

**THE DBA REFORM PROJECT**  
*A QUICK FACTSHEET*  
**THE REDRAFTED DBA REGULATIONS 2019**

1. The Ontario model is replaced by the Success Fee Model. Hence, in the event of the client obtaining a financial benefit that triggers a DBA payment, recoverable costs are paid in addition to the DBA payment, and are not incorporated within the DBA payment.
2. However, the statutorily-set DBA caps are reduced for personal injury matters (from 25% to 20%) and for commercial and other matters (from 50% to 40%), to ensure that the legal representative is not being overcompensated. (It is acknowledged that the precise statutory caps will be a proper matter for consultation.)
3. All expenses, as defined, lie outside the DBA payment, and are paid by the client in addition to the DBA payment.
4. Hence, where the client obtains a financial benefit, the client must pay to the legal representative the following three sums:
  - (i) the DBA payment;
  - (ii) expenses incurred by the legal representative; and
  - (iii) the recoverable costs obtained from the opponent.
5. Counsel's fees are included within the DBA payment. They are not treated as an expense.
6. Where the client recovers a financial benefit that triggers payment of the DBA payment, any irrecoverable costs are included within the DBA payment. The client does not pay those over and above the DBA payment. Recoverable costs are, of course, obtained from the opponent in the event of success.
7. Hence, the DBA payment contains within it only three items which have to be offset against it:
  - (i) counsel's fees (per paragraph 5);
  - (ii) irrecoverable costs incurred by the representative (per paragraph 6); and
  - (iii) VAT, unless that VAT can be recovered by the client from another party, in which event the VAT is refunded by the client to the legal representative.

8. In the usual course, deductions from the client's financial benefit (damages, etc), in favour of the legal representative, are limited to the following:
- (i) the DBA payment; and
  - (ii) irrecoverable expenses. (Recoverable expenses are paid by the opponent.)
- The **only** exception is where the client succeeds, and does not recover from the opponent the recoverable costs. Then, those may be deducted from the financial benefit which the client recovers.
9. Hybrid DBAs are explicitly permitted. Hence:
- (i) in the event of **no** financial benefit being recovered by the client, the legal representative can obtain any recoverable costs, and also up to 30% (a suggested figure) of the irrecoverable costs incurred by that legal representative in prosecuting the failed case. (The client and the legal representative may contract for a lesser percentage of recovery of irrecoverable costs than the 30% cap suggested.) Payments may be requested by the legal representative on account in anticipation of that recovery in the event of a lack of success;
  - (ii) in the event that the client **does** obtain a financial benefit, then per paragraph 4, the legal representative is not entitled to any payment other than the DBA payment, expenses, and recoverable costs. The legal representative cannot recover twice for the same legal work.
10. The DBA Regulations can be used by a defendant to a claim or proceedings, because the relevant 'financial benefit' may be represented by the amount saved from having to be paid by the defendant where a defence is successful.
11. The DBA Regulations can be applied to scenarios in which the client is seeking to recover a financial benefit other than a monetary sum, such as personal property or a chose in action.
12. No independent advice is required before the client and the legal representative enter a DBA.
13. The DBA Regulations expressly remove from their scope a funder's litigation funding agreement.
14. The re-drafted DBA Regulations do not apply to DBAs relating to employment matters. The latter will continue to be governed by the DBA Regulations 2013.
15. DBAs are explicitly ruled out for opt-out collective proceedings under the Competition Act 1998, s 47C(8). As a matter of policy, where a DBA relates to a representative action instituted under CPR 19.6 on an opt-out basis, the same position should apply, for the sake of consistency.
16. There are specific provisions regarding termination of DBAs, which are expressed to be subject to any contrary agreement which may be contained within the parties' own contract.