



THE CROWN SOLICITORS REGULATIONS 1986

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 29th day of September 1986

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 113 (1)(j) of the Public Finance Act 1977, 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

1. Title and commencement—(1) These regulations may be cited as the Crown Solicitors Regulations 1986.

(2) These regulations shall come into force on the 1st day of October 1986.

2. Application of regulations—These regulations shall apply to all work done by Crown Solicitors on and after the 1st day of October 1986.

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:

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

“Registrar” means a Registrar of the High 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 the Solicitor-General 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 Corporation, the Housing Corporation, the Rural Banking and Finance Corporation, or the State Insurance Office, except where any such Department, Office, or Corporation is acting as agent for a Government Department.

4. Classification of counsel—Where any work is undertaken by any counsel on instructions by the Crown Solicitor, whether or not that counsel is a member or employee of the Crown Solicitor’s firm, the Solicitor-General shall determine whether that counsel is to be regarded for the purposes of these regulations as a senior counsel, an intermediate counsel, or a junior counsel.

PART I

EMPLOYMENT OF CROWN SOLICITORS

5. Obligation not to appear against Crown—(1) Subject to subclause (2) of this regulation, no Crown Solicitor or any member or employee of the Crown Solicitor’s firm shall accept employment, other than from the

Crown, in any matter in which the Crown is directly concerned, or appear against the Crown.

(2) The Solicitor-General may exempt a Crown Solicitor or Crown Solicitors from compliance with subclause (1) of this regulation in a particular case or a class of case generally.

6. 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 that Crown Solicitor's hands relating to that matter or business shall be handed over to some other solicitor to be nominated by the Crown, or as the Crown shall direct.

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

PART II

GENERAL PROVISIONS AS TO FEES

8. 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 12 of these regulations, without further charge for receiving instructions, attendances, correspondence, or reports.

9. Special cases—In any special case where the Solicitor-General 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 the Solicitor-General considers fair and reasonable.

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

11. Costs recovered by Crown Solicitor—Where a Crown Solicitor has recovered and received costs in any transaction or proceeding on behalf of the Crown, the Crown Solicitor shall pay the same into his or her, or his or her firm's, trust account and forward his or her, or his or her firm's, cheque, together with a description of the matter to which the cheque relates, to the Department from which the Crown Solicitor received instructions.

PART III

CERTIFICATION OF FEES

12. 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 of the

claim in a voucher to be prepared and signed by the Crown Solicitor; and, if the claim is in respect of proceedings in the High Court, shall forward the voucher to the Registrar of the Registry in which the proceedings were heard, 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, in the following circumstances:

- (a) The Registrar 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 fees to be fixed by reference to a maximum, and the fee claimed does not exceed that maximum and is, in the Registrar's opinion, fair and reasonable:
- (c) There being no appropriate scale prescribed by these regulations, the fee claimed is, in the Registrar's opinion, fair and reasonable and does not exceed—
 - (i) In the case of a Crown Solicitor or senior counsel, \$100.00 per hour; or
 - (ii) In the case of an intermediate counsel, \$80.00 per hour; or
 - (iii) In the case of a junior counsel, \$65.00 per hour—

for the time actually involved:

- (d) In respect of appearances in the High Court, the Registrar 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, the Registrar shall approve such lesser fee as the Registrar considers fair and reasonable and shall so certify on the voucher.

(4) In respect of criminal cases in the High Court or Court of Appeal, and in respect of criminal cases heard on indictment in a District Court, the Registrar shall forward the voucher so certified to the Crown Law Office for payment, and in all other cases the Registrar 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 that, 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 or her to certify,—

the Registrar shall refer the voucher with a memorandum setting forth his or her reasons to the Solicitor-General to determine the amount payable pursuant to regulation 9 of these regulations.

PART IV

BUSINESS AT A DISTANCE AND TRAVELLING EXPENSES

13. Employment of agents—Where it is necessary for a Crown Solicitor to transact Crown business at a distance from his or her usual place of business,—

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

14. Fee for instructing agent—Where a Crown Solicitor employs an agent, the following fee shall be paid for preparing instructions:

	\$
(a) Where the instructions are prepared by the Crown Solicitor himself or herself, or by a senior counsel	100.00
(b) Where the instructions are prepared by an intermediate counsel	80.00
(c) Where the instructions are prepared by a junior counsel	65.00.

