

1974/153



## THE CROWN SOLICITORS REGULATIONS 1974

DENIS BLUNDELL, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 24th day of June 1974

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

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## REGULATIONS

### PART I—PRELIMINARY

**1. Title and commencement**—(1) These regulations may be cited as the Crown Solicitors Regulations 1974.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

**2. Application of regulations**—These regulations shall apply to all work done by Crown Solicitors on or after the 1st day of July 1974.

**3. Interpretation**—(1) In these regulations, unless the context otherwise requires,—

“Civil matter” includes any appeal from any Committee, Board, Authority or other administrative tribunal but does not include any land compensation matter or domestic proceedings to which regulation 34 or 35 applies;

“Crown Solicitor” means a solicitor holding a warrant of appointment as such from the Governor-General;

“Registrar” means a Registrar of the Supreme Court; and includes a Deputy Registrar.

(2) The Solicitor-General may from time to time delegate to any officer of the Crown Law Office all or any of the powers exercisable by him under these regulations.

(3) These regulations prescribe the fees to be paid to Crown Solicitors for conducting the legal business of the Crown, and regulate the terms and conditions of their employment. They do not relate to the legal business of the Public Trustee, the Maori Trustee, the Government Life Insurance Office, the State Advances Corporation, or the State Insurance Office, except where any such Department, Office, or Corporation is acting as agent for a Government Department.

### PART II—EMPLOYMENT OF CROWN SOLICITORS

**4. Obligation not to appear against Crown**—No Crown Solicitor or any member or employee of his firm shall accept employment, other than from the Crown, in any matter in which the Crown is directly concerned, or appear against the Crown:

Provided that the Solicitor-General may exempt a Crown Solicitor or Crown Solicitors from compliance with this regulation in a particular case or a class of cases generally.

**5. Right to take matter or business out of hands of Crown Solicitor—**The Crown may take any matter or business out of the hands of any Crown Solicitor, and may require that all deeds, instruments, and papers in his hands relating thereto shall be handed over to some other solicitor to be nominated by the Crown, or as the Crown shall direct.

**6. No lien against Crown—**No Crown Solicitor shall, as against the Crown in respect of any legal business he performs for the Crown, have any lien upon any document, deed, or instrument of title, or upon any papers whatsoever, being the property of the Crown, or any right to retain any fund or money in his hands belonging to the Crown in satisfaction of or by way of security for the payment of any claim for fees that he may have against the Crown.

### PART III—GENERAL PROVISIONS AS TO FEES

**7. Basis for claiming fees—**Fees claimed by a Crown Solicitor from the Crown shall not be assessed on the ordinary solicitor and client basis, but shall be claimed in accordance with regulation 11 hereof without further charge for receiving instructions, attendances, correspondence, or reports.

**8. Special cases—**In any special case where he is satisfied that the fee payable under these regulations is inadequate or excessive having regard to exceptional circumstances, the Solicitor-General may authorise such fee as he considers fair and reasonable.

**9. Right of Crown to require taxation—**Nothing in these regulations shall preclude the Crown from submitting costs for taxation in the usual way.

**10. Costs recovered by Crown Solicitor—**Where a Crown Solicitor has recovered and received costs in any transaction or proceeding on behalf of the Crown, he shall pay the same into the Public Account and forthwith forward the bank receipt therefor to the Department from which he received his instructions.

### PART IV—CERTIFICATION OF FEES

**11. Certification of fees—**(1) A Crown Solicitor having a claim against the Crown for costs under these regulations shall, on the completion of the matter or business to which the claim relates, set out full particulars thereof in a voucher to be prepared and signed by him; and, if the claim is in respect of proceedings in the Supreme Court, shall forward the voucher to the Registrar of the Registry in which the proceedings were had, and in any other case shall forward it to a Registrar.

(2) Subject to subclause (5) of this regulation, the Registrar shall certify that the fees claimed are payable in accordance with these regulations, if—

- (a) He is satisfied that the fees claimed are correct in accordance with any scale prescribed by these regulations:
- (b) The appropriate scale prescribed by these regulations requires the fee to be fixed by reference to a maximum, and the fee claimed does not exceed that maximum and is in his opinion fair and reasonable:
- (c) There being no appropriate scale prescribed by these regulations, the fee claimed is in his opinion fair and reasonable and does not exceed \$12 per hour for the time actually involved:
- (d) In respect of appearances in the Supreme Court, he is also satisfied that the appearances of which particulars are given were duly made.

