

TREASURY BOARD DIRECTIVE

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

DIRECTIVE: 1/20

SUBJECT: Remuneration Guidelines for Appointees to Administrative
Tribunals and Regulatory Boards

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
and Regulatory Boards

POLICY: SEE APPENDIX 1

**REPEAL OF
EXISTING POLICIES:** Treasury Board Directive 1/17

EFFECTIVE DATE: May 1, 2020



Honourable Carole James
Chair, Treasury Board

April 17, 2020

Date

TREASURY BOARD DIRECTIVE

APPENDIX 1

**REMUNERATION GUIDELINES
FOR APPOINTEES TO
ADMINISTRATIVE TRIBUNALS
AND REGULATORY BOARDS**

1. POLICY OBJECTIVES

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

- Enhance the accountability, openness and transparency of the remuneration and expense system.
- Support a comprehensive framework for appropriate and consistent appointee remuneration and expense reimbursement.
- Affirm the importance and professional nature of the work appointees perform.
- Affirm the importance of attracting and retaining highly skilled and qualified individuals who reflect the diverse identities of British Columbians and the Province's commitment to gender equity and to true and lasting reconciliation with Indigenous peoples in British Columbia.
- Establish and maintain remuneration rate proportionality, where possible, between and among:
 - full-time and part-time appointees;
 - British Columbia administrative tribunals and regulatory boards; and
 - Canadian administrative tribunals and regulatory boards.

2. DEFINITIONS

“administrative tribunal” means an independent entity established by legislation to make quasi-judicial decisions or to resolve disputes that is included on the classification list of administrative tribunals maintained by the Appointee Remuneration Committee.

“appointee” means an individual appointed to an administrative tribunal or regulatory board by the Lieutenant Governor in Council, the minister, or another individual with delegated authority.

“Appointee Remuneration Committee” means the committee established by Treasury Board to administer these Remuneration Guidelines.

“chair” means the individual who is appointed as the chair of an administrative tribunal or regulatory board under the relevant enabling legislation and who is responsible for the management and operation of the administrative tribunal or regulatory board.

“daily rate” as it pertains to full-time appointees, means an annual remuneration rate divided by the number of working days in that year; the daily rate as it pertains to part-time appointees means the rates established consistent with section 6 in these Remuneration Guidelines.

“executive chair” means the individual who is appointed to lead a cluster of tribunals per Part 3 of the *Administrative Tribunals Act*.

“member” means an appointee, other than the chair or a vice chair as defined in these Remuneration Guidelines.

“minister” means the minister who is accountable to government for the administration of the administrative tribunal or regulatory board enabling legislation. Except for the approval of a remuneration plan (see section 4.4), the minister may delegate authority to another individual to carry out the responsibilities of the minister in these Remuneration Guidelines.

“regulatory board” means an independent entity with responsibilities that are regulatory in nature that is included on the classification list of regulatory boards maintained by the Appointee Remuneration Committee.

“remuneration plan” means a formal policy approved by the minister to guide the administration of remuneration for an administrative tribunal or regulatory board consistent with these Remuneration Guidelines.

“tribunal” unless specified otherwise in these Remuneration Guidelines, means both administrative tribunals and regulatory boards.

“vice chair” means an appointee who is designated as a vice chair by the Lieutenant Governor in Council, the minister, or another individual with delegated authority to exercise significant management or administrative responsibilities on behalf of the administrative tribunal or regulatory board.

3. GENERAL APPLICATION

These Remuneration Guidelines set the maximum rates, principles, and general policies for the administration of appointee remuneration.

- 3.1 An appointee’s remuneration must not exceed the maximum rate set for the position within the classification level for their tribunal and there is no requirement that the maximum remuneration rate be paid.
- 3.2 Remuneration may be differentiated within and across tribunals to recognize varying factors, including but not limited to an appointees’ skills, experience, knowledge, and assigned responsibility.
- 3.3 Each tribunal must have an approved remuneration plan to guide the administration of remuneration consistent with these Remuneration Guidelines. A remuneration plan must be publicly available and may apply to more than one tribunal. In the event of a conflict between a tribunal’s remuneration plan and these Remuneration Guidelines, these Remuneration Guidelines prevail.

