

1955/30



THE COURT OF APPEAL RULES 1955

C. W. M. NORRIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 21st day of March 1955

Present:

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

PURSUANT to 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 five other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (two of such other members being Judges of the Supreme Court), hereby makes the following rules.

RULES

GENERAL

Preliminary

1. (1) These rules may be cited as the Court of Appeal Rules 1955.

(2) These rules shall come into force on the fourteenth day after the date of their notification in the *Gazette*.

2. These rules are arranged as follows:

GENERAL

Preliminary

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SCHEDULES

First Schedule: Fees Payable to Registrar of Court of Appeal.

Second Schedule: Rules Revoked.

3. In these rules, unless the context otherwise requires,—

“Code” means the Code of Civil Procedure in the Supreme Court set out in the Second Schedule to the Judicature Act 1908:

“Court” means the Court of Appeal:

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

Interpretation.

No bill of exception or proceeding in error.
R. 1

4. No appeal to the Court shall be taken by way of bill of exception or proceeding in error.

Application to proceedings under Crimes Act 1908.

5. Except as herein expressly provided, these rules shall apply to proceedings under the Crimes Act 1908, but shall not apply to proceedings under the Criminal Appeal Act 1945.

Procedure Generally

Applications to be by motion.
R. 21

6. (1) Except where by any enactment or by these rules other provision is made, all applications to the Court shall be brought by motion.

(2) A motion shall not be necessary to bring before the Court a case stated under the authority of any enactment or a proceeding removed from the Supreme Court under section 64 of the Judicature Act 1908.

(3) Subject to these rules, the provisions of the Code relating to motions, including the period of notice to be given of a motion, shall apply to motions in the Court of Appeal.

Affidavits.
RR. 23, 25

7. (1) Affidavits made in matters pending in the Supreme Court may be used in the Court of Appeal.

(2) Affidavits made in the Court of Appeal shall be filed with the Registrar, and there shall be lodged therewith a sufficient number of copies for the use of the Court and the Judges.

(3) Subject to these rules, the provisions of the Code relating to affidavits shall apply to affidavits in the Court of Appeal.

Intitulement.
RR. 2A (a), 24

8. All documents filed in the Court shall be enfaced and endorsed with the intitulement of the proceedings, comprising—

(a) The words "In the Court of Appeal of New Zealand":

(b) The Short Title of any enactment, other than the Judicature Act 1908 and these rules, conferring jurisdiction to entertain the proceedings:

(c) The name of the appellant, followed by the word "Appellant":

(d) The name of the respondent, followed by the word "Respondent".

Setting Down for Hearing

Time and mode of setting down.
R. 16 (a), (b)

9. (1) Every appeal, case stated, proceeding removed, or other proceeding to be heard at a sitting of the Court shall be set down for hearing at least six clear days before the day appointed for that sitting by filing with the Registrar a praecipe to set down.

(2) No proceeding shall be set down unless previously or at the same time there have been filed and lodged the documents referred to in rule 10, rule 11, or rule 12, as the case may require.

Documents required in appeals.
R. 16 (a)

10. (1) In the case of an appeal, there shall be filed—

(a) The notice of motion referred to in rule 20:

(b) A duplicate or office copy of the judgment or order appealed from:

(c) A copy of the case on appeal, certified on its face by the person filing it as being a true copy of all the documents of which it purports to be a copy.

(2) There shall also be lodged with the Registrar fifteen copies of the case on appeal.

11. (1) In the case of a case stated, there shall be filed the original case stated, under the signature of the person by whom the case is stated or under the seal of the Court by which it is stated.

Documents
required in
cases stated.

(2) There shall also be lodged with the Registrar fifteen copies of the case stated.

12. (1) In the case of a proceeding removed from the Supreme Court, there shall be filed—

Documents
required in
proceedings
removed.
R. 16 (e)

(a) A sealed copy of the order of removal made by the Supreme Court:

(b) A copy of the documents constituting the proceeding so removed, certified on its face by the person filing it as being a true copy of all the documents of which it purports to be a copy.

(2) There shall also be lodged with the Registrar fifteen copies of the order of removal and of the said documents.

