



COURT OF APPEAL (CRIMINAL) RULES 1997

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 25th day of August 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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1. Title and commencement—(1) These rules may be cited as the Court of Appeal (Criminal) 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,—

“Act” means the Crimes Act 1961:

“Court” means the Court of Appeal:

“Exhibit”—

(a) Includes all books, papers, video and audio tapes, documents, and all other property, matters, and things connected with the proceedings against any appellant, that—

(i) Were received in the Trial Court when the appellant was committed for trial or for sentence; or

- (ii) Have been produced or used in evidence in the proceedings; and
 - (b) Includes any written statement given to the Judge by the appellant; but
 - (c) Does not include original depositions not used at trial or an indictment or plea filed in the Trial Court:
- “Registrar” means the Registrar of the Court of Appeal:
 “Trial Court” means a District Court or the High Court, as the case may require:
 “Trial Judge” includes a sentencing Judge.

3. Forms—The forms set out in the Schedule, or forms to the same effect, must be used in all appropriate cases.

Cf. S.R. 1946/94, r. 3

PART 2

PROCEDURE

Institution of Appeal

4. Form of notice of appeal and notice of application for leave to appeal—A notice of appeal or notice of application for leave to appeal must,—

- (a) If the notice is given under section 379A of the Act, be in form 1:
- (b) If the notice is given under section 383 (2) of the Act, be in form 2:
- (c) In every other case, be in form 3.

Cf. S.R. 1946/94, r. 12; S.R. 1967/94, r. 2

5. Notice of application for leave to appeal is sufficient notice of appeal—If the Court grants an appellant leave to appeal, the appellant’s notice of application for leave to appeal is a sufficient notice of appeal.

Cf. S.R. 1946/94, r. 13

6. Other applications may be included in notice of appeal or of application for leave to appeal—The following applications may be included in a notice in form 1 or form 2 or form 3:

- (a) An application for legal aid:
- (b) An application for leave to call a witness:
- (c) An application for leave to be present.

Cf. S.R. 1946/94, r. 14; S.R. 1967/94, r. 6 (2)

7. Persons required or authorised to sign notices and other documents—(1) Except as provided by subclauses (2) to (5), a notice of appeal or of application for leave to appeal must be signed by the appellant.

(2) If the appellant is unable to write, the appellant must affix his or her mark on the notice in the presence of a witness who also signs the notice.

(3) If the appellant contends that the appellant was not responsible for his or her actions on the ground that he or she was insane at the relevant time, any notice required to be signed by the appellant may instead be signed by the appellant’s solicitor or counsel or by any other person authorised to act on the appellant’s behalf.

(4) If the appellant is a body corporate, any notice or other document required to be signed by the appellant may be signed by a duly authorised agent of the body corporate.

(5) Any notice or other document required to be signed by the Solicitor-General may be signed on his or her behalf by Crown Counsel.

Cf. S.R. 1946/94, r. 15; S.R. 1967/94, r. 3

Preparation for Hearing

8. Registrar to obtain certain documents—(1) On receipt of a notice of appeal or notice of application for leave to appeal, the Registrar must obtain for the use of the Court,—

(a) In the case of a conviction or sentence, the trial/sentencing file and any documentary exhibits from the Trial Court; and

(b) In the case of an application for leave to appeal under section 379A or section 379B of the Act, the material relevant to the decision or ruling under appeal.

(2) If the Court requires a copy of the Trial Judge's summing up, the Registrar should send an appropriate request to the Trial Judge as soon as practicable.

Cf. S.R. 1946/94, r. 17

9. Trial Court may direct delivery of documents, etc—(1) Subject to subclause (2), a Judge of the Trial Court may direct that a document, exhibit, or other thing be delivered out of the Trial Court to any person the Judge considers entitled to delivery, and the Judge may make delivery subject to any conditions he or she thinks fit.

(2) Subclause (1) does not apply to property that could be made subject to an order under section 404 of the Act.

Cf. S.R. 1946/94, r. 19

10. Registrar to allocate fixture and prepare case on appeal—

(1) The Registrar must, for each appeal, allocate a fixture and prepare a case on appeal.

(2) The Registrar must send the case on appeal to the parties or other legal representatives, and the parties or other legal representatives must advise the Registrar if any additional material is required to be before the Court at the hearing.

