

Intervenor Action Plan Stakeholder Engagement

July 29, 2024



InterGroup
CONSULTANTS

Meeting Objectives

The purpose of the meeting is to review InterGroup's preliminary findings and recommendations of the research supporting the OEB's Intervenor Action Plan project:

1. Review preliminary findings and recommendations to date
2. Provide opportunity for questions and clarifications in break-out groups

The research is still in progress and a final report will be provided to the OEB in September.

Designated Consumer Advocate

Our working definition for the study is that a consumer advocate appears before a utility regulator to represent the interests of consumers. A consumer advocate must satisfy the following criteria:

1. A mandate to represent consumers, or a particular group of consumers that includes residential consumers, in utility regulatory processes.
2. Be independent of government and the regulator.
3. Have established legitimacy through:
 - a) A legislative mandate;
 - b) Regulator policy; or
 - c) A history of serving a consumer advocacy function in multiple regulatory proceedings.
4. Takes a formal position in proceedings, arguments, or negotiations to represent consumers.

Designated Consumer Advocate

Common policy objectives identified for implementing a consumer advocate:

- Ensure effective consumer representation (common in most jurisdictions)
- Improve regulatory efficiency (e.g. Nfld., AB, UK)
 - Nfld. – Appoint consumer advocate prior to the filing of application and pre-application process to reduce length of hearing and improve efficiency of application process.
 - AB – Making processes and procedures more efficient and productive.
 - UK – Simplify the arrangements and number of organizations involved in consumer representation before the board.
- Consumer education or outreach

Designated Consumer Advocate

Preliminary considerations on a consumer advocate model in Ontario:

Ensuring effective consumer representation

- Ontario has a number of intervenors who perform a consumer representation function.
- OEB staff can supplement this role by calling expert witnesses and making submissions that advocate for specific outcomes or findings.
- OEB staff can also participate in settlement negotiations. Usually as 'active observers' but in some cases the Board can provide for staff to be parties to a settlement proposal.

Designated Consumer Advocate

Preliminary considerations on a consumer advocate model in Ontario:

Improving regulatory efficiency

- The OEB completed a review of its intervenor processes and cost awards in September 2022.
- The OEB is undertaking several projects to help improve its regulatory processes. It has several tools available to help improve efficiency, including the ability to require parties to collaborate.
- Some jurisdictions with formal consumer advocates (e.g. Alberta) have also implemented measures to streamline regulatory processes. The introduction of measures to reduce regulatory burden and increase efficiency are not dependent on the implementation of a consumer advocate.

Designated Consumer Advocate

Preliminary considerations on a consumer advocate model in Ontario:

Consumer education and outreach

- The OEB has a mandate that includes the responsibility “to inform consumers and protect their interests”. In line with this, the OEB provides consumer information on a range of topics, such as understanding and managing bills and choosing energy plans.
- In Ontario, utilities are also required to engage customers and include an overview of customer needs, preferences, and expectations when filing an application.

Designated Consumer Advocate

Preliminary considerations on a consumer advocate model in Ontario:

Administrative Considerations for a Formal Consumer Advocate Model

- A governance structure would need to be set up, including a defined mandate, reporting structure, necessary qualifications, appointment processes (including provisions to revoke an appointment), and accountability and reporting frameworks.
- Typically, formal consumer advocates are not funded directly through the regulator's cost award process. An appropriate funding model would need to be determined.
- There would be new costs associated with adding a consumer advocate in Ontario. Adding a consumer advocate would not reduce costs without also restricting cost awards for other parties.

Designated Consumer Advocate

Preliminary considerations on a consumer advocate model in Ontario:

Benefits of current intervenor model in Ontario

- Ontario's cohort of experienced intervenors provides a diversity of perspectives for the OEB to consider.
- Allowing a broader suite of intervenors provides a venue for different parties to participate.
- Over the last 15 years (2009-2023), revenue requirements for electricity distributors were reduced by an average of 3% or \$23M annually following the regulatory review process involving both intervenors and OEB staff.
- The OEB's success in using settlement conferences to streamline regulatory processes has been assisted by participation of experienced intervenors representing a diversity of views.

