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IN THE SUPREME COURT OF TONGA

PRACTICE DIRECTION ON COSTS

No.1 of 2009

Application

This Practice Direction shall come into effect on 1 March 2009 and shall apply to the assessment and taxation of all costs and disbursements incurred in civil proceedings on or after that date and in respect of any application for judgment in default filed on or after the said date where the costs claimed do not exceed \$1150.

PART ONE: COSTS ON JUDGMENTS IN DEFAULT
(where the costs claimed do not exceed \$1150)

NOTE: The object of these directions is to allow a fee of up to \$1150 in judgment in default cases without the need for taxation.

1. The following directions shall apply in respect of any claim for costs upon the entry of judgment in default of defence (ORDER 14 of the Supreme Court Rules 2007) where the amount claimed does not exceed \$1150.
2. Notwithstanding the provisions of O.14 Rule 2 (2), the draft judgment in default (Form 7) to be filed with the application notice is to be amended by deleting paragraph 2 and substituting:

" 2. The plaintiff is awarded costs and disbursements in the sum of \$
(insert the total of the fee claimed or \$1150 whichever is the lesser, sum plus disbursements being the total of the Court filing fees; photocopying not exceeding \$10 and telephone calls, not exceeding \$10. Any higher or other amounts claimed for disbursements must be approved by the Registrar before the filing of the draft judgment in default).
3. Notwithstanding the provisions of O.14 Rule 2 (3), the supporting bill of costs to be lodged with the Court and served on the party in default shall state the amount claimed as the fee (not exceeding \$1150) without the need for details and list the disbursements.
4. Costs claimed under any bill of costs filed pursuant to this Part of the Practice Direction shall be allowed in the amount claimed (not exceeding \$1150) plus disbursements without the need for formal taxation.

PART TWO: COSTS UPON TAXATION

NOTE: *The object of these directions is to increase the approved scale of fees (last reviewed in August 2004) and to reaffirm the principles applicable on the taxation of costs.*

1. Unless the Court has ordered otherwise, costs are awarded on a party/party basis.
2. In carrying out any taxation of costs pursuant to Order 47 of the Supreme Court Rules 2007 the maximum amounts allowable by the Registrar shall be:

DAILY RATES

Conducting trials and appeals before any Court and any other substantial hearings or appearances before any Court (including time spent in travelling for such appearances):

Senior Counsel	\$1,800
Counsel	\$1,200
Locally Qualified Lawyer	\$800

HOURLY RATES

In carrying out any other legal work for a client not covered by attendances that can be charged under the daily rates above:

Senior Counsel	\$300
Counsel	\$200
Locally Qualified Lawyer	\$130

3. Where a trial or other hearing takes up to three hours the rate allowed shall be calculated at the relevant hourly rate with any final part hour to be counted as an hour. Hearings of more than three hours duration shall be charged at the full daily rate.
4. Time spent on legal research will not be an allowable head of claim unless the law involved is novel or of unusual complexity.
5. Unless a sound basis can be established for charging a higher amount, the sum to be allowed on taxation for disbursements in respect of each telephone call, electronic communication, item of correspondence and other routine item shall not exceed 1/10 of the law practitioner's approved hourly rate.
6. Costs will not be recoverable at a law practitioner's approved hourly rate if the

work or attendance in question could reasonably have been delegated to a clerk.

7. The rates specified in this Part shall also be the maximum rates chargeable by a law practitioner in respect of any hearings, appearances and attendances before a Tribunal, Arbitration Panel or Mediator in the Kingdom.

8. Additional costs may be certified for by any, Magistrate, Tribunal or Arbitrator upon special cause being shown as in the case of a Judge under O.47 Rule 5 and in such event the maximum allowable charge shall be as certified.

9. In any case where a Judge, Magistrate, Tribunal or Arbitrator considers that the standard of pleadings or the conduct of the case or the performance of the law practitioner has not been satisfactory (for whatever reason) he may order that any of the above rates be decreased by such amount as he considers appropriate.

10. No decrease may be made without the Judge, Magistrate, Tribunal or Arbitrator first having given the law practitioner the opportunity of being heard, and in any case where a decrease is ordered the reason(s) therefore are to be provided in writing.

11. Upon taxation of costs under O.46 rule 6(3) (where no objection has been lodged) the Registrar may, if he or she is satisfied that the bill of costs has been prepared in accordance with the principles set out in this Practice Direction, simply confirm the amounts claimed without reduction. Only if the Registrar proposes to make a reduction in the costs or disbursements claimed will it be necessary to allow counsel to be heard.

PART THREE: DISBURSEMENTS ALLOWED UPON TAXATION

1. Consumption tax may be charged on fees only by those law practitioners registered for consumption tax purposes with the Inland Revenue Division of the Revenue Services Department.

2. There shall be allowed as disbursements upon taxation, if properly vouched, all reasonable sums necessarily expended in respect of such items as travelling costs, subsistence and hotel costs, communication charges, Court and witnesses fees, copying and printing charges.

3. Solicitor/client disbursements are not recoverable.

PART FOUR: OVERSEAS COUNSEL

1. In any case where it is reasonable for a litigant to instruct counsel from abroad, additional costs and expenses may be certified for pursuant to O.47 Rule 5 of the Supreme Court Rules provided that the Court is satisfied that such costs, charges or

expenses are reasonably necessary or proper for the attainment of justice or for maintaining or defending the rights of the client.

REPEAL

Practice Note 02/1992, Practice Direction 02/1994 and Practice Direction 05/2004 are repealed from the date of coming into effect of this Practice Direction for all costs and disbursements incurred on or after the said date.



A D FORD
Chief Justice
23 February 2009



cc: Hon. Mr Justice Andrew
Hon. Mr Justice Shuster