13. The Registrar shall thereupon set down the proceeding by entering it in the list of appeals and other proceedings, and, subject to rule 31, it shall come on to be heard according to its order in the list unless the Court otherwise orders.

Registrar to
enter
proceeding in
list.
R. 16 (a)

14. Except in the case of appeals under the Crimes Act 1908, leave to set down otherwise than in accordance with the foregoing rules shall be granted only on good cause shown and on such terms as the Court thinks proper.

Leave to set
down
otherwise.
R. 16 (e)

15. In the event of non-compliance with the foregoing rules relating to the setting down of proceedings, the Court may, on the application of a respondent, make an order declaring that the appeal has been abandoned or adjourning the appeal, and may in either case allow costs to the respondent.

Non-
compliance
with
foregoing
rules.
R. 16 (d)

Form of Documents

16. (1) Every case on appeal shall be printed, typewritten, or cyclostyled.

General form
of case on
appeal.
RR. 12 (3),
14 (S.R.
1953/22, r. 2)

(2) The back of each page of the case shall be left blank.

(3) Every page of the case shall be numbered; and the case shall have prefixed thereto a table of contents, followed immediately by a list of documents wholly omitted from the case under rule 24 (2).

(4) The case shall be sewn or stapled, and bound down the back with a strip of cloth extending over the stitching or stapling on each cover.

(5) The case shall be enfaced and endorsed with the intitlement of the proceedings, as prescribed by rule 8.

(6) Of documents forming records of the Court of first instance or Court appealed from, the first included in the case shall be fully intitled with its intitlement in that Court, and all others shall be intitled only with a description of contents, such as "Statement of Defence" or "[First] Affidavit of A. B."

(7) Every tenth line shall be numbered in the margin.

Printed case.
R. 15 (S.R.
1953/22, r. 2)

17. If an appellant elects to have the case on appeal printed,—
(a) The size of the paper used shall be either demy quarto or foolscap folio:

Provided that this paragraph shall not apply to copies of plans, drawings, or similar documentary exhibits included in the case:

(b) The type to be used in the text shall be 12-point type, except that 10-point type shall be used in printing accounts, tabular matter, and notes:

(c) The number of lines in each page of 12-point type shall be forty-seven on demy quarto, or sixty-five on foolscap folio:

(d) Each line shall be $5\frac{3}{4}$ in. or 146 millimetres in length.

Typewritten
or cyclostyled
case.
R. 15A (S.R.
1953/22, r. 2)

18. If an appellant elects to have the case on appeal typewritten or cyclostyled,—

(a) The size of the paper used shall be foolscap folio:

Provided that this paragraph shall not apply to copies of plans, drawings, or similar documentary exhibits included in the case:

(b) Double spacing shall be left between the lines:

Provided that single spacing may be left between the lines of short quotations or short exhibits:

(c) The margin shall be at least one-fourth of the width of the paper.

Form of other
documents.

19. The documents, other than the case on appeal, to be filed pursuant to any of the provisions of rules 10 to 12 shall conform as nearly as may be practicable to the requirements of rules 16 to 18.

APPEALS

Mode of Appealing

Appeal to be
by motion.
R. 2

20. (1) All appeals to the Court shall be brought by motion of appeal on notice given as hereinafter provided.

(2) The appellant may appeal either from the whole or from part of a judgment or order from which an appeal lies to the Court, and the notice of motion shall state whether the whole or part only of the judgment or order is appealed from, and in the latter case shall specify that part.

Contents of Case on Appeal

Responsibility
for form and
contents.
R. 11 (S.R.
1953/22, r. 2)

21. The primary responsibility for the form and contents of the case on appeal shall rest on the appellant or his solicitor, but if in any doubt or difficulty he shall consult all other parties directly affected by the appeal; and any such other party may of his own motion tender advice to the appellant or his solicitor as to the contents of the case.

22. In an appeal direct from a Court of first instance the case on appeal shall comprise copies of the following documents:

- (a) The notice of motion of appeal:
- (b) The pleadings in the proceedings, where relevant:
- (c) Interlocutory orders made in the proceedings, where relevant:
- (d) Evidence, where relevant:
- (e) Where there is a statement in writing of the reasons for the judgment or order appealed from, a copy of that statement:
- (f) Where those reasons have been stated orally, a proper report, to be approved by the Judge, of the statement made by him of those reasons:
- (g) The formal judgment or order appealed from.

