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CIVIL:

COSTS

1 Introduction

Costs are a way of ensuring that a party who is not at fault is adequately paid for his or her expenses in defending a suit. As such, generally the costs of a proceeding are payable by the **unsuccessful** party in the proceeding: *Rule 15.1(2) Civil Procedure Rules*.

Despite this general rule, you have a discretion in deciding whether and how to award costs: *Rule 15.1(1) Civil Procedure Rules*. This includes the discretion to order that each party pay his or her own costs: *Rule 15.1(4) Civil Procedure Rules*.

Parties may also agree to pay their own costs: *Rule 15.1(3) Civil Procedure Rules*.

2 Costs and Disbursements

Costs relate to the work done by a legal advisor. They are awarded on either a standard basis or indemnity basis.

2.1 Costs Awarded on a Standard Basis

Costs awarded on a standard basis (formerly party and party costs) are all costs necessary for the proper conduct of the proceeding and are proportionate to the matters involved: *Rule 15.5(1) Civil Procedure Rules*.

Normally costs are awarded on a standard basis unless you order that the costs should be awarded on an indemnity basis: *Rule 15.5(3) Civil Procedure Rules*.

2.2 Costs Awarded on an Indemnity Basis

Costs awarded on an indemnity basis (formerly known as solicitor and client costs) are all costs reasonably incurred and proportionate to the matters involved, having regard to:

- any agreement as to costs between the party and his or her lawyer; and
- charges ordinarily payable by a client to a lawyer for the work: *Rule 15.5(2) Civil Procedure Rules*.

You may order costs to be paid on an indemnity basis if the costs are:

- to be paid to a party suing or being sued as a trustee;
- the costs of a proceeding brought for non-compliance with a Court order; or
- to be paid out of a fund: *Rule 15.5(4) Civil Procedure Rules*.

You may also order costs to be paid on an indemnity basis if:

- the other party deliberately or without good cause prolonged the proceeding;
- the other party brought the proceeding in a way, or at a time, that amounted to a misuse of the litigation process;
- the other party deliberately or without good cause engaged in conduct that resulted in increased costs; or
- in any other circumstances you think it is appropriate (including the rejection of an offered settlement): *Rule 15.5 Civil Procedure Rules*.

2.3 Disbursements

Disbursements refer to the money paid out by one party to cover the expenses of bringing or defending the action. Disbursements are awarded in addition to any costs.

Examples of disbursements are money paid out:

- to witnesses to travel and attend Court;
- to have reports prepared;
- photocopying binding and postage of documents.

A litigant unrepresented by a lawyer is only entitled to recover disbursements, not costs: *Rule 15.4 Civil Procedure Rules*.

3 Awarding Costs under Schedule 2

For each proceeding you must make an order for costs when you give judgment: *Rules 15.10(1),(2) Civil Procedure Rules*.

All costs are to be worked out according to the appropriate scale in *Schedule 2, Civil Procedure Rules*: *Rule 15.10(3) Civil Procedure Rules*.

See *Schedule 2* below for costs as of June, 2004.

SCHEDULE 2

COSTS, MAGISTRATES COURT

ITEM	LOW SCALE VT	MEDIUM SCALE VT	HIGH SCALE VT
1. For drafting and settling claim (including counterclaim)	5,000	10,000	15,000
2. For drafting and settling defence (including any set-off)	5,000	10,000	15,000
3. For drafting and settling any other application to the Court, including an application for enforcement and a judgment order	3,000	4,000	5,000
4. For preparation for trial only	3,000	3,000	3,000
5. For any court appearance including for entry of default judgment, but not for trial or adjournment	10,000	15,000	20,000
6. For Court appearance for adjournment	3,000	4,000	5,000
7. First day appearance, for each half day or part of a half day	16,000	20,000	24,000
8. Each subsequent half day	2/3 of half day rate	2/3 of half day rate	2/3 of half day rate
9. Discretionary items (give details of each)	Amount to be determined by the Magistrate		

3.1 The Three Scales

Schedule 2 has three scales: low, medium and high. In deciding which scale the proceeding falls under, you must take into account:

- the amount recovered or claimed;
- the complexity of the case;
- the length of the proceeding; and
- any other relevant matter: *Rule 15.10(4) Civil Procedure Rules*.

Once you decide which scale the proceeding falls under, all item costs are to be awarded using that scale. You must not jump between scales once you have determined under which scale the entire proceeding falls.

Under each scale, there are nine items. Which of the nine items will be recoverable will depend on the proceeding.

3.2 The Nine Items

Item 1. - For Drafting and Settling Claim (Including Counterclaim)

Item 1 will always be recoverable by a successful claimant.

Item 2. - For Drafting and Settling Defence (Including any Set-Off)

Item 2 will always be recoverable by a successful defendant.

Item 3. - For Drafting and Settling any Other Application to the Court, Including an Application for Enforcement and a Judgment Order

Item 3 is recoverable for costs associated with interlocutory applications incurred by a party. Additionally, item 3 will be recoverable for applications for enforcement or judgment orders by the successful party.

Item 4. - For Preparation for Trial Only

Item 4 will always be recoverable by a party if the proceeding goes to trial, no matter how simple the trial.

Item 5. - For any Court Appearance Including for Entry of Default Judgment, but not for Trial or Adjournment

Item 5 will be recoverable if some substantial work is done for the appearance. This item does not cover simple, quick appearances such as adjournments nor does it cover the days spent in full

trial. The very large difference in the amount awarded by item 5 suggests that some substantial work distinguishes it from items 4 and 6.

