

Serial Number 1946/94



THE CRIMINAL APPEAL RULES 1946

MICHAEL MYERS,
Administrator of the Government
ORDER IN COUNCIL

At the Government House at Wellington, this 14th day of
June, 1946

Present :

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN
COUNCIL

PURSUANT to the Crimes Act, 1908, as affected by the Judicature Amendment Act, 1930, and pursuant to the Criminal Appeal Act, 1945, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council and with the concurrence of the Right Honourable the Chief Justice and seven of the other members of the Rules Committee constituted under the Judicature Amendment Act, 1930 (three of such other members being Judges of the Supreme Court), doth hereby make the following rules.

RULES

GENERAL

1. These rules may be cited as the Criminal Appeal Rules 1946.
2. In these rules, unless inconsistent with the context,—

“ Act ” means the Criminal Appeal Act, 1945 :

“ Court ” means the Court of Appeal :

“ Exhibit ” includes all books, papers, and documents and all other property, matters, and things connected with the proceedings against any person who is entitled or may be authorized to appeal under the Act if the same have been received in the Supreme Court when such person was committed for trial or for sentence or have been produced or used in evidence during the trial of or other proceedings in relation to such person and any written statement handed to the Judge by such person, but does not include original depositions of witnesses examined before committing Justices and not made use of at the trial, and does not include an indictment or plea filed in the Supreme Court in connection with a trial :

“ Registrar ” means the Registrar of the Court of Appeal.

3. The forms set out in the Schedule hereto or forms as near thereto as circumstances permit shall be used in all cases to which such forms are applicable.

4. All applications to the Court under the Act other than a notice of appeal or notice of application for leave to appeal shall, subject to Rule 14 hereof, be brought by motion.

5. A motion may, with the leave of the Court, be made orally for a date of hearing or for any other direction relating to a proceeding before the Court.

6. All notices to be given to the Court may be given by delivering the same to the Registrar at his office or by forwarding the same by registered post addressed to the Registrar of the Court of Appeal at the Supreme Court House at Wellington, or may be given through the Controller-General of Prisons.

7. Any other notice or document which is required or authorized by the Act or these rules to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed at a sufficient postal address to the person to or upon whom it is to be given or served, and shall be deemed to be received at the time when it would be delivered or available for delivery in the ordinary course of registered post.

8. The address of a prison or place of residence stated by an appellant in his notice of appeal or notice of application for leave to appeal shall be a sufficient postal address of that appellant.

9. In any case in which he considers it desirable so to do a Judge may inform a person convicted before or sentenced by him that the case is one fit for an appeal to the Court of Appeal under paragraph (b) of section 3 of the Act, and may give to such person the certificate to that effect provided for by the Act and these rules.

10. If the Court considers the complexity or importance of a case makes it desirable so to do, the Court may order that all or any documents relevant to the case be printed, or that such number of typewritten copies thereof be supplied for the use of the Court as may be directed, and any documents ordered to be printed shall be printed in manner prescribed by the rules of the Court of Appeal in force in relation to the general procedure of the Court.

11. The performance of any duty imposed upon any person under the Act or these rules may be enforced by order of the Court.

INSTITUTION OF APPEAL

12. Every notice of appeal or notice of application to the Court for leave to appeal shall be in the form numbered 1 in the Schedule hereto.

13. Where the Court of Appeal has on a notice of application for leave to appeal duly given in the form provided by these rules given an appellant leave to appeal it shall not be necessary to give any notice of appeal, but the notice of application for leave to appeal shall be deemed to be a sufficient notice of appeal.

14. An application by an appellant to be assigned a solicitor and counsel or counsel only, or to be present on the hearing of an appeal or any application for leave to appeal or on any proceedings preliminary or incidental to an appeal, or for leave to call witnesses or to be admitted to bail, shall be sufficient if made by statement contained in the said form numbered 1.

15. (1) Except as provided by clauses (2) and (3) of this rule, every notice of appeal and every notice of application for leave to appeal shall be signed by the appellant himself with his signature or, if he is unable to write, by affixing his mark thereto in the presence of a witness, who shall attest the same by writing signed by the witness.

