



**COURTS MARTIAL APPEALS (FEES AND ALLOWANCES)
REGULATIONS 1997**

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 8th day of September 1997

Present:

THE RIGHT HON J B BOLGER PRESIDING IN COUNCIL

PURSUANT to section 26A of the Courts Martial Appeals Act 1953 (as inserted by section 7 of the Courts Martial Appeals Amendment Act 1997), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

ANALYSIS

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SCHEDULE

Regulations Revoked

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Courts Martial Appeals (Fees and Allowances) Regulations 1997.

(2) These regulations come into force on 9 October 1997.

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:

“Appointed Judge” means a Judge of the Court appointed under section 3 (1) (b) of the Act:

“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:

“Court” means the Courts Martial Appeal Court:

“Court-martial” means a court-martial duly constituted under the Armed Forces Discipline Act 1971:

“Examiner” means a person appointed by the Court to conduct the examination of a witness under section 11 (c) of the Act:

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

“Practitioner” means a barrister or solicitor of the High Court assigned as solicitor or counsel to an appellant under section 13 of the Act:

“Presiding Judge” means the Judge who presides at any sitting of the Court under rule 9 of the Courts-Martial Appeal Rules 1954:

“Registrar” means the Registrar of the Court:

“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 commencing on 1 July.

3. Application of regulations—(1) These regulations apply to all work done by any of the persons specified in subclause (2) on or after 9 October 1997.

(2) Subject to subclause (4), these regulations apply to—

(a) All work done by any appointed Judge in relation to an appeal or any proceedings preliminary or incidental to an appeal under the Act; and

(b) All work done by any practitioner assigned to an appellant in relation to an appeal or any proceedings preliminary or incidental to an appeal under the Act; and

(c) All work done by any examiner in relation to the examination of a witness giving evidence in respect of an appeal or any proceedings preliminary or incidental to an appeal under the Act; and

- (d) All work done by any special commissioner in relation to an appeal or any proceedings preliminary or incidental to an appeal under the Act; and
- (e) All work done by any assessor in relation to an appeal or any proceedings preliminary or incidental to an appeal under the Act.

(3) These regulations apply to any witnesses attending on the order of the Court or examined in any proceedings incidental to the appeal.

(4) Nothing in these regulations applies to any work done by any member of the Armed Forces.

4. Judicial hourly rate of remuneration—For the purposes of these regulations, the Chief of Defence Force must determine the judicial hourly rate of remuneration for each year in accordance with the formula—

$$\frac{D}{N} + G + K = \text{the judicial hourly rate of remuneration}$$

where—

- (a) The salary component (D) is the same as the salary of a District Court Judge determined by the Higher Salaries Commission under section 6 (1) (a) of the District Courts Act 1947; and
- (b) N is the accepted number of chargeable working hours per year specified by regulation 4(4)(c) of the Crown Solicitors Regulations 1994; and
- (c) G is the salary portion of the overhead component determined by the Solicitor-General under regulation 4(3)(b) of the Crown Solicitors Regulations 1994; and
- (d) K is the non-salary portion of the overhead component determined by the Solicitor-General under regulation 4(3)(c) of the Crown Solicitors Regulations 1994.

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.

Cf. S.R. 1991/80, reg. 4

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

(2) Despite subclause (1), the Chief of Defence Force must, before 9 October 1997, prepare and certify, for the purposes of work done in the period beginning on 9 October 1997 and ending with the close of 30 June 1998, a scale of all fees payable under these regulations, and must forward a copy to the Registrar.

Cf. S.R. 1991/80, reg. 5

7. Remuneration of appointed Judges—(1) Subject to subclause (2), the judicial hourly rate of remuneration is payable to an appointed Judge for work to which these regulations apply.

(2) The remuneration payable to an appointed Judge for attendance in respect of an appeal is at the rate of 400% of the judicial hourly rate of remuneration for each half day or part of a half day.

8. Classification of practitioners and examiners—If any work to which these regulations apply is done by a practitioner or examiner, the Chief of Defence Force must determine whether that practitioner or examiner is to be regarded for the purposes of these regulations as a senior person or an intermediate person or a junior person.