Appeal from Court of first instance. R. 13 (S.R. 1953/22, r. 2)

23. In a further appeal from an appellate tribunal, the case on appeal shall comprise copies of the following documents:

- (a) The notice of motion of appeal:
- (b) The case on appeal presented to the Court below:
- (c) Where there is a statement in writing of the reasons for the judgment or order of the Court below, a copy of that statement:
- (d) Where those reasons have been stated orally, a proper report or reports of the statement or statements made by the Judge or Judges of those reasons, each report being approved by the Judge who made the statement:
- (e) The formal judgment or order of the Court below.

Case on further appeal. R. 13 (S.R. 1953/22, r. 2)

24. (1) Subject to the provisions of this rule, where any question of fact is involved in the appeal, the evidence taken in the Court of first instance or other Court below bearing on the question shall be brought before the Court of Appeal by inclusion in the case on appeal of—

Evidence on question of fact. R. 12 (1), (2), (4), (5) (S.R. 1953/22, r. 2)

- (a) Copies of affidavits and other documents; and
- (b) In respect of oral evidence, a copy of the official notes of evidence, or failing those a copy of the Judge's notes, or failing those such other material as the Court appealed from or a Judge thereof or the Court of Appeal may deem expedient.

(2) As far as may be practicable, any document or part of a document or other evidence that is not relevant to any question involved in the appeal, and any merely formal document or part of a document, shall be excluded from the case on appeal, and the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents shall be avoided.

(3) Where one party objects to the inclusion of a document in the case on appeal on the ground that it is unnecessary or irrelevant, and any other party insists upon it being included, the case shall, with a view to the subsequent adjustment of the costs of and incidental to the document, indicate in the table of contents or otherwise the fact that the inclusion of the document was objected to and the party by whom it was objected to.

(4) Any party directly affected by an appeal may apply to the Court appealed from or a Judge thereof for an order that, unless the Court of Appeal otherwise directs, certain evidence be omitted from the case on appeal.

Transmission
of exhibits to
Court of
Appeal.

25. Where transcripts of exhibits of a documentary nature are to be included in the case on appeal, the Registrar of the Court appealed from, after the lodging of the duplicate notice referred to in rule 30, shall allow a reasonable time for the party conducting the appeal to transcribe and verify them, and shall then transmit to the Registrar of the Court of Appeal the originals of all such exhibits in the proceeding, documentary or real, as can conveniently be transmitted, to be retained by him until the appeal is finally disposed of and then returned to the first-mentioned Registrar. In the case of exhibits annexed to affidavits, the affidavits to which they are annexed shall be included in the matter transmitted.

Evidence as
to direction
of Judge.
R. 17

26. If on the hearing of an appeal a question arises as to the ruling or direction of the Judge to a jury, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem it expedient to admit.

Time for Appealing

Time for
appeal *inter*
partes.
RR. 9, 19

27. (1) Except by special leave of the Court or Judge by whom the judgment or order appealed from was given or made, or by special leave of the Court of Appeal, no appeal from any interlocutory judgment or order in proceedings between parties shall be brought after the expiration of twenty-eight days, and no other appeal in proceedings between parties shall be brought after the expiration of three months:

Provided that the time of the vacation up to and including the 10th day of January shall not be reckoned in the computation of the said period of twenty-eight days.

(2) An order or decision made or given in the matter of the winding-up of a company under the Companies Act 1933 shall be deemed for the purposes of this rule to be an order from which an appeal may not be brought after the expiration of twenty-eight days.

(3) A judgment or order dismissing an application for a new trial shall be deemed for the purposes of this rule to be a judgment or order from which an appeal may not be brought after the expiration of three months.

(4) For the purposes of this rule, the power to grant special leave may be exercised in such cases and on such terms as the justice of the case may require.

Commence-
ment of time
for appeal.
R. 19

28. The periods referred to in rule 27 shall be computed—

(a) Where an action is dismissed or a judgment of non-suit is pronounced or an application is refused, or in the case of an order falling within the provisions of rule 425 of the Code, from the time when the decision of the Court is given, irrespective of whether reasons for the decision are given at a later date and irrespective of whether any formal steps to sign, enter, or otherwise perfect the decision are necessary or are afterwards taken:

(b) In any other case, from the time at which the judgment or order is signed, entered, or otherwise perfected.