(3) If in the opinion of the Registrar the nature of the service actually performed in any case does not justify the payment of the full fees prescribed by these regulations, 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, he shall approve such lesser fee as he considers fair and reasonable and shall so certify on the voucher.

(4) In respect of criminal cases in the Supreme Court or Court of Appeal, the Registrar shall forward the voucher so certified to the Crown Law Office for payment, and in all other cases he shall return the voucher so certified to the Crown Solicitor for submission to the appropriate Government Department whose Permanent Head or other authorised certifying officer, if satisfied that the services charged for have been duly performed, shall so certify and arrange payment.

(5) If either—

- (a) The fee claimed exceeds the amount which in the opinion of the Registrar could properly be claimed under subclause (2) of this regulation, and is claimed by reason of special circumstances; or
- (b) The Registrar is in doubt as to whether the fee is a proper fee for him to certify—

the Registrar shall refer the voucher with a memorandum setting forth his reasons to the Solicitor-General to determine the amount payable pursuant to regulation 8 hereof.

#### PART V—BUSINESS AT A DISTANCE AND TRAVELLING EXPENSES

**12. Employment of agents**—Where it is necessary for a Crown Solicitor to transact Crown business at a distance from his usual place of business—

- (a) He shall employ an agent unless, from the nature of the case or for special reasons, it is necessary that the Crown Solicitor himself should transact the business:
- (b) Except for special reasons and with the approval of the Solicitor-General, or in pursuance of any existing departmental arrangement, he shall employ as agent in any town in which a Crown Solicitor has been appointed only that Crown Solicitor.

**13. Fee for instructing agent**—Where a Crown Solicitor employs an agent, a fee not exceeding \$18 will be allowed for preparing instructions.

**14. Travelling expenses**—The following travelling expenses will be allowed to a Crown Solicitor required to travel on Crown business more than 3 miles from his usual place of business:

- (a) Fares paid for public transport, subject to the production of receipts for fares exceeding \$5 and not fixed by law or readily ascertainable;
- (b) Car allowance at 15c a mile each way where a private car is used;
- (c) Subsistence expenses reasonably incurred by him during the period of his absence from his residence, subject to the production of a receipt for any item in excess of \$5, plus a sum of 50c per day or part of a day;
- (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 15 hereof does not exceed the total of the fares, subsistence expenses and special allowance that would have been payable if public transport had been used.

**15. Special allowance for travelling time**—A special allowance at the rate of \$9 for each hour occupied on any day in travelling on Crown business will be allowed to a Crown Solicitor in addition to the travelling expenses provided in regulation 14 hereof:

Provided that such special allowance shall not be payable in addition to any other payment for preparation or otherwise in respect of the same time, and provided further that such special allowance shall not be payable for the hours between 8 p.m. and 7 a.m. the following day when the Crown Solicitor is travelling overnight by train or ship.

#### PART VI—CRIMINAL AND QUASI-CRIMINAL PROCEEDINGS

**16. Trials of indictable offences**—In proceedings in the Supreme Court on trials of indictable offences the following scale shall apply:

	\$
(a) Preparing for trial with all matters (other than interlocutory matters) incidental thereto;	
(i) Indictments for murder for each hour .....	12.00
(ii) Other cases for each hour .....	12.00
with a maximum of .....	75.00
(b) Appearance;	
(i) Prosecution of indictments, for each half day or part half day .....	75.00
(ii) On arraignment, where for any reason the trial does not proceed further .....	18.00
(c) All work and attendances in respect of stay of proceedings	22.50
(d) Preparation in respect of interlocutory matters argued before trial, for each hour .....	20.00
(e) Appearance in respect of interlocutory matters argued before trial, for each hour .....	20.00
(f) Instructing counsel from outside the Crown Solicitor's own office to appear on any prosecution or appeal including preparation and presentation of indictment .....	30.00

**17. Appearance upon sentencing**—(1) For appearance upon sentencing of prisoners the fee shall be \$12 in respect of each indictment, or as the result of one preliminary hearing or committal for sentence, irrespective of the number of prisoners or charges.

(2) No fee shall be payable in respect of appearance upon the sentencing of a prisoner where the sentence is pronounced on the same day as the verdict, unless that appearance alone necessitates a separate attendance of the Crown Solicitor.

