



THE COURTS-MARTIAL APPEAL RULES 1954

C. W. M. NORRIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 7th day of
December 1954

Present:

THE RIGHT HON. S. G. HOLLAND PRESIDING IN COUNCIL

PURSUANT to the Courts-Martial Appeals Act 1953 and the Judicature Act 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and six other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (two of those other members being Judges of the Supreme Court), hereby makes the following rules.

R U L E S

1. (1) These rules may be cited as the Courts-Martial Appeal Rules 1954.
- (2) These rules shall come into force on the date of the commencement of the Courts-Martial Appeals Act 1953.
2. (1) In these rules, unless the context otherwise requires,—
 - “The Act” means the Courts-Martial Appeals Act 1953:
 - “The Court” means the Courts-Martial Appeal Court constituted by the Act:
 - “Exhibits” means all documents and things which have been produced and used in evidence at a trial by Court-martial, whether they are attached to the proceedings of the Court-martial or not:
 - “Respondent” means the authority that under section 15 of the Act has the duty of undertaking the defence of the appeal.
- (2) A form referred to by number means the form so numbered in the First Schedule to these rules, or a form as near thereto as circumstances permit.

Applications for Leave to Appeal and Notices

3. (1) A person desiring to appeal to the Court against his conviction by a Court-martial shall make application for leave to appeal in form 1 and shall answer the questions and comply with the requirements set forth therein.

(2) An application for leave to appeal and any notice required or authorized to be given to the Court under these rules, other than a notice of abandonment, shall be signed by the appellant or by his representative. A notice of abandonment shall, except as provided in rule 7 (2) hereof, be signed by the appellant himself.

(3) An application for leave to appeal and any notice required or authorized to be given to the Court under these rules shall, subject to subclause (4) of this rule, be addressed to the Registrar of the Courts-Martial Appeal Court, Wellington, New Zealand, or such other place as the Chief Justice may from time to time direct.

(4) In any of the circumstances specified in the first column of the Second Schedule to these rules, any application or notice which is required or authorized to be given to the Court under these rules may be lodged with the person specified, in relation to those circumstances, in the second column of that Schedule.

(5) Where any application or notice is lodged with a person other than the Registrar in accordance with subclause (4) of this rule, it shall be the duty of that person—

- (a) To forward the application or notice to the Registrar with as much expedition as possible; and
- (b) If it appears to that person that it is practicable to furnish the Registrar, before the receipt by him of the application or notice, with such particulars of the application or notice as will enable him to prepare a copy of it, and that in all the circumstances it is expedient so to do, forthwith to furnish him with those particulars.

(6) Where an appellant, or any other person required or authorized to make an application or give any notice for the purposes of the Act or of these rules, is unable to write, he may affix his mark thereto, in the presence of a witness, who shall attest the same, and thereupon the application or notice shall be deemed to be signed by the appellant.

Time for Applying for Leave to Appeal

4. The period within which an application for leave to appeal must, under section 7 (1) of the Act, be lodged shall be—

- (a) In the case of a conviction by a naval Court-martial, where held outside New Zealand forty days, and where held in New Zealand twenty-one days, next following the day on which the conviction was pronounced:
- (b) In the case of an army or air force Court-martial, where held outside New Zealand thirty days, and where held in New Zealand fourteen days, next following the day on which the finding of the Court-martial was promulgated.

Extension of Time

5. A notice of application to the Court for an extension of time within which to make application for leave to appeal under section 7 (4) of the Act shall be in form 2, and shall either be sent to the Registrar with the application for leave to appeal or be lodged in accordance with rule 3 (4) hereof with the application for leave to appeal.

6. Where the time for lodging any application or notice with the Registrar or any other person in accordance with the Act or these rules expires on a day on which the office of the Registrar or that other person is closed, and by reason thereof the application or notice cannot be lodged on that day, the application or notice shall be deemed to be lodged in time if it is lodged on the day on which the office is next open.

Abandonment of Appeal

7. (1) An appellant may, at any time after he has made application for leave to appeal, abandon his appeal by giving to the Registrar notice of abandonment thereof in form 3, or by lodging the notice in accordance with rule 3 (4) hereof.

