

Version
as at 1 May 2023



Court Martial Appeals (Fees and Allowances) Regulations 2008 (SR 2008/239)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 4th day of August 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 26A of the Court Martial Appeals Act 1953, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the New Zealand Defence Force.

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Regulations

1 Title

These regulations are the Court Martial Appeals (Fees and Allowances) Regulations 2008.

2 Commencement

These regulations come into force on 1 July 2009.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Court Martial Appeals Act 1953

assessor means an assessor to the Court appointed under section 11(f) of the Act

base hourly rate of remuneration has the meaning given to it by regulation 5

certified scale of fees means the certified scale of fees payable under these regulations prepared by the Chief of Defence Force in accordance with regulation 6

Chief of Defence Force means the officer appointed under section 8 of the Defence Act 1990

examiner means a person appointed by the Court to conduct the examination of a witness under section 11(c) of the Act

presiding Judge means the Judge who presides at any sitting of the Court under rule 43 of the Court Martial Appeal Court Rules 2008

special commissioner means a special commissioner appointed by the Court to inquire into, and report on, a question arising on an appeal under section 11(e) of the Act

year means a period of 12 months starting on 1 July.

4 Application of regulations

- (1) These regulations apply to all work done by the following persons on or after 1 July 2009 in relation to an appeal or any proceedings preliminary or incidental to an appeal under the Act:
 - (a) an examiner:
 - (b) a special commissioner:
 - (c) an assessor.
- (2) These regulations apply to witnesses attending on the order of the Court or examined in any proceedings incidental to an appeal under the Act.
- (3) Nothing in these regulations applies to work done by a member of the Armed Forces.

5 Base hourly rate of remuneration

For the purposes of these regulations, the base hourly rate of remuneration for work done in any year is the same as the senior hourly rate of remuneration determined by the Solicitor-General under regulation 4 of the Crown Solicitors Regulations 1994 for work done in that year.

6 Certified scale of fees

- (1) The Chief of Defence Force must, before the start of each year, prepare and certify a scale of all fees, travelling expenses, and allowances payable in accordance with regulations 5, 8, 11, and 12 in respect of work to which these regulations apply.
- (2) A copy of the scale must be given to the Registrar.

7 Classification of examiners

- (1) If work to which these regulations apply is done by an examiner, the Registrar must determine whether that examiner is to be regarded for the purposes of these regulations as a senior examiner, an intermediate examiner, or a junior examiner.
- (2) A person must be regarded as a senior examiner for the purposes of these regulations if —
 - (a) he or she has practised at the bar for a continuous period of more than 7 years; and
 - (b) his or her experience includes appearances—
 - (i) in criminal trials and other litigation involving complex legal issues; or

- (ii) as lead counsel in more than 10 separate contested proceedings before a court-martial, the Court Martial, the Summary Appeal Court, or the Court Martial Appeal Court.
- (3) A person must be regarded as an intermediate examiner for the purposes of these regulations if he or she does not qualify as senior counsel but—
 - (a) he or she has practised at the bar for a continuous period of more than 4 years; and
 - (b) his or her experience includes appearances—
 - (i) in criminal trials; or
 - (ii) as leading counsel in more than 5 separate proceedings before a court-martial, the Court Martial, the Summary Appeal Court, or the Court Martial Appeal Court.
- (4) A person who does not qualify as a senior or intermediate examiner must be regarded as a junior examiner for the purposes of these regulations.

8 Remuneration of examiners and assessors

- (1) The remuneration payable to an examiner or an assessor for work to which these regulations apply is at the following rate per hour:
 - (a) in the case of a senior examiner or an assessor, the base hourly rate of remuneration:
 - (b) in the case of an intermediate examiner, 80% of the base hourly rate of remuneration:
 - (c) in the case of a junior examiner, 65% of the base hourly rate of remuneration.
- (2) However, the remuneration payable to an examiner or an assessor for an attendance in respect of an appeal is at the rate prescribed for that examiner or assessor by subclause (1), multiplied in each case by 4 for each half-day or part of a half-day.

9 Remuneration of special commissioners

- (1) The Court must fix the remuneration of a special commissioner as if that special commissioner were an expert witness entitled to be paid fees under regulation 6 of the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023.
- (2) The hourly fee payable to a special commissioner under subclause (1) must be within the range specified in regulation 6(3) of the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023.

Regulation 9: replaced, on 1 May 2023, by regulation 16(1) of the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023 (SL 2023/18).

10 Payment of witnesses

- (1) A witness for a person to whom legal aid has been granted may be paid fees, allowances, and expenses in accordance with the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023.
- (2) Subclause (1) is subject to any direction of the Court.
Regulation 10(1): amended, on 1 May 2023, by regulation 16(1) of the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023 (SL 2023/18).

