

Version  
as at 23 June 2022



## Court of Appeal (Criminal) Rules 2001 (SR 2001/371)

Silvia Cartwright, Governor-General

### Order in Council

At Wellington this 3rd day of December 2001

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 51C of the Judicature Act 1908, section 409 of the Crimes Act 1961, and section 73 of the Bail Act 2000, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and, as far as the rules regulate the practice and procedure of the Court of Appeal in the exercise of jurisdiction conferred by the Judicature Act 1908 and the Crimes Act 1961, with the concurrence of the Right Honourable the Chief Justice and at least 2 of the 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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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**These rules are administered by the Ministry of Justice.**

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## Rules

### 1 Title

These rules are the Court of Appeal (Criminal) Rules 2001.

## Part 1

### Preliminary provisions

### 2 Commencement

These rules come into force on 10 December 2001.

### 3 Interpretation

(1) In these rules, unless the context otherwise requires,—

**Act** means the Criminal Procedure Act 2011

**appeal on the papers** means an appeal to be disposed of under section 329(1) of the Act by way of a hearing on the papers

**appellant** includes an applicant for leave to appeal

**bail appeal** means an appeal under section 47 or 52 of the Bail Act 2000 that relates to a decision on bail made by a High Court Judge

**chief executive** means the chief executive of the Department of Corrections

**court** means the Court of Appeal

**electronic address** includes an email or a fax address

**extended supervision order appeal** means an appeal under section 107R of the Parole Act 2002 against a decision or order made by a sentencing court under section 107I, section 107IAC, section 107M, or section 107RA of that Act

**general appeal**—

- (a) means—
  - (i) an appeal under section 229 of the Act against conviction; or
  - (ii) an appeal under section 244 of the Act against sentence; or
  - (iii) an appeal under both sections 229 and 244 of the Act; or
  - (iv) an appeal under section 260 of the Act against a finding of criminal contempt, or a sentence for criminal contempt, or both; but
- (b) does not include an extended supervision order appeal

**oral appeal** means—

- (a) an appeal to be disposed of under section 329(1) of the Act by way of a hearing involving oral submissions; or
- (b) a bail appeal
- (c) *[Revoked]*
- (d) *[Revoked]*

**prosecutor** means,—

- (a) in the case of an extended supervision order appeal, the chief executive; or
- (b) in the case of any other appeal or an application for leave to appeal, the Solicitor-General or a prosecutor

**prosecutor appeal** means an appeal by a prosecutor, whether made under Part 6 of the Act or any other Act (except the Parole Act 2002)

**Registrar** means the Registrar of the Court of Appeal, and includes any Deputy Registrar of that court

**Registry** means the registry of the court

**respondent** includes an intended respondent

**trial court** means a District Court or the High Court, as the case may require

**Trial Judge** includes a sentencing Judge

**victim**, in relation to an extended supervision order appeal, has the meaning given to it by section 4(1) of the Parole Act 2002

**working day** means a day that is not—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, or Waitangi Day; or
- (ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; or
- (b) a day in the period commencing on 25 December in one year and ending on 15 January in the next year.

- (2) In any judgment, order, direction, or other document forming part of any proceeding, unless the context otherwise requires, **working day** has the meaning given by subclause (1).

Compare: SR 1997/168 r 2

Rule 3(1) **Act**: replaced, on 1 July 2013, by rule 4(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **appeal on the papers**: amended, on 1 July 2013, by rule 4(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **appellant**: replaced, on 1 July 2013, by rule 4(3) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **application for leave to appeal**: revoked, on 1 July 2013, by rule 4(4) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **bail appeal**: amended, on 1 July 2013, by rule 4(5) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **chief executive**: inserted, on 1 May 2005, by rule 3(1) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 3(1) **electronic address**: inserted, on 1 July 2013, by rule 4(6) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **exhibit**: revoked, on 1 July 2013, by rule 4(7) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **extended supervision order appeal**: inserted, on 1 May 2005, by rule 3(2) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 3(1) **extended supervision order appeal**: amended, on 12 December 2014, by section 32(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Rule 3(1) **general appeal**: substituted, on 1 May 2005, by rule 3(3) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 3(1) **general appeal** paragraph (a): replaced, on 1 July 2013, by rule 4(8) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **oral appeal** paragraph (a): amended, on 1 July 2013, by rule 4(9)(a) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **oral appeal** paragraph (b): amended, on 1 July 2013, by rule 4(9)(b) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **oral appeal** paragraph (c): revoked, on 1 July 2013, by rule 4(9)(c) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **oral appeal** paragraph (d): revoked, on 1 July 2013, by rule 4(9)(c) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **prosecutor**: substituted, on 1 May 2005, by rule 3(4) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 3(1) **prosecutor appeal**: substituted, on 17 April 2008, by rule 4 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 3(1) **prosecutor appeal**: amended, on 1 July 2013, by rule 4(10) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **Registrar**: replaced, on 1 July 2013, by rule 4(11) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **Registry**: inserted, on 7 August 2006, by rule 4 of the Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182).

Rule 3(1) **respondent**: inserted, on 1 July 2013, by rule 4(12) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **summary proceedings appeal**: revoked, on 1 July 2013, by rule 4(13) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 3(1) **victim**: added, on 1 May 2005, by rule 3(6) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 3(1) **working day**: added, on 1 May 2005, by rule 3(6) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 3(1) **working day** paragraph (a): amended, on 23 June 2022, by rule 6 of the Court Rules (Te Kāhui o Matariki Public Holiday) Amendment Rules 2022 (SL 2022/154).

Section 3(1) **working day** paragraph (ab): inserted, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 3(2): added, on 1 May 2005, by rule 3(7) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

#### 4 Application of rules

- (1) These rules apply to—
  - (a) applications for leave to appeal to which Part 6 of the Act applies; and
  - (b) prosecutor appeals; and
  - (c) general appeals; and
  - (d) bail appeals; and
  - (e) *[Revoked]*
  - (f) extended supervision order appeals.
- (2) These rules also apply to steps that are incidental to appeals referred to in subclause (1) (including applications made to the court for leave to appeal in relation to those appeals).
- (3) On its own initiative or on the application of a party, the court or a Judge of the court may direct, authorise, or accept a departure from these rules for reasons of urgency or for any other reason.

Rule 4(1)(a): amended, on 1 July 2013, by rule 5(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 4(1)(e): revoked, on 1 July 2013, by rule 5(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 4(1)(f): added, on 1 May 2005, by rule 4(1) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 4(3): amended, on 1 May 2005, by rule 4(2) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

#### 5 Forms

The forms set out in the Schedule, or forms to the same effect, must be used in all appropriate cases.

Compare: SR 1997/168 r 3

#### 5A Submissions

Any submissions filed under these rules must—

- (a) be in type of not less than 12 point size; and
- (b) be on A4 paper; and
- (c) use 1.5 line spacing; and
- (d) not exceed any page limit specified in these rules or by a Judge.

Rule 5A: inserted, on 17 April 2008, by rule 5 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

### **5AA Heading in te reo Māori**

The heading of each document filed in the Registry must include the words “I te Kōti Pira o Aotearoa”.

Rule 5AA: inserted, on 20 May 2021, by rule 5 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

## **Part 2 Procedure**

### *Applications for leave to appeal*

Heading: inserted, on 17 April 2008, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

### **5B Forms of application for leave to appeal**

- (1) An application for leave to appeal (other than by a prosecutor) to which Part 6 of the Act applies must be made by notice of application for leave to appeal in—
  - (a) form 2, if the application for leave to appeal is for a second appeal against conviction, sentence, or contempt of court; or
  - (b) form 1, in any other case.
- (2) An application for leave to appeal by a prosecutor must be made by notice of application for leave to appeal in form 3.

Rule 5B: replaced, on 1 July 2013, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### **5C Reply memorandum**

- (1) A respondent who is served with a notice of application for leave to appeal must, within 5 working days of service of that notice, file and serve on the applicant a reply memorandum.
- (2) The respondent’s reply memorandum must state—
  - (a) whether the respondent consents to, opposes, or does not oppose the application, and (if applicable) the reasons for opposing it; and
  - (b) whether, if the respondent opposes the application, the respondent considers the application should be heard separately from, or simultaneously with, the proposed appeal, and the reasons for that view.



