



THE ARMED FORCES DISCIPLINE (LEGAL SERVICES FEES AND ALLOWANCES) REGULATIONS 1991

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 20th day of May 1991

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 205 (1) (c) of the Armed Forces Discipline Act 1971 (as substituted by section 3 of the Armed Forces Discipline Amendment Act (No. 2) 1988 and amended by section 105 (1) of the Defence Act 1990), Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991.

(2) These regulations shall come into force on the 24th day of June 1991.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Armed Forces Discipline Act 1971:

“Base hourly rate of remuneration” has the meaning given to it by regulation 4 of these regulations:

“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 5 of these regulations:

“Certifying officer” means an officer so designated for the purposes of these regulations by the Chief of Defence Force:

“Judge Advocate General” means the Judge Advocate General of the Armed Forces appointed under section 203 of the Act; and includes any practitioner appointed as Deputy Judge Advocate General of the Armed Forces under section 203A of the Act:

“Legal Staff Officer” means any member of the territorial forces so designated; and includes any member of the territorial forces designated as Assistant Legal Staff Officer:

“Practitioner” means a barrister or solicitor of the High Court:

“Year” means a period of 12 months commencing on the 1st day of April.

3. Application of regulations—(1) These regulations apply to all work done by any of the persons specified in subclause (2) of this regulation on or after the 1st day of July 1991.

(2) Subject to subclause (3) of this regulation, these regulations apply to—

(a) All work done by the Judge Advocate General by way of assistance with the administration of the Act, or in respect of any matter arising out of or relating to service law; and

(b) All work done by any practitioner in relation to the attendance of that practitioner at any court-martial as—

- (i) Judge advocate; or
- (ii) Prosecuting counsel; or
- (iii) Defence counsel; and

(c) All work done by—

- (i) Any practitioner; or
 - (ii) Any Legal Staff Officer; or
 - (iii) Any person engaged from time to time by or under the authority of the Chief of Defence Force to lecture—
- in respect of any matter arising out of or relating to service law; and

(d) All work done by any practitioner appointed as counsel to represent the Chief of Defence Force pursuant to section 15 of the Courts Martial Appeals Act 1953.

(3) Nothing in these regulations applies to any work done by any member of the regular forces.

4. Base hourly rate of remuneration—For the purposes of these regulations, the base hourly rate of remuneration for work done in any year shall be the same as the senior hourly rate of remuneration determined by the Solicitor-General under regulation 4 of the Crown Solicitors Regulations 1987* for work done in that year.

5. Certified scale of fees—(1) The Chief of Defence Force shall, before the commencement of each year, prepare and certify a scale of all fees payable under these regulations, and shall forward a copy to each certifying officer.

(2) Notwithstanding anything in subclause (1) of this regulation, the Chief of Defence Force shall, before the 1st day of July 1991, prepare and certify, for the purposes of work done in the period beginning on the 1st day of July 1991 and ending with the close of the 31st day of March 1992, a scale of all fees payable under these regulations, and shall forward a copy to each certifying officer.

6. Classification of persons—Where any work to which these regulations apply is done by—

(a) Any practitioner (other than the Judge Advocate General); or

(b) Any person engaged as a lecturer,—
the Chief of Defence Force shall determine whether that person is to be regarded for the purposes of these regulations as a senior person or an intermediate person or a junior person.

7. Remuneration of Judge Advocate General—(1) Subject to subclause (2) of this regulation, there shall be payable to the Judge Advocate General, for work to which these regulations apply, remuneration at the rate per hour of 130 percent of the base hourly rate of remuneration.

(2) For attendance in respect of any court-martial, there shall be payable to the Judge Advocate General remuneration at the rate of 520 percent of the base hourly rate of remuneration for each half day or part of a half day.

8. Remuneration of other practitioners—(1) Subject to subclause (2) of this regulation, there shall be payable to a practitioner (other than the Judge Advocate General), for work to which these regulations apply, remuneration at the following rate per hour:

(a) In the case of a senior practitioner, the base hourly rate of remuneration:

(b) In the case of an intermediate practitioner, 80 percent of the base hourly rate of remuneration:

(c) In the case of a junior practitioner, 65 percent of the base hourly rate of remuneration.

(2) For attendance in respect of any court-martial, there shall be payable to a practitioner (other than the Judge Advocate General) remuneration at the rate prescribed for that practitioner by subclause (1) of this regulation, multiplied in each case by 4 for each half day or part of a half day.

9. Remuneration of Legal Staff Officers—There shall be payable to a Legal Staff Officer, for work to which these regulations apply, remuneration at the rate per hour of the base hourly rate of remuneration.

10. Remuneration of lecturers—There shall be payable to a lecturer, for work to which these regulations apply, remuneration at the following rate per hour:

- (a) In the case of a senior lecturer, the base hourly rate of remuneration:
- (b) In the case of an intermediate lecturer, 80 percent of the base hourly rate of remuneration:
- (c) In the case of a junior lecturer, 65 percent of the base hourly rate of remuneration.