- 3.4 An appointee may not receive more than the maximum daily rate unless there are ‘extraordinary circumstances’ where a tribunal or the appointee is required to contribute time over and above the ‘ordinary’ expected commitment. No remuneration may be provided under this section unless the criteria for ‘extraordinary circumstances’ and associated approval process(es) are detailed in the tribunal’s remuneration plan or unless the minister requests and either Treasury Board or the Appointee Remuneration Committee grants a temporary exemption. The Appointee Remuneration Committee may not grant a temporary exemption that exceeds 6 months in duration.
- 3.5 If authorized through statute, the Lieutenant Governor in Council may set remuneration that differs from these Remuneration Guidelines by specifying the remuneration in the letter of appointment or appointing instrument (e.g., through Order-in-Council).
- 3.6 Permanent exemptions to these Remuneration Guidelines must be approved by Treasury Board.
- 3.7 Remuneration and reimbursement must be paid to the appointee, not to an employer, corporate entity, or an organization. An appointee is an individual who holds an “office” as defined in federal Goods and Service Tax (GST), Canada Pension Plan (CPP) and Employment Insurance (EI) legislation.
- 3.8 A government employee appointed to a tribunal in their capacity, or as part of their 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 or tribunal for travel expenses at the rate of reimbursement to which the employee is entitled by virtue of the employee’s employment.

4. TRIBUNAL REMUNERATION PLANS

Each tribunal must have an approved remuneration plan with the following requirements and characteristics, to be reviewed and approved by the minister at least once every three years:

- 4.1 Must establish the minimum and maximum remuneration rates for the appointee positions within the classification level for the tribunal.
- 4.2 Must establish the approval processes and/or criteria for increases to appointee remuneration within the established ranges and rates.
- 4.3 Must be publicly available on the administrative tribunal, regulatory board or ministry website.

- 4.4 Must be approved by the minister and the approval of a remuneration plan may not be delegated.
- 4.5 Must provide an explanation as to the treatment of appointees, particularly those remunerated through per diems, for the purposes of Personal Income Tax withholdings, the federal Goods and Services Tax (GST), Canada Pension Plan (CPP), and *Employment Insurance Act* (EI) schemes.
- 4.6 May outline the criteria and approval process(es) to provide additional remuneration for ‘extraordinary circumstances’ where an appointee is required to contribute time over and above the ‘ordinary’ expected commitment.
- 4.7 May outline how varying levels of skills, experience and knowledge, level of responsibility, and other operational requirements factor into the remuneration rates.
- 4.8 May outline internal policies regarding the administration of remuneration for individuals appointed to multiple tribunals consistent with part 7 of these Remuneration Guidelines.
- 4.9 May document any other internal policies regarding the administration of appointee remuneration and expense reimbursement.

5. FULL-TIME APPOINTEES

- 5.1 Whether appointed by the Lieutenant Governor in Council or any other authority, unless otherwise specified by that appointing authority, full-time appointees are classified as Category C under the definition of “Order in Council Appointees” in Part 1, section 3 of the British Columbia Government’s *Terms and Conditions of Employment for Excluded Employees and Appointees*.
- 5.2 Whether appointed by the Lieutenant Governor in Council or any other authority, unless otherwise specified by that appointing authority, full-time appointees are entitled to benefits as set out in part 10 of the *Terms and Conditions of Employment for Excluded Employees and Appointees*, Category C, or as otherwise specified in the tribunal’s remuneration plan.
- 5.3 Full-time appointees may, at the discretion of the chair and subject to documentation, be scheduled to serve the tribunal on a regular part-time basis. Remuneration and benefits must be prorated to the time commitment. The key distinguishing feature from “part-time” appointees under section 6.1, is that there must be a clear and predictable commitment of hours of service per pay period.

5.4 Minimum and maximum annual remuneration rates for full-time appointees:

Full Time Remuneration						
Classification	Chair		Vice Chair		Member	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Level 1	\$124,000	\$137,000	\$105,000	\$116,000	\$87,000	\$96,000
Level 2	\$137,000	\$147,000	\$116,000	\$125,000	\$96,000	\$103,000
Level 3	\$147,000	\$168,000	\$125,000	\$143,000	\$103,000	\$118,000
Level 4	\$168,000	\$190,000	\$143,000	\$161,000	\$118,000	\$132,000
Level 5	\$190,000	\$210,000	\$161,000	\$179,000	\$132,000	\$147,000

5.5 Whether appointed by the Lieutenant Governor in Council or any other authority, unless otherwise specified by that appointing authority, 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 an appointee of a tribunal, in accordance with the Group 2 rates, policies, and procedures outlined in the *Terms and Conditions of Employment for Excluded Employees and Appointees*, or as otherwise specified in the tribunal remuneration plan.