Rule 5C: inserted, on 17 April 2008, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 5C(1): amended, on 1 July 2013, by rule 7(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 5C(2): replaced, on 1 July 2013, by rule 7(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **5D Case management of application for leave to appeal**

- (1) As soon as the reply memorandum is filed or the time for filing the reply memorandum has passed, the Registrar must refer the application for leave to appeal to a Judge for case management.
- (2) The Judge may determine—
  - (a) that leave to appeal be determined by the court separately from the proposed appeal; or
  - (b) that leave to appeal be determined by the court simultaneously with the appeal.
- (3) The Judge need not give reasons for the determination under subclause (2).
- (4) If rules 21 to 25 apply to the proposed appeal, the Judge may, when making a determination under subclause (2) or following that determination, make the initial decision on the mode of hearing in terms of rule 23(1).

Rule 5D: inserted, on 17 April 2008, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

#### **5E No need for notice of appeal if appeal to be heard**

- (1) This rule applies where—
  - (a) following a determination under rule 5D(2)(a), the court gives leave to appeal; or
  - (b) a Judge determines, under rule 5D(2)(b), that leave to appeal be determined by the court simultaneously with the appeal.
- (2) The applicant need not file a notice of appeal.
- (3) If the appeal is to be an oral appeal, the Registrar must allocate a fixture for it in accordance with rule 26 and the appeal proceeds in accordance with the provisions relating to oral appeals.
- (4) If the appeal is to be an appeal on the papers, the appeal proceeds in accordance with the provisions relating to appeals on the papers.

Rule 5E: inserted, on 17 April 2008, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

#### **5F Procedure where leave to appeal is to be heard on papers, separately from proposed appeal**

- (1) This rule applies where an application for leave to appeal is to be heard on the papers and separately from the proposed appeal.

- (2) The provisions of these rules relating to appeals and applications that are heard on the papers apply with any necessary modifications.
- (3) If the court decides to give leave to appeal, the court or a Judge must, when leave is given or subsequently, decide whether the appeal is to be heard as an oral appeal or as an appeal on the papers.

Rule 5F: inserted, on 17 April 2008, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

### **5G Procedure where leave to appeal is to be heard orally, separately from proposed appeal**

- (1) This rule applies where an application for leave to appeal is to be heard orally and separately from the proposed appeal.
- (2) The provisions of these rules relating to appeals and applications to be heard orally apply with any necessary modifications.
- (3) Despite rule 27, each party's written submissions must not exceed 5 pages, unless a Judge permits longer submissions.
- (4) Despite rule 27, the applicant must provide his or her written submissions to the court and to the respondent no less than 10 working days before the hearing date.
- (5) Despite rule 27, the respondent must provide his or her written submissions to the court and to the applicant no less than 5 working days before the hearing date.
- (6) Oral submissions made at the hearing of an application for leave to appeal may not exceed—
  - (a) 15 minutes, in the case of the applicant's opening submission;
  - (b) 15 minutes, in the case of the respondent's submission;
  - (c) 5 minutes, in the case of the applicant's submission in reply.
- (7) Subclause (6) is subject to any contrary direction given in a particular case by a Judge.

Rule 5G: inserted, on 17 April 2008, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

### **5H Submissions where leave to appeal is determined simultaneously with appeal**

When an application for leave to appeal is to be determined by the court simultaneously with the appeal, the parties must, in their written submissions on the merits of the appeal, also address the question whether leave to appeal should be granted.

Rule 5H: inserted, on 17 April 2008, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

## **5I Reasons for decision to grant or refuse leave**

If the court is required to give reasons under section 340 of the Act for its determination of an application for leave to appeal, those reasons may be stated briefly and in general terms.

Rule 5I: replaced, on 1 July 2013, by rule 8 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### *Institution of appeal*

## **6 Form of notice of appeal**

- (1) *[Revoked]*
- (2) A prosecutor appeal must be made by notice of appeal in form 4.
- (3) A general appeal must be made by notice of appeal in form 5.
- (4) A bail appeal (other than by a prosecutor) must be made by notice of appeal in form 6.
- (5) *[Revoked]*
- (6) *[Revoked]*
- (7) An extended supervision order appeal must,—
  - (a) if made by the chief executive, be made in form 4 (which applies with all necessary modifications); or
  - (b) if made by the offender to whom the extended supervision order relates, be made in form 7.

Compare: SR 1997/168 r 4

Rule 6 heading: amended, on 17 April 2008, by rule 7(1) of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 6(1): revoked, on 17 April 2008, by rule 7(2) of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 6(2): amended, on 1 July 2013, by rule 9(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 6(2): amended, on 17 April 2008, by rule 7(3) of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 6(3): amended, on 1 July 2013, by rule 9(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 6(4): amended, on 1 July 2013, by rule 9(3) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 6(5): revoked, on 1 July 2013, by rule 9(4) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 6(6): revoked, on 17 April 2008, by rule 7(4) of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 6(7): added, on 1 May 2005, by rule 5 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 6(7)(a): amended, on 1 July 2013, by rule 9(5) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 6(7)(b): amended, on 1 July 2013, by rule 9(6) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## **7 Other applications may be included in notice of appeal or of application for leave to appeal**

A notice of appeal or notice of application for leave to appeal may include either or both of the following:

- (a) an application for leave to call a witness:
- (b) an application for leave to be present.

Compare: SR 1997/168 r 6

Rule 7: amended, on 1 July 2013, by rule 10 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## **8 Persons required or authorised to sign notices and other documents**

- (1) The appellant or the appellant's lawyer must sign a notice of appeal, a notice of application for leave to appeal, or an interlocutory application unless—
  - (a) the notice is required to be marked and signed in accordance with subclause (2); and
  - (b) another person signs the notice under any of subclauses (3) to (5).
- (1A) If the appellant's lawyer signs the notice under subclause (1), they must also—
  - (a) certify that personal execution by the appellant is presently impracticable; and
  - (b) certify that the notice has been read by, or to, and approved by the appellant; and
  - (c) undertake that an original notice signed by the appellant will be filed as soon as practicable and prior to any fixture being allocated.
- (2) An appellant who is unable to write must affix his or her mark on the notice in the presence of a witness who must also sign the notice.
- (3) A notice required to be signed by an appellant who contends that the appellant was not responsible for his or her actions on the ground that he or she was insane at the relevant time may be signed by the appellant's lawyer or by any other person authorised to act on the appellant's behalf.
- (4) A notice or other document required to be signed by an appellant that is a body corporate may be signed on its behalf by a duly authorised agent of the body corporate.
- (5) A notice or other document required to be signed by—
  - (a) the Solicitor-General may be signed on his or her behalf by Crown Counsel; or
  - (b) the chief executive may be signed on his or her behalf by the chief executive's delegate.

Compare: SR 1997/168 r 7

Rule 8(1): replaced, on 20 May 2021, by rule 4 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Rule 8(1A): inserted, on 20 May 2021, by rule 4 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Rule 8(3): amended, on 1 July 2013, by rule 11 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 8(5): substituted, on 1 May 2005, by rule 7 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

## **9 Notice of application for leave to appeal is sufficient notice of appeal**

*[Revoked]*

Rule 9: revoked, on 17 April 2008, by rule 9 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

## **10 Mode of bringing appeal and effecting service**

- (1) A person appeals by filing in the Registry a notice of appeal or a notice of application for leave to appeal (as the case requires).
- (2) An appeal is brought, or an application for leave to appeal is made, when the notice of appeal or the notice of application for leave to appeal, as the case may be, is received in the Registry.
- (3) The Registrar is responsible for effecting service of notices of appeal and notices of application for leave to appeal.

Rule 10(1): amended, on 7 August 2006, by rule 5 of the Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182).

Rule 10(2): amended, on 7 August 2006, by rule 5 of the Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182).

## **11 Application for extension of time**

An appellant who seeks an extension of time within which to appeal, or to apply for leave to appeal, may include an application for an extension of time within his or her notice of appeal, or his or her notice of application for leave to appeal, by completing the relevant part of the form.

Compare: SR 1997/168 r 16

## **12 Form must be treated as application for extension of time if notice given out of time**

A notice (other than for a bail appeal) that is given out of time must be treated as if it contains an application for extension of time.