29. (1) For the purposes of rule 27, an appeal shall be deemed to be brought when notice of the motion of appeal is served on every party directly affected by the appeal and a duplicate has been lodged in the Court appealed from; but it shall not be necessary to serve parties not so affected, nor shall it be necessary within the time limited by rule 27 to file in the Court of Appeal the notice of motion of appeal.

When appeal deemed to be brought.
R. 3

(2) Service at an address for service notified in the proceedings appealed from shall be sufficient service for the purposes of this rule.

30. Either before or immediately after notice of motion of appeal is served on the parties as required by rule 29, a duplicate of the notice shall be lodged in the Court appealed from.

Filing notice of motion.
R. 2A (b)

31. Notwithstanding the provisions of rule 13, no motion of appeal shall be heard, except with the consent of the respondent or by order of the Court,—

Time of hearing, *inter partes*.
R. 4

(a) Where the time for bringing the appeal is limited to three months, at a sitting that commences less than fourteen days after service of the notice of motion of appeal:

(b) Where the time for bringing the appeal is limited to twenty-eight days, at a sitting that commences less than seven days after service of the notice of motion of appeal.

32. (1) Subject to the provisions of these rules as to setting down, an appeal in respect of an application made *ex parte* in the Court appealed from may be made to the Court of Appeal *ex parte* at its next sitting or, if the decision of the Court appealed from was given less than fourteen days before the commencement of the next sitting, at that or the next following sitting.

Time for appeal *ex parte*.
R. 10

(2) By special leave of the Court or Judge by whom the decision appealed from was given, or by special leave of the Court of Appeal, any such appeal may be made at a later sitting.

Cross Appeals

33. (1) It shall not be necessary for a respondent to give notice of motion by way of cross appeal.

Cross appeals.
RR. 6, 7

(2) If a respondent intends on the hearing of an appeal to contend that the decision of the Court below should be varied, he shall within the appropriate time specified in subclause (4) of this rule, or within such time as may be allowed by the Court, file with the Registrar and give to any parties who may be affected by such contention a notice of such intention.

(3) The omission to give such notice shall not diminish the powers conferred on the Court by the Judicature Act 1908, but may in the discretion of the Court be ground for an adjournment of the hearing of the appeal or for a special order as to costs.

- (4) Subject to any special order that may be made, the notice referred to in subclause (2) of this rule shall be given,—
- (a) Where the time for bringing the appeal is limited to three months, not less than eight days before the commencement of the sitting at which the appeal is to be heard:
- (b) Where the time for bringing the appeal is limited to twenty-eight days, not less than four days before the commencement of that sitting.

Security for Costs

Security for
costs.
R. 22

34. (1) Within fourteen days after the appeal has been brought as prescribed by rule 27, due security for costs in the Court of Appeal shall be given to the satisfaction of the Registrar of the Court appealed from, unless the Court appealed from otherwise directs.

(2) If security is not so given, the notice of motion of appeal shall be deemed to be abandoned:

Provided that a fresh notice of motion of appeal may be given if rule 27 can be and is complied with.

(3) Unless the Court appealed from otherwise orders, the amount for which security is to be given shall be fixed without reference to costs allowable for any day of hearing after the first.

(4) An application to the Court appealed from may be made under this rule before or after notice of the motion of appeal has been served, and shall be made on notice to all parties directly affected by the appeal.

(5) Security shall not be required for the performance of the judgment or order appealed from. This subclause is without prejudice to any power of the Court appealed from or Court of first instance to require security on granting a stay of execution.

Stay of Proceedings

Stay of
proceedings.
RR. 20, 22

35. (1) Where an appeal is brought direct from a Court of first instance, that Court and the Court of Appeal shall each have power to order a stay of execution or a stay of proceedings under the decision appealed from.

(2) Where a further appeal is brought from the decision of an appellate tribunal, that tribunal and the Court of first instance and the Court of Appeal shall each have power to order a stay of execution or a stay of proceedings under the decision appealed from.

