



COURT OF APPEAL (CIVIL) RULES 1997

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 1st day of September 1997

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 51C of 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 at least 2 of the other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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RULES

1. Title and commencement—(1) These rules may be cited as the Court of Appeal (Civil) Rules 1997.

(2) These rules come into force on 1 October 1997.

PART 1

PRELIMINARY PROVISIONS

2. Interpretation—In these rules, unless the context otherwise requires,—

“Court” means the Court of Appeal:

“Court below” means the court or tribunal from which the appeal is brought directly to the Court of Appeal:

“Registrar” means the Registrar of the Court of Appeal; and includes any Deputy Registrar of the Court.

3. Application of rules—These rules apply to all proceedings of the Court, except appeals and proceedings under Part XIII of the Crimes Act 1961.

Cf. S.R. 1955/30, r. 5

PART 2

FILING OF APPEALS

4. Notice of appeal—Except as otherwise provided by these rules or any other enactment, all appeals to the Court must be brought by filing a notice of appeal.

Cf. S.R. 1955/30, rr. 6, 20

5. Time for appeal—(1) Except by special leave of the Court below or by special leave of the Court of Appeal, and unless the enactment conferring the right of appeal otherwise provides, no appeal may be brought after the expiration of 28 days.

(2) An appeal by special leave of the Court below must be brought within the time fixed by the Court below.

(3) In calculating the period referred to in subclause (1), the period commencing on 20 December and ending with the close of 10 January must be disregarded.

Cf. S.R. 1955/30, r. 27

6. Commencement of time for appeal—(1) If—

(a) An action is dismissed or a judgment of non-suit is pronounced; or

(b) An application is refused; or

(c) The order is one to which rule 268 of the High Court Rules applies,—the period referred to in rule 5 (1) begins when the decision appealed from is given, irrespective of whether reasons for the decision are given then or 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.

(2) In all cases other than those referred to in subclause (1), the period referred to in rule 5 (1) begins when the judgment or order is signed, entered, or otherwise perfected.

Cf. S.R. 1955/30, r. 28

7. Mode of bringing appeal—(1) An appeal is brought only when the appellant has—

- (a) Filed a notice of appeal in the Registry of the Court; and
- (b) Served a copy of the notice of appeal on the Registrar of the Court below; and
- (c) Served a copy of the notice of appeal on every party directly affected by the appeal.

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

(3) The notice of appeal must state whether the whole or part only of the judgment or order is appealed from and, if part only is appealed from, the notice must specify that part.

(4) A notice of appeal is not required if the proceeding is a case stated under the authority of any enactment or is a proceeding removed from the High Court under section 64 of the Judicature Act 1908.

Cf. S.R. 1955/30, rr. 6, 20, 29, 30

8. Cross-appeals—(1) A respondent who intends on the hearing of an appeal to contend that the decision of the Court below should be varied must file with the Registrar, and serve on any parties who may be affected by such a contention, a notice of cross-appeal.

(2) Except with the leave of the Court, a notice of cross-appeal may not be filed more than 28 days after the service of the notice of appeal on the respondent.

(3) A notice of cross-appeal must state whether the whole or part only of the judgment or order is appealed from and, if part only is appealed from, the notice must specify that part.

(4) The omission to give a notice of cross-appeal does not limit the powers of the Court, and the omission may, in the Court's discretion, be a ground for adjourning the hearing of the appeal or for a special order as to costs.

Cf. S.R. 1955/30, r. 33

9. Stay of proceedings—(1) Either the Court below or the Court of Appeal may order a stay of execution or stay of proceedings under the decision appealed from, or grant other interim relief by order or (if the Crown is the respondent) by declaration, pending the determination of the appeal.

(2) An order referred to in subclause (1) 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.

(3) Unless an order referred to in subclause (1) otherwise provides, an appeal does not operate as a stay of execution or of proceedings under the decision appealed from.

(4) Unless the Court appealed from otherwise directs, an appeal does not invalidate any intermediate act or proceeding.

Cf. S.R. 1955/30, r. 35

10. Appeal abandoned if not pursued—(1) An appeal is to be treated as having been abandoned if the appellant does not, within 6 months after the appeal is brought, either—

- (a) Apply for a fixture and file the case on appeal; or
- (b) Apply for an extension of time for applying for a fixture and filing the case on appeal.

(2) On an application under subclause (1) (b), the Court may, extend, by such period as it thinks fit, the time for applying for a fixture and filing the case on appeal, and may from time to time further extend that period while the proceeding is pending.

(3) This rule applies only to appeals brought on or after the date of commencement of these rules.

11. Security for costs—(1) Unless the Court below otherwise directs,—

- (a) An appellant must give security for the respondent's costs in the Court of Appeal; and
- (b) The Registrar of the Court below must be satisfied with the security; and
- (c) The security must be given within 14 days after the appeal has been brought.

(2) If security is given in accordance with this rule, the Registrar of the Court below must confirm to the Registrar of the Court of Appeal that the security has been given.

(3) If security is not given in accordance with this rule, the notice of appeal or application for special leave to appeal is to be treated as having been abandoned; but a fresh notice of appeal may be given if rule 5 can be and is complied with.

