



## House of Representatives

# Supplementary Order Paper

Thursday, 3 May 2001

### Crimes (Criminal Appeals) Amendment Bill

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#### *Proposed amendments*

Hon Phil Goff, in Committee, to move the following amendments:

*Clause 5(1)*

To insert in *new subsection (1A)(b)*, after the word "if" (page 4, line 1), the words "the Registrar considers it".

*Clause 6: new section 392A*

To insert in *subsection (5)*, after the words "having regard to any" (page 6, lines 22 and 23), the word "written".

To insert, after *subsection (5)* (page 6, line 24), the following subsection:

"(5A) The Court or Judge making a decision on the mode of hearing must apply **subsections (2) to (5) of section 392B** (with all necessary modifications) in the same way as the Court would apply them in determining an appeal or application for leave to appeal.

*Clause 9*

To omit *subclauses (2) to (7)* (page 9, line 8 to page 10, line 29), and substitute the following subclause:

(2) The schedule of the Court of Appeal (Criminal) Rules 1997 is amended by omitting form 1 and form 3, and substituting the form 1 and form 3 in the **Schedule**.

*Clause 9A(3)*

To omit this subclause (page 11, lines 15 to 19), and substitute the following subclause:

(3) If, before the commencement of this Act, a fixture for a hearing involving oral submissions has been set down for an appeal or application, then the principal Act and the Court of Appeal (Criminal) Rules 1997 (as they read immediately

before the commencement of this Act) continue to apply to the appeal or application.

*Clause 12(1)*

To insert in *paragraph (b)*, after the word “any” (page 13, line 9), the word “written”.

To insert in *paragraph (c)*, immediately before the word “submissions” in both places where it appears (page 13, lines 10 and 11), the word “written”.

To insert, after *subsection (1)* (page 13, line 14), the following subsection:

- (1A) Neither the parties nor their representatives may appear before a Judge on an application for leave for a rehearing.

*Schedule*

To insert, after *clause 13* (page 13, line 33), the following schedule:

**Schedule** s 9(2)  
**New form 1 and form 3 substituted in Schedule of  
Court of Appeal (Criminal) Rules 1997**

Form 1 r 4(a)  
Notice of application for leave to appeal on matters arising  
before trial

*Section 379A, Crimes Act 1961*

*In the Court of Appeal of New Zealand*

R v

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

I, [full name], the prosecutor (or the accused person) in the proceeding described above, give you notice under section 379A of the Crimes Act 1961 that I apply for the leave of the Court of Appeal to appeal to that Court against [give particulars of the decision against which you wish to appeal, including the date on which and the place at which it was made] on the grounds set out below, and I give answers as follows to the following questions:

- 1(a) Is any solicitor or counsel now acting for you?
- (b) If so, give his or her name and address:
- (c) Have you applied, or do you intend to apply, to the Legal Services Agency for a grant of legal aid?
- 2 Do you wish this application to be considered by the Court at an oral hearing or at a hearing on the papers? Give reasons for your choice. [See the note at the end of this form for further explanation.]
- 3(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.]

Form 1—*continued*

- 4 You have 10 days from the date of the decision against which you wish to appeal in which to file your application. 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?
- 5 What are the grounds of your application?

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 .  
Signature of applicant:

**Note:**

- The Court will consider this application either at an oral hearing (which is a hearing at which oral submissions may be made) or at a hearing on the papers (which is a hearing at which the Court makes its decision solely on the basis of the written material before it).
- The decision about which type of hearing to hold will be made as the interests of justice require. This involves considering matters such as: the nature and complexity of the issues raised by your application; the gravity of the offence; whether new evidence should be called; whether the application can be fairly dealt with on the papers, or whether oral submissions should be heard; and any relevant cultural or personal factors.
- It is important that you include in this application anything that is relevant to any of these matters, and that you state the grounds of your application as fully as you can. Attach additional sheets of paper to this form if necessary.

Form 3

r 4(c)

Notice of appeal or application for leave to appeal by  
person convicted

*Crimes Act 1961*

Name of appellant or applicant:  
Offence(s) of which convicted:  
Place of conviction:  
Date of conviction:  
Date when sentence passed:  
Place of sentence:  
Sentence:  
Name of penal institution (*or*, if not in a penal institution, full postal address of appellant or applicant):

Form 3—*continued***To the Registrar of the Court of Appeal**

I, the above-named appellant or applicant, give you notice that I wish to appeal to the Court of Appeal against my

[*conviction*]      [*sentence*]      [*conviction and sentence*]

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

- 1(a) Is any solicitor or counsel now acting for you?
- (b) If so, give his or her name and address:
- (c) Have you applied, or do you intend to apply, to the Legal Services Agency for a grant of legal aid?
- 2 Do you wish your appeal to be considered by the Court at an oral hearing or at a hearing on the papers? Give reasons for your choice. [*See the note at the end of this form for further explanation.*]
- 3(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.*]
- 4(a) Do you wish to apply for leave to call any witnesses on your appeal?
- (b) If so, then state—
  - (i) 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:
- 5 You have 28 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 or application for leave to appeal?

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 .  
Signature of appellant or applicant:

Form 3—continued

**Note:**

- The Court will consider this appeal or application either at an oral hearing (which is a hearing at which oral submissions may be made) or at a hearing on the papers (which is a hearing at which the Court makes its decision solely on the basis of the written material before it).
- The decision about which type of hearing to hold will be made as the interests of justice require. This involves considering matters such as: the nature and complexity of the issues raised by your application; the gravity of the offence; whether new evidence should be called; whether the appeal can be fairly dealt with on the papers, or whether oral submissions should be heard; and any relevant cultural or personal factors.
- It is important that you include in this appeal or application anything that is relevant to any of these matters, and that you state the grounds of your appeal or application as fully as you can. Attach additional sheets of paper to this form if necessary.

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**Explanatory note**

This Supplementary Order Paper, which replaces SOP No 126, amends the Crimes (Criminal Appeals) Amendment Bill. The changes that were in SOP No 126, and that are retained in this SOP, clarify the following points:

- it is the Registrar of the Court of Appeal who determines, for the purpose of preparing the case on appeal, whether the trial Judge's summing up to the jury is relevant to the grounds of appeal (*clause 5(1)*);
- a decision on the mode of hearing is made on the basis of the written material before the Court or Judge making the decision, and is dealt with in the manner of a hearing on the papers (*clause 6*);
- it is only written submissions that are considered by the Judge making a decision on an application for leave for a rehearing, and neither the parties nor their representatives are entitled to appear before the Judge making the decision (*clause 12*).

A redraft of *clause 9A(3)* (a transitional provision) is included in this SOP, in order to clarify its effect.

In SOP No 126, 2 forms in the Court of Appeal (Criminal) Rules 1997 were amended. By this SOP, the forms are replaced entirely (*clause 9*). The replacements incorporate the proposed amendments, make minor changes to reflect current practice (particularly in relation to legal aid), and simplify the language of the forms.