Cf. S.R. 1991/80, reg. 6

9. Remuneration of practitioners, examiners, and assessors—

(1) Subject to subclause (2), the remuneration payable to a practitioner, examiner, or assessor for work to which these regulations apply is at the following rate per hour:

- (a) In the case of a senior practitioner, senior examiner, or an assessor, the base hourly rate of remuneration:
- (b) In the case of an intermediate practitioner or intermediate examiner, 80% of the base hourly rate of remuneration:
- (c) In the case of a junior practitioner or junior examiner, 65% of the base hourly rate of remuneration.

(2) The remuneration payable to a practitioner, examiner, or assessor for any attendance in respect of an appeal is at the rate prescribed for that practitioner, examiner, or assessor by subclause (1), multiplied in each case by 4 for each half day or part of a half day.

Cf. S.R. 1991/80, reg. 8

10. Practitioners not to receive other remuneration—A practitioner must not, 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 any work to which these regulations apply.

Cf. S.R. 1961/65, reg. 4

11. Contribution by appellant—(1) If the Court has granted an appellant legal aid, a Judge of the Court may, in the Judge's discretion, require, as a condition of the grant of aid, that the appellant pay to the Crown, in respect of the sums payable by the Crown under these regulations on the appellant's behalf, a contribution of such amount as the Judge thinks fit.

(2) A Judge must not require the payment of a contribution under subclause (1) if, in the opinion of the Judge, the making of the contribution would cause the appellant hardship.

(3) An appellant may be required to make any contribution to the Crown under subclause (1) in 1 sum or in instalments.

(4) If an appellant is required to make a contribution to the Crown under subclause (1), the amount of that contribution is recoverable from the appellant as a debt due to the Crown.

12. Modification or cancellation of legal aid—If, at any time after legal aid is granted to an appellant, it appears to the Court that—

- (a) The appellant has sufficient means to enable the appellant to obtain legal assistance; or

- (b) It is no longer desirable in the interests of justice that the appellant should have legal aid; or
- (c) For any reason the terms of the order granting legal aid to the appellant are no longer appropriate,—
the Court may—
- (d) Modify the order granting legal aid; or
- (e) Direct that no legal aid or, as the case may be, no further legal aid must be provided in respect of the appeal, or proceedings preliminary or incidental to the appeal, for which the legal aid was granted.

Cf. S.R. 1961/65, reg. 6

13. Persons jointly charged—Unless for special reasons the Court directs otherwise, if legal aid is granted to 2 or more persons who are jointly charged, then, subject to the power of the Court to assign both a solicitor and counsel, only 1 practitioner must be assigned and only 1 set of fees is allowed.

Cf. S.R. 1961/65, reg. 7

14. Remuneration of special commissioners—The Court must fix the remuneration of any special commissioner as if that special commissioner were an expert witness, within the range set out in clause 1 (1) of the Schedule of the Witnesses and Interpreters Fees Regulations 1974.

15. Payment of witnesses—Subject to any direction of the Court, a witness for any person to whom legal aid has been granted may be paid fees, allowances, and expenses in accordance with the Witnesses and Interpreters Fees Regulations 1974.

Cf. S.R. 1961/62, reg. 9

16. Travelling expenses—The following travelling expenses will be allowed to any person specified in regulation 3 (2) required to travel more than 5 kilometres from that person's 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% of the base hourly rate of remuneration, and not fixed by law or readily ascertainable:
- (b) A mileage allowance, where a private motor vehicle is used, which allowance is payable at the rate of the mileage allowance approved from time to time under the Fees and Travelling Allowances Act 1951 as being payable to any member of a statutory Board who, in travelling in the service of that statutory Board, uses for any journey a private motor vehicle:
- (c) Subsistence expenses reasonably incurred by that person during the period of absence from that person's usual place of residence, subject to the production of a receipt for any item exceeding 10% of the base hourly rate of remuneration, plus an incidentals allowance for each day or part of a day, which incidentals allowance is payable at the rate of the incidentals allowance approved from time to time under the Fees and Travelling Allowances Act 1951 as payable to any member of a statutory Board who is travelling in the service of that statutory Board:

- (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 17, does not exceed the total of the fares, subsistence expenses, and special allowance that would have been payable if public transport had been used.

Cf. S.R. 1991/80, reg. 11

17. Special allowance for travelling time—(1) For each hour occupied on any day in travelling in respect of any work to which these regulations apply, a special allowance at the following rate will be allowed in addition to the travelling expenses provided for by regulation 16:

- (a) In the case of an appointed Judge, 66% of the judicial hourly rate of remuneration:
- (b) In the case of a senior practitioner, senior examiner, or an assessor, 66% of the base hourly rate of remuneration:
- (c) In the case of an intermediate practitioner or intermediate examiner, 53% of the base hourly rate of remuneration:
- (d) In the case of a junior practitioner or 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 in respect of the same time.