Compare: SR 1997/168 r 17

Rule 12: amended, on 1 July 2013, by rule 12 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**12A Complaint against trial lawyer**

- (1) If a ground of appeal is that there was a miscarriage of justice because of the conduct of the appellant's lawyer at the trial or sentencing (**trial lawyer**), particulars of the conduct concerned must be given in—
  - (a) the notice of appeal; or
  - (b) a memorandum to be filed and served by the appellant within 30 working days after filing the notice of appeal.
- (2) The appellant must, within 30 working days after filing the notice of appeal, file and serve on the prosecutor any affidavits that relate to the ground of appeal.
- (3) The prosecutor must file and serve any affidavit in reply within 15 working days after the service of the appellant's affidavit.
- (4) A party who wishes to cross-examine a deponent who has sworn an affidavit on behalf of the other party must, within 15 working days after service of the affidavit, file and serve on the other party a notice of cross-examination specifying the deponent the party wishes to cross-examine.
- (5) A party on whom a notice is served under subclause (4) must—
  - (a) immediately advise the deponent that he or she is required for cross-examination; and
  - (b) advise the deponent of the hearing date of the appeal as soon as it is known; and
  - (c) ensure that the deponent is present at the hearing for cross-examination.
- (6) If the appellant wishes to waive privilege under section 65 of the Evidence Act 2006 in respect of communications between the appellant and trial lawyer, the appellant must, within 30 working days after filing the notice of appeal, provide to the prosecutor a written waiver of privilege in respect of all communications of that kind.

Rule 12A: substituted, on 1 September 2010, by rule 4 of the Court of Appeal (Criminal) Amendment Rules 2010 (SR 2010/214).

Rule 12A heading: amended, on 1 July 2013, by rule 13(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 12A(1): amended, on 1 July 2013, by rule 13(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 12A(6): amended, on 1 July 2013, by rule 13(3) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**12B Fresh evidence**

- (1) If a ground of appeal is that there was a miscarriage of justice because further evidence has become available since the trial, particulars of the further evidence must be set out in—
  - (a) the notice of appeal; or

- (b) a memorandum to be filed and served by the appellant within 30 working days of filing the notice of appeal.
- (2) The appellant must, within 30 working days of filing the notice of appeal, file and serve on the prosecutor any affidavits that relate to the ground of appeal.
- (3) The affidavits must—
  - (a) set out the further evidence; and
  - (b) explain why the further evidence was not available at the trial and why it could not, with reasonable diligence, have been called.
- (4) The prosecutor must file and serve any affidavit in reply within 15 working days after service of the appellant’s affidavit.
- (5) *[Revoked]*
- (6) *[Revoked]*

Rule 12B: inserted, on 1 May 2005, by rule 9 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 12B(5): revoked, on 17 April 2008, by rule 11 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 12B(6): revoked, on 17 April 2008, by rule 11 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

### **12BA Deponent may be required to give evidence orally**

- (1) This rule applies if, in an appeal based on a ground described in rule 12A or 12B, an affidavit is filed on behalf of a party (**party A**) and served on the other party (**party B**).
- (2) If party B requires the deponent who has sworn the affidavit to give his or her evidence orally, party B must, within 15 working days of service of the affidavit, file and serve on party A a notice (an **oral evidence notice**) stating that requirement.
- (3) If party B consents to the deponent giving his or her evidence in chief by the affidavit but requires the deponent to be cross-examined, party B must, within 15 working days of service of the affidavit, file and serve on party A a notice (a **cross-examination notice**) stating that requirement.
- (4) If party A is served with an oral evidence notice or a cross-examination notice, party A must—
  - (a) immediately advise the deponent that he or she is required to give his or her evidence orally or be available for cross-examination (as the case may be); and
  - (b) advise the deponent of the hearing date of the appeal as soon as it is known; and
  - (c) ensure that the deponent is present at the hearing.

- (5) If party B does not serve an oral evidence notice with respect to the affidavit, party A may assume that party B consents to the deponent giving his or her evidence by the affidavit.

Rule 12BA: inserted, on 17 April 2008, by rule 12 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

### **12C Disparity of sentences**

If a ground of appeal is that the sentence imposed on the appellant was not appropriate because of disparity with a sentence imposed on a co-offender, that ground of appeal must be stated in the notice of appeal.

Rule 12C: inserted, on 1 May 2005, by rule 9 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

### **12D References to notice of appeal include references to notice of application for leave to appeal**

The references to a notice of appeal in rules 12A, 12B, and 12C include references to a notice of application for leave to appeal if leave is sought for a second appeal under 1 or more of the following sections of the Act:

- (a) section 237(1):
- (b) section 253(1):
- (c) section 253(2).

Rule 12D: inserted, on 1 July 2013, by rule 14 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## *Preparation for hearing*

### **13 Documents required for general appeals**

- (1) On receiving a notice of appeal for a general appeal, the Registrar must obtain for the use of the court the documents required by section 323(2) of the Act, namely, all documents, exhibits, and other things that appear necessary for the proper determination of the appeal.
- (1A) The documents obtained under subclause (1) form the preliminary case on appeal for the use of the court and must be given to—
- (a) the court or Judge determining the mode of hearing; and
  - (b) the parties to the appeal; and
  - (c) the Legal Services Commissioner, on request by the Commissioner.
- (2) If a notice of appeal states in accordance with rule 12C that a ground of appeal is disparity of sentence, the Registrar must obtain, for the use of the court, documents relevant to the sentence imposed on the appellant's co-offender, including—
- (a) the statement of facts or evidence on which the sentence imposed on the appellant's co-offender was based:



- (b) information submitted to the Judge under section 21 of the Victims' Rights Act 2002 for the sentencing of the appellant's co-offender:
  - (c) the pre-sentence report relating to the appellant's co-offender (including the co-offender's record of convictions):
  - (d) the Judge's sentencing remarks with respect to the appellant's co-offender.
- (3) The Registrar must include the material specified in subclause (4) in the preliminary case on appeal or, if the preliminary case on appeal has been prepared, in a supplementary case on appeal.
- (4) The material is—
- (a) material filed under rule 12A or 12B; or
  - (b) material obtained under subclause (2)(a), (c), and (d) (but not material obtained under subclause (2)(b)).
- (5) The preliminary case on appeal, together with any supplementary case on appeal, constitutes the final case on appeal for a general appeal.
- (6) The parties' lawyers must ensure that all material relevant to the appeal has been included in the final case on appeal.

Compare: SR 1997/168 r 8

Rule 13(1): replaced, on 1 July 2013, by rule 15(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 13(1A): inserted, on 1 July 2013, by rule 15(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 13(2): substituted, on 1 May 2005, by rule 10 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 13(3): added, on 1 May 2005, by rule 10 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 13(4): added, on 1 May 2005, by rule 10 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 13(5): added, on 1 May 2005, by rule 10 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 13(6): added, on 1 May 2005, by rule 10 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 13(6): amended, on 1 July 2013, by rule 15(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **14 Documents required for other appeals**

On receiving a notice of appeal (other than for a general appeal) or notice of application for leave to appeal, the Registrar must obtain for the use of the court the material relevant to the decision or ruling under appeal.

Rule 14: replaced, on 1 July 2013, by rule 16 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**15 Documents required for extension of time**

On receiving an application for extension of time under rule 11 or a form having that effect under rule 12, the Registrar must comply with rule 13 (in the case of a general appeal) or rule 14 (in the case of any other appeal or application for leave to appeal), and the relevant rule applies with the necessary modifications.

Compare: SR 1997/168 r 18

Rule 15: amended, on 1 July 2013, by rule 17 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**16 Trial court may direct delivery of documents, etc**

- (1) A Judge of the trial court may direct that a document, exhibit, or other thing be delivered out of the trial court to any person the Judge considers entitled to delivery, and the Judge may make delivery subject to any conditions he or she thinks fit.
- (2) However, subclause (1) does not apply to property that could be made subject to an order under section 377 of the Act (which relates to orders for the restitution of property).

Compare: SR 1997/168 r 9

Rule 16(2): amended, on 1 July 2013, by rule 18 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**17 Court of Appeal may request trial court to provide report**

- (1) In any proceeding to which Part 6 of the Act applies, the Registrar must, if the Court of Appeal or a Judge of the Court of Appeal so directs, request the Judge of the trial court to provide the Court of Appeal with a report in writing setting out his or her opinion about the case generally or about any particular point arising in the proceeding.
- (2) The Registrar must disclose the report—
  - (a) to any party who requests a copy of it unless the Court of Appeal otherwise directs; and
  - (b) to any other person on the direction of the Court of Appeal.
- (3) To enable a Judge to prepare the report, the Registrar must provide the Judge with any document concerning the proceeding and in the Registrar's possession if the Judge requests the document or the Court of Appeal or a Judge of the court directs the Registrar to provide the document.

Compare: SR 1997/168 r 12

Rule 17(1): amended, on 1 July 2013, by rule 19 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**18 Examination of witnesses otherwise than before court**

- (1) If the court orders the examination of witnesses to be conducted otherwise than before the court, the examination must, subject to any special directions the

court may give, be conducted so far as is practicable in the same manner as the examination of witnesses by an examiner under rule 9.20 of the High Court Rules 2016.

