



## THE CROWN SOLICITORS REGULATIONS 1994

CATHERINE A. TIZARD, Governor-General

### ORDER IN COUNCIL

At Wellington this 11th day of July 1994

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 81 (1) (g) of the Public Finance Act 1989, Her 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 1994.

(2) Except as provided in regulation 6 (2) of these regulations, these regulations shall come into force on the 1st day of August 1994.

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

“Certified scale of fees” means the certified scale of all fees payable under these regulations prepared by the Solicitor-General in accordance with regulation 6 (1) of these regulations:

“Civil matter” includes any appeal from any commission, 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:

“Year” means the period of 12 months ending on the expiration of the 30th day of June.

**3. Application of regulations**—(1) These regulations shall apply to all legal business of the Crown conducted by Crown Solicitors on or after the 1st day of August 1994.

(2) Nothing in these regulations shall apply to the legal business of the Public Trustee or the Maori Trustee, except where any such trustee is acting as agent for a Government department.

PART I

DUTIES AND POWERS OF SOLICITOR-GENERAL

**4. Senior hourly rate of remuneration**—(1) In this regulation—

“Base period” means the period of 11 months beginning on the 1st day of August 1994 and ending with the expiration of the 30th day of June 1995:

“Practice”, in relation to a Crown Solicitor, means,—

(a) Where the Crown Solicitor is in partnership with any other solicitor, the practice of the firm; or

(b) Where the Crown Solicitor is in practice without any partner, the practice of the Crown Solicitor.

(2) For the purposes of these regulations, the senior hourly rate of remuneration for the base period is \$153 per hour, which rate is determined in accordance with a formula under which—

- (a)  $C + G + K$  = the senior hourly rate of remuneration; and
- (b) C, the salary component, is \$85.50 per hour; and
- (c) G, the salary portion of the overhead component is \$45.00 per hour; and
- (d) K, the non-salary portion of the overhead component, is \$22.50 per hour.

(3) For the purposes of these regulations, the Solicitor-General shall, for each year following the base period, determine the senior hourly rate of remuneration in accordance with the formula—

$$C_{t+1} + G_{t+1} + K_{t+1} = \text{the senior hourly rate of remuneration}$$

where—

- (a) The salary component ( $C_{t+1}$ ) is determined in accordance with subclause (4) of this regulation; and
- (b) The salary portion of the overhead component ( $G_{t+1}$ ) is determined—
  - (i) In respect of the year beginning on the 1st day of July 1995, by taking the salary component of the senior hourly rate of remuneration for the base period, namely \$45 per hour, and increasing it by the percentage movement in law firm salaries paid to all staff (excluding any partner remuneration) since the 30th day of September 1993:
  - (ii) In respect of each year beginning on or after the 1st day of July 1996, by taking the salary portion of the overhead component of the senior hourly rate of remuneration for the immediately preceding year and increasing it by the percentage movement in law firm salaries paid to all staff (excluding any partner remuneration) since the last determination; and
- (c) The non-salary portion of the overhead component ( $K_{t+1}$ ) is determined—
  - (i) In respect of the year beginning on the 1st day of July 1995, by taking the non-salary portion of the overhead component of the senior hourly rate of remuneration for the base period, namely \$22.50 per hour, and increasing it by the percentage amount by which the Consumer Price Index has increased for the period of 12 months ending with the immediately preceding 31st day of December:
  - (ii) In respect of each year beginning on or after the 1st day of July 1996, by taking the non-salary portion of the overhead component of the senior hourly rate of remuneration for the immediately preceding year and increasing it by the percentage amount by which the Consumer Price Index has increased for the period of 12 months ending with the immediately preceding 31st day of December.
- (4) The salary component referred to in subclause (3) (a) of this regulation shall be determined in the following manner:
  - (a) The Solicitor-General shall ascertain from up-to-date independent survey information the average market salary for a solicitor with 8 years or more experience [Amount “A”]:
  - (b) Amount “A” shall be increased by 50 percent [Amount “B”]:

(c) Amount "B" shall be divided by 1400 (being the accepted number of chargeable working hours per year) [Amount " $C_{t+1}$ "].

(5) The percentage movement in law firm salaries paid to all staff (excluding any partner remuneration) shall, for the purposes of subclause (3) (b) of this regulation, be ascertained from time to time by the Solicitor-General from up-to-date independent survey information.

**5. Classification of counsel**—Where any work is undertaken by any counsel on instructions by the Solicitor-General or the Crown Solicitor, whether or not that counsel is a member or employee of the Crown Solicitor's practice, 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.