(2) Where it is contended that the appellant is insane, a notice of abandonment may be given and signed by the appellant's representative.

(3) The signature of the appellant or his representative to a notice of abandonment shall be witnessed by a legal staff officer, or the appellant's commanding officer, or an officer not below the rank of field officer.

Legal Aid

8. An appellant who desires to apply to the Court for legal aid under section 13 of the Act shall do so when making application for leave to appeal by answering fully and correctly the questions 1 and 2 in form 1.

Presiding Judge

9. At any sitting of the Court—

- (a) Where one only of the Judges is a Judge of the Supreme Court, he shall preside:
- (b) Where two or more of the Judges are Judges of the Supreme Court, the senior of those Judges shall preside:
- (c) Where the Court consists exclusively of appointed Judges, such one of those Judges as the Chief Justice directs shall preside.

Application to a Single Judge

10. (1) A Judge of the Court, exercising the powers of the Court under section 25 of the Act, may sit wherever convenient.

(2) Where any application has been dealt with by a Judge in exercise of the powers of the Court under section 25 of the Act, the Registrar shall forthwith notify the appellant of the decision.

(3) The period within which an appellant, if the Judge refuses an application on the part of the appellant to exercise in his favour any of the powers mentioned in paragraphs (a) to (d) of section 25 of the Act, must under the said section make a requisition to have the application determined by the Court shall be fourteen days if the appellant is in New Zealand or thirty days if the appellant is outside New Zealand next following the day on which he receives a notification under subclause (2) of this rule. The form in which that requisition shall be made shall be that set out in form 4.

Courts-martial Proceedings

11. (1) The Registrar, on receipt by him of an application for leave to appeal under the Act, or where a reference is made under section 24 of the Act, shall request the Judge Advocate of the Fleet or the Judge Advocate General to furnish to him the proceedings of the Court-martial.

(2) After an application is finally refused or is withdrawn or the appeal is determined or abandoned, the proceedings of the Court-martial shall, subject to any order which the Court may make, be returned by the Registrar to the Judge Advocate of the Fleet or to the Judge Advocate General, as the case may be.

(3) A copy of any document which is required for the use of the Court may be made by such person and in such manner as the Registrar may direct.

Copies of Proceedings, etc.

12. (1) At any time after the Registrar has received an application for leave to appeal, an appellant or respondent may, subject to the provisions of these rules, obtain from the Registrar copies of any document in his possession for the purposes of the appeal.

(2) Copies of any document shall be supplied by the Registrar to the appellant or respondent at a charge not exceeding 6d. for every folio of seventy-two words, but if the appellant has been assigned free legal aid the Registrar shall, unless he considers it unnecessary for the purposes of the appeal, supply such copies free of charge.

Documents and Exhibits

13. (1) The Registrar may, on an application made to him by the appellant or respondent, or where he considers it necessary for the proper determination of any appeal or application, and shall, where so directed by the Court, obtain and keep available for use by the Court any document or exhibit, and, subject to rule 14 hereof, pending the determination of the appeal or application, every such document and exhibit and the proceedings of the Court-martial shall be open, as and when the Registrar may arrange, for inspection by the appellant or respondent.

(2) Subject to rule 14 hereof, the Court may, at any stage of an appeal, whenever it thinks it necessary or expedient in the interests of justice so to do, order any document, exhibit, or other thing connected with the proceedings to be produced to the Registrar or before it, by any person having the custody or control thereof.

(3) After an application is finally refused or is withdrawn or the appeal is determined or abandoned, documents and exhibits shall, subject to any order which the Court may make, be returned by the Registrar to the person who produced or forwarded the same.

(4) Service of any order made under this rule shall be personal service, unless the Court otherwise orders.

Security of Documents, etc.

14. (1) If the Minister of Defence or any person authorized in that behalf certifies that, for reasons of security, the whole or part of the proceedings or other document, exhibit, or other thing ought not to be disclosed otherwise than to the Court, or ought only to be disclosed subject to certain conditions specified by the person who so certifies, the Registrar shall, notwithstanding any provision of these rules to the contrary, not permit inspection or supply a copy thereof without seeking a direction from the Court.