Cf. S.R. 1991/80, reg. 12

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

Cf. S.R. 1991/80, reg. 13

19. Claims for fees—Any person having a claim for fees or expenses under these regulations must, 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 must forward the voucher to the Registrar.

Cf. S.R. 1961/65, reg. 10 (1); S.R. 1991/80, reg. 14

20. Certification of claim—Subject to regulations 21 and 23, the Registrar must certify that the fees or expenses claimed are payable under these regulations in the following circumstances:

- (a) The Registrar 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 Registrar's opinion, fair and reasonable:
- (c) If there is no appropriate fee provided for in these regulations, the fee claimed is, in the Registrar's opinion, fair and reasonable and does not exceed,—
- (i) In the case of an appointed Judge, the judicial hourly rate of remuneration:

(ii) In the case of a senior practitioner, senior examiner, or an assessor, the base hourly rate of remuneration:

(iii) In the case of an intermediate practitioner or intermediate examiner, 80% of the base hourly rate of remuneration:

(iv) In the case of a junior practitioner or junior examiner, 65% of the base hourly rate of remuneration—
for each hour actually involved.

Cf. S.R. 1961/65, reg. 10 (1); S.R. 1991/80, reg. 15

21. Power to approve lesser fee—If, in the opinion of the Registrar, 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 1 of a number or series of transactions or proceedings that are similar or that arise out of the same set of circumstances, the Registrar must approve such lesser fee as he or she considers fair and reasonable, and must so certify on the voucher.

Cf. S.R. 1961/65, reg. 5; S.R. 1991/80, reg. 16

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

Cf. S.R. 1991/80, reg. 17

23. Power to refer certain claims to presiding Judge—If either—

- (a) The fee claimed by any practitioner, examiner, or assessor exceeds the amount that, in the opinion of the Registrar, could properly be claimed under regulation 20, and is claimed by reason of exceptional circumstances; or
- (b) The Registrar doubts whether the fee claimed by any practitioner, examiner, or assessor is a proper fee the Registrar to certify,—
the Registrar must refer the voucher, with a memorandum setting out his or her reasons, to the presiding Judge, and that Judge may authorise such fee as he or she considers fair and reasonable.

Cf. S.R. 1991/80, reg. 18 (1)

24. Power to refer appointed Judge's claim for review—If either—

- (a) The fee claimed by an appointed Judge exceeds the amount that, in the opinion of the Registrar, could properly be claimed under regulation 20, and is claimed by reason of exceptional circumstances; or
- (b) The Registrar doubts whether the fee claimed by an appointed Judge is a proper fee for him or her to certify,—
the Registrar must refer the voucher, with a memorandum setting out his or her reasons, to,—
 - (c) If the presiding Judge is not an appointed Judge, the presiding Judge, and that Judge may authorise such fee as he or she considers fair and reasonable; or
 - (d) If the presiding Judge is an appointed Judge, the Chief Justice, and the Chief Justice may authorise such fee as he or she considers fair and reasonable.

25. Revocations and saving—(1) The regulations specified in the Schedule are revoked.

(2) The Courts Martial Appeals (Legal Aid and Expenses) Regulations 1961, despite their revocation by subclause (1), continue to apply to work done on or after their commencement, but before 9 October 1997.

Reg. 25

SCHEDULE
REGULATIONS REVOKED

Regulations	Statutory Regulations Serial Number
The Courts Martial Appeals (Legal Aid and Expenses) Regulations 1961	S.R. 1961/65
The Courts Martial Appeals (Legal Aid and Expenses) Regulations 1961, Amendment No. 1 ...	S.R. 1971/182
The Courts Martial Appeals (Legal Aid and Expenses) Regulations 1961, Amendment No. 4 ...	S.R. 1986/87

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 9 October 1997, replace the Courts Martial Appeals (Legal Aid and Expenses) Regulations 1961.

In particular, the regulations revise the fees and expenses payable, on or after 9 October 1997, in respect of proceedings before the Courts Martial Appeal Court.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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These regulations are administered in the Ministry of Defence.