**6. Certified scale of fees**—(1) The Solicitor-General shall, before the commencement of the base period and before the commencement of each year beginning on or after the 1st day of June 1995, prepare and certify a scale of all fees payable in accordance with these regulations, and shall forward a copy to each Crown Solicitor and each Registrar.

(2) This regulation shall come into force on the day after the date of the notification of these regulations in the *Gazette*.

**7. Power of delegation**—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.

## PART II

### EMPLOYMENT OF CROWN SOLICITORS

**8. 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 practice, 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 class of case generally.

**9. Right to take matter or business out of hands of Crown Solicitor**—The Solicitor-General 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 Solicitor-General, or as the Solicitor-General shall direct.

**10. 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 III

## GENERAL PROVISIONS AS TO FEES

**11. 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 15 of these regulations, without further charge for receiving instructions, attendances, correspondence, or reports.

**12. 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.

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

**14. 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 practice's trust account and forward his or her practice's cheque, together with a description of the matter to which the cheque relates, to the Government department from which the Crown Solicitor received instructions.

## PART IV

## CERTIFICATION OF FEES

**15. Certification of fees**—(1) A Crown Solicitor having a claim against the Crown for costs under these regulations shall set out full particulars of the claim in an invoice 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 invoice to the Registrar of the Registry in which the proceedings were heard, and in any other case shall forward it to a Registrar. In any event, the costs claimed shall be at the rates applicable at the time the work or any part of the work was done.

(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 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) There being 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 a Crown Solicitor or senior counsel, the senior hourly rate of remuneration; or
  - (ii) In the case of an intermediate counsel, 80 percent of the senior hourly rate of remuneration; or

(iii) In the case of a junior counsel, 65 percent of the senior hourly rate of remuneration—  
for each hour 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 time involved or the nature of the service actually performed in any case 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 or circumstances, the Registrar shall approve such lesser fee as the Registrar considers fair and reasonable and shall so certify on the invoice.

(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 invoice so certified to the Crown Law Office for payment, and in all other cases the Registrar shall return the invoice so certified to the Crown Solicitor for submission to the appropriate Government department, whose Chief Executive 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 the Registrar to certify,—

the Registrar shall refer the invoice with a memorandum setting forth his or her reasons to the Solicitor-General to determine the amount payable pursuant to regulation 12 of these regulations.

## PART V

### BUSINESS AT A DISTANCE AND TRAVELLING EXPENSES

**16. 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.

**17. 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, a fee equal to the senior hourly rate of remuneration:

(b) Where the instructions are prepared by an intermediate counsel, a fee equal to 80 percent of the senior hourly rate of remuneration:

- (c) Where the instructions are prepared by a junior counsel, a fee equal to 65 percent of the senior hourly rate of remuneration.

**18. Travelling expenses**—The following travelling expenses shall 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 \$20.00, and not fixed by law or readily ascertainable;
- (b) Car allowance, where a private car is used, at the rate from time to time recommended by the State Services Commission as payable to employees of the Public Service;
- (c) Subsistence expenses reasonably incurred by the Crown Solicitor during the period of absence from his or her residence, subject to the production of a receipt for any item in excess of \$20.00, plus an incidentals allowance for each day or part of a day, at the rate from time to time recommended 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 19 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.

**19. 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 18 of these regulations, a special allowance at the following rate:

- (a) In the case of a Crown Solicitor or senior counsel, 66 percent of the senior hourly rate of remuneration;
- (b) In the case of an intermediate counsel, 53 percent of the senior hourly rate of remuneration;
- (c) In the case of a junior counsel, 43 percent of the senior 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.

## PART VI

### REMUNERATION

**20. 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, commission, 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, the senior hourly rate of remuneration;
- (b) In the case of an intermediate counsel, 80 percent of the senior hourly rate of remuneration;
- (c) In the case of a junior counsel, 65 percent of the senior hourly rate of remuneration.

(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 hours
- (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 hours
- (d) In respect of all other proceedings 7 hours.

(3) Nothing in this regulation applies in respect of appeals against sentence from a District Court to the High Court, or to appearances on sentencing as provided in regulation 21 (2) of these regulations.

**21. Fees for appearances**—(1) Subject to subclauses (2) to (4) of this regulation, for appearance in respect of any trial or hearing, whether of a criminal or civil nature, before any court, commission, committee, board, authority, or other administrative tribunal there shall be paid remuneration at the following rate, multiplied in each case by 4, for each half day or part of a half day:

- (a) In the case of a Crown Solicitor or a senior counsel, the senior hourly rate of remuneration:
- (b) In the case of an intermediate counsel, 80 percent of the senior hourly rate of remuneration:
- (c) In the case of a junior counsel, 65 percent of the senior hourly rate of remuneration.