Cf. S.R. 1946/94, rr. 20, 23; S.R. 1967/94, r. 4

11. Register to be kept—(1) The Registrar must keep a register in such form as he or she thinks fit of all—

(a) Notices of appeal, and notices of application for leave to appeal, received by the Registrar; and

(b) Decisions of the Court given in the appeals referred to in those notices.

(2) The register must be open for public inspection during the Court's ordinary office hours.

Cf. S.R. 1946/94, r. 21

12. Court of Appeal may require Trial Court to provide report—

(1) In any proceeding under Part XIII of the Act, the Registrar must, if the Court or a Judge of the Court so directs, request the Judge of the Trial Court to provide the Court of Appeal with a report in writing setting out his or her opinion about the case generally or about any particular point arising in the proceeding.

(2) A report given under subclause (1) must not be disclosed to any person except by leave of the Court of Appeal or a Judge of that Court.

(3) To enable a Judge to prepare a report under subclause (1), the Registrar must provide the Judge with any document concerning the proceeding and in the Registrar's possession if the Judge requests the document or the Court of Appeal or a Judge of that Court directs the Registrar to provide the document.

Cf. S.R. 1946/94, r. 22

Hearing of Appeal

13. Registrar to give parties notice of fixture—Notice of the time and place fixed for the hearing of an appeal or application for leave to appeal must be given by the Registrar to—

- (a) The Solicitor-General; and
- (b) The accused person or convicted person; and
- (c) If the appellant is in custody and the Court has granted the appellant leave to be present at the hearing, the chief executive of the Department of Corrections.

Cf. S.R. 1946/94, rr. 24, 25; S.R. 1967/94, r. 5

14. Decision to be delivered in open Court—The Court must deliver in open Court its decisions on appeals and applications for leave to appeal.

Cf. S.R. 1946/94, r. 26

15. Registrar to notify appellant or respondent of Court's determination if appellant or respondent in custody—If the appellant or respondent is in custody when the Court determines an appeal or incidental matter, the Registrar must—

- (a) Give the appellant or respondent a notification of the determination in form 4; and
- (b) Give a copy of the notification to—
 - (i) The Registrar of the Trial Court; and
 - (ii) The Custody Manager of the penal institution where the appellant or respondent is in custody; and
 - (iii) The Penal Records section of the Public Prison Service.

Cf. S.R. 1946/94, r. 27

Extension of Time

16. Form of application—A person may apply for an extension of the time within which notice of appeal or notice of an application for leave to appeal may be given by filing a notice that—

- (a) Is in form 1 or form 2 or form 3; and
- (b) Is signed in accordance with rule 7.

Cf. S.R. 1946/94, rr. 28, 29; S.R. 1967/94, r. 6

17. Form to be treated as application for extension of time if notice given out of time—If a notice in form 1 or form 2 or form 3 is given out of time, the form is to be treated as if it contains an application for extension of time.

Cf. S.R. 1946/94, r. 30; S.R. 1967/94, r. 6

18. Rule 8 applies when documents for extension of time received by Registrar—On the Registrar's receipt of an application for extension of time or a form having effect under rule 17, rule 8 applies.

Cf. S.R. 1946/94, r. 31

Bail

19. Trial Court to administer terms and conditions of bail—If the Court grants bail pending an appeal, the Trial Court is responsible for administering the terms and conditions of bail and has all the powers necessary to enable it to carry out that responsibility.

Cf. S.R. 1946/94, r. 32

20. Court may issue warrant for arrest of appellant in interest of justice—At any time after an appellant has been released on bail by order of the Court, the Court may, on the application of the Crown or a surety, revoke the order and issue a warrant in form 5 for the arrest of the appellant if it is in the interests of justice to do so.

Cf. S.R. 1946/94, r. 33

21. Rights of surety unaffected—(1) These rules do not affect the right of a surety to apprehend the person for whom he or she is a surety.

(2) On delivering that person into custody, the surety is discharged from all further obligations concerning his or her suretyship.