- (2) The parties or their lawyers are entitled to be present at, and take part in, the examination of any witness.

Compare: SR 1997/168 r 25

Rule 18(1): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 18(1): amended, on 1 July 2013, by rule 20(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 18(2): amended, on 1 July 2013, by rule 20(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## 19 Registrar may issue witness subpoenas

The Registrar may issue a writ of subpoena in the name of the court if the court makes an order under section 335(2)(a) or (b) of the Act to secure the attendance of a person as a witness either before—

- (a) the court; or
- (b) any officer of the court or any District Court Judge or any other person appointed by the court for the purpose.

Compare: SR 1997/168 r 26

Rule 19: amended, on 1 July 2013, by rule 21 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## 20 Authorities bundles

- (1) In this rule, **authorities bundle** means a bundle of authorities and legislation on which a party relies.
- (2) This rule applies whenever written submissions are filed, whether for the purpose of an appeal on the papers or of an oral appeal.
- (3) At the time a party provides his or her submissions to the court, he or she must also provide to the court,—
  - (a) if the appeal is to be heard by 3 Judges, 4 copies of an authorities bundle for court use;
  - (b) if the appeal is to be heard by 5 Judges, 6 copies of an authorities bundle for court use;
  - (c) if the appeal is to be heard on the papers, sufficient additional copies of an authorities bundle so that the Registrar can provide 1 copy for each other party.
- (4) An authorities bundle must contain—
  - (a) only cases to which a party’s lawyer intends to refer the court and to rely on for more than a general principle; and

(b) as its first page, a list of the authorities, including their citations.

Compare: Practice Note — Criminal Appeals [1997] 3 NZLR 513

Rule 20(4)(a): amended, on 1 July 2013, by rule 22 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### *Mode of hearing*

## **21 Application of mode of hearing provisions and appeals on papers provisions**

Rules 22 to 25 (mode of hearing) and rules 29 to 32 (appeals on the papers) apply to all appeals except bail appeals.

Rule 21: amended, on 1 July 2013, by rule 23 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## **22 Submissions on mode of hearing**

A party's initial submissions on the mode of hearing must be set out in the notice of appeal or notice of application for leave to appeal.

Rule 22: amended, on 17 April 2008, by rule 14 of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

## **23 Procedure to determine mode of hearing**

- (1) The initial decision on the mode of hearing of an appeal must be made by the court or Judge in accordance with section 329 of the Act (which enables the court or Judge to have regard to the criteria set out in section 329(2) of the Act).
- (2) The court may, at any time, either on its own initiative or on the application of any party, change the mode of hearing of a particular appeal to an oral hearing in accordance with section 329 of the Act.

Rule 23: replaced, on 1 July 2013, by rule 24 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## **24 Decision on mode of hearing**

The Registrar must notify the parties of a decision to deal with an appeal just on the basis of written material and the reasons for the decision (as required by section 329(5) of the Act).

Rule 24: replaced, on 1 July 2013, by rule 25 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

## **25 Further mode of hearing submissions**

If a party to an appeal wishes the court to reconsider a decision under section 329 of the Act on the mode of hearing, the party may include further submissions on this matter in written submissions on the merits under rule 29.

Rule 25: amended, on 1 July 2013, by rule 26 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

*Oral appeals*

**26 Registrar to give parties notice of fixture for oral appeals**

- (1) This rule applies to oral appeals.
- (2) The Registrar must allocate a fixture for every oral appeal.
- (3) Notice of the time and place fixed for the hearing must be given by the Registrar to—
  - (a) the appellant; and
  - (b) the respondent; and
  - (c) if the appellant or the respondent is in custody and the court has granted the appellant or the respondent leave to be present at the hearing, the chief executive.

Compare: SR 1997/168 rr 10, 13

Rule 26(3): replaced, on 1 July 2013, by rule 27 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**27 Timing of submissions on merits**

- (1) This rule applies to oral appeals.
- (2) The appellant must provide full written submissions on the appeal.
- (3) The appellant must provide his or her written submissions to the court and to the respondent no less than 15 working days before the hearing date.
- (4) The respondent must provide his or her written submissions to the court and to the appellant no less than 10 working days before the hearing date.
- (4A) In the case of an extended supervision order appeal to which this rule applies, a victim who wishes to make written submissions to the court must provide them to the court no less than 15 working days before the hearing date.
- (4B) If the victim also wishes to appear and make oral submissions at the hearing, he or she must, in accordance with subclause (4C), apply for the court's leave to appear and make oral submissions.
- (4C) The victim must apply for the court's leave in a separate letter that—
  - (a) is provided to the court at the same time as the written submissions referred to in subclause (4A); and
  - (b) sets out the reasons why the court should give leave.
- (4D) The Registrar must serve on the prosecutor and the offender to whom the appeal relates a copy of—
  - (a) the written submissions referred to in subclause (4A); and
  - (b) the letter referred to in subclause (4C).
- (4E) Subclause (4D) is subject to section 107W of the Parole Act 2002 and, accordingly, the Registrar must delete any information that discloses the current

address or contact details of the victim from the copy of any documents to be served on the offender under that subclause.

- (5) If the appeal is to be heard by 3 Judges, 4 copies of the submissions must be provided for court use.
- (6) If the appeal is to be heard by 5 Judges, 6 copies of the submissions must be provided for court use.

Rule 27(3): amended, on 1 May 2005, by rule 12(1) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 27(4): amended, on 1 May 2005, by rule 12(2) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 27(4A): inserted, on 1 May 2005, by rule 12(3) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 27(4B): inserted, on 1 May 2005, by rule 12(3) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 27(4C): inserted, on 1 May 2005, by rule 12(3) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 27(4D): inserted, on 1 May 2005, by rule 12(3) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 27(4E): inserted, on 1 May 2005, by rule 12(3) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

## 28 Right of reply at oral hearing

A party who wishes to exercise the right of reply in an appeal that is to be heard as an oral appeal must exercise that right orally at the hearing.

Rule 28: amended, on 1 July 2013, by rule 28 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### *Appeals on papers*

## 29 Period allowed for making written submissions on merits

- (1) This rule applies to appeals on the papers.
- (2) In this rule, **appointed period** means a period appointed under subclause (4) and, when used in subclause (9), includes a period appointed under subclause (7)(a).
- (3) For the purposes of this rule,—
  - (a) the time allowed for making submissions begins to run on the date on which the appellant or respondent receives the relevant notice or material:
  - (b) if sent by mail or electronically, the notice or material must be treated as having been received 3 days after the date on which it is sent to that party's last known postal address or electronic address.
- (4) The Registrar must appoint a period of no less than 20 working days within which submissions may be made—

- (a) by the appellant in support of the appeal (including further written submissions about the court's decision on the mode of hearing); and
  - (b) in the case of an extended supervision order appeal, by the victim.
- (5) Notice of the appointed period must be given by the Registrar to—
  - (a) the appellant; and
  - (b) the respondent.
- (6) The Registrar must send to the respondent a copy of all written submissions received by the court from the appellant and, if applicable, from the victim, within the appointed period, and the respondent may make written submissions within—
  - (a) 10 working days if the respondent is the Solicitor-General or the chief executive; or
  - (b) 20 working days in the case of any other respondent.
- (6A) Subclause (6) is subject to section 107W of the Parole Act 2002 in so far as it relates to written submissions from the victim and, accordingly, the Registrar must delete any information that discloses the current address or contact details of the victim from the copy of those submissions to be served on the respondent under that subclause if the respondent is the offender.
- (7) A copy of all written submissions received by the court from the respondent within the applicable period stated in subclause (6) must be sent by the Registrar to the appellant, and—
  - (a) the appellant may make written submissions in reply within a period of no less than 10 working days appointed by the Registrar; and
  - (b) the Registrar must send the respondent a copy of the appellant's submissions in reply.
- (8) Each party must file in the court—
  - (a) 4 copies of that party's submissions for court use; and
  - (b) sufficient additional copies so that the Registrar can provide 1 copy for each other party.
- (9) *[Revoked]*

Rule 29(3)(b): amended, on 1 July 2013, by rule 29(a) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 29(3)(b): amended, on 1 July 2013, by rule 29(b) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 29(4): substituted, on 1 May 2005, by rule 13(1) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 29(6): substituted, on 1 May 2005, by rule 13(2) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 29(6A): inserted, on 1 May 2005, by rule 13(2) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 29(7)(a): amended, on 1 May 2005, by rule 13(3) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 29(9): revoked, on 1 May 2005, by rule 13(4) of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

### **30 Timing of appeal on papers**

The court must not begin hearing an appeal on the papers until all the periods prescribed or directed under rule 29 have expired.