(2) Where on the trial of a person entitled to appeal or to apply for leave to appeal it has been contended that he was not responsible according to law for his actions on the ground that he was insane at the time the act was done or omission made by him, any notice otherwise required to be signed by that person may be given and signed by his solicitor or other person authorized to act on his behalf.

(3) Any notice or other document required to be signed by the appellant himself may, if the appellant is a body corporate, be signed by the secretary, clerk, manager, or like responsible servant of the body corporate or by its solicitor.

16. The certificate of a Judge to be given pursuant to paragraph (b) of section 3 of the Act may be in the form numbered 2 in the Schedule hereto.

PREPARATION FOR HEARING

17. Upon receipt of a notice of appeal or notice of application for leave to appeal the Registrar shall procure for the use of the Court the following documents :—

- (i) Where the appellant has been convicted after trial in the Supreme Court, the indictment, a copy of the Judge's notes of evidence, and such of the exhibits of a documentary character as can conveniently be transmitted :
- (ii) Where the appellant has on arraignment upon indictment pleaded guilty, the indictment, the depositions on which he was committed for trial, and such exhibits as aforesaid :
- (iii) Where the appellant was committed to the Supreme Court for sentence under section 181 of the Justices of the Peace Act, 1927, or has pleaded guilty under section 41 of the Statutes Amendment Act, 1936, the information, depositions, and other documents transmitted to the Supreme Court, including such exhibits as aforesaid :
- (iv) In all cases, a copy of the sentence, if any, and of any ancillary order made by the Supreme Court upon or in connection with the conviction or sentence :
- (v) In all cases, such other exhibits as the Court of Appeal may call for :
- (vi) In the case of an application for leave to appeal against sentence, or whenever the propriety of the sentence may be in issue, in addition to the documents aforesaid, the Probation Officer's report, and a list of the appellant's previous convictions, with a certificate of the identity of the appellant with the person named in the list.

18. The Registrar of the Supreme Court shall retain all documents, exhibits, and other things received in that Court upon any trial or proceeding resulting in a conviction within the meaning of the Act until the expiration of the time allowed by the Act for appealing or applying for leave to appeal against the conviction, or until the expiration of any extension of that time of which he has notice, or for such further time as may reasonably be necessary.

19. Nevertheless, a Judge of the Supreme Court may for sufficient cause at any time direct that a document, exhibit, or other thing other than property in respect of which in the particular circumstances an order can be made under section 451 of the Crimes Act, 1908, be delivered out of the Supreme Court to any person he considers to be entitled to such delivery upon such conditions as the Judge thinks fit, including stipulations as to place of custody, an undertaking for return of the document, exhibit, or other thing to the Supreme Court upon demand, and security for the performance of such undertaking.

20. Unless the Registrar refers an appeal to the Court under subsection (2) of section 15 of the Act for summary determination, he shall forward to the Solicitor-General a copy of the notice of appeal or notice of application for leave to appeal, and shall thereafter afford the Solicitor-General, or any person employed or engaged as counsel or solicitor for the Crown, all reasonable facilities for inspecting, perusing, and copying the documents, exhibits, and other things connected with the proceedings.

21. The Registrar shall keep a register in such form as he thinks fit of all notices of appeal and notices of application for leave to appeal received by him and of the decisions of the Court given thereon, and the register shall be open for public inspection during ordinary office hours.

22. (1) In connection with any proceeding under the Act the Registrar shall, if the Court of Appeal or a Judge thereof so directs, request the Judge of the Court of trial to furnish the Court of Appeal with a report in writing giving his opinion upon the case generally or upon any point arising upon the case of the appellant :

Provided that such report shall not be disclosed to any person except by leave of the Court or a Judge thereof.

(2) To enable a Judge to prepare his report, the Registrar shall transmit to him such of the documents relating to the proceedings and for the time being in the Registrar's custody as the Judge may call for or as the Court of Appeal or a Judge thereof may direct him so to transmit.

HEARING OF APPEALS

23. Every appeal and application for leave to appeal not summarily determined under subsection (2) of section 15 of the Act shall be heard at such time and place as the Court may direct, whether of its own motion, or on the application of the appellant, or on the application of counsel defending the appeal.