6. PART-TIME APPOINTEES

- 6.1 For the purpose of these Remuneration Guidelines, the defining feature of ‘part-time’ appointees is that they are remunerated for their service on an “as and when required” basis. 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 and Appointees.
- 6.2 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 and Appointees.
- 6.3 Remuneration for part-time appointees for each twenty-four-hour day in respect of work carried out for a tribunal must not exceed the maximum daily rate for their position and classification as set out below:

Part Time Remuneration – Maximum Daily Rate			
Classification	Chair	Vice Chair	Member
Level 1	\$600	\$500	\$425
Level 2	\$650	\$550	\$450
Level 3	\$725	\$625	\$500
Level 4	\$800	\$700	\$575
Level 5	\$900	\$800	\$650

- 6.4 The maximum daily rate applies to a medical practitioner appointed to a tribunal on the basis of a requirement for their clinical expertise. If there are documented recruitment and retention challenges, the tribunal’s remuneration plan may set rates up to the relevant amounts negotiated in agreements between the BC Medical Association (Doctors of BC), the Government of British Columbia, and the Medical Services Commission.
- 6.5 A tribunal’s remuneration plan may set remuneration for the following up to the applicable part-time vice chair rates:
- 6.5.1 Appointees who are expressly required by the tribunal’s enabling legislation to hold a professional accreditation in order to be appointed to the tribunal.
- 6.5.2 Appointees with qualifications deemed by the minister to be specifically relevant and required to fulfil the tribunal’s mandate.
- 6.5.3 Appointees designated to:
- Preside at a multi-person panel hearing.
 - Conduct a hearing as a single-person panel.
 - Conduct a dispute resolution process.
 - BC Review Board as an alternate chair under section 672.38(1) of the federal Criminal Code (R.S., 1985, c. C-46).
- 6.6 The tribunal’s remuneration plan must manage remuneration for part-time appointees in line with the following principles or guidelines:
- 6.6.1 The remuneration plan must set remuneration rates and how remuneration is calculated in respect of work carried out for the tribunal. Remuneration may be set as an hourly rate, a full- or half-day per diem rate, or as a flat rate per file or case assigned, or a combination of such measures.
- 6.6.2 Appointees may not be remunerated more than one half of the applicable daily rate for attending a tribunal hearing or in-person meeting that lasts four hours or less.

- 6.6.3 A tribunal hearing 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.
- 6.7 The remuneration plan may set remuneration and policies for:
- 6.7.1 Undertaking duties on behalf of the 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;
 - required professional development or training; and
 - other duties as requested by the chair or their designate.
- 6.7.2 Instances where a scheduled hearing is cancelled on short notice. In setting such policies, chairs are encouraged to consider assigning the appointee additional duties in lieu of the hearing time where possible.
- 6.7.3 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.
- 6.8 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 an appointee of a tribunal, in accordance with the Group 2 rates, policies, and procedures outlined in the *Terms and Conditions of Employment for Excluded Employees and Appointees*, or as otherwise specified in the tribunal remuneration plan.
- 6.9 Appointees are not entitled to be reimbursed for professional dues, membership fees, insurance or other costs, except as otherwise provided by the Attorney General related to Law Society fees.
- 6.10 An appointee is not entitled to be paid for time spent attending social events.
- 6.11 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*.
- 6.12 Remuneration paid to part-time appointees:
- Is not subject to CPP or EI deductions if such appointees are not engaged in pensionable or insurable employment under federal CPP and EI legislation.

- Is subject to income tax withholding and is to be reported annually to the Canada Revenue Agency on a T4 Supplementary Slip.
- No GST is payable or collectable on the appointee's services because the appointee provides their services in the course of holding an office and is therefore not engaged in business or commercial activity for the purposes of the federal *Excise Tax Act*. Therefore, the appointee is not making any taxable supplies and no GST is payable or collectable on the appointee's services.

7. APPOINTMENT TO MULTIPLE TRIBUNALS

- 7.1 To the extent possible, the remuneration for an individual appointed to multiple tribunals should reflect the specific remuneration rates and time commitment to each tribunal.
- 7.2 An individual appointed to multiple tribunals may not receive more than their maximum daily rate in a 24-hour period pertaining to their highest classification rate unless the circumstances in section 3.4 (extraordinary circumstances) apply.
- 7.3 Where the chair of an administrative tribunal or regulatory board is cross-appointed as the chair of another regulatory tribunal or regulatory board, or appointed as an "executive chair", the minister may approve additional remuneration not to exceed \$25,000 or 20% of the highest applicable remuneration rate, whichever is lower.
- 7.4 Where the vice chair of an administrative tribunal or regulatory board is cross-appointed as the vice chair of another regulatory tribunal or regulatory board, the Minister may approve additional remuneration not to exceed \$15,000 or 10% of the highest applicable remuneration rate, whichever is lower.