**18. Criminal appeals**—In appeals under the Crimes Act 1961, the following scale shall apply:

	\$
(a) For preparation and appearance on application to a Judge for a certificate that the case is a fit case for appeal (but excluding cases arising under rule 9 of the Criminal Appeal Rules 1946*) .....	15.00
(b) For preparation on appeal against conviction or sentence or both, or against any interlocutory order or on any other matter not otherwise provided for; for each hour .....	12.00
(c) For appearance on appeal against conviction or sentence or both, or reference of an application for the exercise of the mercy of the Crown; for each half day or part of a half day .....	75.00
(d) For appearance on appeal against any interlocutory order; for each half day or part of a half day .....	75.00
(e) For appearance on any matter not otherwise provided for other than the making of fixtures; for each half day or part of a half day .....	75.00

Provided that, with reference to paragraphs (c), (d), and (e) of this regulation, if more than one case is heard on any half day not more than one fee shall be charged for the hearings, such fee to be apportioned between the different cases.

**19. Summary prosecutions**—For conducting prosecutions in cases that are tried summarily before a Magistrate or Justices, the following scale shall apply:

	\$
(a) For receiving instructions, drawing and filing of information; for each case where there is one information, irrespective of the number of charges or persons charged .....	15.00
On each additional information arising out of the same or similar circumstances .....	7.50
and	
(b) For appearance on a plea of guilty or where the information is withdrawn or where only formal proof is required;	
On the first information .....	7.50
On each additional information arising out of the same or similar circumstances .....	6.00
or	
(c) On a plea of guilty, or where the information is withdrawn, or where upon a non-appearance of the defendant evidence has to be given following full preparation, for	

	\$
each hour's preparation excluding the first hour .....	12.00
with a maximum of .....	45.00
For appearance in each case where there is one information irrespective of the number of charges or persons charged .....	7.50
On each additional information arising out of the same or similar circumstances .....	6.00
or	
(d) On a plea of not guilty for each hour's preparation exclud- ing the first hour .....	12.00
with a maximum of .....	45.00
For appearance conducting prosecution; for each half day or part half day irrespective of the number of charges or persons charged .....	45.00

Provided that if more than one case is heard on any half day not more than one fee shall be charged for the hearings, such fee to be apportioned between the different cases.

**20. Criminal matters before Magistrates**—The fees that may be allowed under regulation 19 hereof shall, as far as applicable, be paid in respect of complaints and criminal or quasi-criminal matters of any other kind which may be heard and disposed of before a Magistrate or a Justice or Justices.

**21. Fee where costs allowed to Crown**—Where costs in excess of the fee assessed under regulation 19 or regulation 20 hereof have been awarded to the Crown, such costs shall be allowed instead of the assessed fee.

**22. Preliminary hearing of indictable offences**—A Crown Solicitor conducting the preliminary investigation of an indictable offence shall be allowed the same fee for preparation and appearance as if the preliminary hearing were a trial before the Supreme Court, and the scale prescribed by regulation 16 hereof shall apply accordingly and shall cover all proceedings up to committal of the accused for trial or his discharge, including a general supervision over all matters necessary to make the case complete.

**23. Before Coroners**—For an inquest before a Coroner, a fee not exceeding \$12 per hour shall be allowed for preparation with a maximum of \$45, and for appearance \$45 for each half day or part of a half day. Where the inquest is on 2 or more bodies, only one fee shall be paid.

**24. Appeals and other proceedings under or relating to the Summary Proceedings Act 1957**—(1) In proceedings in the Supreme Court under or relating to the Summary Proceedings Act 1957, whether by way of appeal against conviction or order, motion for review, certiorari, mandamus, prohibition or otherwise (except appeals against sentence only), the fee allowed shall be \$12 for each hour of preparation with a maximum of \$60, and \$60 for each half day of the hearing:

Provided that, if more than one appeal is heard in any half day and the same counsel appears for the Crown on each appeal, not more than one fee shall be charged for the hearings (such fee to be apportioned between the different appeals).

(2) In proceedings in the Court of Appeal under or relating to the Summary Proceedings Act 1957 the same provisions shall apply except that the fee allowed shall be \$15 for each hour of preparation with a maximum of \$75, and \$75 for each half day of the hearing.

**25. Appeals against sentence**—On an appeal against sentence only before the Supreme Court, the fee for preparation and appearance shall be such amount not exceeding \$30 as may be certified by the Registrar as fair and reasonable:

Provided that, if more than one appearance is necessary, a further fee of \$12 shall be allowed for each additional appearance.

**26. Fee where costs allowed to Crown**—Where costs in excess of the fee assessed under regulation 24 or regulation 25 hereof have been awarded to the Crown such costs shall be allowed instead of the assessed fee.

