

1961/65



**THE COURTS MARTIAL APPEALS (LEGAL AID AND
EXPENSES) REGULATIONS 1961**

COBHAM, Governor-General
ORDER IN COUNCIL

At the Government House at Wellington this 21st day of June 1961

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Courts Martial Appeals Act 1953, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title—These regulations may be cited as the Courts Martial Appeals (Legal Aid and Expenses) Regulations 1961.

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

“The Act” means the Courts Martial Appeals Act 1953:

“Appellant” means a person who has been convicted by a Court Martial and desires to appeal to the Court:

“Court” means the Courts Martial Appeal Court:

“Practitioner” means a barrister or solicitor of the Supreme Court assigned as solicitor or counsel to an appellant:

“Registrar” means the Registrar of the Courts Martial Appeal Court.

3. Fees and expenses of assigned practitioners—(1) Subject to regulation 11 hereof, where pursuant to section 13 of the Act the Court has assigned a solicitor and counsel or counsel only to an appellant by way of legal aid, fees shall be payable in respect of such aid in accordance with the Schedule hereto.

(2) In any case where no fee is prescribed in the Schedule hereto for the business, matter, or proceeding, the fee payable for that business, matter, or proceeding shall be at such rate, based upon the rates payable under the Schedule hereto, as the Registrar certifies as being fair and reasonable.

4. Practitioners not to receive other remuneration—No practitioner assigned under the Act shall, except under these regulations, receive directly or indirectly from any person any fee or remuneration,

or take the benefit of any contract or promise to pay any fee or remuneration, in respect of his services rendered pursuant to the assignment:

Provided that a Judge of the Court may upon application in writing signed by the practitioner and upon the full disclosure of all facts connected therewith, allow such fee or remuneration as he may specify instead of or in addition to any fee prescribed under these regulations.

5. Payment of reduced fees—In any case where the service actually performed does not justify the payment of the full fees prescribed in the Schedule hereto, or where 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 arise out of the same set of circumstances, the fees allowable shall be such as the Registrar certifies as being fair and reasonable.

6. Cancellation of legal aid—If at any time after the grant of legal aid it appears to the Court that the appellant has sufficient means to enable him to obtain legal assistance, the Court may direct that no legal aid or, as the case may require, no further legal aid shall be afforded under these regulations for anything done after the communication of such a direction to a practitioner.

7. Persons jointly charged—Unless for special reasons the Court directs otherwise, where legal aid is granted to two or more persons who are jointly charged, then, subject to the power of the Court to assign both a solicitor and counsel, only one practitioner shall be assigned and only one set of fees shall be allowed.

8. Disbursements—Payment may be made of all disbursements reasonably and properly incurred for the purposes of the proceedings in respect of which legal aid was granted.

9. Payment of witnesses—Subject to any direction of the Court, a witness for any person to whom legal aid has been granted may, if the Registrar certifies the attendance of the witness was reasonably necessary, be paid fees, allowances, and expenses in accordance with the Witnesses and Interpreters Fees Regulations 1959.*

10. Claims for fees, expenses, or disbursements—(1) Any person having a claim for fees, expenses, or disbursements under these regulations shall set out full particulars thereof in a voucher to be prepared and signed by him, and shall forward the voucher to the Registrar, who shall certify the voucher as follows—

- (a) If any scale prescribed by these regulations applies, that the amounts claimed are fair and reasonable and do not exceed the appropriate scale to which he shall refer:
- (b) If no scale prescribed by these regulations applies, that the amounts claimed are fair and reasonable and are in his opinion in accordance with subclause (2) of regulation 3 hereof:
- (c) That the services have been duly performed in accordance with an assignment.

(2) Except where a Judge of the Court has given a direction pursuant to the proviso to regulation 4 hereof, every claim for payment of practitioners' fees under these regulations shall contain a certificate by the claimant that he has not received from any person either directly or indirectly, any fee or remuneration, and an undertaking that, except under these regulations, he will not receive any such fee or remuneration or take the benefit of any contract or promise to pay any fee or remuneration, in respect of his services rendered pursuant to his assignment.

11. Payments to members of the armed forces—Members of the armed forces receiving pay as such who are attending the Court as counsel, interpreters, or witnesses shall be regarded as being on official business, and shall receive pay, allowances, and expenses as if on official business for the period involved. Any payments made in accordance with these regulations to such members of the armed forces shall be refunded to the Public Account.

SCHEDULE

Reg. 3 (1)

FEEs AND EXPENSES OF ASSIGNED PRACTITIONERS

Part I—Fees in Proceedings in Courts Martial Appeal Court

| | £ | s. | d. |
|--|----|----|----|
| 1. Preparation on appeal against conviction | 10 | 10 | 0 |
| And, where the conviction was one of murder or treason, for each half-day necessarily occupied after the first day | 5 | 5 | 0 |
| 2. Appearance on appeal against conviction, for each half-day occupied | 7 | 7 | 0 |
| 3. Where a solicitor and counsel are both assigned, the fees payable to the solicitor shall be at two-thirds of the rates specified for counsel in clause 1 of this Part of this Schedule. | | | |

Part II—Travelling Expenses and Allowances

1. Where a practitioner is required in pursuance of an assignment to travel more than 2 miles from the place where he carries on business, travelling expenses and a travelling allowance will be allowed as follows:

(a) The cost of travelling by public conveyance subject to production of receipts for fares over 10s.:

 Provided that receipts need not be produced for fares where the fares are readily ascertainable:

(b) A travelling allowance of £2 2s. for each day of 24 hours; and for any portion of a day a sum equal to one twenty-fourth of the full daily rate for each hour or fraction thereof:

 Provided that, where the practitioner is not absent overnight from his usual place of business, his actual and reasonable expenses shall be paid instead of the travelling allowance:

 Provided also that where a fare paid for travelling includes the cost of a sleeping berth on a train or a ship, the period of absence for the purpose of this paragraph shall not include the time spent on the train or ship.

SCHEDULE—*continued*

2. Where the practitioner is occupied during ordinary office hours in travelling to and from the Court, he may claim and may be paid in addition to travelling expenses and the travelling allowance under clause 1 of this Part, a special allowance of £3 3s. for each half-day necessarily so occupied:

Provided that the special allowance shall be paid only instead of and not in addition to any payment for preparation under this scale in respect of the same time when so occupied in travelling.

T. J. SHERRARD,
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 are made under the Courts Martial Appeals Act 1953, which includes provisions empowering the Courts Martial Appeal Court to assign a solicitor and counsel or counsel only by way of legal aid to a person who wishes to appeal against his conviction by Court Martial but has insufficient means to enable him to obtain such aid.

These regulations prescribe the fees and expenses payable to solicitors and counsel assigned to appellants under the Act and the expenses payable to witnesses in such appeals, and contain other incidental provisions.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 June 1961.

These regulations are administered in the Army Department.