

BRITISH COLUMBIA EXPROPRIATION ASSOCIATION

The Tariff of Costs

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3. Practical Considerations:
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 - the tariff items;
 - *Yue v. City of Surrey*;
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 - interest.
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 - effect on conduct and length of hearings;
 - impact on Board decisions;
 - limitations on the scope for inquiry into the necessity or propriety of work;
 - arbitrariness in costs allowances.

BRITISH COLUMBIA EXPROPRIATION ASSOCIATION DECISIONS SERVICE

CASE NAME:	Yue v. Surrey (City)	
CITED AS:	[2000] BCEA 327	
DECISION DATE:	August 31, 2000	
COURT:	British Columbia Expropriation Compensation Board	
REGISTRY:	Victoria	
ACTION NO:	10/00	
CLAIMANT:	Kenneth Yan-Keung Yue Joan Mi-Ping Yue	
AUTHORITY:	City of Surrey	
OTHER PARTIES:	n/a	
JUDGES:	Robert W. Shorthouse	Chair
COUNSEL:	Manjeet K. Chana Anthony Capuccinello	for the Claimant for the Authority
EXPERT WITNESSES:	n/a	
CASE SUMMARY:	Interim cost review pursuant to s. 48 of the <i>Expropriation Act</i> , R.S.B.C. 1996, s. 125. This is the first reported case to apply the tariff found in the <i>Tariff of Costs Regulation</i> B.C. Reg 189/99, adopted June 28, 1999.	
STATUTE REFERENCES:	<i>Expropriation Act</i> , R.S.B.C. 1996, c. 125, s. 45	
CASE REFERENCES:	n/a	
PREVIOUS BCEA DECISIONS:	n/a	

[1] THE CHAIR (orally): I am prepared to make a decision at this point with respect to the claimants' application for a review of interim costs and an award of advance costs in the matter.

[2] Let me say at the outset that I consider the manner in which these cost claims have been presented to the Board for review to be woefully inadequate in a number of particulars.

[3] First of all, as I indicated initially -- and I'm not persuaded by anything that I heard in the course of the hearing from claimants' counsel -- in my view, it is inappropriate in these circumstances to render separate bills of costs for each of two owners who have together asserted one application for determination of compensation in which the claims for compensation are not allocated as between owners. In fact, no issue appears to be different between them with respect to what is being asserted, and these bills are, in fact, duplications of each other and except for the matter of disbursements, at least if accepted in that format, would result in roughly double the amount of costs which they might otherwise be entitled to seek to recover from the respondent. In my view, one legal bill of costs in tariff format and one real estate appraisal bill of costs presented in tariff format, is the appropriate way in which these matters should come before the Board on an interim cost review.

[4] Secondly, I am not satisfied on the evidence that Scale 3 is an appropriate scale to fix for the award of any costs, and quite to the contrary, it appears to me that at this stage, this is a reasonably straightforward matter in which the single issue to be determined, as best can be judged from the pleadings and from what has been said in this matter, is the highest and best use of the property before and after the taking and injurious affection to the remainder of the property which is not taken. That strikes me on its face as being a reasonably straightforward matter. The fact that counsel have agreed that five days would be sufficient for the hearing of this compensation claim again suggests, that the matter is not unduly complicated. At best, in my view, Scale 2 would be the appropriate scale to fix for this interim review.

[5] Thirdly, for the most part I have almost no useful evidence before me to be able to assess costs which have been incurred, or the necessity or reasonableness of the costs that are claimed, with the exception of certain items which have already been discussed, and I think essentially agreed on between counsel in this respect. Certainly the claimants' choice to affix the maximum number of units in each category, where a range is prescribed, would need to be supported by a great deal more evidence than has been offered in the material which is before me.

[6] I recognize that an interim cost review -- and the Board has often made this point -- is a summary process; that not every detail need be disclosed and that there is some appreciation on the part of the Board, that disclosure of a great deal of information could prejudice the claimants' case, or its strategy for proceedings with the case. On the other hand, the Board has often in the past made the point that without full disclosure of everything that might be taking place, that it must be within the ingenuity of counsel to be able to provide some reasonable indication that a particular amount of work has been performed, the nature of the work performed and the time expended, in order to be able to allow me to make an assessment of the necessity for and the reasonableness of what is being done.