### **31 Panel for hearing on papers**

A hearing of an appeal on the papers under section 331 of the Act must be conducted by 3 Judges and may take the form of each Judge separately considering the relevant materials (including any written submissions) before the Judges arrive at their decision.

Rule 31: amended, on 1 July 2013, by rule 30 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### **32 Change of mode of hearing**

- (1) If the court, having considered any further submissions on the mode of hearing under rules 25 and 29(4), decides to change the mode of hearing, it must give its decision in accordance with section 329(5) of the Act.
- (2) If the court orders a hearing involving oral submissions,—
  - (a) the Registrar must allocate a fixture; and
  - (b) notice of the time and place fixed for the hearing of the appeal or application must be given in accordance with rule 26(3).
- (3) The submissions already filed constitute the written submissions for the hearing unless the court otherwise directs.
- (4) If the court, having considered any further submissions on the mode of hearing under rules 25 and 29(4), decides not to change the mode of hearing, it may give its decision on that matter at the same time as it gives its decision on the merits of the appeal or application.

Rule 32(1): amended, on 1 July 2013, by rule 31 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### *Solicitor-General's references*

Heading: inserted, on 1 July 2013, by rule 32 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### **32A Solicitor-General's references**

- (1) An application by the Solicitor-General for leave to refer a question of law to the Court of Appeal under subpart 11 of Part 6 of the Act must be made by notice of application for leave in form 8.
- (2) An application for leave under subclause (1) must be accompanied by an explanatory memorandum.



- (3) The court may determine an application for leave under subclause (1) just on the basis of written material or by way of a hearing involving oral submissions.
- (4) If leave is granted,—
  - (a) the court must appoint counsel to assist the court as required by section 314(4)(a) of the Act; and
  - (b) the court may direct that a notice be given to the defendant in the proceeding to which the reference relates advising that a determination of the reference does not affect anything done in any proceeding to which the reference relates by another court before the date of that determination.

Rule 32A: inserted, on 1 July 2013, by rule 32 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### *Decisions*

#### **33 Delivery of judgments**

- (1) The court may—
  - (a) deliver its judgment orally; or
  - (b) reserve its judgment.
- (2) A judgment that is delivered orally is given when a Judge or Judges deliver it in open court.
- (3) A judgment that is reserved may be delivered—
  - (a) in open court; or
  - (b) through the Registrar.
- (4) If subclause (3)(a) applies,—
  - (a) a Judge who was a member of the court that heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (**delivery time**):
  - (b) as soon as the Registrar is informed of the delivery time, the Registrar must attempt to notify the parties, by telephone or otherwise, of the fact that the court intends to deliver the judgment in open court and of the delivery time:
  - (c) any 2 Judges of the court (whether or not members of the court that heard the appeal) may, at the delivery time, deliver the judgment on behalf of the court:
  - (d) the parties do not need to appear or be represented when the judgment is delivered:
  - (e) the judgment is given when it is delivered in open court.
- (5) If subclause (3)(b) applies,—

- (a) a Judge who was a member of the court that heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (**delivery time**):
  - (b) as soon as the Registrar is informed of the delivery time, the Registrar must attempt to notify the parties, by telephone or otherwise, of the fact that the court intends to deliver the judgment through the Registrar and of the delivery time:
  - (c) the judgment must for all purposes be treated as having been given at the delivery time.
- (6) The Registrar must, if requested to do so by a party,—
- (a) send to the party immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed, a copy of the judgment by post or electronically; or
  - (b) make a copy of the judgment available for collecting from the Registry immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed.
- (7) The Registrar must immediately after the delivery time, or in the case of a judgment delivered orally as soon as practicable after the judgment is transcribed, post or send electronically a copy of the judgment to—
- (a) any party who has given an address for service but who has not made a request under subclause (6); and
  - (b) if appropriate, the Registrar of the trial court; and
  - (c) if appropriate and if the party is in custody, the Custody Manager of the relevant prison and the Department of Corrections.
- (8) A failure by the Registrar to comply with subclause 4(b), 5(b), (6) or (7) does not affect the validity of the judgment or its delivery time.
- (9) A copy of the judgment signed by at least 1 Judge who was a member of the court that heard the appeal must be retained by the Registry.
- (10) This rule does not apply to minutes or procedural orders.

Rule 33: substituted, on 7 August 2006, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182).

Rule 33(6)(a): amended, on 1 July 2013, by rule 33(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 33(7): amended, on 1 July 2013, by rule 33(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### **34 Review of decisions made by Judge**

- (1) Whenever a Judge has exercised a power of the court and a party has the right to have that decision reviewed by the court, the Registrar must, at the same time as giving notice of the decision, inform that party of his or her right to have that decision reviewed by the court.

- (2) An application for review must be in writing and must be made within 10 working days after receipt of notification of the Judge's decision.

Rule 34: substituted, on 7 August 2006, by rule 7 of the Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182).

#### **34A Judges to be identified**

Every judgment, minute, or direction must identify on the face of it the Judge or Judges who made the decision or minute or gave the direction.

Rule 34A: inserted, on 7 August 2006, by rule 8 of the Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182).

### **Part 3 Miscellaneous provisions**

#### **35 Abandonment of appeal**

- (1) An appellant may, at any time, abandon an appeal by filing in the Registry a notice advising that he or she—
- (a) does not intend further to prosecute the appeal; and
  - (b) abandons all further proceedings concerning that appeal.
- (2) The notice must be signed by—
- (a) the appellant personally; or
  - (b) the appellant's lawyer.
- (3) If the notice is signed by the appellant personally, the appellant's signature must be witnessed and the witness must add the witness's address and description after the witness's signature.
- (4) A notice abandoning an appeal may be in form 9.

Compare: SR 1997/168 r 29

Rule 35(1): amended, on 7 August 2006, by rule 9 of the Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182).

Rule 35(2)(b): amended, on 1 July 2013, by rule 34(1) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Rule 35(4): replaced, on 1 July 2013, by rule 34(2) of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **36 Persons to be heard by court before restitution order annulled or varied**

- (1) This rule applies if, on the trial of a person entitled or given leave to appeal under the Act, an order for restitution of property has been made in the High Court.
- (2) Before any order is made by the Court of Appeal under section 352(4) of the Act, the following persons are entitled to be heard before the Court of Appeal:
- (a) the person in whose favour or against whom the order of restitution has been made:

- (b) with the leave of the Court of Appeal, any other person.

Compare: SR 1997/168 r 30

Rule 36(2): amended, on 1 July 2013, by rule 35 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**36A Chief executive must notify victim about extended supervision order appeal**

The chief executive must, in relation to an extended supervision order appeal,—

- (a) notify every victim about any decision of the court on the appeal, including any decision on an application for leave to appear and make oral submissions made by the victim under rule 27(4B); and
- (b) notify every victim about when any submissions to the court on the appeal must be made; and
- (c) notify every victim about the time and place fixed for the hearing of the appeal if the victim’s application for leave to appear and make oral submissions under rule 27(4B) is granted; and
- (d) ensure that copies of any submissions filed by or provided to the chief executive are forwarded to every victim as soon as practicable.

Rule 36A: inserted, on 1 May 2005, by rule 15 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

**37 Payment received under fine must be retained until appeal decided**

- (1) A person who lawfully receives a fine paid by a person sentenced on conviction to payment of a fine must retain the fine until the Registrar of the trial court is notified of the Court of Appeal’s decision on any related appeal.
- (2) An appellant who is in custody in default of payment of a fine must be treated for the purposes of Part 6 of the Act and these rules as a person sentenced to imprisonment.

Compare: SR 1997/168 r 32

Rule 37(2): amended, on 1 July 2013, by rule 36 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**38 Successful appellant entitled to return of amount paid towards fine**

*[Revoked]*

Rule 38: revoked, on 1 July 2013, by rule 37 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

**39 Trial court Judge may give directions concerning order to pay prosecution costs, etc**

A Judge of the trial court may give any directions that he or she considers proper concerning—

- (a) the suspension, pending appeal, of any order made under section 4 of the Costs in Criminal Cases Act 1967; or
- (b) any consequence flowing from a conviction.

Compare: SR 1997/168 r 34

#### **40 Register must be kept**

- (1) The Registrar must keep a register, in any form he or she thinks fit, of all—
  - (a) notices of appeal and notices of application for leave to appeal received by the Registrar; and
  - (b) decisions of the court given in the appeals referred to in those notices.
- (2) The register must be open for public inspection during the court's ordinary office hours.