(4) Unless the Court below otherwise orders, security may not be required to be given for costs allowable for any day of hearing after the first day.

(5) An application to the Court below—

- (a) May be made under this rule before or after notice of the appeal has been served;
- (b) Must be made on notice to all parties directly affected by the appeal.

(6) Security is not required for the performance of the judgment or order appealed from; but this subclause does not limit any power of the Court below or Court of first instance to require security on granting a stay of execution.

Cf. S.R. 1955/30, r. 34

PART 3

GENERAL PROVISIONS RELATING TO APPEALS

12. Application for fixture—Subject to rule 10, any party may at any time apply to the Registrar for the allocation of a fixture date.

Cf. S.R. 1955/30, rr. 9, 13, 14

13. Form of documents filed in appeals—The Court may determine the form of documents to be filed in appeals.

Cf. S.R. 1955/30, rr. 10–12, 16–19, 21–26

14. Case on appeal—Unless the Registrar otherwise directs, an appellant must file with the Registrar 4 copies of the case on appeal.

Cf. S.R. 1955/30, r. 10 (2)

15. Intitulement—All documents filed in the Court must have on their face an intitulement of the proceedings comprising—

- (a) The words “In the Court of Appeal of New Zealand”; and
- (b) The Short Title of any enactment, other than the Judicature Act 1908 and these rules, conferring jurisdiction to entertain the proceedings; and
- (c) The name of the appellant, followed by the word “Appellant”; and
- (d) The name of the respondent, followed by the word “Respondent”.

Cf. S.R. 1955/30, r. 8

16. Affidavits—(1) Affidavits made in matters pending in the Court or tribunal of first instance, or in the other Court below, may be used in the Court of Appeal.

(2) Affidavits made in the Court must be filed with the Registrar, and the party filing an affidavit must lodge with the Registrar a sufficient number of copies as directed by the Registrar.

(3) The provisions of the High Court Rules concerning affidavits apply, with any necessary modifications, to affidavits in the Court of Appeal.

Cf. S.R. 1955/30, r. 7

17. Evidence on questions of fact—If a question of fact is involved in an appeal, the appellant must bring before the Court the evidence bearing on the question that was taken in the Court or tribunal of first instance, or other Court below, by including in the case on appeal—

- (a) Copies of affidavits and other documents; and
- (b) If oral evidence is involved, a copy of the notes of evidence or, if those are not available, such other material as the Court considers expedient.

Cf. S.R. 1955/30, r. 24 (1)

18. Appeals to be by way of rehearing—All appeals are to be by way of rehearing.

Cf. S.R. 1955/30, r. 37

19. Powers of Court in hearing appeals—(1) The Court may at any time allow the amendment of any notice of appeal or cross-appeal.

(2) The Court may—

- (a) Direct the service of a notice of appeal or cross-appeal on any party to the proceeding appealed from who has not been served, or on any person who is not a party; and
- (b) In the meantime, postpone or adjourn the hearing of the appeal on such terms as may seem just, and give such judgment and make such orders as might have been given or made if the persons served in this manner had been originally parties.

(3) The Court has all the powers and duties concerning procedure, including the amendment of pleadings, that are conferred or imposed on the Court of first instance.

(4) The Court may draw inferences of fact.

(5) The Court may give any judgment and make any order which ought to have been given or made, and make such further or other orders as the case may require.

(6) The powers of the Court may be exercised even though the notice of appeal or cross-appeal may state that part only of a decision is appealed from, and may be exercised in favour of all or any respondents or parties

although they may not have appealed from the decision or contended that it should be varied.

(7) The powers of the Court may be exercised despite any interlocutory ruling or order that has not been appealed.

(8) Nothing in this rule limits any other powers of the Court.

Cf. S.R. 1955/30, rr. 38–45

20. Delivery of judgment—The Court must deliver its judgments in open court.

21. Costs and disbursements—(1) The Court may make such orders concerning the whole or any part of the costs and disbursements of an appeal, or of any other proceedings in the Court, as may seem just in its discretion.

(2) The Court may order that the costs and disbursements awarded to any party be taxed as between party and party or as between solicitor and client.

(3) The Court may order that the costs and disbursements be charged upon or paid out of any fund, estate, or assets before the Court.

(4) For the purposes of this rule, “costs and disbursements” includes costs, disbursements, witness expenses, and other necessary payments incurred in the appeal or other proceedings.

Cf. S.R. 1955/30, rr. 46–48; S.R. 1977/123, rr. 2, 4; S.R. 1977/329, r. 2

22. Repayment of judgment sum and interest—(1) If an appellant has, in accordance with a judgment of a Court below, paid a judgment debt and any interest payable on that debt, and the appellant successfully appeals from that judgment, the Court of Appeal may make the orders referred to in subclause (2).

(2) The Court may make such orders, as may seem just in its discretion, concerning—

(a) The repayment of the amount paid by the appellant; and

(b) The payment of interest to the appellant on the amount paid by the appellant under the judgment during the period commencing on the date of the payment and ending with the date of the repayment.