(2) Nothing in these rules shall affect any rule of law which authorizes or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Witnesses

15. (1) An order of the Court that a witness shall attend and be examined shall be in form 5 and shall specify the time and place at which to attend.

(2) Any such order may be made on the application at any time of the appellant or respondent, but if the appellant is in custody and is not legally represented the application shall be made by him in form 6.

(3) Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, the order shall specify the person appointed as examiner to take the examination, the place thereof, and the witness to be examined.

(4) The Registrar shall, subject to rule 14 hereof and any direction given by the Court, furnish to the person appointed to take an examination such document, exhibit, or other thing relating to the appeal as he may require, or the Registrar may furnish copies thereof made in such manner as may be suitable. Every such document and exhibit and other thing shall, after the examination has been concluded, be returned to the Registrar by the examiner, together with any depositions taken by him under this rule.

(5) When the examiner has appointed the day and time for the examination, he shall request the Registrar to notify the appellant and the respondent thereof, and also, when the appellant is in custody, the person in charge of the place where the appellant is confined, and the Registrar shall thereupon cause to be served on every witness to be examined a notice in form 5.

(6) An examiner shall have power to administer an oath to, or take the affirmation of, any witness, and to require any such person to take such an oath or make such an affirmation and to answer any question to which the examiner may legally require an answer.

(7) The examination of every witness before an examiner shall be taken in the form of a deposition, and unless otherwise ordered shall be taken in private, subject to the right of the parties to be present and to cross-examine the witness. Depositions shall be recorded in the manner set out in form 7.

(8) Service of any order or notice required by this rule to be given to any witness shall be personal service, unless the Court otherwise orders.

Special Commissioner

16. (1) When an order of reference is made by the Court under section 11 (e) of the Act, the question to be referred, and the person to whom as special commissioner the question is to be referred, shall be specified in the order, which may require the special commissioner to make interim reports to the Court from time to time.

(2) The Court may order that copies of any report made by a special commissioner shall be furnished to the appellant and respondent.

Registrar and Cause List

17. (1) The Registrar shall keep a register of all cases in which he receives an application for leave to appeal under the Act, and the register shall be open for public inspection in such place and at such hours as the Registrar, subject to the approval of the Court, shall decide.

(2) The Registrar shall also prepare a list of appeals and applications which the Court may consider on the days on which the Court, as constituted for the hearing and determination of appeals under the Act, shall sit, and shall cause the list to be published at such times, in such places, and in such manner as he, subject to the approval of the Court, thinks convenient for giving due notice to any parties interested therein of the hearing of the cases in the list by the Court.

Presence of Appellant at Hearing

18. Where an appellant is in custody and has obtained leave to be present at the hearing and determination of his application or appeal, or at an examination or investigation, or at any stage thereof, the Registrar shall notify the appellant, the respondent, and the person in charge of the place where the appellant is confined of the date thereof.

Notifying Results of Appeals, etc.

19. (1) On the final determination of any appeal or of any application, the Registrar shall give to the appellant, the respondent, and, where the appellant is in custody, to the person in charge of the place where he is confined written notice of the determination.

(2) In the case of an appeal against a conviction involving sentence of death, the Registrar shall, on receiving an application for leave to appeal, send a copy thereof to the Minister, and shall, where leave to appeal is refused and on the final determination of an appeal, forthwith give written notice to the appellant, and to the Minister, and to the person in charge of the place where the appellant is confined.

Application to Attorney-General for Certificate

20. (1) An appellant or respondent desiring to apply to the Attorney-General, under section 10 (1) of the Act, for a certificate that the decision of the Court involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, shall make application in form 8.

(2) A notice of application to the Court for an extension of time within which to apply for such a certificate shall be in form 9, and shall be accompanied by form 8.