(3) Any such order may relate to execution of the whole or part of a judgment or order, or to a particular form of execution, and may be made subject to such conditions as to the giving of security and other conditions as the Court making the order thinks fit to impose.

(4) Except so far as ordered as aforesaid, an appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, and no intermediate act or proceeding shall be invalidated except so far as the Court appealed from directs.

Admission of Further Evidence

36. (1) The Court shall have full discretionary power to receive further evidence on questions of fact by oral examination in Court, by affidavit, or by depositions taken before an examiner or examiners.

Admission of further evidence.
R. 5

(2) On an interlocutory application, or in any case as to matters that have occurred after the date of the decision from which the appeal is brought, such further evidence may be given without special leave.

(3) On an appeal from a judgment or order after trial or after the hearing of any cause or matter on the merits, such further evidence shall be admitted only with the special leave of the Court and on special grounds, unless it is evidence as to matters subsequent to the decision as aforesaid.

Powers of Court in Hearing Appeals

37. All appeals shall be by way of rehearing.

Appeal to be by way of rehearing.
R. 2

38. Any notice of motion of appeal may be amended at any time as the Court thinks fit.

Amendment of motion of appeal.
R. 3

39. The Court may direct that a notice of motion of appeal be served on any party to the proceeding appealed from who has not been served pursuant to rule 29 as a party directly affected by the appeal, or on any person who is not a party; and in the meantime may postpone or adjourn the hearing of the appeal on such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.

Service on additional parties or other persons.
R. 3

40. The Court shall have all the powers and duties as to amendment and otherwise of the Court of first instance.

Powers of amendment, etc.
R. 5

41. The Court shall have power to draw inferences of fact.

Power to draw inferences of fact.
R. 8

42. The Court shall have power to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

Power to give judgment or make order.
R. 5

43. The powers of the Court may be exercised notwithstanding that the motion of appeal may be that part only of the decision be reversed or varied, and may be exercised in favour of all or any of the respondents or parties although they may not have appealed from the decision or contended that it should be varied.

Powers not restricted to terms of appeal.
R. 5

44. No interlocutory order or rule from which there has been no appeal shall operate so as to prevent the Court from giving such decision on the appeal as may seem just.

Interlocutory order not to restrict decision on appeal.
R. 18

45. Nothing in rules 38 to 44 shall limit the Court in the exercise of any power conferred elsewhere in these rules.

Saving.

COSTS AND FEES OF COURT

Costs

46. The Court shall have power to make such order as to the whole or any part of the costs of an appeal, or of any other proceedings in the Court, as may seem just.

47. The costs of proceedings in the Court shall be according to the following scales:

- (a) Drawing and settling case: Under £200, £5 5s.; £200 to £500, £10 10s.; over £500, £15 15s.:
- (b) Cost of printing, typewriting, or cyclostyling: Whatever the amount paid, or, if the typewriting or cyclostyling has been carried out in the office of the solicitor for the appellant, such sum as may be allowed by the Registrar in that behalf:
- (c) Setting down and arguing to judgment a case not from a distance: Under £200, £21; £200 to £500, £50; over £500, £75:
- (d) Setting down and arguing to judgment a case from a distance: The appropriate fee set out in paragraph (c) of this rule, and, in the discretion of the Court, an additional sum, to be fixed by the Court, not exceeding half that fee:
- (e) For every day of hearing after the first, whether the case is from a distance or not: A sum to be fixed by the Court, not exceeding £21.
- (f) Extra counsel, if certified for: Not exceeding £10 10s. each per day:
- (g) If affidavits are allowed, or evidence is taken orally: Such costs in respect thereof as are fixed by the Court:
- (h) If money is not claimed, costs shall be on such of the above-mentioned scales as shall be determined by the Court, having regard to the importance of the case:
- (i) If different questions are involved, the costs may be apportioned by the Court.

48. Unless the Court otherwise directs, when costs are allowed, there shall also be allowed as disbursements the sums paid as fees of Court under rule 49.

Fees of Court

49. (1) The fees specified in the First Schedule hereto shall be payable in proceedings in the Court, in respect of the matters so specified.