Compare: SR 1997/168 r 11

#### **41 Mode of giving notice to court**

Notices may be given to the court by serving them by hand or by sending them to the Registrar, at his or her office, by mail or electronically.

Compare: SR 1997/168 r 35

Rule 41: amended, on 1 July 2013, by rule 38 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **42 Mode of giving notice to parties**

A notice may be given to a party—

- (a) at his or her postal address by mail or by any other written or printed means; or
- (b) by sending it to an electronic address supplied by the party.

Compare: SR 1997/168 r 36

Rule 42(b): amended, on 1 July 2013, by rule 39 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **43 Court order may enforce rules**

The performance of any duty imposed on any person under Part 6 of the Act or these rules may be enforced by order of the court.

Compare: SR 1997/168 r 37

Rule 43: amended, on 1 July 2013, by rule 40 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **44 Effect of non-compliance with rules**

- (1) Non-compliance by a party with these rules does not prevent that party from continuing to take part in the appeal if the court considers that the non-compliance was not wilful and that it may be waived or remedied by amendment or otherwise.

- (2) The court may, in any manner that it thinks fit,—
- (a) direct the party to remedy the non-compliance; and
  - (b) if the party was not present in court when the direction was given, direct the Registrar to transmit its direction to the party.

Compare: SR 1997/168 r 38

#### **45 Cases not provided for in rules**

In any matter not expressly provided for by these rules, the court may give any direction that it thinks best calculated to carry out the purposes of Part 6 of the Act or the other relevant Act.

Compare: SR 1997/168 r 39

Rule 45: amended, on 1 July 2013, by rule 41 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **45A Power to extend or shorten time appointed by rules or fixed by order**

- (1) The court or a Judge may extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding on any terms that the court or the Judge thinks just.
- (2) The court or a Judge may exercise a power conferred by subclause (1)—
- (a) whether on application by a party or on the court's or Judge's own initiative; and
  - (b) whether for reasons of urgency or for any other reason; and
  - (c) in the case of an extension of the time referred to in that subclause, whether before or after that time has expired.

Rule 45A: inserted, on 1 May 2005, by rule 16 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

Rule 45A(1): substituted, on 17 April 2008, by rule 15(1) of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 45A(2): amended, on 17 April 2008, by rule 15(2) of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 45A(2)(a): amended, on 17 April 2008, by rule 15(3) of the Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73).

Rule 45A(2)(b): amended, on 1 July 2013, by rule 42 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

#### **45B Correction of accidental slip or omission**

- (1) This rule applies if—
- (a) any judgment or order or the reasons for any judgment or order contain a clerical mistake or an error arising from any accidental slip or omission (whether the mistake, error, slip, or omission was made by an officer of the court or not); or
  - (b) any judgment or order is so drawn up as not to express what was actually decided and intended.

- (2) The court or the Registrar may correct the judgment or order or the reasons for the judgment or order on—
  - (a) the court's or Registrar's own initiative; or
  - (b) an interlocutory application made for that purpose.
- (3) The Registrar may correct the judgment or order or the reasons for the judgment or order in accordance with subclause (2) only if the judgment or order in question was made by the Registrar.

Rule 45B: inserted, on 1 May 2005, by rule 16 of the Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70).

#### **46 Revocation and saving**

- (1) The Court of Appeal (Criminal) Rules 1997 (SR 1997/168) are revoked.
- (2) The revocation of any rule by subclause (1) does not affect the validity of any document made or thing done under that revoked rule.

## Schedule Forms

r 5

Schedule: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

### Form 1

#### Notice of application for leave to appeal

r 5B(1)(b)

*Part 6, Criminal Procedure Act 2011*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[Name] v [R or Police or prosecutor]

Name of applicant:

Decision being appealed:

Date of decision:

Court in which the decision was made (include place):

This application is for leave for a first/second\* appeal.

\*Select one. A second appeal is an appeal from the determination of an appeal by the High Court.

**To** the Registrar of the Court of Appeal

I, [name], the applicant, give you notice that I apply for leave to appeal to the Court of Appeal against the decision described above on the grounds set out below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?
- (b) If so, give his or her name and address and electronic address, if any (such as an email address, or a fax address, or both):
- (c) Have you applied, or do you intend to apply, to the Legal Services Agency for a grant of legal aid?
- 2 If you are currently in a prison, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and electronic address, if any (such as an email address, or a fax address, or both)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
- (b) If so, what are your reasons for seeking leave to be present? (If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.)
- 5 If you have not yet had your trial, when is the trial likely to be?
- 6 Attach the decision against which you wish to appeal (if available).



- 7 You have 20 working days from the date of the decision that you wish to appeal in which to file your notice of application for leave to appeal. The court may extend this time. If your application is out of time, what are your reasons for saying that the court should nevertheless extend the time and consider your application?
- 8 (a) If your application for leave is for a first appeal, why should the court give you leave to appeal?
- (b) If your application for leave is for a second appeal, the court may grant leave only if satisfied that the appeal involves a matter of general or public importance or that a miscarriage of justice may have occurred, or may occur unless the appeal is heard. Why should the court give you leave to appeal?
- 9 (a) If leave to appeal is granted, what would the grounds of your appeal be?
- (b) On what statutory provisions or cases would you rely?
- 10 (a) If your proposed appeal relates to the admissibility of evidence proposed to be called at the trial, outline (on a separate sheet, if necessary) the disputed evidence in question and its relevance to the trial.
- (b) If your proposed appeal challenges the exercise of a judicial discretion, explain (on a separate sheet, if necessary) why the challenge meets the criteria for reversing the exercise of a discretion.
- (c) If your proposed appeal challenges a factual finding in the decision against which you wish to appeal, outline (on a separate sheet, if necessary) the evidence on which you rely for your challenge.
- 11 (a) If your proposed appeal is on a question of law, what question or questions of law would you like the Court of Appeal to determine?
- (b) What should the answer to the question or questions of law be? [*In addition, briefly set out the grounds for that answer or answers.*]
- (c) What else would you like the Court of Appeal to do in addition to answering the question or questions of law?
- 12 Include in this application anything that is relevant to the decision about whether your application should be considered at an oral hearing or be dealt with on the papers, such as—
- (a) whether you have been assisted by a lawyer in preparing your application for leave:
- (b) (if relevant) whether you have been provided with copies of the relevant trial documentation:
- (c) the gravity of the offence:
- (d) the nature and complexity of the issues raised by your application:
- (e) whether any evidence should be called:
- (f) any relevant cultural or personal factors.

Dated this [*date*] day of [*month*] [*year*]

Signature of applicant:

**Note**

If you are granted leave to appeal, your appeal (and application if being considered at the same time) will be considered at an oral hearing (that is, a hearing at which oral submissions may be made) unless the court or a Judge determines that the appeal can be fairly dealt with on the papers and either has no realistic prospect of success or clearly should be allowed. In that case, the appeal will be dealt with at a hearing on the papers. This is a hearing at which the court makes its decision solely on the basis of the written material before it.

Schedule form 1: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 1: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Form 2  
Notice of application for leave to appeal by person convicted

r 5B(1)(a)

*Part 6, Criminal Procedure Act 2011*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[*Name*] v [R or Police or prosecutor]

Name of applicant:

Offence(s) of which convicted:

Court in which conviction entered: District Court at [*place*]

Date of conviction:

Date when sentence passed:

Court in which sentence passed: District Court at [*place*]

Sentence:

Court in which determination of first appeal was made: High Court at [*place*]

Date of determination of first appeal:

The first appeal was an appeal against—

[*Specify whichever applies—*

- *my conviction*
- *my sentence*
- *my conviction and sentence*
- *the finding of criminal contempt*
- *the finding of criminal contempt and sentence.*]

To the Registrar of the Court of Appeal

I, [*name*], the applicant, give you notice that I apply for leave to appeal to the Court of Appeal against the determination of the High Court described above on the grounds set out below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?
  - (b) If so, give his or her name and address and electronic address, if any (such as an email address, or a fax address, or both):
  - (c) Have you applied, or do you intend to apply, to the Legal Services Agency for a grant of legal aid?
- 2 If you are currently in a prison, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and electronic address, if any (such as an email address, or a fax address, or both)?

- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
- (b) If so, what are your reasons for seeking leave to be present? (If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.)
- 5 You have 20 working days from the date of the determination of the High Court that you wish to appeal in which to file your notice of application for leave to appeal with the Court of Appeal. The court may extend this time. If your application is out of time, what are your reasons for saying that the court should nevertheless extend the time and consider your application?
- 6 (a) The court may grant leave only if satisfied that the appeal involves a matter of general or public importance or that a miscarriage of justice may have occurred, or may occur unless the appeal is heard. Why should the court give you leave to appeal?
- (b) On what statutory provisions or cases would you rely?
- 7 (a) Do you wish to apply for leave to call any witnesses on your proposed appeal?
- (b) If so, then state—
- (i) the name and address of the witness(es):
  - (ii) whether the witness(es) gave evidence at trial:
  - (iii) if not, the reason why the witness(es) did not give evidence:
  - (iv) on what matters you wish the witness(es) to give evidence:
  - (v) briefly, what evidence you think the witness(es) can give.
- 8 Include in this application anything that is relevant to the decision about whether your application should be considered at an oral hearing or be dealt with on the papers, such as—
- (a) whether you have been assisted by a lawyer in preparing your application for leave:
  - (b) (if relevant) whether you have been provided with copies of the relevant trial documentation:
  - (c) the gravity of the offence:
  - (d) the nature and complexity of the issues raised by your application:
  - (e) whether any evidence should be called:
  - (f) any relevant cultural or personal factors.

Dated this [date] day of [month] [year]

Signature of applicant:

**Note**

If you are granted leave to appeal, your appeal (and application, if being considered at the same time) will be considered at an oral hearing (that is, a hearing at which oral submissions may be made) unless the court or a Judge determines that the appeal can be fairly dealt with on the papers and either has no realistic prospect of success or clearly should be allowed. In that case, the appeal will be dealt with at a hearing on the papers. This is a hearing at which the court makes its decision solely on the basis of the written material before it.

Schedule form 2: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 2: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

## Form 3

## Notice of application for leave to appeal by Solicitor-General or prosecutor

r 5B(2)

*Part 6, Criminal Procedure Act 2011*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[R *or* Police *or* prosecutor] v [Name]

Name and full address of respondent:

Decision being appealed:

Date of decision:

Court in which the decision was made (include place):

This application is for leave for a first/second\* appeal.

\*Select one.

**To** the Registrar of the Court of Appeal

Take notice that, under [section number and Act], I, the Solicitor-General/prosecutor\*, apply for leave to appeal against the decision described above on the grounds set out below, and I give answers as follows to the following questions:

\*Select one.

- 1 (a) If leave to appeal is granted, what would the grounds of your appeal be?
- (b) On what statutory provisions or cases would you rely?
- 2 Why should the court give you leave to appeal?
- 3 If the trial has not yet been held, when is the trial likely to be?
- 4 Attach the decision against which you wish to appeal (if available).
- 5 If this application is out of time, what are your reasons for saying that the court should nevertheless extend the time and consider your application?
- 6 (a) If your application for leave is for a first appeal, why should the court give you leave to appeal?
- (b) If your application for leave is for a second appeal (that is, it is an appeal from a determination of a first appeal by the High Court), the court may grant leave only if satisfied that the appeal involves a matter of general or public importance or that a miscarriage of justice may have occurred, or may occur unless the appeal is heard. Why should the court give you leave to appeal?
- 7 (a) If leave to appeal is granted, what would the grounds of your appeal be?
- (b) On what statutory provisions or cases would you rely?
- 8 (a) If your proposed appeal relates to the admissibility of evidence proposed to be called at the trial, outline (on a separate sheet, if necessary) the disputed evidence in question and its relevance to the trial.

- (b) If your proposed appeal challenges the exercise of a judicial discretion, explain (on a separate sheet, if necessary) why the challenge meets the criteria for reversing the exercise of a discretion.
  - (c) If your proposed appeal challenges a factual finding in the decision against which you wish to appeal, outline (on a separate sheet, if necessary) the evidence on which you rely for your challenge.
- 9
- (a) If your proposed appeal is on a question of law, what question or questions of law would you like the Court of Appeal to determine?
  - (b) What should the answer to the question or questions of law be? [*In addition, briefly set out the grounds for that answer or answers.*]
  - (c) What else would you like the Court of Appeal to do in addition to answering the question or questions of law?

Dated this [date] day of [month] [year]

Signature of Solicitor-General/prosecutor\*:

The address for service is: [address]

\*Select one.

Schedule form 3: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 3: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Form 4  
Notice of appeal by Solicitor-General or prosecutor

r 6(2)

*Part 6, Criminal Procedure Act 2011*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[R *or* Police *or* prosecutor] v [Name]

Name and full address of respondent:

Decision being appealed:

Date of decision:

Court in which the decision was made (include place):

**To** the Registrar of the Court of Appeal

Take notice that, under [section number and Act], I, the Solicitor-General/prosecutor\*, appeal against the decision described above on the grounds set out below, and I give answers as follows to the following questions:

- 1 What are the grounds of your appeal?
- 2 Attach the decision against which you wish to appeal (if available).
- 3 If this appeal is out of time, what are your reasons for saying that the court should nevertheless extend the time and consider your appeal?

\*Select one.

Dated this [date] day of [month] [year]

Signature of Solicitor-General/prosecutor\*:

The address for service is: [address]

\*Select one.

Schedule form 4: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 4: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).



Form 5  
Notice of appeal by person convicted

r 6(3)

*Part 6, Criminal Procedure Act 2011*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[*Name*] v [R or Police or prosecutor]

Name of appellant:

Offence(s) of which convicted:

Court in which conviction entered: District Court at [*place*] or High Court at [*place*]

Date of conviction:

Date when sentence passed:

Court in which sentence passed: District Court at [*place*] or High Court at [*place*]

Sentence:

**To** the Registrar of the Court of Appeal

I, [*name*], the appellant, give you notice that I wish to appeal to the Court of Appeal against—

[*Specify whichever applies—*

- *my conviction*
- *my sentence*
- *my conviction and sentence*
- *the finding of criminal contempt*
- *the finding of criminal contempt and sentence.*]

on the grounds set out below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?  
(b) If so, give his or her name and address and electronic address, if any (such as an email address, or a fax address, or both):  
(c) Have you applied, or do you intend to apply, to the Legal Services Agency for a grant of legal aid?
- 2 If you are currently in a prison, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and electronic address, if any (such as an email address, or a fax address, or both)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?

- (b) If so, what are your reasons for seeking leave to be present? (If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.)
- 5 You have 20 working days from the date on which you were sentenced in which to file your notice of appeal with the Court of Appeal. The court may extend this time. If your appeal is out of time, what are your reasons for saying that the court should nevertheless extend the time and consider your appeal?
- 6 What are the grounds of your appeal?
- 7 (a) Do you wish to apply for leave to call any witnesses on your appeal?  
(b) If so, then state—  
(i) the name and address of the witness(es);  
(ii) whether the witness(es) gave evidence at the trial;  
(iii) if not, the reason why the witness(es) did not give evidence;  
(iv) on what matters you wish the witness(es) to give evidence;  
(v) briefly, what evidence you think the witness(es) can give.
- 8 Include in this notice of appeal anything that is relevant to the decision about whether your appeal should be considered at an oral hearing or be dealt with on the papers, such as—  
(a) whether you have been assisted by a lawyer in preparing your appeal;  
(b) (if relevant) whether you have been provided with copies of the relevant trial documentation;  
(c) the gravity of the offence;  
(d) the nature and complexity of the issues raised by your appeal;  
(e) whether any evidence should be called;  
(f) any relevant cultural or personal factors.

Dated this [date] day of [month] [year]

Signature of appellant:

### **Note**

Your appeal will be considered at an oral hearing (that is, a hearing at which oral submissions may be made) unless the court or a Judge determines that the appeal can be fairly dealt with on the papers and either has no realistic prospect of success or clearly should be allowed. In that case, the appeal will be dealt with at a hearing on the papers. This is a hearing at which the court makes its decision solely on the basis of the written material before it.