Item 6. - For Court Appearance for Adjournment

Item 6 is recoverable for straightforward adjournments which take very little time. For example, an adjournment accompanied by a simple request would be covered by this item. If the appearance involves more complex issues in addition to the adjournment, consider awarding item 5 instead.

Item 7. - First Day Appearance, for Each Half Day or Part of Half Day

Item 7 is recoverable only for the first calendar day of a trial. For example, if a trial has one half day on Monday and one half day on Tuesday, only Monday's appearance is covered by this item.

Item 8. - Each Subsequent Half Day

Item 8 is recoverable for each half day after the first calendar day of a trial. For example, if a trial has one half day on Monday, one half day on Tuesday, and one half day on Wednesday, the appearances on Tuesday and Wednesday are covered by this item.

Item 9. – Discretionary Items (give details of each)

Item 9 is recoverable for other items not covered by the first 8 items. It is recoverable for such things as sworn statements, and other complex matters not paid for by item 4 such as trying to get mediation, settlement conferences, etc. Use your discretion to avoid getting into an examination of every minor cost incurred by a party.

4 Particular Costs

Settlement Offers

You must take into account any rejected settlement offers: *Rule 15.11 Civil Procedure Rules*.

Costs of Amendments

A party who amends a document must pay the costs arising from the amendment, unless:

- the amendment was made in response to another party's amendment or default; or
- you order another party to pay them: *Rule 15.12 Civil Procedure Rules*.

Costs of Extending or Shortening Time

A party who applies to extend or to shorten the length of time set under the *Civil Procedure Rules* must pay the costs of the application: *Rule 15.13 Civil Procedure Rules*.

Trustee's Costs

A person who is sued or sues as a trustee is entitled to have the costs that are not paid by someone else paid out of the funds held by the trustee, unless you order otherwise: *Rule 15.14 Civil Procedure Rules*.

Costs of Counterclaim

A party successful on a counterclaim may be awarded the costs of the counterclaim even if he or she is unsuccessful in the proceeding overall: *Rule 15.15 Civil Procedure Rules*.

Costs of Determination

The costs of determining costs of a proceeding are themselves part of the costs of the proceeding: *Rule 15.16 Civil Procedure Rules*.

4.1 Costs Unnecessarily Incurred

Time Wasted

If costs are incurred unnecessarily by one party, you may order costs against the first party for the time wasted, if the first party:

- has failed to appear at a conference or hearing when given notice of the date and time;
- has not filed and served on time a document required by the Court to file and serve;
- actions or failure to act, have otherwise led to the time of the Court or other parties being wasted: *Rule 15.25(1) Civil Procedure Rules*.

Any party incurring costs for time wasted may apply for the order: *Rule 15.25(4) Civil Procedure Rules*.

You may make an order for costs for time wasted:

- for the whole or part of a proceeding;
- at a conference or hearing: *Rules 15.25(2),(3) Civil Procedure Rules*.

If you are satisfied that the unnecessary costs were incurred because of the conduct of the party's lawyer, you may order the lawyer to personally pay the costs: *Rule 15.25(5) Civil Procedure Rules*.

All costs for time wasted are to be paid within the period you order. You must order a minimum period of 7 days: *Rule 15.25(6) Civil Procedure Rules*.

If the costs are not paid within the period ordered, you may order that the whole or part of the proceeding be struck out: *Rule 15.25(7) Civil Procedure Rules*.

Wasted Proceeding

You may order the costs of the whole or part of the proceeding be paid by the lawyer personally if the party brings a proceeding that:

- has no prospect of success, is vexatious, mischievous or without legal merit; and
- a reasonably competent lawyer would have advised the party not to bring the proceeding: *Rule 15.26 Civil Procedure Rules*.

You may order that the whole or part of the proceeding be paid by the lawyer personally if you are satisfied that the costs of the proceeding were increased because the lawyer:

- did not appear when required;
- was not ready to proceed or otherwise wasted the Court's time; or
- incurred unnecessary expense for the other party: *Rule 15.26(2) Civil Procedure Rules*.

A party may apply for costs against a lawyer personally: *Rule 15.27(1) Civil Procedure Rules*.

Application

The application must:

- set out the reasons why the costs order is being sought;
- fix a date, no less than 14 days later, for the lawyer to file a sworn statement in response;
- fix a date for hearing the application; and
- be served on the lawyer concerned: *Rules 15.27(2),(3) Civil Procedure Rules*.

If possible, the trial judge should deal with the application: *Rule 15.27(4) Civil Procedure Rules*.

You must not make an order for costs against a lawyer personally without giving the lawyer an opportunity to be heard: *Rule 15.26(3) Civil Procedure Rules*.

Order

If you are satisfied that the order for costs against the lawyer should be granted, you may order that the costs be paid by the lawyer personally: *Rule 15.28(1) Civil Procedure Rules*.

The order is then enforceable as a money order under *Part 14 Civil Procedure Rules: Rule 15.28(2) Civil Procedure Rules*.

5 Security for Costs

Security for costs is only very rarely ordered in Magistrate's Court. You may only order security for costs if:

- the proceeding is to set aside a default judgment; or
- the claimant is ordinarily resident outside Vanuatu: *Rule 15.17 Civil Procedure Rules*.

For further information see *Civil Procedure Rules 15.18 – 15.24*.