Restitution Order

21. (1) Where any property has been the subject of a restitution order made on a conviction by a Court-martial or, by reason of any such conviction, has reverted in the owner by virtue of subsection (1) of section 26 of the Sale of Goods Act 1908, and the operation of the order or of the provisions of the said subsection has been suspended under section 19 of the Act, unless the property is in the custody of the Registrar the property shall be caused to be kept in safe custody for the period during which the operation of the order or the reverting as aforesaid is suspended, and the Court or a Judge thereof may give directions to ensure the safe custody of the property and its production when required.

(2) Any person in whose favour or against whom a restitution order has been made or in whom any property has been reverted on a conviction by virtue of the said section 26 (1) and, with leave of the Court, any other person shall, on the final hearing by the Court of the appeal against the conviction on which the order was made or by reason of which the property was reverted as aforesaid, be entitled to have any representations that he may make considered by the Court before any order is made under section 19 (2) of the Act.

Right of Audience

22. In any proceedings before the Court any of the following persons may address the Court:

- (a) A barrister of the Supreme Court of New Zealand retained by or on behalf of the appellant or respondent:
- (b) The appellant, if he has leave of the Court to be present:
- (c) Where the Court is directed to sit at a place outside New Zealand, any other person allowed by leave of the Court to appear on behalf of the appellant or respondent.

Deputy Registrars and Officers of Court

23. Without limiting the provisions of section 5 of the Act, it is hereby declared that there may from time to time be appointed by the Chief Justice, or in accordance with directions given by the Chief Justice, such Deputy Registrars and other officers of the Court as may be required to exercise any powers or functions outside New Zealand.

24. Subject to any directions given by the Court or by the Chief Justice, every Deputy Registrar of the Court, whether appointed under section 5 of the Act or under rule 23 hereof, may exercise and perform any of the powers and functions of the Registrar.

Non-compliance With Rules

25. Non-compliance with these rules by an appellant shall not prevent the further prosecution of his appeal, unless the Court or a Judge thereof otherwise directs. The Registrar shall forthwith notify the appellant of any directions given by the Court or a Judge thereof under this rule, where the appellant was not present at the time when the directions were given.

Enforcement of Duties

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

SCHEDULES

Form 1
Rs. 3, 8

FIRST SCHEDULE

APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION

To the Registrar of the Courts-Martial Appeal Court,
Wellington, New Zealand.

Name of appellant: No.:
Unit or ship: Rank:
Convicted by Court-martial held at
Offence of which convicted:
Sentence:
Date when conviction pronounced or finding promulgated:

Name of prison or place of detention:¹

I, the above-named appellant, hereby give you notice that I desire to appeal to the Courts-Martial Appeal Court against my conviction on the following grounds:²

(Signed)³, Appellant.

Dated the ⁴..... day of 19.....

Questions⁵

Answers

1. Do you desire the Court to assign you legal aid?
If your answer to this question is "Yes", then answer the following questions:
(a) What pay, allowances, salary, or income were you receiving before your conviction?
(b) What other means have you?
(This information is required to show whether your means are insufficient to enable you to obtain legal aid for yourself.)
2. Is any solicitor or other person now acting for you?
3. Do you desire to be present when the Court considers your appeal?
4. Do you desire to apply for leave to call any witnesses on your appeal?
If your answer to this question is "Yes" you must also fill in form 6 and send it with this form.

NOTES

¹ If not in custody, set out appellant's address in full.

² Here set out clearly and concisely the reasons why you consider your conviction should be quashed.

³ This notice must be signed by the appellant or by his representative. If the appellant cannot write, he must affix his mark in the presence of a witness. The name and address of the attesting witness must be given.

⁴ If this form is lodged after the expiration of the time allowed to the appellant under rule 4, he must also fill in form 2 and send it with this form.

⁵ The appellant must answer these questions.

Form 2

R. 5

NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPLY FOR LEAVE TO APPEAL

To the Registrar of the Courts-Martial Appeal Court,
Wellington, New Zealand.

I, ¹....., having been convicted of the offence of ²..... by Court-martial held at on the day of 19....., and being now at ³....., give you notice that I hereby apply to the Court for an extension of the time within which I may give Notice of Application for Leave to Appeal, on the grounds following:⁴

(Signed)....., Appellant.