Designated Consumer Advocate

Preliminary considerations on a consumer advocate model in Ontario:

Summary

- Ontario's existing regulatory processes seem to provide for effective representation of consumer interests through a combination of established intervenors and OEB staff. There is no apparent gap in consumer representation that would necessitate a consumer advocate model.
- Establishing a formal consumer advocate in Ontario would not be a one-stop solution for improving regulatory efficiency. In addition, the implementation of consumer advocate model would incur associated costs.
- Additional measures to improve efficiency and reduce costs could be implemented regardless of whether or not a formal consumer advocate is implemented in Ontario.

Preliminary Recommendations – Implementing a Designated Consumer Advocate

Based on the work undertaken to date, InterGroup does not recommend the OEB pursue the implementation of a formal consumer advocate:

- Ontario's current model appears to achieve consumer representation objectives that a formal consumer advocate facilitates in other jurisdictions.
- There are process changes the OEB could pursue to improve efficiency and as a result reduce intervenor costs without establishing a formal consumer advocate e.g.
 - Requiring budgets for all interventions for larger proceedings
 - Limiting the number of information requests (e.g. AUC does this)
 - Adopting approaches to incent or require greater collaboration between intervenors

These and other options will be explored as the research continues.

Capping Intervenor Costs

Examples of policies or mechanisms for capping intervenor costs include:

- Regulators in BC, MB, and QC have rules of practice that allow them to cap the cost of proceedings. The BCUC is allowed to establish a cap on cost awards available in a proceeding to any or all participants.
- Some jurisdictions in the USA have established annual funding caps (e.g. MI, OR, WI).
- Ontario currently has a pilot project in place for cost of service applications for utilities with fewer than 30,000 customers with budgets of \$20,000 per intervenor.

Capping Intervenor Costs

Other examples of policies or mechanisms for managing intervenor costs without hard caps include:

- Directions to intervenors to collaborate or avoid duplication (many jurisdictions).
- Requiring intervenors to submit budgets early on in a proceeding. The regulator can provide comments on the reasonableness of the proposed budgets (e.g. MB, QC).
 - The OEB requires intervenors to provide a budget when submitting evidence but not generally otherwise.
 - It may not be practical to require budgets for all intervenors in all proceedings

Preliminary Recommendations – Capping Intervenor Costs

InterGroup recommends the OEB build on the work done to date to improve regulatory efficiency and in particular:

- Review the results of the pilot project for budgets for small proceedings and consider continuing or expanding to other types of proceedings, or establish firmer caps.
- For some proceedings, require intervenors intending to seek cost awards to provide a budget early in the proceeding. This would help identify when intervenor cost expectations are high and indicate a need to manage costs through measures including directing intervenors to focus their issue lists or expand collaboration with parties with similar interests.
- Consider other procedures to improve process efficiencies that may be available (e.g. limiting number of information requests, reinforcing need to collaborate).

Analysis of Cost Awards

Scale of Cost Awards

- InterGroup reviewed intervenor cost award data from 2020-21 to 2023-24 in Ontario (2020-21 to 2023-24), Alberta (2021 to 2023), BC (2021 to 2023), and Manitoba (2019-2023).
- For jurisdictions that include applicant costs in their cost awards (e.g. AB), only intervenor costs are included.
- Advances of funds and interim cost awards were included in the totals for each proceeding where applicable.

Analysis of Cost Awards: Average Annual Intervenor Cost Awards Per Customer & Per Capita

Proceeding	Average Annual Intervenor Costs Awarded (\$millions)	Number of Customers (millions)	Average Annual Intervenor Costs Awarded per Customer (\$)	Population (millions)	Average Annual Intervenor Costs Awarded Per Capita (\$)
Ontario (2020/21 - 2023/24)	\$4.1	9.3	\$0.4	15.6	\$0.3
British Columbia (2021 - 2023)	\$2.6	-	-	5.5	\$0.5
Alberta (2021 - 2023)	\$3.9	3.2	\$1.2	4.7	\$0.8
Manitoba (2019 - 2023)	\$0.7	0.9	\$0.7	1.5	\$0.5