(2) The fees to be paid in respect of matters not specified in the said Schedule shall be the fees charged in respect of similar matters in ordinary civil proceedings in the Supreme Court.

POOR PERSONS' APPEALS

50. Any person may, at the discretion of the Court, be admitted to appeal as a poor person from any judgment, decree, or order of the Supreme Court, or from any other Court from which an appeal to the Court of Appeal lies, on proof that he is not worth £50, his wearing apparel and the subject of the cause or matter excepted, and on compliance with the following rules.

Costs in
discretion of
Court.
R. 5

Scale of costs.
R. 26 (S.R.
1954/38)

Court fees to
be allowed.

Fees of Court.
(S.R.
1952/121)

Leave to
appeal as poor
person.
R. 27

51. (1) Every application for leave to appeal as a poor person shall be supported by the affidavits hereinafter mentioned.

Application for
leave.
RR. 28, 29

(2) Every person desiring to obtain the leave of the Court to appeal as a poor person shall make and file in support of his application an affidavit stating in detail the particulars of all real and personal property, wheresoever situated, in which he has any estate or interest whatever, whether vested or contingent, in possession or remainder, and the estimated value of each item thereof, and further stating that he is not possessed of or entitled to any other property whatever.

52. (1) The applicant and his solicitor shall also make, and the applicant shall file in the Court, an affidavit showing in detail every sum which the applicant, and every person on his behalf, or at his request, or in his interest, or for his benefit, has paid or become liable for, or has promised or undertaken to pay, for costs, charges, disbursements, and other expenses in respect of the action, cause, or matter as to which he desires to appeal, and in respect of all advice, consultations, and professional charges whatsoever preliminary to such action, cause, or matter.

Affidavit as to
payments for
costs.
RR. 30, 31

(2) Every such affidavit shall show the details and the date of every such payment, promise, or undertaking, and the name of the person or persons by and to whom every such payment, promise, or undertaking has been made or given.

(3) It shall be the duty of every solicitor to whom any such payment, promise, or undertaking has been made or given (whether the solicitor is or is not the solicitor acting for the applicant in the application for leave to appeal as a poor person), at the request of the applicant, and without any fee or charge, to make the affidavit required by this rule. If he fails to do so on request he shall be guilty of a contempt of Court, and shall, at the instance of the applicant, be examined by the Court; and the examination shall take the place of the affidavit.

53. (1) Every person desiring to appeal as a poor person shall lay before counsel a case for his opinion.

Case for
counsel's
opinion.
RR. 32, 33, 34

(2) No person who has acted, or is acting, or who intends to act as solicitor for the person who desires to obtain leave to appeal as a poor person shall be competent to act as counsel to advise on the case for opinion. The certificate of any such person shall be treated as a nullity.

(3) Every such case shall contain—

(a) A copy of all the pleadings or other proceedings in the cause or matter in respect of which it is desired to obtain leave to appeal as a poor person:

(b) If the Judge from whose judgment it is desired to obtain leave so to appeal has given written reasons for his judgment, a full copy of the written reasons:

(c) If it is desired to review the judgment of the Judge upon the facts, or to appeal against the order of the Judge for a new trial, a full copy of the Judge's notes of evidence:

(d) A full and true statement of all other material facts (if any) that are necessary to enable the counsel before whom the case is laid to advise honestly and impartially on it.

(4) Before the case is laid before counsel, the party or his solicitor shall make an affidavit to be endorsed thereon showing fully and clearly that this rule has been strictly complied with.

Copy of notes of evidence and reasons for judgment. R. 35

54. In every case in which a person desires leave to appeal as a poor person and has made and filed the affidavits required by rules 51 and 52 (which affidavits may be made and filed before the motion for leave has been filed), the Judge from whose judgment, decree, or order it is desired to appeal will, on application being made in writing to the Registrar for the purpose, permit the party who desires so to appeal, or his solicitor, or any person in the employment of such solicitor, to copy in the office of the Registrar of the Supreme Court at the place where the judgment, decree, or order was given or made the written reasons (if any) given by the Judge for the judgment, decree, or order, and the notes of evidence taken by the Judge in respect of the cause or matter.

