costs refer to the financial outlay incurred by a party in defending or pursuing proceedings before the Tribunal. Costs may include the retaining of a solicitor/barrister to act for a party, retaining an expert witness to give evidence or retaining a planning consultant to assist a party in an appeal. It may also include disbursements such as photocopying and faxing. Before making an application for costs, a party may wish to take advice as to whether the costs claimed are ones which are capable of reimbursement by order of the Tribunal.

15.3 WHO CAN CLAIM FOR COSTS: Any party to proceedings before the Tribunal may make an application for costs excluding witnesses or persons who were not formally joined as a party to proceedings. At the conclusion of the proceedings, the Tribunal will issue an order allowing persons to make any applications for costs within 21 days of a nominated date. If no applications are made within that timeframe, the Tribunal will issue a self-executing order that each party bear their own costs of the proceedings. Care and attention must be exercised to ensure that the application is made within the timeframe nominated by the Tribunal.

15.4 MAKING AN APPLICATION FOR COSTS: An application for costs must:

- (a) Be in writing,
- (b) Specify the parties against whom the application for costs is sought,
- (c) Include submissions in support of the application for costs.

Regard should be had to the relevant provisions under legislation which regulate applications for costs. Any tests or factors which are set out in that legislation should be addressed in the making of the written submissions. Section 28 of the *Appeal Tribunal Act* is provided to assist parties who may be making an application under that section.

Section 28 of the Act:

“28. Costs

- (1) Each party to an appeal is to pay its own costs.
- (2) However, the Appeal Tribunal may order a party to an appeal to pay all or part of the costs of another party to the appeal if the Appeal Tribunal is satisfied that it is fair and reasonable to do so.

- (3) For the purposes of subsection (2), the Appeal Tribunal may take into account any of the following matters:
- (a) whether the appeal appears to the Appeal Tribunal to have been instituted merely to delay or obstruct;
 - (b) whether in the Appeal Tribunal's opinion a party has raised frivolous or vexatious issues;
 - (c) the relative merits of the claims made by each of the parties;
 - (d) whether in the Appeal Tribunal's opinion a party has unnecessarily or unreasonably prolonged the appeal or increased the costs of it;
 - (e) whether a party has failed to comply with a direction or order of the Appeal Tribunal without reasonable excuse;
 - (f) whether a party has failed to comply with any relevant law or planning scheme;
 - (g) the nature, complexity and outcome of the appeal;
 - (h) the capacity of the parties to meet an order for costs;
 - (i) any other matter the Appeal Tribunal considers relevant.
- (4) If the Appeal Tribunal makes an order for costs under subsection (2), it –
- (a) is to specify the time within which those costs are to be paid; and
 - (b) may, by a further order, extend the time if it considers it reasonable in the circumstances.
- (5) If the Appeal Tribunal makes an order for costs before the end of any proceedings, it may require that the order be complied with before it continues with the proceedings.
- (6) An order for costs under this section may be registered in a court having jurisdiction for the recovery of debts of the amount ordered to be paid by or under the order.
- (7) Proceedings for the enforcement of an order for costs under this section may be taken as if the order were a judgment of the court in which the order is registered.”

15.5 DETERMINING A COSTS APPLICATION: A costs application is forwarded to the parties against whom an order is sought. Those parties are afforded a right of reply, which is ordinarily 10 days from receipt of the costs application. All parties may request a costs hearing. Ordinarily, a costs hearing will only occur where a factual dispute has arisen in the written material forwarded to the Tribunal by the respective parties. If no such factual dispute arises, a costs application will ordinarily be dealt with by written submissions. The party who made an application for a costs order is given a final right of response to any submissions which are made by the Respondent to the costs application. That is ordinarily a period of seven days.

Please note, costs decisions are not subject to the 90 day timeframe pursuant to Section 16(1)(f) of the RMPAT Act 1993. The Tribunal must give priority to appeal decisions which

fall under the 90 day timeframe. As such, cost decisions will be determined at the earliest convenience of the Tribunal and within date order of their filing.

15.6 AN ORDER FOR COSTS: If the Tribunal is satisfied that an order for costs should issue, it will issue the terms of that order in writing. The order will include a timeframe within which the order for costs is to be complied with. The order will also contain a dispute resolution clause whereby parties who may dispute the quantum charged by the Applicant for costs may come before an assessing officer of the Tribunal to hear and determine that dispute (see *Practice Direction 16 – Costs Assessment Hearings*). Once an assessing officer has heard and determined any dispute as to the quantum of costs, a Certificate of Costs Assessment will issue which may then be used in enforcement proceedings of the order of the Tribunal.