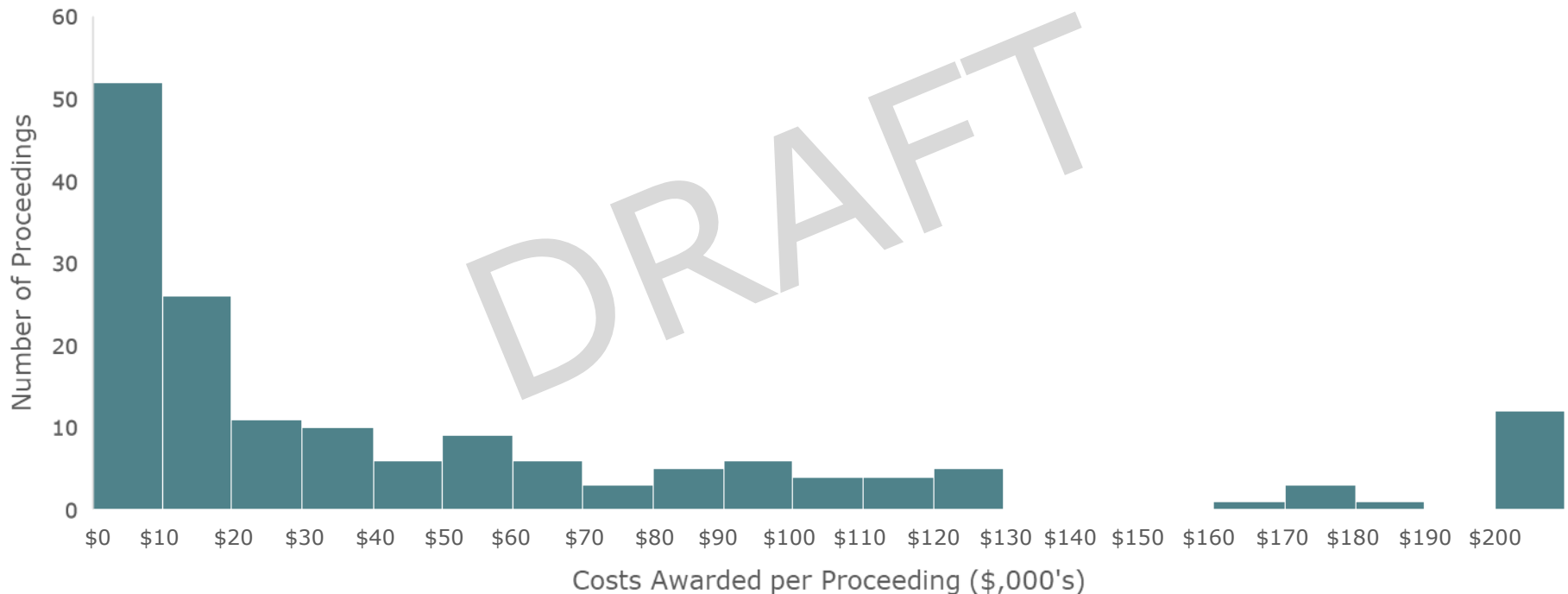
- Ontario has lower costs awards per customer and per capita than other jurisdictions in Canada.
- In Alberta, cost awards do not include consumer advocate funding.

Analysis of Cost Awards: Intervenor Cost Claims & Awards per Proceeding (\$,000's)

Jurisdiction	Average Intervenor Cost Claims Per Proceeding	Average Intervenor Cost Awards Per Proceeding	Average % Awarded per Proceeding
Ontario (2020/21 - 2023/24)	\$104,000	\$100,000	97%
British Columbia (2021 - 2023)	\$86,000	\$83,000	96%
Alberta (2021 - 2023)	\$201,000	\$168,000	84%
Manitoba (2019 - 2023)	\$381,000	\$369,000	97%

- Ontario grants the second lowest average intervenor cost awards per proceeding compared to other jurisdictions in Canada.
- Ontario grants a similar percentage of cost claims to other jurisdictions in Canada (96% to 97%). Only Alberta has a materially lower award percentage (84%).

Analysis of Cost Awards: Intervenor Cost Award Distribution per Proceeding (2020/21 to 2023/24)



- The majority of proceedings in Ontario have < \$25,000 in costs awarded.
- There are a few larger proceedings with cost awards > \$200,000.

Cost Award Approval Processes

Cost Award Eligibility

In Ontario, parties to a proceeding can be eligible for cost awards with certain exceptions. For example, applicants, and federal, provincial, and municipal governments are generally not eligible.

