



# Court of Appeal (Civil) Amendment Rules 2006

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 3rd day of July 2006

Present:

Her Excellency the Governor-General in Council

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

### Contents

	Page
1 Title	2
2 Commencement	2
3 Principal rules amended	2
4 New rule 7A inserted	2
7A Judges to be identified	2
5 Application of this Part	2
6 Time for making application for leave	2
7 New rule 49 substituted	3
49 Delivery of judgment	3

## Rules

### 1 Title

These rules are the Court of Appeal (Civil) Amendment Rules 2006.

### 2 Commencement

These rules come into force on 7 August 2006.

### 3 Principal rules amended

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

### 4 New rule 7A inserted

The following rule is inserted after rule 7:

#### “7A 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.”

### 5 Application of this Part

Rule 13 is amended by revoking subclause (2).

### 6 Time for making application for leave

- (1) Rule 14 is amended by revoking subclause (1) and substituting the following subclause:

“(1) If an enactment provides that an appeal against a decision may not be brought to the Court without leave of the Court, an application for that leave must be made to the Court within 20 working days after the decision is given.”

- (2) Rule 14 is amended by revoking subclause (3) and substituting the following subclause:

“(3) For the purposes of subclauses (1) and (2), a period begins when the decision to which it relates is given, whether or not—

“(a) reasons for the decision are then given or are given later; or

“(b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.”

- (3) Rule 14(5) is revoked.

**7 New rule 49 substituted**

Rule 49 is revoked and the following rule substituted:

**“49 Delivery of judgment**

“(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 email or facsimile or post; 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) If a party who has given an address for service does not make a request under subclause (6), 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 a copy of the judgment to that party.
- “(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 applies to judgments on appeals and applications for leave to appeal. The rule does not apply to minutes, interlocutory orders, or directions.”

Diane Morcom,  
Clerk of the Executive Council.

---

### Explanatory note

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

These rules, which come into force on 7 August 2006, amend the Court of Appeal (Civil) Rules 2005. In general terms, the amendments—

- insert a new rule requiring the Judge or Judges responsible to be identified on all judgments, minutes, and directions (*rule 4*):

- remove references in rules 13 and 14 to applications to the court appealed from for leave to appeal to the Court of Appeal (*rules 5 and 6*);
- provide for how judgments of the Court of Appeal may be delivered (*rule 7*).

*Rule 4* inserts a *new rule 7A* requiring every judgment, minute, or direction to identify on the face of it the Judge or Judges who made the decision or minute or gave the direction.

*Rules 5 and 6* make related rule changes to rules 13 and 14. The combined effect of rules 13(2) and 14(1) is that if leave to appeal to the Court of Appeal is required initially from the court appealed from, an application for that leave must be made to the court appealed from within 20 working days after the decision appealed against is given. This means that only the Court of Appeal can extend the time within which an application for that leave can be made, requiring an application to extend time to be made to the Court of Appeal together with the payment of a filing fee. Although the leave of the High Court may be required to appeal, there is no power for that court under the High Court Rules to extend time. The changes to rules 13 and 14 mean that those rules will apply only to applications to the Court of Appeal for leave to appeal (whether initially or following a refusal by the court appealed from to grant leave).

Corresponding amendments to the High Court Rules are made by the High Court Amendment Rules (No 2) 2006, which also come into force on 1 August 2006, relating to the procedure for obtaining leave of that court to appeal to the Court of Appeal. The procedure for obtaining leave to appeal from the High Court to the Court of Appeal will thus be located in the High Court Rules, and the High Court will be able to extend the time to apply for leave to appeal under its own rules.

*Rule 7* substitutes a *new rule 49* setting out the procedure for the delivery of judgments. This is required following the repeal of section 58(2) and the amendment to section 59 of the Judicature Act 1908 by the Judicature Amendment Act 2006. Section 58(2) had been interpreted as requiring all Court of Appeal judgments to be delivered in open Court. The repeal of this provision and the amendment to section 59 mean that judgments of the Court may now be given in the manner prescribed by rules. Key features of the new rule are—

- judgments may be delivered orally or reserved:
- if a judgment is delivered orally, it is given when a Judge or Judges deliver it in open Court:
- if a judgment is reserved, it may either be delivered in open Court or through the Registrar:
- where a reserved judgment is delivered in open Court, any 2 Judges of the Court may deliver the judgment, whether or not they were members of the Court that heard the appeal; this is consistent with the Court's decision in *Clark v Attorney-General (No 2)* [2005] NZAR 495. The judgment is given when it is pronounced in open Court. The Registrar must attempt to notify the parties in advance of the fact that the Court intends to deliver its judgment, however there is no obligation on parties to appear or be represented when the judgment is delivered:
- where a reserved judgment is delivered through the Registrar, 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**). The judgment is treated for all purposes as having been given at the delivery time. The Registrar must attempt to notify the parties in advance that the Court intends to deliver its judgment through the Registrar and of the delivery time:
- a party may request the Registrar to send by email or facsimile or post, or make available for collecting, a copy of the judgment immediately after delivery time (or its transcription in the case of an oral judgment). If no request is made, the Registrar must post a copy of the judgment to a party at the party's address for service:
- the Registry must retain a copy of the judgment signed by at least 1 of the Judges who was a member of the Court that heard the appeal.

---

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 6 July 2006.

These rules are administered by the Ministry of Justice.

---