[7] I note that claimants' counsel suggests that if I am dissatisfied with the evidence that I have before me, that the claimant should be granted liberty to adduce further evidence at some further interim cost hearing with respect to these bills of cost. The effect of that course is, in my view, under the tariff to require the respondent to pay twice for essentially the same review and it strikes me as not appropriate to expect the respondent to do that when in fact adequate evidence might have been provided in the first instance which would have allowed me to make a more thorough assessment. Instead, I am prepared to make an assessment of these bills of costs based on what I can discern summarily from the evidence which was provided and from other material which is before the Board at this point.

[8] So, let me therefore turn to the actual Tariff Cost Claim Schedule. First of all, with respect to legal costs, and I make the point again that I am only looking at one legal bill of cost which is applicable to both Mr. and Mrs. Yue. With respect to the first item, Correspondence, where the range is 1 to 20 and the number of units claimed is 20, it strikes me that at this stage in the proceedings that some level of correspondence, investigations and so forth, matters that are called for under Item 1, have most likely been performed and I am prepared to assess 5 units with respect to that item.

[9] As to the instruction of the expert, that is the real estate appraiser, I accept from the affidavit evidence that Mr. Melville has had preliminary discussions with the real estate appraiser. He has instructed him with respect to work to be done in connection with the claim.

On the other hand, I believe his own affidavit refers to preliminary discussions. It is quite clear that this is not the end of the process in terms of his involvement with the expert, yet, on a range of 1 to 5 units, 5 units have been claimed. I will assess 3 units as being appropriate in the circumstances.

[10] Item 5, Prosecuting the Claim. The Board does have, of course, the Application for Determination of Compensation filed in this matter. I don't have the particulars which were ordered by the Board to be provided to the respondent, but I hear no objection taken to the proposition as set out in Mr. Melville's affidavit that particulars were provided. This item calls for a range of units from 1 to 10, and given the state of proceedings and given the likelihood, in any case, that the Application for Determination of Compensation will almost certainly need to be amended at some point before the hearing proceeds -- that was indicated back in the May application -- I would assess 5 units for that item.

[11] Items 12, 13 and 21 appear not to be in dispute and, therefore, again I would award 1.5 units as claimed for Item 12; 2.5 for Item 13 and 1 unit for Item 21.

[12] I believe that totals 18 units in all and in my view those should be assessed at Scale 2. The respondent does not take issue with the adding on of GST in this instance, and PST is also applicable, as we know, to legal accounts and so those matters are not in dispute, but of course need to be recalculated in light of what I have awarded in this respect.

[13] Dealing with the disbursements. There was no actual objection taken to the disbursements which are listed. Mr. Melville in his affidavit indicated that the disbursements had, in fact, been split evenly between Mr. and Mrs. Yue's bill so, therefore, I would say that the disbursements as shown in those two bills of cost, which would appear to total some \$31.67 times two, those disbursements will be allowed as claimed.

[14] Turning to the real estate appraisal costs, where of course I have even less direct evidence in terms of what has actually taken place, what work has been undertaken by the appraiser. I have simply Mr. Melville's affidavit based on his information and belief as to what has taken place, but I accept on the sworn affidavit evidence that real estate appraisal work has gone forward. With respect to Item 1 where a range of 1 to 20 is indicated, I would allow 5. Item 2 which involves the inspection of the subject property, the range of 1 to 30 is provided. At this juncture, based on the very slim amount of information that I have as to the amount of work which has been done or which remains to be done, I would summarily allow 10 units. Market research, again, a range of 1 to 20, I will allow 5 units. With respect to the inspection of comparables on a range of 1 to 20, I am prepared to allow 5 units for a total for real estate appraisal costs of 20 units on again Scale 2. GST can be claimed on that revised amount and I understood claimants' counsel quite properly to concede that PST should not be payable on that portion of the bill.

[15] Just to clarify what I said earlier, in my view this matter should not be open for further assessment of costs on these particular cost items. Of course, the costs claimed can always be reviewed at the end of [the] day in a [Expropriation Act, R.S.B.C. 1996, c. 125] s. 45 final review of costs. However, at this point I would say that the review with respect to this interim billing is complete and final.

[16] That completes my decision in the matter.

[UPDATED: October 6, 2000 JBM]