(2) For appearance in respect of interlocutory matters argued before trial or hearing, including applications for bail, and in respect of appearances on sentencing of prisoners in respect of each indictment or as the result of one preliminary hearing or committal for sentence, regardless of the number of prisoners or charges, there shall be paid remuneration at the following rate per hour:

- (a) In the case of a Crown Solicitor or a senior counsel, the senior hourly rate of remuneration:
- (b) In the case of an intermediate counsel, 80 percent of the senior hourly rate of remuneration:
- (c) In the case of a junior counsel, 65 percent of the senior hourly rate of remuneration.

(3) If more than one matter is dealt with on any appearance to which subclause (2) of this regulation applies, only one fee shall be charged for the appearance and that fee to be apportioned between the different matters.

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

**22. 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, a fee equal to the senior hourly rate of remuneration multiplied by 1½:
- (b) Where the appeal is brought by the informant pursuant to section 115A of the Summary Proceedings Act 1957, a fee equal to the senior hourly rate of remuneration multiplied by 3.



**23. Fee for instructing other counsel**—Where a Crown Solicitor instructs counsel from outside the Crown Solicitor's own practice 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, a fee equal to 150 percent of the senior hourly rate of remuneration:
- (b) Where the instructions are prepared by an intermediate counsel, a fee equal to 120 percent of the senior hourly rate of remuneration:
- (c) Where the instructions are prepared by a junior counsel, a fee equal to 97.5 percent of the senior hourly rate of remuneration.

**24. 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 determine 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.

**25. 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 practice, 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.

**26. 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 20 and 21 of these regulations,—

whichever is the greater.

(2) Without limiting the generality of the powers conferred on the Solicitor-General by regulation 12 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.

**27. 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 20 and 21 of these regulations as if the Crown Solicitor were representing the Crown.

## PART VII

### CONVEYANCING

**28. 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.

**29. 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.

**30. 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.

**31. 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.

## PART VIII

### SAVINGS AND REVOCATION

**32. Savings in respect of conduct of legal business of Crown—** Nothing in these regulations restricts the right of the Solicitor-General—

- (a) To appoint or instruct counsel other than a Crown Solicitor to represent Crown interests in any particular matter of legal business of the Crown; or
- (b) To appoint panels comprised of counsel other than Crown Solicitors to conduct prosecutions in particular regions; or
- (c) To require that any counsel who is a member of a panel of the kind described in paragraph (b) of this regulation shall be instructed in relation to—
  - (i) Any particular matter; or

- (ii) Any particular class of matters; or
- (iii) Any particular number of matters in a period of time specified by the Solicitor-General.

**33. Revocation and savings**—(1) The Crown Solicitors Regulations 1987\* are hereby revoked.

(2) 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.

(3) 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.

(4) 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.

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

(6) The Crown Solicitors Regulations 1986 shall, notwithstanding their revocation by the Crown Solicitors Regulations 1987, continue to apply to work done on or after the 1st day of October 1986, but before the 1st day of April 1987.

(7) The Crown Solicitors Regulations 1987 shall, notwithstanding their revocation by subclause (1) of this clause, continue to apply to work done on or after the 1st day of April 1987 but before the 1st day of August 1994.

MARIE SHROFF,  
Clerk of the Executive Council.

\*S.R. 1987/58

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## EXPLANATORY NOTE

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

These regulations revoke and replace the Crown Solicitors Regulations 1987. Except for regulation 6, these regulations come into force on 1 August 1994. They are made pursuant to section 81 (1) (g) of the Public Finance Act 1989 which allows the fees payable to Crown Solicitors to be fixed or determined by or in accordance with the regulations.

The basis of this arrangement is set out in regulation 4.

The senior hourly rate of remuneration for the base period (which begins on 1 August 1994 and ends with the close of 30 June 1995) is fixed by regulation 4 (2).

Regulation 4 (3) requires the Solicitor-General to determine, for each year following the base period, the senior hourly rate of remuneration.

The senior hourly rate of remuneration is the hourly fee payable to Crown Solicitors and other Senior Counsel. Its amount, for each year following the base period, is to be determined in accordance with the formula set out in regulation 4 (3). Other fees are then expressed as a percentage of the senior hourly rate of remuneration.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 14 July 1994.

These regulations are administered in the Crown Law Office.