Cf. S.R. 1946/94, r. 34

22. Provisions applying if bailed appellant fails to appear at hearing—If an appellant who has been admitted to bail fails to appear at the hearing of the appellant's appeal, the Court may do all or any of the following:

- (a) Dismiss the appeal and issue a warrant in form 5 for the arrest of the appellant;
- (b) Hear the appeal in the appellant's absence;
- (c) Declare the forfeiture of any bail bond concerning the appellant.

Cf. S.R. 1946/94, r. 35

23. Court may alter bail—The Court may revoke or alter any order admitting the appellant to bail or concerning the appellant's bail in any other way, and this rule applies irrespective of whether the order was made in the Court or in the High Court.

Cf. S.R. 1946/94, r. 36

24. Judge may issue warrant for arrest of appellant if bail revoked, etc—A Judge of the Court may issue a warrant in form 5 for the arrest of the appellant if—

- (a) The appellant's bail is revoked; or
- (b) The appellant fails to appear according to the terms of the appellant's bond; or
- (c) A surety for the appellant applies for the appellant's apprehension and committal to prison.

Cf. S.R. 1946/94, r. 38

Additional Evidence

25. Examination of witnesses otherwise than before Court—(1) If the Court orders the examination of witnesses to be conducted otherwise than before the Court, the examination must, subject to any special directions the Court may give, be conducted so far as is practicable in the same manner as the examination of witnesses by an examiner under rule 372 of the High Court Rules.

(2) The parties or their counsel are entitled to be present at and take part in the examination of any witness.

Cf. S.R. 1946/94, rr. 39, 41

26. Registrar may issue witness subpoenas—If the Court makes an order under section 389 (b) of the Act to secure the attendance of a person as a witness either before the Court or before any person appointed by the Court for the purpose, the Registrar may issue a writ of subpoena in the name of the Court.

Cf. S.R. 1946/94, r. 40

Decisions of Single Judge

27. Registrar to notify appellant if application refused by Judge—If the powers of the Court have been exercised by a Judge of the Court under section 393 of the Act and an application has been refused, then, instead of giving a notice in form 4, the Registrar must notify the appellant in writing of the refusal and of the appellant's right to have the application determined by the Court.

Cf. S.R. 1946/94, r. 42

28. Application for determination by Court—An appellant whose application has been refused by a Judge and who seeks to have the application determined by the Court must, within 7 days after service on the appellant of the notification of refusal given under rule 27, apply in writing for a determination by the Court.

Cf. S.R. 1946/94, r. 43

Abandonment of Appeal

29. Appellant may abandon appeal by notice in writing—(1) An appellant may abandon the appellant's appeal at any time after—

- (a) Giving notice of appeal or notice of application for leave to appeal; or
- (b) Applying for an extension of the time allowed for giving a notice referred to in paragraph (a).

(2) A notice of abandonment of appeal—

(a) Must be in form 6; and

(b) May be signed by the appellant personally or by a solicitor or counsel on the appellant's behalf.

(3) If the notice is signed by the appellant personally, the appellant's signature must be witnessed and the witness must add the witness's address and description after the witness's signature.

Cf. S.R. 1946/94, rr. 44, 45

Restitution of Property

30. Persons to be heard by Court before restitution order annulled or varied—If, on the trial of a person entitled or given leave to appeal under the Act, an order for restitution of property has been made in the High Court, then, before any order is made by the Court of Appeal under section 387 (2) of the Act, the following persons are entitled to be heard before the Court of Appeal:

(a) The person in whose favour or against whom the order of restitution has been made:

(b) Any person in whose favour or against whom an order under rule 31 has been made:

(c) With the leave of the Court of Appeal, any other person.

Cf. S.R. 1946/94, r. 46

31. High Court may give directions concerning property—If the High Court has in any case—

(a) Suspended the operation of an order under section 387 of the Act for the restitution of property and the operation of section 26 (1) of the Sale of Goods Act 1908; or

(b) Directed under section 387 of the Act that the operation of the order be not suspended,—

the High Court may, if it considers the case is a special case, give such direction as it thinks proper to secure the production of the property for use at the hearing of the appeal or to ensure its proper custody pending the determination of the appeal.

Cf. S.R. 1946/94, r. 47

Suspension of Fine

32. Payment received under fine to be retained until appeal determined—(1) If a person has on conviction been sentenced to payment of a fine, the person lawfully authorised to receive the fine must on receiving the fine retain it until the determination of any related appeal is notified to the Registrar of the Trial Court.