8. ROLES AND RESPONSIBILITIES

- 8.1 **Treasury Board** establishes and may revise these Remuneration Guidelines and may consider requests for exceptions to these Remuneration Guidelines.
- 8.2 **The Appointee Remuneration Committee:**
- 8.2.1 Is responsible for classifying new tribunals, or re-classifying existing tribunals, in accordance with the criteria are set out in Schedule 1 to these Remuneration Guidelines.

- 8.2.2 Administers requests for exceptions to these Remuneration Guidelines to Treasury Board for decision and provides support and recommendations to Treasury Board in its deliberations.
 - 8.2.3 Reviews proposed tribunal remuneration plans or amendments and provides recommendations to the minister prior to the minister's approval of the new or amended remuneration plan.
 - 8.2.4 Resolves any conflicts between these Remuneration Guidelines and an approved tribunal remuneration plan.
 - 8.2.5 Meets at the call of the Appointee Remuneration Committee Chair.
 - 8.2.6 Maintains and makes available publicly on the Public Sector Employers' Council Secretariat website these Remuneration Guidelines, lists of the administrative tribunals and regulatory boards, links to provisions such as the *Terms and Conditions of Employment for Excluded Employees and Appointees*, and other relevant documents and information.
 - 8.2.7 Monitors annual remuneration disclosure and may prescribe the format and timelines in which disclosure must occur.
 - 8.2.8 Reviews these Remuneration Guidelines and makes recommendations to Treasury Board as required, or at least every three years.
- 8.3 **The Public Sector Employers' Council Secretariat** acts as the secretariat to the Appointee Remuneration Committee and ensures remuneration and classification information is publicly available.
- 8.4 **The minister responsible for a tribunal:**
- 8.4.1 Will establish and maintain a remuneration plan for the tribunal.
 - 8.4.2 May not delegate the approval of a remuneration plan or amendments to a remuneration plan. For added clarity, approving a remuneration plan is distinct from remuneration adjustments for individual appointees. The approval of remuneration increases for individual appointees may be delegated consistent with the process or criteria established in the tribunal's remuneration plan.
 - 8.4.3 Will request the Appointee Remuneration Committee to classify any new tribunal established by legislation.

- 8.4.4 Will request the Appointee Remuneration Committee to consider a reclassification of a tribunal if its mandate is changed significantly.
 - 8.4.5 Will request the Appointee Remuneration Committee to review and make recommendations prior to the minister's approval of a tribunal's remuneration plan or subsequent amendments to the plan.
 - 8.4.6 May seek a temporary exception from the Appointee Remuneration Committee or a permanent exemption from Treasury Board to the remuneration provisions of these Remuneration Guidelines. In either case, the minister must submit the request through the Appointee Remuneration Committee.
 - 8.4.7 Will provide actual remuneration information to the Appointee Remuneration Committee when requested and make such information available on the ministry website if there is no tribunal website.
- 8.5 **The Administrative Tribunal or Regulatory Board**, as overseen by the chair, administers the remuneration, benefits, and expenses payable to appointees:
- 8.5.1 In accordance with these Remuneration Guidelines and the remuneration plan for their tribunal.
 - 8.5.2 In accordance with the classification determination of the Appointee Remuneration Committee or Treasury Board.
 - 8.5.3 Ensures actual remuneration and reimbursement information, as requested by the Appointee Remuneration Committee, is provided to the minister and PSEC Secretariat and is publicly available on the tribunal or ministry website.

9. EXCEPTIONS

BC Securities Commission: Appointee remuneration is established as an exception to the remuneration set out in these Remuneration Guidelines.

10. EFFECTIVE DATE

These Remuneration Guidelines are effective May 1, 2020.

Schedule 1

Administrative Tribunal and Regulatory Board Classification Structure Criteria

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

- Primary legislation, regulations and policies
- Accountability and subsequent review processes: level, deference by the courts and privative clause
- Public policy role as defined in legislation
- Scope/focus of function
- Case complexity
- Procedural complexity: complexity of dispute prevention and/or resolution process
- Alternative dispute resolution processes and innovation
- Participant needs
- Scope and complexity of decision-making and skills required
- Strategic importance to government and public policy
- Strategic importance to industry or sector
- Impact on individuals
- Required knowledge, skills, expertise, and experience
- Requirement for external engagement, either with communities, industry, sector, government representatives, Indigenous communities, or professions
- Expectations to generate and implement innovation

Criteria for exceptional responsibilities on which chairs of administrative tribunals and regulatory boards are to be classified for the purposes of this directive include:

- All the criteria of the administrative tribunal and regulatory boards of which the chair is responsible
- Complexity of the role: oversight on decisions, HR responsibilities
- Responsibility for more than one administrative tribunal or regulatory board
- Responsibility for an administrative pod
- Overarching responsibilities across administrative tribunals and regulatory boards such as leadership, systems, engagement