In other jurisdictions cost awards may:

- Not be available to parties that solely represent their own business interest (e.g. MB).
- Be limited to those who require financial assistance for their participation in a proceeding (e.g. WI, NS).
- Not be available to business, commercial, and industrial entities or associations and municipalities (e.g. AB).

In Alberta – utility applicants are required to make a cost award application to recover their proceeding-related costs in rates and must use the same tariff as intervenors.

Other Potential Process Changes

Budget Submissions, Interim, and Advance Cost Award Eligibility

Budget submissions:

- In Ontario, budget submissions are required if an intervenor intends to file evidence. The budget only requires the estimated costs for the expert in connection with the proposed evidence.
- Other jurisdictions (e.g. MB), require budgets to be submitted at the beginning of a proceeding. Budgets are required to be updated if any material differences are anticipated.

Interim cost awards:

- The OEB offers interim cost awards, but there is no explicit application process.
- In other jurisdictions interim cost awards are typically only offered if the intervenor requires financial assistance and the proceeding is longer than normal.

Other Potential Process Changes

Budget Submissions, Interim, and Advance Cost Award Eligibility

Advance cost award eligibility:

- Advance funding is not available in Ontario.
- Other jurisdictions (e.g. MB, AB, and BC) provide advance funding. Typically, the proceeding must be of a substantial duration and the intervenor must demonstrate a financial need for advance funding.

Other Potential Process Changes

Additional tools to incent or increase collaboration among intervenors and other parties:

- Require more detail on intervenor application forms and provide more direction to collaborate in procedural orders
 - Manitoba PUB has at times limited scope of intervention for similar intervenors and directed them to collaborate.
- Alberta Commission limits the number of information requests allowed for each intervenor. Reinforces need for intervenors to collaborate and not duplicate questions.
- Alberta Commission instructs intervenors and applicants to try to resolve issues in quality of responses amongst themselves prior to submitting motions for further and better responses.

Preliminary Recommendations – Other Potential Process Changes

- The OEB could consider formalizing a process for access to interim funding and/or advance funding. This could help intervenors manage the cost of participating in longer proceedings and provide an opportunity to review and comment on budgets before a final cost award.
- Consider other process changes that would help incent collaboration and reduce duplication including potentially more detailed intervenor application forms, specific directions to certain intervenors to collaborate in procedural order or limits on the number of information requests per intervenor.

Intervenor Fee Tariffs: Consultants (\$/hour)

Years of Experience	Canadian Average	ON	QC	MB	AB	BC	Average	California (\$CAD)
Last Updated	-	2007*	2020	2024	2024	2016	-	2022
Case Managers / Coordinators	110	170	80	-	-	75	110	-
1	141	170	135	118	160	120	158	244
6	186	230	160	165	210	165	209	322
11	248	290	195	204	315	235	264	345
>20	293	330	240	288	370	235	305	368
Expert Witnesses	285	-	300	-	-	270	285	-

Intervenor Fee Tariffs: Lawyers (\$/hour)

Years of Experience	Canadian Average	ON	QC	MB	AB	BC	Average	California (\$CAD)
Last Updated	-	2007*	2020	2024	2024	2016	-	2022
Articling Students	120	100	80	-	190	110	120	-
1	196	170	135	118	315	240	216	320
6	253	230	200	170	380	285	305	567
11	303	290	250	225	430	320	366	681
>20	359	330	300	340	475	350	438	830
Articling Students	120	100	80	-	190	110	120	-

Intervenor Fee Tariffs

Summary

- Intervenor fee tariffs for consultants are above the Canadian average.
- Some jurisdictions have a separate expert witness category, above the normal fee tariff rates for consultants.
- Intervenor fee tariffs for counsel are below the Canadian average. Most jurisdictions set fee tariffs for counsel higher than fee tariffs for consultants.
- There has been no increase to the tariffs in Ontario since 2007*, most other jurisdictions have been updated in the last five years.
- Manitoba has been updating their fee tariffs more frequently, most recently increasing them by about 3% between 2023 and 2024. The Manitoba Public Utilities Board has committed to a benchmarking review every five years.
- California escalates their fee tariffs annually using the U.S. Bureau of Labour Statistics Employment Cost Index.