23. Result of appeal—The Registrar must notify the Registrar of the Court below of the result of each appeal.

PART 4

APPLICATIONS AND MISCELLANEOUS PROVISIONS

24. Application for leave to adduce fresh evidence—(1) The Court may, on the application of any party, receive further evidence on questions of fact by—

(a) Oral examination in Court; or

(b) Affidavit; or

(c) Depositions taken before an examiner or examiners in accordance with rules 369 to 376 of the High Court Rules.

(2) Special leave to adduce further evidence on questions of fact is not required if the evidence is to be adduced for the purposes of an interlocutory application or if the evidence concerns matters that have occurred after the date of the decision appealed from.

(3) On an appeal from a judgment or order after trial or after the hearing of any cause or matter on the merits, further evidence on questions of fact may be admitted only with the special leave of the Court and on special grounds, unless the evidence concerns matters that have occurred after the date of the decision appealed from.

Cf. S.R. 1955/30, r. 36

25. Orders and directions—The Court may in any case make such orders and give such directions as may, in the Court's discretion, seem necessary for the just resolution of the case.

26. Application to strike out for want of prosecution—The Court may, on the application of the respondent or any other party to an appeal, order that the appeal be struck out for want of prosecution.

27. Effect of non-compliance with rules—Non-compliance with any of these rules, other than rule 10 or rule 11, does not render void the proceedings in which the non-compliance has occurred, but the proceedings 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 decides.

Cf. S.R. 1955/30, rr. 15, 69

28. Revocations and saving—(1) The following rules are revoked:

- (a) The Court of Appeal Rules 1955 (S.R. 1955/30);
- (b) The Court of Appeal Rules 1955, Amendment No. 3 (S.R. 1977/123);
- (c) The Court of Appeal Rules 1955, Amendment No. 4 (S.R. 1977/329).

(2) The revocation of any rule by subclause (1) does not affect the validity of any document made or any thing done under that revoked rule.

MARIE SHROFF,
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 1 October 1997, set out the rules of procedure of the Court of Appeal in civil cases and replace the Court of Appeal Rules 1955. The new rules do not apply to proceedings under Part XIII of the Crimes Act 1961.

The new rules contain changes in procedure and the main changes are as follows.

Rule 5 requires all appeals, except those brought by special leave, to be brought within 28 days. The former distinction between interlocutory and final orders no longer applies and the provisions in old rule 31 (time of hearing *inter partes*) and rule 32 (time for appeal *ex parte*) have not been carried over.

Rule 7 requires an appeal to be brought by notice of appeal and this procedure replaces the former motion procedure (under old rules 6 and 20).

Rule 8 relates to cross-appeals and replaces old rule 33. The new rule sets a 28-day time limit for filing a cross-appeal.

Rule 10 is new and requires appellants to process their appeals promptly. The appeal is treated as having been abandoned if the appellant has not applied for a fixture and filed the case on appeal within 6 months after bringing the appeal. Provision is made for extensions of the period allowed for applying for a fixture and filing the case on appeal.

Rule 12 entitles any party to apply for a fixture date. Leave is not required for an application (unlike under old rule 14).

Rule 13 allows the Court to determine the form of documents used in appeals. This rule replaces old rules 10 to 12, 16 to 19, and 21 to 26.

Rule 14 requires that 4 copies of the case on appeal be filed. The former requirement (in old rule 10) that a copy be certified, and the separate provisions about the form of cases stated (old rule 11) and cases removed to the Court (old rule 12), no longer apply. The new rules (unlike old rules 21 to 23) do not prescribe requirements about the contents of the case on appeal and those matters are presently covered by the Provisional Practice Note (Civil).

Rule 17 specifies how to bring before the Court evidence of fact and replaces old rule 24. Attention is drawn to the following changes:

- (a) The Provisional Practice Note (Civil) presently deals with the exclusion of unnecessary or irrelevant evidence from the case on appeal and supersedes the provisions formerly in subclauses (2) to (4) of the old rule:
- (b) There is now no provision for a party to apply to the Court below for an order directing that certain evidence be omitted from the case on appeal:
- (c) No distinction is drawn between notes of evidence and Judge's notes:
- (d) Old rule 25 (the transmission of exhibits) and rule 26 (evidence as to directions given by a Judge) are not carried over.

Rule 20 is new and requires judgments to be delivered in open court. The new rule is consistent with current practice and with rule 4 of the New Zealand (Appeals to the Privy Council) Order 1910 which enables an application for leave to be made when judgment is delivered.

Rule 21 relates to costs, expenses, and disbursements and replaces old rules 46 to 48. Costs, expenses, and disbursements will now be fixed in the Court's discretion without any reference to a formal scale.

Rule 22 is new and provides for the repayment of a judgment debt and interest where an appeal against such a judgment is successful.

Rule 24 relates to the admission of further evidence and replaces old rule 36. The new rule enables the special examiner procedure in rules 369 to 376 of the High Court Rules to be used.

Rule 25 is new and embodies the Court's inherent ability to make orders and give directions for the disposition of cases.

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These rules are administered in the Ministry of Justice.