24. Notice of the time and place fixed for the hearing of an appeal or application for leave to appeal shall be given by the Registrar to an appellant in custody to whom the Court has granted leave to be present at such hearing and to an appellant not in custody.

25. In the case of an appellant in custody to whom the Court has granted leave to be present at such hearing notice shall also be given by the Registrar to the Controller-General of Prisons.

26. The decision on every appeal and application for leave to appeal shall be pronounced in open Court.

27. On the determination of an appeal or of any matter incidental thereto the Registrar shall, if the appellant is in custody and has not been present at such determination, give notice thereof to the appellant in one of the forms numbered 3 and 4 in the Schedule hereto, and shall send a copy thereof to the Gaoler of the prison where the appellant

is in custody, and another copy to the Registrar of the Supreme Court at the place where the appellant was convicted, and if leave is thereby granted to the appellant to be present at any subsequent proceedings, shall send another copy to the Controller-General of Prisons.

EXTENSION OF TIME

28. An application for extension of the time within which notice of appeal or notice of an application for leave to appeal may be given may be made either by motion or in the form numbered 1 in the Schedule hereto.

29. If an application for extension of time is made by motion there shall be filed therewith a notice in the form numbered 1 in the Schedule hereto signed as required by Rule 15.

30. If a notice in the said form numbered 1 is given out of time it shall be deemed to be an application for extension of time, and if the application for extension of time be granted the notice shall be deemed to be a notice of appeal or, as the case may be, a notice of application for leave to appeal, and the provisions of Rule 13 shall apply.

31. Upon receipt of a motion for extension of time or a notice of appeal or application for leave to appeal taking effect under Rule 30 as an application for extension of time the provisions of Rule 17 shall apply.

BAIL

32. The recognizance to be taken when the Court admits an appellant to bail pending the determination of his appeal may be in the form numbered 1 in the First Schedule to the Justices of the Peace Act, 1927, or to the like effect.

33. At any time after an appellant has been released on bail under the Act the Court of Appeal may, on application made *ex parte* on the part of the Crown or any surety and if satisfied that it is in the interests of justice so to do, revoke the order admitting him to bail and order the issue of a warrant for his apprehension and committal to prison.

34. Nothing in these rules shall affect the lawful right of a surety to apprehend and surrender into custody the person for whose appearance he has become bound and thereby to discharge himself of his suretyship.

35. If an appellant admitted to bail be not present at any hearing of his appeal, the Court may summarily dismiss the appeal and order the issue of a warrant for his apprehension and committal to prison, or may hear the appeal in his absence, or make such other order as it thinks fit, and may for the purposes of estreat declare the forfeiture of any recognizance.

36. Where an appellant is present before the Court the Court may of its own motion, or on the application of any person, revoke an order admitting the appellant to bail or revoke or vary any such order previously made or enlarge from time to time the recognizance of the appellant or of his sureties, or substitute any other surety for a surety previously bound as it thinks fit.

37. An appellant not in custody shall, whenever his case is called on before the Court, surrender himself to the proper officers of the Court and be searched by them, and shall be deemed to be in their lawful custody until further released on bail or otherwise dealt with as the Court directs.

38. A warrant for the apprehension of an appellant admitted to bail whose admission to bail is revoked or who fails to appear according to the conditions of his recognizance or whose surety applies for his apprehension and committal to prison may be issued by any Judge of the Court, whether there has been any information in writing and on oath or not, and may be in the form numbered 5 in the Schedule hereto or to the like effect.

ADDITIONAL EVIDENCE

39. When the Court orders the examination of witnesses to be conducted otherwise than before the Court such examination shall, subject to any special directions the Court may give, be conducted in like manner as the examination of witnesses on commission by a special examiner appointed in proceedings in the Supreme Court in its civil jurisdiction.

40. For the purpose of securing the attendance of any person as a witness either before the Court or before any person appointed by the Court for the purpose, writs of subpoena may be issued in the name of the Court by the Registrar.

41. The appellant and respondent, or counsel or solicitors on their behalf, shall be entitled to be present at and to take part in any examination of witnesses conducted otherwise than before the Court.