Schedule form 5: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 5: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Form 6  
Notice of appeal relating to bail

r 6(4)

*Section 47 or 52, Bail Act 2000*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[Name] v [R or Police or prosecutor]

Name of appellant:

Decision being appealed:

*[Describe the decision against which you are appealing. You may appeal against a decision of a High Court Judge to—*

- *refuse bail (section 47); or*
- *impose or substitute or revoke or vary any condition of bail (section 47); or*
- *refuse to impose any condition of bail or any particular condition of bail (section 47); or*
- *refuse to vary or revoke any condition of bail (section 47); or*
- *direct that the non-performance of a bail condition be entered into the court record referred to in section 39(3) of the Bail Act 2000 (section 52).]*

Date of decision:

**To** the Registrar of the Court of Appeal

I, [name], the appellant, give you notice that I wish to appeal to the Court of Appeal against the bail decision described above on the grounds set out below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?  
(b) If so, give his or her name and address, and electronic address, if any (such as an email address, or a fax address, or both):
- 2 If you are currently in a prison, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and electronic address, if any (such as an email address, or a fax address, or both)?
- 4 (a) If you are in custody, do you wish the Court of Appeal to grant you leave to be present at the hearing of your appeal?  
(b) If so, what are your reasons for seeking leave to be present?
- 5 What are the grounds of your appeal?

Dated this [date] day of [month] [year]

Signature of appellant:

**Note**

You have 20 working days from the date of the determination of the High Court that you wish to appeal against in which to file your notice of appeal with the Court of Appeal.

Schedule form 6: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 6: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Schedule form 6: amended, on 4 October 2013, by rule 4 of the Court of Appeal (Criminal) Amendment Rules (No 2) 2013 (SR 2013/408).

## Form 7

## Notice of appeal by offender relating to extended supervision order

r 6(7)(b)

*Section 107R, Parole Act 2002*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[Name] v [R or Police or prosecutor]

Name of appellant:

Decision being appealed:

*[Describe the decision against which you are appealing. You may appeal against the sentencing court—*

- *making an extended supervision order (section 107I of the Parole Act 2002); or*
- *making an order under section 107IAC of the Parole Act 2002 requiring the imposition of an intensive monitoring condition; or*
- *declining to cancel an extended supervision order (section 107M of the Parole Act 2002); or*
- *ordering for a specified period that you not be permitted to apply for the cancellation of the extended supervision order to which you are subject (section 107M(6) of the Parole Act 2002); or*
- *confirming an extended supervision order following a review under section 107RA of the Parole Act 2002.*

Date of decision:

**To the Registrar of the Court of Appeal**

I, [name], the appellant, give you notice that I wish to appeal to the Court of Appeal against the decision described above on the grounds set out below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?  
(b) If so, give his or her name and address and electronic address, if any (such as an email address, or a fax address, or both):  
(c) Have you applied, or do you intend to apply, to the Legal Services Agency for a grant of legal aid?
- 2 If you are currently in a prison, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and electronic address if any (such as an email address, or a fax address, or both)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?  
(b) If so, what are your reasons for seeking leave to be present?
- 5 (a) Do you wish to apply for leave to call any witnesses on your appeal?

- (b) If so, then state—
  - (i) the name and address of the witness(es):
  - (ii) whether the witness(es) gave evidence at the trial:
  - (iii) if not, the reason why the witness(es) did not give evidence:
  - (iv) on what matters you wish the witness(es) to give evidence:
  - (v) briefly, what evidence you think the witness(es) can give.
- 6 You have 20 working days from the date of the decision that you wish to appeal in which to file your notice of appeal with the Court of Appeal. The court may extend this time. If your appeal is out of time, what are your reasons for saying that the court should nevertheless extend the time and consider your appeal?
- 7 What are the grounds of your appeal?
- 8 Include in this notice of appeal anything that is relevant to the decision about whether your appeal should be considered at an oral hearing or be dealt with on the papers, such as—
  - (a) whether you have been assisted by a lawyer in preparing your appeal:
  - (b) (if relevant) whether you have been provided with copies of the relevant trial documentation:
  - (c) the gravity of the offence:
  - (d) the nature and complexity of the issues raised by your appeal:
  - (e) whether any evidence should be called:
  - (f) any relevant cultural or personal factors.

Dated this [*date*] day of [*month*] [*year*]

Signature of appellant:

### Note

Your appeal will be considered at an oral hearing (that is, a hearing at which oral submissions may be made) unless the court or a Judge determines that the appeal can be fairly dealt with on the papers and either has no realistic prospect of success or clearly should be allowed. In that case, the appeal will be dealt with at a hearing on the papers. This is a hearing at which the court makes its decision solely on the basis of the written material before it.

Schedule form 7: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 7: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Schedule form 7: amended, on 12 December 2014, by section 32(3) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Schedule form 7: amended, on 12 December 2014, by section 32(4) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

## Form 8

## Notice of application for leave to refer question of law by Solicitor-General

r 32A

*Subpart 11, Part 6, Criminal Procedure Act 2011*

In the Court of Appeal of New Zealand

I te Kōti Pira o Aotearoa

*Solicitor-General reference*

Proceeding in which the question of law arose:

Court in which the question of law arose (include place):

If the question arose in or in relation to the trial of a person, the date on which the criminal proceeding ended:

If the question arose in or in relation to a defendant's first appeal, the date of the determination of that appeal by the High Court:

Question or questions proposed for the Court of Appeal: [*Set out the questions you wish the Court of Appeal to determine.*]**To** the Registrar of the Court of AppealTake notice that, under [*section number and Act*], I, the Solicitor-General, apply for leave to refer a question of law to the Court of Appeal on the grounds set out below, and I give answers as follows to the following questions:

- 1 What should the answer to the question or questions of law be? [*In addition, briefly set out the grounds for that answer or those answers.*]
- 2 What else do you wish the Court of Appeal to do in addition to answering the question or questions of law?
- 3 An application for leave to refer a question of law must be made within 60 working days of the date on which the criminal proceeding ended or of the date of the determination by the High Court (whichever is applicable). If this application is out of time, what are your reasons for saying that the court should nevertheless extend the time and consider your application?

Dated this [*date*] day of [*month*] [*year*]

Signature of Solicitor-General:

The address for service is: [*address*]

Schedule form 8: replaced, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 8: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).



Form 9  
Notice of abandonment of appeal

r 35

*Section 337, Criminal Procedure Act 2011*

In the Court of Appeal of New Zealand

I te Kōti Pira ō Aotearoa

[Name] v [R or Police or prosecutor]

**To** the Registrar of the Court of Appeal

I, [name], having sent to the Court of Appeal a notice of appeal/application for leave to appeal\* against [set out the determination which you are appealing or seeking leave to appeal and the court that made that determination], now give you notice that—

- (a) I do not intend further to prosecute my appeal or application; and
- (b) As from the date of this notice, I abandon all further proceedings concerning that appeal or application.

\*Select one.

Dated this [date] day of [month] [year]

Signature:

\*Witness to signature of [name]

Signature of witness:

Address:

Description:

\*Signature of the appellant or applicant must be witnessed only if the appellant or applicant signs the notice in person.

Schedule form 9: inserted, on 1 July 2013, by rule 43 of the Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175).

Schedule form 9: amended, on 20 May 2021, by rule 6 of the Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85).

Marie Shroff,  
Clerk of the Executive Council.

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## Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73)

Anand Satyanand, Governor-General

At Wellington this 17th day of March 2008.

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 51C of the Judicature Act 1908, section 409 of the Crimes Act 1961, and section 73 of the Bail Act 2000, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and, as far as the rules regulate the practice and procedure of the Court of Appeal in the exercise of jurisdiction conferred by the Judicature Act 1908 and the Crimes Act 1961, with the concurrence of the Right Honourable the Chief Justice and at least 2 of the other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

### Rules

**1 Title**

These rules are the Court of Appeal (Criminal) Amendment Rules 2008.

**2 Commencement**

These rules come into force on 17 April 2008.

**17 Transitional provision**

The principal rules, as in force immediately before the commencement of these rules, continue to apply to every application for leave to appeal made before that commencement as if these rules (other than this rule) had not been made.

Diane Morcom,  
Clerk of the Executive Council.

Date of notification in *Gazette*: 20 March 2008.

## Notes

### **1** *General*

This is a consolidation of the Court of Appeal (Criminal) Rules 2001 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Court Rules (Te Kāhui o Matariki Public Holiday) Amendment Rules 2022 (SL 2022/154): rule 6

Court of Appeal (Criminal) Amendment Rules 2021 (LI 2021/85)

Senior Courts Act 2016 (2016 No 48): section 183(c)

Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69): section 32

Court of Appeal (Criminal) Amendment Rules (No 2) 2013 (SR 2013/408)

Court of Appeal (Criminal) Amendment Rules 2013 (SR 2013/175)

Court of Appeal (Criminal) Amendment Rules 2010 (SR 2010/214)

Court of Appeal (Criminal) Amendment Rules 2008 (SR 2008/73)

Court of Appeal (Criminal) Amendment Rules 2006 (SR 2006/182)

Court of Appeal (Criminal) Amendment Rules 2005 (SR 2005/70)