



By e-mail

November 3, 2009

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Dear Ms Walli,

Ontario Power Generation ("OPG")
Application for an Accounting Order Regarding Variance and Deferral Accounts
Board File No.: EB-2009-0174
Our File No.: 339583-000049

We are writing to question the assertion in Ms Reuber's November 2, 2009 letter to the Board that the LPIC Levy Surcharge included in our client's Cost Claim "is not an allowable disbursement listed in the Board's Practice Direction on Cost Awards."

Our understanding is that the current Practice Direction on Cost Awards allows for the recovery of:

"Reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process ..."

While not specifically an item of:

"... postage, photocopying, transcript costs, travel and accommodation, ..."

the LPIC Levy Surcharge is payable whenever a party represented by solicitors intervenes in an Ontario Energy Board ("OEB") proceeding. Our understanding is that OPG must pay such charges whenever its solicitors initiate or intervene in an OEB proceeding.

We enclose excerpts from information pertaining to the civil litigation levy surcharge. Pursuant to a By-law under the *Law Society Act*, lawyers are required to remit an amount of \$50 per transaction to the LSUC. The amount is recoverable from the client as a disbursement that is subject to GST.

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa ON K1P 1J9
tel.: (613) 237-5160 fax: (613) 230-8842
www.blgcanada.com

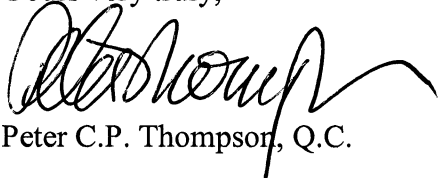
PETER C.P. THOMPSON, Q.C.
direct tel.: (613) 787-3528
e-mail: pthompson@blgcanada.com

We respectfully suggest that the disbursement is one that is "directly related to the party's participation in the process" and is therefore recoverable. The disbursement has been repeatedly allowed in prior Cost Claims we have submitted to the Board for assessment and, to our knowledge, the other utilities the Board regulates have never questioned the appropriateness of the disbursement.

For these reasons, we suggest that the item falls within the ambit of allowable disbursements under the Board's Practice Direction on Cost Awards and that the claim for \$52.50 in CME's Cost Claim dated October 13, 2009, for the LPIC Levy Surcharge should be allowed.

Please contact me if the Board requires any further information with respect to this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read "Peter C.P. Thompson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Peter C.P. Thompson, Q.C.

PCT\slc
enclosure

c. Barbara Reuber (OPG)
Paul Clipsham (CME)
Vincent J. DeRose

OTT01\3856210\1



How much is the civil litigation levy surcharge and who must pay it?

Pursuant to By-Law 6, a LAWYER or firm that acts for one or more parties on a civil litigation transaction (as defined in paragraph A of Endorsement No. 3 of Policy No. 2009-001) must pay The Law Society of Upper Canada a civil litigation transaction levy surcharge of \$50 per transaction, **inclusive of all taxes**.

How is the transaction levy surcharge calculated when I remit it to the Law Society and when I disburse the surcharge to my clients?

Remitting the surcharge to the Law Society

In 2009, as in the previous ten years, the transaction levy surcharges are considered insurance premiums and therefore are **NOT** subject to GST. However, they are subject to PST. The total amount that is to be remitted to the **Law Society** therefore is **\$50 per transaction**.

Surcharge	\$46.30
PST	3.70
Total	\$50.00

Calculating the surcharge when it is disbursed to clients

Because you are required to remit \$50 to the Law Society per transaction, and therefore are out of pocket \$50, you may disburse the full \$50 to your clients. As do your other disbursements, this expense attracts GST, at the rate of five per cent, as calculated below.

Surcharge	\$50.00	
GST	2.50	(remitted directly to C.R.A.)
Total	\$52.50	

Who may file documentation on a LAWYER'S behalf?

LAWYERS may delegate to their firms the responsibility of completing and remitting to LAWPRO the civil litigation transaction summary sheet along with the quarterly payments. However, it remains the responsibility of the individual LAWYER to ensure that the civil litigation surcharge forms are submitted accurately on time to LAWPRO.

When are levy surcharge payments due to the Law Society?

The civil litigation transaction levies payable by a LAWYER under Endorsement No. 3 of Policy No. 2009-001 shall be accumulated and paid quarterly within thirty days of the quarterly period ending on the last day of March, June, September and December.

When do I have to file an exemption form?

LAWYERS who are exempt from paying the civil litigation transaction levy surcharge must file the exemption form once every year, by April 30th. LAWYERS admitted into practice after that date should file the exemption form within 30 days of the next quarterly period ending on the last day of June, September or December. The exemption form is on page 15 of this booklet.

I have opted for the Restricted Area of Practice option and intend to practise only criminal law. Am I not automatically exempt from having to remit civil litigation transaction surcharge filings?

No. All LAWYERS in private practice and insured under the LAWPRO program, regardless of their area of practice or the practice option(s) selected, are required to file either an annual transaction levy exemption form (which exempts them from the transaction levy filings) or a quarterly transaction levy filing form indicating total transactions and surcharges payable for that quarter. The exemption form must usually be filed by April 30 each year.

Who can I contact if I have any questions regarding the above information?

All questions can be directed to LAWPRO's customer service department toll-free at 1-800-410-1013 or locally at (416) 598-5899 or via e-mail to service@lawpro.ca.