11. Travelling expenses—The following travelling expenses shall be allowed to any person specified in regulation 3 (2) of these regulations required to travel more than 5 kilometres from his or her usual place of business in connection with any work to which these regulations apply:

- (a) Fares paid for public transport, subject to the production of receipts for fares exceeding 10 percent of the base hourly rate of remuneration, and not fixed by law or readily ascertainable:
- (b) A car allowance, where a private car is used, at the rate from time to time prescribed by the State Services Commission as payable to employees of the Public Service:
- (c) Subsistence expenses reasonably incurred by any such person during the period of absence from his or her residence, subject to the production of a receipt for any item exceeding 10 percent of the base hourly rate of remuneration, plus an incidentals allowance for each day or part of a day, at the rate prescribed by the State Services Commission as payable to employees of the Public Service:
- (d) The cost paid for hiring a rental car, if that cost, together with subsistence expenses under this regulation and the special allowance provided for in regulation 12 of these regulations, does not exceed the total of the fares, subsistence expenses, and special allowance that would have been payable if public transport had been used.

12. Special allowance for travelling time—(1) Subject to subclause (2) of this regulation, for each hour occupied on any day in travelling on any business to which these regulations apply, there shall be allowed in addition to the travelling expenses provided for by regulation 11 of these regulations, a special allowance at the following rate:

- (a) In the case of a senior person or a Legal Staff Officer, 66 percent of the base hourly rate of remuneration:
- (b) In the case of an intermediate person, 53 percent of the base hourly rate of remuneration:
- (c) In the case of a junior person, 43 percent of the base hourly rate of remuneration.

(2) Such special allowance shall not be payable in addition to any other payment for preparation or otherwise in respect of the same time.

13. Other expenses—The fees prescribed in these regulations are inclusive of all charges for receiving instructions, preparation, correspondence, research, reports, and attendances; but other necessary expenses, such as toll charges, are payable to the extent that the certifying officer is satisfied that such expenses are fair and reasonable both as to nature and cost.

14. Claims for fees—Any person having a claim for fees or expenses under these regulations shall, on the completion of the work to which the claim relates, set out full particulars of the claim in a voucher to be prepared and signed by the person, and shall forward the voucher to a certifying officer.

15. Certification of claim—Subject to regulations 16 and 18 of these regulations, the certifying officer shall certify that the fees or expenses claimed are payable under these regulations, in the following circumstances:

- (a) The certifying officer is satisfied that the fees claimed are correct in accordance with the certified scale of fees:
- (b) These regulations require the fees to be fixed by reference to a maximum, and the fee claimed does not exceed the maximum specified in the certified scale of fees, and is, in the certifying officer's opinion, fair and reasonable:
- (c) There being no appropriate fee provided for in these regulations, the fee claimed is, in the certifying officer's opinion, fair and reasonable and does not exceed,—
 - (i) In the case of a senior person or a Legal Staff Officer, the base hourly rate of remuneration:
 - (ii) In the case of an intermediate person, 80 percent of the base hourly rate of remuneration:
 - (iii) In the case of a junior person, 65 percent of the base hourly rate of remuneration—
for each hour actually involved.

16. Power to approve lesser fee—If, in the opinion of the certifying officer, 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 the work occasioned in any transaction or proceeding is reduced by the fact that the transaction or proceeding is one of a number or series of transactions or proceedings that are similar or that arise out of the same set of circumstances, the certifying officer shall approve such lesser fee as he or she considers fair and reasonable, and shall so certify on the voucher.

17. Payment of claim—The certifying officer shall forward the voucher so certified to the Chief of Defence Force or any other officer authorised for the purpose of this regulation, who, if satisfied that the services charged for have been duly performed, shall so certify and arrange payment.

18. Power to refer claim to Solicitor-General—(1) If either—

- (a) The fee claimed exceeds the amount that, in the opinion of the certifying officer, could properly be claimed under regulation 15 of these regulations, and is claimed by reason of exceptional circumstances; or
- (b) The certifying officer doubts whether the fee is a proper fee for him or her to certify,—

the certifying officer shall refer the voucher, with a memorandum setting forth his or her reasons, to the Solicitor-General, and the Solicitor-General may authorise such fee as the Solicitor-General considers fair and reasonable.

(2) In any special case where the Chief of Defence Force considers that any fee payable under these regulations is inadequate or excessive having regard to exceptional circumstances, the Chief of Defence Force may refer the matter to the Solicitor-General for review, and the Solicitor-General may authorise such fee as the Solicitor-General considers fair and reasonable.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 24 June 1991, are made under section 205 (1) (c) of the Armed Forces Discipline Act 1971. They prescribe the fees and allowances payable for professional legal services rendered, on or after 1 July 1991, by civilians in connection with courts-martial proceedings and other matters relating to service law.

At present, such payments are determined by the Chief of Defence Force, with applications being made to the Solicitor-General for additional payments. *Regulations 4 and 5* provide for the establishment of a scale of fees, relative to those payable under the Crown Solicitors Regulations 1987. Those regulations require the Solicitor-General, in each year, to determine what is called the senior hourly rate of remuneration. Under *regulation 4* of these regulations, this figure is the base hourly rate of remuneration for work to which these regulations apply. Other fees are then expressed as a percentage of the base hourly rate, in accordance with a person's classification under the regulations as senior, intermediate, or junior.

Regulations 11 to 13 provide for the payment of various allowances and expenses, including transport, travelling time, and subsistence costs incurred in connection with work to which these regulations apply.

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These regulations are administered in the New Zealand Defence Force.