Certificate of counsel. R. 36

55. The certificate of counsel shall be written at the foot of the case in his own handwriting, and shall be in the following form: "I, , of , barrister, certify that I have carefully perused and have carefully, honestly, and impartially considered the foregoing case for opinion, and that the case is, in my opinion, a proper case for appeal".

Case and certificate to be produced to Court. R. 37

56. It shall not be necessary to file the case and the certificate of counsel in the office of the Registrar, but the case and certificate shall be produced to the Court on the hearing of the motion.

Compliance with rules necessary. R. 38

57. No such motion shall be heard or considered by the Court until the foregoing rules have been strictly complied with.

Argument in support of application. R. 39

58. Before leave to appeal is given, the applicant or his counsel shall satisfy the Court by argument in open Court that there is reasonable ground for the appeal; and the certificate of counsel of his opinion will not be accepted as conclusive on that point.

Notice to opposite party. R. 40

59. The Court may, if it thinks fit, direct that notice of the intention of the applicant to move for an order in accordance with his motion shall be served on the opposite party or his solicitor, and may adjourn the hearing of the motion until such day as the Court thinks fit to enable such notice to be given, and may from time to time further adjourn the hearing to enable answering affidavits to be filed or the persons making affidavits in the matter of the motion to be cross-examined in Court or before the Registrar.

No Court fees payable. R. 41

60. A person applying for leave to appeal or admitted to appeal as a poor person shall not be liable to any Court fees.

Assignment of counsel and solicitor. R. 42

61. Where any person is admitted to appeal as a poor person the Court may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or a Judge that he has some good reason for refusing.

No fee or reward payable. R. 43

62. While any person appeals as a poor person, no person shall take or agree to take or seek to obtain from him, or from any person on his behalf, or for his benefit, or in his interest, any fee, profit, or reward for the conduct of his business in the Court; and no person acting as solicitor or counsel for the poor person shall, except with the leave of the Supreme Court or a Judge, take any payment, fee, or reward for any business whatever done for

such person out of the Court, or for any past services rendered or alleged to have been rendered to such person in respect of any matter whatsoever. Any person who without such leave takes or agrees to take or seeks to obtain any such fee, profit, or reward shall be guilty of a contempt of Court:

Provided that such leave shall not be necessary to permit the solicitor to receive any sum representing out-of-pocket expenses reasonably incurred and actually disbursed by him, including fees of counsel in the Supreme Court.

63. If any person admitted to appeal as a poor person gives or agrees to give any such fee, profit, or reward, the order admitting him to appeal shall be forthwith discharged, and he shall not be admitted again in the same cause to appeal as a poor person.

Where poor person gives fee or reward.
R. 44

64. If in the opinion of the Court the appeal of any person admitted to appeal as a poor person is conducted in a vexatious or improper manner, the order admitting him to appeal may be discharged at the discretion of the Court.

Appeal conducted improperly.
R. 45

65. If any order admitting a person to appeal as a poor person is discharged on the ground that his means at the time when the order was made exceeded £50, he shall not be admitted again in the same cause to appeal as a poor person.

Where order discharged.
R. 46

66. No notice of motion shall be served on behalf of any person admitted to appeal as a poor person, except for the discharge of his solicitor, unless it is signed by his solicitor.

Notice, etc., to be signed by solicitor.
R. 47

67. It shall be the duty of the solicitor acting for or assigned to a person admitted to appeal as a poor person to take care that no notice is served without good cause.

Duty of solicitor.
R. 48

68. Costs ordered to be paid to a person admitted to appeal as a poor person shall, unless the Court otherwise directs, be taxed as in other cases.

Costs of poor person.
R. 49

MISCELLANEOUS

69. Non-compliance with any of these rules shall not render void the proceedings in which the non-compliance has occurred, but they may be set aside either wholly or in part or amended or otherwise dealt with in such manner and on such terms as the Court, on any motion made with reference to the non-compliance, may deem just.

Effect of non-compliance with rules.

70. All matters pending or in progress at the commencement of these rules may be continued, completed, and enforced under these rules, which shall accordingly apply thereto.

Application to pending proceedings.

71. (1) The rules specified in the Second Schedule hereto are hereby revoked.