Preliminary Recommendations – Intervenor Fee Tariffs

- The jurisdictional comparison indicates the current OEB tariff for legal counsel is below the Canadian average. The OEB could consider adjusting the tariff for legal counsel. The OEB could consider completing a benchmarking review of fee tariffs every five years.
- Between 5-year intervals, the OEB could consider annual increases to the tariff indexed to inflation.
 - Over the first five years, the OEB could consider freezing consultant rates and increasing rates for legal counsel.
- The OEB could consider adding an expert witness category for consultants to the tariff.

Topics for Discussion

Discussion

Topics for Discussion

- Designated consumer advocate
- Capping intervenor costs
- Approaches to increase collaboration between intervenors
- Analysis of cost award values and approval processes
- Other potential process changes and intervenor fee tariffs

Discussion

Topics for Discussion

- Any feedback on preliminary findings or recommendations?
- Are there additional considerations you think are important?
- Do you have experience or examples from other places that could help inform the findings?
- Do you have perspectives on the OEB's current cost award process we should know about?

Background Materials

Project Objectives and Approach

The objectives of the study are to provide a report to respond to the Minister of Energy's letter of direction to the OEB to continue to review intervenor processes to improve regulatory efficiency and specifically consider a designated consumer advocate and capping intervenor costs. The assignment is organized into three work packages:

1. Considerations on establishing a designated consumer advocate and policies for capping intervenor costs.
2. Analysis of cost award values in Ontario compared to other jurisdictions and the processes related to application for and approval of cost awards.
3. Review of intervenor fee tariffs, advances of funds and potential process changes to improve efficiency.

Project Objectives and Approach

The research builds on work previously undertaken by the OEB including the Framework for Review of Intervenor Processes and Cost Awards and recent amendments to the OEB's Rule of Practice and Procedure and Practice Direction on Cost Awards.

The research includes information collected by InterGroup during a review of practices in 15 other jurisdictions. Jurisdictions were selected to provide a sample of practices for other utility regulatory tribunals based on discussions with the OEB and the availability of public information.

Project Objectives and Approach

1. Canadian (eight jurisdictions)
 - Newfoundland & Labrador
 - Nova Scotia
 - Prince Edward Island
 - New Brunswick
 - Québec
 - Manitoba
 - Alberta
 - British Columbia
2. American (five jurisdictions)
 - Michigan
 - Oregon
 - Wisconsin
 - California
 - New York
3. Other (two jurisdictions)
 - United Kingdom
 - Australia