Dated the day of 19.....

Form 1 must be filled up and sent with this notice to the Registrar.

NOTES

¹ Insert name, number, rank, and unit or ship.

² State shortly the offence or offences.

³ Set out address in full.

⁴ Here set out clearly and concisely the reasons for the delay in giving notice, and the grounds on which you submit the Court should extend the time.

FIRST SCHEDULE—*continued*

Form 3

R. 7

NOTICE OF ABANDONMENT

To the Registrar of the Courts-Martial Appeal Court,
Wellington, New Zealand.

Name of appellant :..... No.:.....

Unit or ship:..... Rank:.....

Convicted by Court-martial held at

Offence for which convicted:.....

Name of prison or place of detention:¹.....

I, the above-named appellant, having been convicted and sentenced as above stated and having duly sent to the Registrar of the Court notice that I desired to appeal, now hereby give notice that I do not intend further to prosecute my appeal, but that I hereby abandon all proceedings in regard thereto as from the date hereof.

Dated the day of 19....

(Signed)²....., Appellant.

This notice was signed by the above-named appellant on the day above-stated in my presence, after the effect of the notice had been explained to him by me:

Signature of witness²:.....

Rank of witness:.....

Capacity in which witness signs²:.....

NOTES

¹ If not in custody, set out appellant's address in full.² This notice must be signed in the presence of a witness, who must be a legal staff officer, or the appellant's commanding officer, or an officer not below the rank of field officer, and should indicate the capacity in which he signs.

Form 4

R. 10 (3)

NOTICE OF APPEAL FROM JUDGE UNDER SECTION 25 OF THE ACT

To the Registrar of the Courts-Martial Appeal Court,
Wellington, New Zealand.

I, ¹....., having received your notification that my applications for—(a) Leave to appeal²:(b) Extension of the period within which application for leave to appeal may be made²:(c) Legal aid²:

(d) Permission to be present at the proceedings in the appeal²—
have been refused by a Judge of the Court, do hereby give you notice that I desire that the said applications shall be considered and determined by the full Court.

(Signed)....., Appellant.

Dated the day of 19....

If you desire to state any reasons, in addition to those set out by you in your original application³, upon which you submit that the Court should grant this application, you may do so in the space below.

NOTES

¹ Insert name, number, rank, and unit or ship.² Strike out if not applicable.³ You must not repeat reasons that you have already stated in previous applications.

FIRST SCHEDULE—*continued*

Form 5

R. 15

ORDER TO WITNESS TO ATTEND FOR EXAMINATION

From the Registrar of the Courts-Martial Appeal Court,
Wellington, New Zealand.

To ¹

WHEREAS, on good cause shown to the Courts-Martial Appeal Court, you have been ordered to attend and be examined as a witness before (the Court) (an Examiner)² upon the appeal of ³.....

This is to give you notice to attend before the (Court) (Examiner)² at o'clock in the noon on the day of 19.... at the '.....' (and also to bring with you and produce the undermentioned books, papers, or other things relating to the appeal, viz:)⁴

Dated the day of 19...., Registrar.

NOTES

¹ Full name and address of witness.² Strike out words in parentheses not applicable.³ Name, number, and rank of appellant.⁴ Insert place where examination is to take place.

Form 6

R. 15 (2)

APPELLANT'S APPLICATION TO CALL FURTHER EVIDENCE

To the Registrar of the Courts-Martial Appeal Court,
Wellington, New Zealand.

I, ¹....., having applied for leave to appeal to the Courts-Martial Appeal Court, hereby give notice that I desire the Court to order the following (witness) (witnesses)² to attend the Court and be examined on my behalf.

(Signed)....., Appellant.

Dated the day of 19....

You are required to complete the following particulars³:

(a) Name and address of witness:

(b) Was the witness examined at your Court-martial?

(c) If not, state reason why he was not examined:

(d) State shortly the evidence you think he can give:

NOTES

¹ Insert name, number, rank, and unit or ship.² Strike out word in parentheses not applicable.³ If more than one witness is desired, the information must be given in respect of each witness.