11 Travelling expenses

- (1) A person who is required to travel more than 5 kilometres from his or her usual place of business in connection with the work to which these regulations apply is allowed the following travelling expenses:
 - (a) fares paid for public transport:
 - (b) if a private motor vehicle is used, a mileage allowance payable at the rate of the mileage allowance approved under section 4(4) of the Fees and Travelling Allowances Act 1951 as payable to a member of a statutory Board who uses a private vehicle when travelling in the service of the Board:
 - (c) a subsistence allowance for each day or part of a day the person is away from his or her usual place of residence, payable at the rate of the subsistence allowance approved under section 4(2) of the Fees and Travelling Allowances Act 1951 as payable to a member of a statutory Board who is travelling in the service of the Board:
 - (d) the cost paid for hiring a rental car, if that cost, together with the subsistence allowance under paragraph (c) and the special allowance provided for in regulation 12, is not more than the total of the fares, subsistence allowance, and special allowance that would have been payable if public transport had been used.
- (2) However, in relation to subclause (1)(a), receipts must be produced for fares that exceed 10% of the base hourly rate of remuneration if these are not fixed by law or readily ascertainable.

12 Special allowance for travelling time

- (1) A special allowance at the following rate is payable for each hour occupied in travelling for work to which these regulations apply, in addition to the travelling expenses provided for in regulation 11:
 - (a) in the case of a senior examiner or an assessor, 66% of the base hourly rate of remuneration:
 - (b) in the case of an intermediate examiner, 53% of the base hourly rate of remuneration:

- (c) in the case of a junior examiner, 43% of the base hourly rate of remuneration.
- (2) The special allowance is not payable in addition to any other payment, for preparation or otherwise, for the same time.

13 Other expenses

- (1) The fees prescribed in these regulations are inclusive of all charges for receiving instructions, preparation, correspondence, research, reports, preparing and checking judgments, and attendances.
- (2) However, other necessary expenses (for example, toll charges) are payable to the extent that the Registrar is satisfied that the expenses are fair and reasonable both as to nature and cost.

14 Claims for fees

A person who claims fees, expenses, and allowances under these regulations must, on the completion of the work to which the claim relates,—

- (a) prepare and sign a voucher setting out full particulars of the claim; and
- (b) give the voucher to the Registrar.

15 Certification of claim

- (1) The Registrar must certify that the fees, expenses, and allowances claimed are payable under these regulations if—
 - (a) he or she is satisfied that they are in accordance with the certified scale of fees; or
 - (b) these regulations require them to be fixed by reference to a maximum and—
 - (i) the claim does not exceed the maximum; and
 - (ii) in the Registrar's opinion, they are fair and reasonable; or
 - (c) in respect of a claim for fees, there are no appropriate fees provided for in these regulations and the fees claimed are, in the Registrar's opinion, fair and reasonable and for each hour actually involved do not exceed,—
 - (i) in the case of a senior examiner or an assessor, the base hourly rate of remuneration:
 - (ii) in the case of an intermediate examiner, 80% of the base hourly rate of remuneration:
 - (iii) in the case of a junior examiner, 65% of the base hourly rate of remuneration.
- (2) Subclause (1) is subject to regulations 16 and 18.

16 Power to approve lesser fee

- (1) Subclause (2) applies if, in the Registrar's opinion,—

- (a) the time involved or the nature of the service actually performed does not justify the payment of the full fees set out in the certified scale of fees; or
 - (b) the work involved in a transaction or proceeding is reduced by the fact that the transaction or proceeding is one of a series of transactions or proceedings that are similar or arise out of the same set of circumstances.
- (2) If this subclause applies, the Registrar must approve a lesser fee that he or she thinks is fair and reasonable and must certify this on the voucher.

17 Payment of claim

- (1) The Registrar must forward the certified voucher to the Registrar of the Court Martial for the purpose of this regulation.
- (2) If the Registrar of the Court Martial is satisfied that the services charged have been duly performed, he or she must certify this and arrange payment.

18 Power to refer certain claims to presiding Judge

- (1) Subclause (2) applies if—
 - (a) the fee claimed by an examiner or assessor is more than the amount that, in the opinion of the Registrar, could properly be claimed under regulation 14, and is claimed because of exceptional circumstances; or
 - (b) the Registrar doubts whether the fee claimed by an examiner or assessor is a proper fee for the Registrar to certify.
- (2) If this subclause applies,—
 - (a) the Registrar must refer the voucher, with a memorandum setting out his or her reasons, to the presiding Judge; and
 - (b) the presiding Judge may authorise the fee he or she considers fair and reasonable.

19 Revocation and saving

- (1) The Courts Martial Appeals (Fees and Allowances) Regulations 1997 (SR 1997/188) are revoked.
- (2) The Courts Martial Appeals (Fees and Allowances) Regulations 1997, despite their revocation by subclause (1), continue to apply to work done before 1 July 2009.

Michael Webster,
for Clerk of the Executive Council.

Notes**1 General**

This is a consolidation of the Court Martial Appeals (Fees and Allowances) Regulations 2008 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023 (SL 2023/18): regulation 16(1)