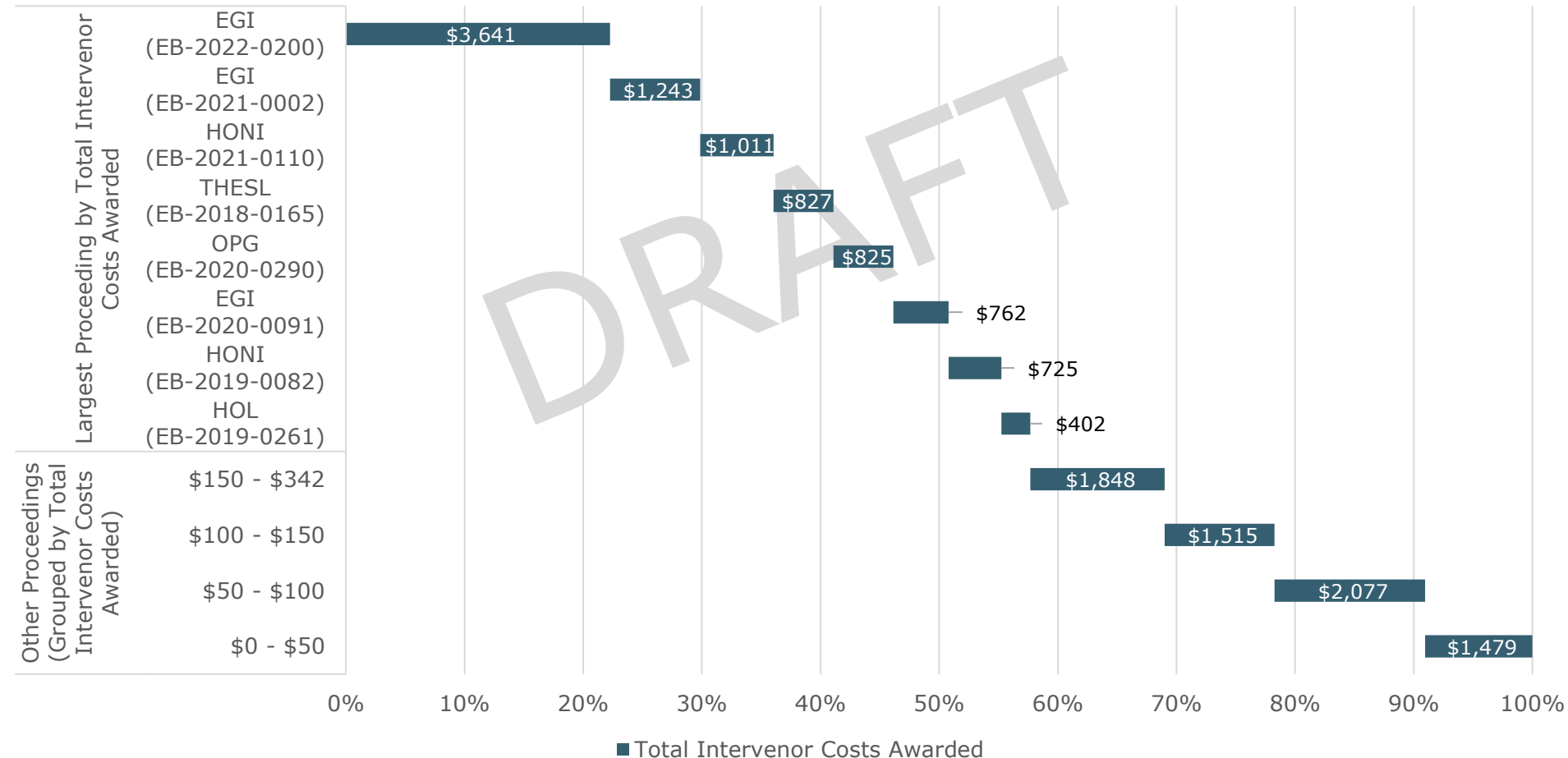
Designated Consumer Advocate

Three main ways the role of a consumer advocate can be established:

- Formal Consumer Advocate - Legislation: the consumer advocate is enabled by legislation (e.g. NS, Nfld., AB,).
- Informal Consumer Advocate - Regulator policy: the regulator enabled a group to perform a consumer advocate function through its own policy or initiative (e.g. BC).
- Informal Consumer Advocate - Practice or convention: the consumer advocate function is filled by a group established through a history of participation in proceedings before the commission (e.g. MB, QC, WI)

The review compares how the consumer advocate function is implemented in all of these models.

Analysis of Cost Awards: OEB Cost Awards By Proceeding (\$000's)



Analysis of Cost Awards: OEB Cost Awards By Proceeding (\$000's)

- The six proceedings with the largest amounts of awarded costs make up over 50% of the total costs awarded between 2020/21 and 2023/24.
- However, other jurisdictions have proceedings with similarly high total intervenor costs awarded.

Proceeding	Number of Intervenor	Award
British Columbia (2021 – 2023)		
BC Hydro (F-29-23A) F2023 to F2025 Revenue Requirements Application	10	\$1,907
Alberta (2021 - 2023)		
AUC (28375) Third Generation Performance Based Regulation	2	\$1,546
AESO (26711) Bulk, Regional, and Modernized Demand Opportunity Service Rate Design Application	7	\$1,294
Manitoba (2019 – 2023)		
Manitoba Hydro 2023/24 - 2024/25 GRA	5	\$1,684

Analysis of Cost Award Approval Processes

Considerations in Final Award of Costs

Section 5.01 of the OEB practice direction on costs provides a number of things the Board may consider in approving a final award of costs, including whether the intervenor participated responsibly, contributed to a better understanding of the issues, and made reasonable efforts to co-operate with other parties.

These considerations are consistent with language in the rules of practice in other jurisdictions. In some cases, more specific considerations are included, for example, the BCUC requires that intervenors stay within their originally approved scope.



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