DECISIONS OF A SINGLE JUDGE

42. Where the powers of the Court have been exercised by a Judge of the Court under section 16 of the Act and an application has been refused, then, in lieu of notice in the form numbered 4 in the Schedule hereto, the Registrar shall send the appellant a notification in the form numbered 6 in the Schedule hereto, together with a blank copy of the form numbered 7 in the Schedule hereto.

43. An appellant whose application has been refused by a Judge and who seeks to have his application determined by the Court of Appeal as duly constituted for the hearing and determining of appeals shall, within seven days after service upon him of notice in the said form numbered 6, make application in that behalf in the said form numbered 7.

ABANDONMENT OF APPEAL

44. An appellant at any time after he has given notice of appeal or of application for leave to appeal, or after he has applied for extension of time for such a notice, may abandon his appeal by giving the Registrar notice to that effect in the form numbered 8 in the Schedule hereto, and upon the giving of such notice of abandonment the appeal shall be deemed to have been dismissed by the Court.

45. Notice of abandonment of appeal may be signed by the appellant personally or by a solicitor on his behalf, and if signed by the appellant personally the signature shall be witnessed by some person, who shall add his address and description after his signature.

RESTITUTION OF PROPERTY

46. Where upon 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 Supreme Court, then before any order is made by the

Court of Appeal under subsection (2) of section 6 of the Act the following persons shall be entitled to be heard before the Court of Appeal:—

- (a) The person in whose favour or against whom the order of restitution was made :
- (b) Any person in whose favour or against whom an order under the next succeeding rule has been made :
- (c) With the leave of the Court of Appeal, any other person.

47. The Supreme Court may in respect of the suspension pursuant to section 6 of the Act of the operation of any order for the restitution of property and the operation of subsection (1) of section 26 of the Sale of Goods Act, 1908, or upon any direction given under section 6 of the Act that such operation be not suspended, give in any special case such direction as it thinks proper to secure the production of the property for use at the hearing of the appeal or to ensure its proper custody pending the determination of the appeal.

SUSPENSION OF FINE

48. Where a person has on conviction been sentenced to payment of a fine the person lawfully authorized to receive the fine shall on receiving the same retain it until the determination of any appeal in relation thereto is notified to the Registrar of the Supreme Court, and if such person remains in custody in default of payment he shall be deemed for all purposes of the Act and these rules to be a person sentenced to imprisonment.

49. An appellant who has paid a fine in accordance with a sentence shall in the event of a successful appeal be entitled, subject to the order of the Court of Appeal, to the return of the sum paid or part thereof as the case may be.

50. Where any person convicted and sentenced to payment of a fine intimates to a Judge of the Supreme Court that he desires to appeal to the Court of Appeal either on grounds which involve questions of law alone or upon the certificate of the Judge who tried him that it is a fit case for appeal and such certificate has been duly granted, the Judge may, if he thinks fit, order as follows:—

- (a) That such person enter forthwith into recognizances in the form numbered 9 in the Schedule hereto in such sum as the Judge thinks fit, and if with sureties, then with sureties to be approved by the Registrar of the Supreme Court in such sums as the Judge thinks fit for the prosecution of the appeal :
- (b) That, subject to the completion of recognizances as so ordered, liability for payment of the fine be suspended until the final determination of the appeal.

51. For the purposes of estreat of any recognizances the same may be forfeited before any Judge of the Supreme Court.

SUSPENSION OF OTHER CONSEQUENCES OF CONVICTION

52. A Judge of the Supreme Court may give such directions as may be proper for or relating to the suspension pending appeal of any order made under section 449 of the Crimes Act, 1908, or any consequence flowing from a conviction.

MISCELLANEOUS

53. Non-compliance on the part of an appellant with these rules shall not prevent the further prosecution of his appeal if the Court considers that such non-compliance was not wilful and that it may be waived or remedied by amendment or otherwise, and in that case the Court may, in such manner as it thinks fit, direct the appellant to remedy such non-compliance and the Registrar to transmit any such direction to an appellant not present in Court when the direction was given.