**27. Bankruptcy**—For all attendances and preparation in bankruptcy matters a fee not exceeding \$12 per hour shall be allowed with a maximum of \$60, and for appearance \$60 per half day or part of a half day:

Provided that, in any case where a Crown Solicitor's costs are taxed and allowed out of the bankrupt's estate, his fee shall be such sum as is allowed him on the taxation.

**28. Second counsel in criminal matters**—In trials and appeals on a charge of murder in which second counsel is engaged, and in preliminary investigations of such charges where the Solicitor-General has authorised the engagement of second counsel, and in any other trials or criminal proceedings on appeal in which the Solicitor-General has authorised the employment of second counsel, the fee payable to second counsel from the Crown Solicitor's own office for preparing and hearing shall be at the rate of half the fee prescribed for the Crown Solicitor.

#### PART VII—CIVIL PROCEEDINGS

**29. Fees in Court of Appeal and Supreme Court**—(1) In the Court of Appeal and the Supreme Court—

- (a) The fee to be allowed in any civil matter heard in the Court of Appeal, whether the Crown is successful or not, shall be the scale party and party costs on the amount of the judgment appealed from:
- (b) The fee to be allowed in any civil matter heard in the Supreme Court, whether the Crown is successful or not, shall be the scale party and party costs on the amount claimed:
- (c) The fee to be allowed in any civil matter heard in the Court of Appeal or the Supreme Court if no money is claimed shall be such amount as the Court shall have awarded as costs to the successful party, but, in cases in the Court of Appeal, without any allowance as for cases from a distance.



(2) Notwithstanding anything in subclause (1) of this regulation—

(a) If the claim is for an unduly excessive amount or if the scale party and party costs are inadequate having regard to the purpose of the proceedings, the fee shall be fixed by the Solicitor-General having regard to all the circumstances:

(b) Where costs in excess of the fee assessed under the foregoing provisions of this regulation have been awarded to the Crown, such costs may be allowed instead of the assessed fee.

(3) The fee to be allowed in any civil matter which is settled between the parties before trial shall be half of such amount as would have been awarded by the Court as party and party costs in accordance with the appropriate Court scale on the amount of the claim if the matter had gone to trial and had occupied one full day:

Provided that in any case where the amount of the plaintiff's claim exceeds \$30,000 and a fee in excess of one half of the said party and party costs on a claim for \$30,000 is sought, the fee to be allowed shall be fixed by the Solicitor-General having regard to all the circumstances.

(4) The fee to be allowed in any civil matter which is settled during or after trial shall be fixed by the Solicitor-General having regard to all the circumstances.

**30. Workers' compensation matters—**(1) The fee to be allowed in any matter heard in a Magistrate's Court, whether the Crown is successful or not, shall be \$12 for each hour for preparation with a maximum of \$60, and \$60 for each half day of the hearing.

(2) Where costs in excess of the fee assessed under the foregoing provisions of this regulation have been awarded to the Crown, such costs may be allowed instead of the assessed fee.

(3) The fee to be allowed in any matter relating to workers' compensation which is settled between the parties shall be \$45.

**31. In a Magistrate's Court—**(1) The fee to be allowed in any civil matter heard in a Magistrate's Court whether the Crown is successful or not, shall be the scale party and party costs on the amount claimed, or, if no money is claimed, such amount as the Court awards as costs to the successful party:

Provided that, where the Crown is a party to several cases heard at the same sitting of a Magistrate's Court, such sum shall be allowed in each case as may be fixed by a Registrar.

(2) The fee to be allowed in any civil matter which is settled between the parties shall be half of such amount as would have been awarded by the Court as party and party costs in accordance with the appropriate Court scale on the amount of the claim if the matter had gone to trial and had occupied one full day.

**32. In Maori Land Court and Maori Appellate Court—**(1) The fees payable in respect of matters in the Maori Land Court shall be the same as the fees prescribed under regulation 31 hereof for civil matters in a Magistrate's Court.

(2) The fees payable in respect of matters in the Maori Appellate Court shall be the same as the fees prescribed under regulation 30 hereof for a matter in the Compensation Court.

**33. Revenue cases stated**—The fees payable in respect of revenue cases stated shall be in accordance with the following scale:

- (a) In cases heard in the Supreme Court or in the Court of Appeal, the fees prescribed under regulation 29 hereof shall apply:
- (b) In cases heard by the Board of Review, there shall be paid a fee of \$12 per hour for preparation with a maximum of \$60 and a fee of \$60 for each half day or part half day for appearance.