15. Travelling expenses—The following travelling expenses will be allowed to a Crown Solicitor required to travel on Crown business more than 5 kilometres from his or her usual place of business:

- (a) Fares paid for public transport, subject to the production of receipts for fares exceeding \$12.25, and not fixed by law or readily ascertainable:
- (b) 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 the Crown Solicitor during the periods of absence from his or her residence, subject to the production of a receipt for any item in excess of \$12.25 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 16 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.

16. Special allowance for travelling time—(1) Subject to subclause (2) of this regulation, for each hour occupied on any day in travelling on Crown business, there shall be allowed, in addition to the travelling expenses provided for by regulation 15 of these regulations, a special allowance at the following rate:

	\$
(a) In the case of a Crown Solicitor or a senior counsel	66.00
(b) In the case of an intermediate counsel	53.00
(c) In the case of a junior counsel	43.00.

(2) Such special allowance shall not be payable in addition to any other payment for preparation or otherwise in respect of the same time, nor shall such special allowance be payable for the hours between 8 p.m. and 7 a.m. the following day when the Crown Solicitor or counsel is travelling overnight by train or ship.

PART V

REMUNERATION

17. Fees for preparation—(1) Subject to subclauses (2) and (3) of this regulation, for preparation in respect of any trial, hearing, or interlocutory matter in respect of any criminal or civil matter before any court, committee, board, authority, or other administrative tribunal there shall be paid remuneration at the following rate per hour:

	\$
(a) In the case of a Crown Solicitor or a senior counsel	100.00
(b) In the case of an intermediate counsel	80.00
(c) In the case of a junior counsel	65.00.

(2) The maximum number of hours for which payment may be claimed under subclause (1) of this regulation shall be as follows:

(a) In respect of appeals against conviction from a District Court to the High Court	5
(b) In respect of indictments for murder, the time actually spent	
(c) In respect of any other proceedings in the Court of Appeal or the High Court, or matters heard on indictment in a District Court	10
(d) In respect of all other proceedings	7

(3) Nothing in this regulation applies in respect of appeals against sentence from a District Court to the High Court.

18. Fees for appearances—(1) Subject to subclauses (2) and (3) of this regulation, for appearance in respect of any trial or hearing, whether of a criminal or civil nature, before any court, committee, board, authority, or other administrative tribunal there shall be paid remuneration at the following rate for each half day or part of a half day:

	\$
(a) In the case of a Crown Solicitor or a senior counsel	400.00
(b) In the case of an intermediate counsel	320.00
(c) In the case of a junior counsel	260.00.

(2) For appearance in respect of interlocutory matters argued before trial or hearing, including applications for bail, there shall be paid remuneration at the following rate per hour:

	\$
(a) In the case of a Crown Solicitor or a senior counsel	100.00
(b) In the case of an intermediate counsel	80.00
(c) In the case of a junior counsel	65.00.

Provided that, if more than one matter is dealt with on any such appearance, only one fee shall be charged for the appearance, such fee to be apportioned between the different matters.

(3) Nothing in this regulation applies in respect of appeals against sentence from a District Court to the High Court.

19. Appeals to High Court against sentence—For preparation and appearance in respect of an appeal against sentence only in the High Court, there shall be paid the following fee:

	\$
(a) Where the appeal is brought by the person convicted	150.00
(b) Where the appeal is brought by the informant pursuant to section 115A of the Summary Proceedings Act 1957	300.00.

20. Fee for instructing other counsel—Where a Crown Solicitor instructs counsel from outside the Crown Solicitor’s own office to appear on any prosecution or appeal (including preparing and presenting the indictment), the following fee shall be paid for preparing instructions:

	\$
(a) Where the instructions are prepared by the Crown Solicitor himself or herself, or by a senior counsel	150.00
(b) Where the instructions are prepared by an intermediate counsel	120.00
(c) Where the instructions are prepared by a junior counsel	97.50.