54. In any matter not expressly provided for by these rules the Court may give such direction as it thinks best calculated to carry out the purposes of the Act, and may for that purpose refer to the practice of a Court of Criminal Appeal in any other British country.

55. The rules regulating practice and procedure in connection with appeals from sentence under section 2 of the Crimes Amendment Act, 1920, published in the *Gazette* on the 4th day of August, 1921, are revoked.

SCHEDULE

Form No. 1

The Criminal Appeal Act, 1945

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL

Name of Appellant :
 Office of which convicted :
 Place of conviction :
 Date of conviction :
 Date when sentence passed :
 Sentence :
 Name of prison (or, if not in prison, full postal address of appellant) :

To the REGISTRAR OF THE COURT OF APPEAL.

I, THE above-named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my (conviction) (sentence) (conviction and sentence) on the grounds set forth below, and I give answers as follows to the following questions :—

1. Did the Judge before whom you were tried grant you a certificate that it was a fit case for appeal ?
2. (a) Do you desire the Court of Appeal to assign you legal aid ?
 (b) If so,—
 (1) What was your occupation and what wages, salary, or income were you receiving before your conviction ?
 (2) Have you any means to enable you to obtain legal aid for yourself ?
 (3) If so, state particulars :
3. (a) Is any solicitor now acting for you ?
 (b) If so, give his name and address :
4. (a) Do you desire leave from the Court of Appeal for you to be present at the hearing of your appeal or application for leave to appeal or proceedings preliminary or incidental to your appeal, and, if so, at which ?
 (b) If so, what reasons do you submit for seeking leave to be present ?
5. (a) Do you desire to apply for leave to call any witnesses on your appeal ?
 (b) If so, then state—
 (1) Name and address of witness :
 (2) Whether the witness was examined at the trial :
 (3) If not, reason why he was not so examined :
 (4) On what matters you wish him to be examined :
 (5) Shortly, what evidence you think he can give :

6. If your appeal or application is out of time, what ground do you submit as reasons why the Court should nevertheless entertain your appeal or application?

7. (a) If you are not on bail, do you desire to be admitted to bail?

(b) If so, what reasons do you submit for being admitted to bail?

8. What are the grounds of your appeal or application for leave to appeal?

[You are informed that you may present your case and argument in writing instead of by oral argument if you so desire, and any case or argument so presented will be considered by the Court. If you desire to present your case and argument in writing, set out here as fully as you think right your case and argument in support of your appeal. Additional sheets may be attached to this form.]

Dated this day of, 19..

Signature of Appellant:

Form No. 2

JUDGE'S CERTIFICATE

In the Supreme Court,
..... District,
..... Registry.

R. v.

WHEREAS [Full name] was on the day of, 19.., convicted within the meaning of the Criminal Appeal Act, 1945, before me for the offence of [Insert name of offence], and was thereupon sentenced by me to

I do hereby certify, under paragraph (b) of section 3 of the said Act, that the case is a fit case for appeal upon the following grounds:

Dated this day of, 19..

Signature of Judge:

Form No. 3

The Criminal Appeal Act, 1945

NOTIFICATION TO APPELLANT OF RESULT OF APPEAL

R. v.

To the Above-named Appellant.

THIS is to give you notice that the Court of Appeal has considered the matter of your appeal and has finally determined the same, and has this day given judgment to the effect following—namely, (that your appeal be dismissed) or (that the sentence imposed upon you be altered from to), or as the case may be.

Dated this day of, 19..

.....
Registrar of the Court of Appeal.

Form No. 4

The Criminal Appeal Act, 1945

NOTIFICATION TO APPELLANT OF RESULT OF APPLICATION

R. v.

To the Above-named Appellant.

THIS is to give you notice that the Court of Appeal has considered the matter of your application for—

(Leave to appeal to the said Court against (conviction) (sentence)),

(Leave to extend the time within which you may give (notice of appeal) or (notice of application for leave to appeal)),

(Legal aid to be assigned to you),

(Permission to be present during the proceedings in your (appeal) (application for leave to appeal)), or as the case may be, and has finally determined the same, and has this day given judgment to the effect following—namely, (that you have days from the day of, 19.., within which you may give notice of appeal), or as the case may be.