Form 7

R. 15 (7)

Courts-Martial Appeals Act 1953

RECORD OF DEPOSITION OF WITNESS EXAMINED BEFORE EXAMINER

..... Appellant

THE deposition on oath taken before me, the undersigned, being an Examiner duly appointed by the Courts-Martial Appeal Court, of of and of witnesses, examined before me under an order of the said Court dated day of 19...., in the presence of the said appellant (or of his counsel or solicitor) and the respondent (or its counsel or solicitor) at on the day of 19...., which said appellant and respondent (personally, or by their counsel or solicitors respectively) had full opportunity of asking questions of the said witnesses, to whom the depositions following were read by me before being signed by them the said witnesses respectively.

The deposition of of who upon oath duly administered by me saith as follows: [*Here follows deposition*].

(Signed)....., Witness.

Taken before me the day of 19....

(Signed)....., Examiner.

FIRST SCHEDULE—*continued*

Form 8

R. 20 (1)

NOTICE OF APPLICATION FOR A CERTIFICATE UNDER SECTION 10 (1) OF THE ACT

To the Attorney-General, Parliament House,
Wellington, New Zealand.

Name of appellant:..... No.:.....

Unit or ship:..... Rank:.....

Respondent:.....

Offence of which appellant was convicted by Court-martial:.....

Date when appeal was heard, and place:.....

Decision of Court:.....

Date of decision:.....

Address of appellant:.....

(The above-named appellant) (the above-named respondent)¹ hereby gives you notice that (he) (it)¹ desires you to grant a certificate pursuant to section 10 (1) of the Courts-Martial Appeals Act 1953 that the aforesaid decision of the Court involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, the point of law being ².....

Dated³ the day of 19.....(Signed)..... (Appellant) (Respondent)¹.

NOTES

¹ Strike out the words in parentheses not applicable.² Here set out concisely the point of law in question and state why it is considered to be of exceptional public importance.³ If this notice is not given within fourteen days from the date of the Court's decision, form 9 must be filled in and sent with this form to the Registrar.

Form 9

R. 20 (2)

NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPLY FOR A CERTIFICATE UNDER SECTION 10 OF THE ACT

To the Registrar of the Courts-Martial Appeal Court,
Wellington, New Zealand.

Appellant:¹.....

Respondent:.....

Present address of appellant:².....

The appellant having appealed to the Court against his conviction by Court-martial for the offence of ³..... and the decision of the Court having been given at on the day of 19....., the (appellant) (respondent)⁴ hereby gives you notice that (he) (it)⁴ hereby applies to the Court for an extension of the time within which to apply to the Attorney-General for a certificate under section 10 of the Act, on the grounds following:⁵.....

(Signed)..... (Appellant) (Respondent)⁴.

Dated the day of 19.....

Form 8 must be filled up and sent with this notice to the Registrar.

NOTES

¹ Insert name, number, rank, and unit or ship.² Set out address in full.³ State shortly the offence.⁴ Strike out words in parentheses not applicable.⁵ Here set out clearly and concisely the reasons for the delay in making such application and the ground on which it is submitted the Court should extend the time.

R. 3 (4)

SECOND SCHEDULE

Circumstances	Person With Whom an Application or Notice is Lodged Under Rule 3 (4)
(1) Appellant serving in or in custody on board H.M. ship	Captain of the ship.
(2) Appellant in custody on board a ship other than one of H.M. ships	Officer commanding forces on board.
(3) Appellant serving with an army or air force unit	Officer commanding the unit.
(4) Appellant confined in naval detention quarters	Officer in charge of the naval detention quarters.
(5) Appellant confined in military prison or detention barrack	Commandant of the prison or barrack.
(6) Appellant confined in a civil prison	Governor or gaoler of the prison.
(7) Appellant who is a civilian and is outside New Zealand	Officer commanding at the nearest naval, army, or air force headquarters.

T. J. SHERRARD,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 9 December 1954.

These regulations are administered in the Navy, Army, and Air Departments.