Revocations and savings.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the revocation of any provision by these rules shall not affect any document made or any thing whatsoever done under the provision so revoked, and every such document or thing, so far as it is subsisting or in force at the time of the revocation and could have been made or done under these rules, shall continue and have effect as if it had been made or done under the corresponding provision of these rules and as if that provision had been in force when the document was made or the thing was done.

SCHEDULES

FIRST SCHEDULE

Rule 49

FEES PAYABLE TO REGISTRAR OF COURT OF APPEAL

	£	s.	d.
Filing notice of motion of appeal	2	0	0
Filing case	0	10	0
Setting down case on appeal or on removal from the Supreme Court	1	10	0
Hearing case on appeal or removed—			
For the first day or part thereof	5	0	0
For each succeeding day or part thereof	2	0	0
Sealing any order	1	10	0
Sealing any duplicate thereof	1	0	0
Sealing any document not otherwise provided for	1	10	0
Sealing any duplicate thereof	1	0	0
Filing any motion	1	0	0
Filing any document not otherwise provided for	0	10	0
Settling and comparing record to Privy Council	5	0	0

SECOND SCHEDULE

Rule 71

RULES REVOKED

1. The rules of the Court of Appeal, set out in the Third Schedule to the Judicature Act 1908.
2. The rules dated 6 October 1916, amending the rules of the Court of Appeal (*Gazette*, 21 December 1916, Vol. III, page 3893).
3. The rules dated 9 October 1926, amending the rules of the Court of Appeal (*Gazette*, 4 November 1926, Vol. III, page 3139).
4. The Court of Appeal Amendment Rules 1935 (*Gazette*, 30 January 1936, Vol. I, page 134).
5. The Court of Appeal Amendment Rules 1939 (Statutory Regulations 1939, Serial number 1939/110, page 546).
6. The Court of Appeal Amendment Rules 1940 (Statutory Regulations 1940, Serial number 1940/181, page 587).
7. The Court of Appeal Amendment Rules 1946 (Statutory Regulations 1946, Serial number 1946/12, page 25).
8. The Court of Appeal (Fees) Rules 1952 (Statutory Regulations 1952, Serial number 1952/121, page 514).
9. The Court of Appeal Amendment Rules 1953 (Statutory Regulations 1953, Serial number 1953/22, page 72).
10. The Court of Appeal Amendment Rules 1954 (Statutory Regulations 1954, Serial number 1954/38, page 171).

T. J. SHERRARD,
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 consolidate, with amendments, the rules of procedure of the Court of Appeal in civil cases and in cases stated for the opinion of that Court under the Crimes Act 1908. They do not apply to proceedings under the Criminal Appeal Act 1945.

The rules have been rearranged, and minor drafting alterations have been made. There are marginal references to the corresponding rules replaced by these rules.

The new rules contain changes in procedure. The main changes are set out below.

Time for Appealing (rules 27 to 32).—Under the old rules, appeals from interlocutory orders, or from any orders (including final orders) in matters that were not actions, were to be brought within twenty-eight days; and other appeals were to be brought within four months. Under these rules, appeals from interlocutory orders are to be brought within twenty-eight days, and all other appeals within three months. The power to enlarge either of the appeal periods is no longer restricted to the Court of Appeal, but may be exercised by the Court or Judge whose judgment or order is appealed from. The classes of case in which the time for appeal runs from the giving of the Court's decision are extended to include not only the refusal of an application but also the dismissal of an action, a judgment of non-suit, and orders to which rule 425 of the Supreme Court Code applies (orders that need not be drawn up). The first part of the long vacation up to and including 10 January is not to be counted in computing the twenty-eight day appeal period.

Setting Down for Hearing (rules 9 to 15).—Appeals are now to be set down for hearing by filing a praecipe at least six clear days before the day appointed for the sitting of the Court. This brings the time into line with rule 250 of the Supreme Court Code.

Security for Costs (rule 34).—The security required to be given on appeal is restricted to security for costs in the Court of Appeal.

Poor Persons' Appeals (rules 50 to 68).—Applications for leave to appeal as a poor person will be by motion instead of petition (rules 6 and 51); and the value of the assets allowed to such an applicant is increased from £25 to £50.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 24 March 1955.

These regulations are administered in the Department of Justice.