Dated this day of, 19..

.....
Registrar of the Court of Appeal.

Form No. 5

WARRANT TO ARREST

In the Court of Appeal of New Zealand.

R. v. A.B.

WHEREAS A.B., an appellant under the Criminal Appeal Act, 1945, has been released by this Court on bail, and it has now been ordered by this Court that a warrant be issued for his apprehension and committal to prison:

This is to command you to whom this warrant is addressed to arrest the said A.B. and to lodge the said A.B. in the prison at, there to be imprisoned by the Gaoler of the said prison until further order of this Court.

Dated this day of, 19..

.....

Judge.

To W.T., Constable [By his proper title], of, and to all other constables.

Form No. 6

The Criminal Appeal Act, 1945

NOTIFICATION TO APPELLANT OF DECISION OF JUDGE OF COURT OF APPEAL

R. v.

To the Above-named Appellant.

THIS is to give you notice that a Judge of the Court of Appeal has considered the matter of your application for (leave to appeal to the said Court), or otherwise, as in Form No. 4, and has refused your application.

You are, however, entitled to have the application determined by the Court of Appeal. If you so desire you are required to complete the form attached hereto and return it to reach me within seven days of your receipt of this notice.

Dated this day of, 19..

.....

Registrar of the Court of Appeal.

Form No. 7

The Criminal Appeal Act, 1945

NOTICE BY APPELLANT REQUIRING APPLICATION TO BE DETERMINED BY THE COURT

R. v.

To the Registrar of the Court of Appeal.

I, [Full name], having received notice that my application for (leave to appeal to the Court of Appeal), or as the case may be, has been refused do hereby give notice that I desire the said application to be determined by the Court of Appeal as constituted for the hearing and determining of appeals.

Dated this day of, 19..

Signature :

[Any reasons additional to those set out in the original notice upon which you submit that the Court of Appeal should grant your application may be set out below.]

Form No. 8

The Criminal Appeal Act, 1945

NOTICE OF ABANDONMENT OF APPEAL

R. v.

To the Registrar of the Court of Appeal.

I, [Full name], having been convicted in the Supreme Court at for the offence of, and having been desirous of appeal and having sent to the Court of Appeal notice to that effect, do hereby give you notice that I do not intend further to prosecute my appeal, and that I hereby abandon all further proceedings in regard thereto as from the date hereof.

Dated this day of, 19..

Signature :

Witness to signature of [Full name]—

Signature of Witness :

Address :

Description :

Form No. 9

RECOGNIZANCE ON SUSPENSION OF FINE

In the Supreme Court of New Zealand,

..... District,
 Registry.

WHEREAS, A.B., of, was on the day of, 19.., in the Supreme Court at convicted of, and was thereupon sentenced to pay the sum of £..... as a fine for his said offence :

And whereas the said A.B. has intimated that he desires to appeal to the Court of Appeal (on grounds which involve questions of law alone) (upon the certificate of the Judge who tried him that it is a fit case for appeal and such certificate has been duly granted) :

And whereas it has been ordered that the said A.B. and sureties enter into recognizances as hereinafter appears, and that, subject to the completion of recognizances as so ordered, liability for payment of the said fine be suspended until the final determination of the appeal :

Now, therefore, the said A.B. hereby binds himself to perform the following obligation, that is to say :—

To prosecute without delay an appeal to the Court of Appeal against his conviction aforesaid and personally to be present at and before the Court of Appeal at each and every hearing of his appeal and to submit to the judgment of the Court of Appeal therein :

And the said A.B. and likewise C.D., of, and E.F., of, whose names are hereunto subscribed as sureties, hereby severally acknowledge themselves bound to forfeit to the Crown the respective sums following—that is to say, the said A.B. the sum of £....., and each of them the said C.D. and E.F. the sum of £....., each in case the said A.B. fails to perform the said obligation.

Signatures :

.....

Taken before me at, this day of, 19..

W. O. HARVEY,
 Acting Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.
 Date of notification in *Gazette* : 20th day of June, 1946.
 These regulations are administered in the Department of Justice.