**34. Land compensation matters**—The fee payable in respect of any compensation matter under the Public Works Act 1928, whether before a Land Valuation Committee, the Administrative Division of the Supreme Court, or the Court of Appeal, shall be fixed by the Solicitor-General having regard to all the circumstances.

**35. Domestic proceedings**—The fees payable for representing a Maintenance Officer or Child Welfare Officer in matters under the Domestic Proceedings Act 1968 shall be:

- |   |       |
|---|-------|
| (a) In a Magistrate's Court;  | \$    |
| (i) For receiving instructions and preparing all necessary documents                                      | 15.00 |
| (ii) For each hour's preparation excluding the first hour with a maximum of                               | 45.00 |
| (iii) For appearance conducting case; for each half day or part half day                                  | 45.00 |
| (b) In the Supreme Court and Court of Appeal, the same as the fees prescribed under regulation 24 hereof. |       |

**36. Miscellaneous administrative tribunals**—For all preparation and attendances in connection with any matter before any administrative tribunal (other than a Land Valuation Committee) there shall be paid a fee of \$12 per hour with a maximum of \$45. For all appearances before any such tribunal there shall be paid a fee of \$45 for each half day or part half day.

**37. Counsel assisting**—Where at the request of a Court or an administrative tribunal, and with the prior approval of the Solicitor-General, a Crown Solicitor appears in any matter, or action, or in any proceedings on any appeal, and argues any question of law or of fact arising in the matter, action or proceedings, and where the Court makes no order as to the payment of the Crown Solicitor's costs pursuant to section 99A of the Judicature Act 1908, the fees payable shall be:

- (a) In a Magistrate's Court and before any administrative tribunal, the fees prescribed under regulation 36 hereof:
- (b) In the Supreme Court or Court of Appeal, the fees prescribed under regulation 24 hereof.

#### PART VIII—CONVEYANCING

**38. Instruments affecting interest of Crown in land or property**—The fee to be allowed in respect of any instrument or dealing affecting any estate or interest of the Crown, or any person or body on behalf of the Crown, in land or property,—

- (a) If payable by the Crown, shall be two-thirds of the appropriate fee prescribed by the Scale of Conveyancing Charges for the time being approved by the Council of the New Zealand Law Society with a minimum fee of \$15:
- (b) If payable by any other party, shall not exceed the appropriate fee prescribed by the said Scale of Conveyancing Charges.

**39. Conveyancing fees inclusive of all charges**—The fees prescribed in this Part of these regulations are inclusive of all charges for attendances, correspondence, reports, searches, and investigation of title, but are exclusive of actual and necessary disbursements.

**40. Duty of Crown Solicitor where costs not payable by Crown**—Where by the ordinary course of practice the costs of preparing and completing any instrument or a counterpart thereof ought to be borne by one of the parties thereto, other than the Crown, the Crown Solicitor shall arrange that the costs properly chargeable to that party are paid by him.

**41. Certificate by Crown Solicitor**—(1) Where it is necessary that any instrument should be executed on behalf of the Crown, the Crown Solicitor in submitting it for execution shall certify that he has perused or prepared the instrument and that in his opinion it is a proper instrument to be executed by or on behalf of the Crown.

(2) On the completion of any transaction affecting any estate or interest of the Crown or any person or body on behalf of the Crown in land, the Crown Solicitor shall deliver with the documents of title a certificate setting out the nature of the transaction and his opinion that it has been duly and properly completed.

**42. Revocation and saving**—(1) The Crown Solicitors Regulations 1969\* and the Crown Solicitors Regulations 1969, Amendment No. 1† are hereby revoked.

(2) The Crown Solicitors Regulations 1969 and the Crown Solicitors Regulations 1969, Amendment No. 1 shall, notwithstanding their revocation, continue to apply to work done before the 1st day of July 1974.

P. G. MILLEN,

Clerk of the Executive Council.

\*S.R. 1969/170  
†S.R. 1971/221

#### EXPLANATORY NOTE

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

These regulations relate to the employment of Crown Solicitors (not being members of the Public Service) for conducting the legal business of the Crown. They regulate the terms of the employment of Crown Solicitors, and prescribe the fees to be paid to them. They are in substitution for the Crown Solicitors Regulations 1969 and the Crown Solicitors Regulations 1969, Amendment No. 1 which are revoked.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 27 June 1974.

These regulations are administered in the Crown Law Office.