



## **Court of Appeal (Civil) Amendment Rules 2010**

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 1st day of November 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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## Rules

### 1 Title

These rules are the Court of Appeal (Civil) Amendment Rules 2010.

### 2 Commencement

These rules come into force on 1 January 2011.

### 3 Principal rules amended

These rules amend the Court of Appeal (Civil) Rules 2005.

### 4 New heading and rules 26A and 26B inserted

The following heading and rules are inserted after rule 26:

*“Abandonment of applications for leave*

#### “26A Abandonment of applications for leave

“(1) An applicant for leave to appeal may, at any time, abandon an application by filing in the Registry a notice advising that the applicant—

“(a) does not intend to pursue the application further; and

“(b) abandons any right to prosecute the application and the proposed appeal.

“(2) The notice must be signed by—

“(a) the applicant personally; or

“(b) the applicant’s solicitor or counsel.

“(3) The abandonment of an application does not affect the power of the Court or a Judge to make any order as to costs in respect of the application.

#### “26B Effect of failing to pay fees of Court

“(1) This rule applies when the Registrar or a Judge determines that the fee payable on filing an application for leave to appeal is not to be waived and the applicant for leave to appeal then fails to comply with regulation 7(2)(a) of the Court of Appeal Fees Regulations 2001.

“(2) When this rule applies, the application for leave to appeal is to be treated as abandoned on the expiry of 2 months from the later of the date of the determination of—

- “(a) the Registrar, under regulation 5 of the Court of Appeal Fees Regulations 2001; or
- “(b) the Judge, under section 100B of the Judicature Act 1908, in circumstances where the applicant for leave to appeal exercised the right to review the Registrar’s decision.
- “(3) A Judge, on application made within 20 working days of the date on which the application for leave to appeal was treated as abandoned under subclause (2), may, if the interests of justice so require, reinstate the application for leave to appeal, but only if the fee has been paid before the application under this subclause is made.
- “(4) This rule is subject to section 100B of the Judicature Act 1908 but overrides rules 5(2) and 6.”

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **Explanatory note**

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

*New rule 26A* fills a gap. There is presently no rule governing the abandonment of an application for leave to appeal in a civil case.

Often, an application for leave to appeal is filed along with an application for waiver of the fee. *New rule 26B* provides that if the Registrar or a Judge declines to waive the fee, and the applicant subsequently takes no action, the application must be treated as abandoned after a further 20 working days have elapsed.

These rules come into force on 1 January 2011.

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**Court of Appeal (Civil) Amendment  
Rules 2010**

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Date of notification in *Gazette*: 4 November 2010.  
These rules are administered by the Ministry of Justice.

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