21. Fees for arranging fixtures, attending callovers, etc.—For attendance before a Registrar or Judge in the High Court or a District Court for the arrangement of fixtures and the discussion and settlement of related matters, there shall be paid a fee at such hourly rate as the Solicitor-General shall approve for the time actually spent in such attendance, one such fee being payable regardless of the number of fixtures or other matters dealt with on the attendance.

22. Second counsel—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 civil or criminal matter in respect of which the Solicitor-General has authorised the employment of second counsel, the remuneration payable to that second counsel, whether or not from the Crown Solicitor’s own office, for preparation and appearance shall be determined in accordance with the foregoing provisions of this Part of these regulations as if the second counsel were acting as sole counsel.

23. Fees where civil proceedings settled before trial—(1) Subject to subclause (2) of this regulation, the fee to be allowed in any civil matter that is settled between the parties before the trial shall be either—

- (a) 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 1 full day; or

(b) A fee calculated in accordance with regulations 17 and 18 of these regulations,—

whichever is the greater.

(2) Without limiting the generality of the powers conferred on the Solicitor-General by regulation 9 of these regulations, the Solicitor-General may, in any case to which subclause (1) of this regulation applies, fix a higher or lower fee than the fee that would otherwise be payable in accordance with that subclause if, having regard to all the circumstances of the case including the amount of the claim, the Solicitor-General thinks such a different fee would be appropriate.

24. 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 on any appeal, and argues any question of law or of fact arising in the matter, action, or proceedings, and 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 to that Crown Solicitor for preparation and appearance shall be determined in accordance with regulations 17 and 18 of these regulations as if the Crown Solicitor were representing the Crown.

PART VI

CONVEYANCING

25. 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, whether payable by the Crown or by any other party, shall be a fair and reasonable fee calculated in accordance with the Principles of Charging set out in Part Two of the Costing and Conveyancing Practice Manual of the New Zealand Law Society, as approved by the Council of that Society on the 22nd day of June 1984.

26. 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 disbursements that comprise out-of-pocket expenses actually incurred by the Crown Solicitor.

27. 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 of any instrument ought to be borne by one of the parties to the instrument, other than the Crown, the Crown Solicitor shall arrange that the costs properly chargeable to that party are recovered.

28. 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 or she has perused or prepared the instrument and that in his or her 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 or her opinion that it has been duly and properly completed.

29. Revocation and savings—(1) The Crown Solicitors Regulations 1985* are hereby revoked.

(2) The Crown Solicitors Regulations 1977 shall, notwithstanding their revocation by the Crown Solicitors Regulations 1980, continue to apply to work done on or after the 16th day of August 1977, but before the 1st day of April 1980.

(3) The Crown Solicitors Regulations 1980 shall, notwithstanding their revocation by the Crown Solicitors Regulations 1981, continue to apply to work done on or after the 1st day of April 1980, but before the 1st day of April 1981.

(4) The Crown Solicitors Regulations 1981 shall, notwithstanding their revocation by the Crown Solicitors Regulations 1982, continue to apply to work done on or after the 1st day of April 1981, but before the 1st day of April 1982.

(5) The Crown Solicitors Regulations 1982 shall, notwithstanding their revocation by the Crown Solicitors Regulations 1985, continue to apply to work done on or after the 1st day of April 1982, but before the 1st day of April 1985.

(6) The Crown Solicitors Regulations 1985 shall, notwithstanding their revocation by subclause (1) of this regulation, continue to apply to work done on or after the 1st day of April 1985, but before the 1st day of October 1986.

P. G. MILLEN,
Clerk of the Executive Council.

*S. R. 1985/270

EXPLANATORY NOTE

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

These regulations revoke and replace, from 1 October 1986, the Crown Solicitors Regulations 1985. The principal change effected by these regulations is a change away from scales of fees based on the type of work done and the forum in which the proceedings are conducted, to scales based on the seniority of counsel. Thus, different rates are prescribed according to whether the work is done by the Crown Solicitor himself or herself or a senior counsel, or by an intermediate counsel, or by a junior counsel. Which counsel are to be considered to be senior, intermediate, or junior is to be determined by the Solicitor-General.

The overall effect of the regulations is to raise the level of remuneration payable to Crown Solicitors and other counsel instructed by the Crown.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 30 September 1986.
These regulations are administered in the Crown Law Office.