(2) If the appellant is in custody in default of payment of a fine, the appellant is to be treated for the purposes of Part XIII of the Act and these rules to be a person sentenced to imprisonment.

Cf. S.R. 1946/94, r. 48

33. Successful appellant entitled to return of amount paid towards fine—An appellant who has paid a fine in accordance with a sentence and is successful on appeal is entitled, subject to the order of the Court, to the return of the amount paid or part of the amount paid, as the case may be.

Cf. S.R. 1946/94, r. 49

Suspension of Other Consequences of Conviction

34. Trial Court Judge may give directions concerning order to pay prosecution costs, etc—A Judge of the Trial Court may give such directions as he or she considers proper concerning—

(a) The suspension pending appeal of any order made under section 4 of the Costs in Criminal Cases Act 1967; or

(b) Any consequence flowing from a conviction.

Cf. S.R. 1946/94, r. 52

PART 3

MISCELLANEOUS PROVISIONS

35. Mode of giving notice to Court—Notices may be given to the Court by sending them to the Registrar, at his or her office, by mail, fax, or any other means.

Cf. S.R. 1946/94, r. 6

36. Postal address of appellant—The last known address (including a prison) of an appellant evidenced by the appellant's notice of appeal or application for leave to appeal is a sufficient postal address of that appellant for the giving of any notice.

Cf. S.R. 1946/94, r. 8

37. Court order may enforce rules—The performance of any duty imposed on any person under Part XIII of the Act or these rules may be enforced by order of the Court.

Cf. S.R. 1946/94, r. 11

38. Effect of non-compliance with rules—(1) Non-compliance on the part of an appellant with these rules does not prevent the appellant prosecuting the appellant's appeal if the Court considers that such non-compliance was not wilful and that it may be waived or remedied by amendment or otherwise.

(2) The Court may, in such manner as it thinks fit,—

(a) Direct the appellant to remedy the non-compliance; and

(b) If the appellant was not present in Court when the direction was given, direct the Registrar to transmit its direction to the appellant.

Cf. S.R. 1946/94, r. 53

39. Cases not provided for in rules—In any matter not expressly provided for by these rules, the Court may give such direction as it thinks best calculated to carry out the purposes of Part XIII of the Act.

Cf. S.R. 1946/94, r. 54

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

(a) The Criminal Appeal Rules 1946 (S.R. 1946/94);

(b) The Criminal Appeal Rules 1946, Amendment No. 1 (S.R. 1967/94);

(c) The Criminal Appeal Rules 1946, Amendment No. 2 (S.R. 1992/196).

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

SCHEDULE

FORMS

Rule 4 (a)

Form 1

The Crimes Act 1961

NOTICE OF APPLICATION FOR LEAVE TO APPEAL ON MATTERS ARISING BEFORE TRIAL

In the Court of Appeal of New Zealand R v

To the Registrar of the Court of Appeal

I, [Full name], the prosecutor (or the accused person) in the proceeding described above, give you notice under section 379A of the Crimes Act 1961 that I apply for the leave of the Court of Appeal to appeal to that Court against [Give particulars of the decision against which you wish to appeal, including the date on which and the place at which it was made] on the grounds set out below, and I give answers as follows to the following questions:

- 1. (a) Do you wish the Court of Appeal to assign you legal aid? (b) If so, — (1) What was your occupation and what wages, salary, or income were you receiving before this prosecution was commenced? (2) Have you any means to enable you to obtain legal aid for yourself? (3) If so, state particulars: 2. (a) Is any solicitor or counsel now acting for you? (b) If so, give his or her name and address: 3. (a) If you are in custody, do you wish the Court of Appeal to grant you leave to be present at the hearing of this application? (b) If so, what are your reasons for seeking leave to be present? [If you wish to be admitted to bail, you must apply separately in writing setting out the reasons and grounds for your application.] 4. If your application is out of time, what grounds do you submit as reasons why the Court should nevertheless consider your application? 5. What are the grounds of your application? [You may present your case and argument in writing instead of by oral argument if you so wish, and any case or argument so presented will be considered by the Court. If you wish to present your case and argument in writing, set out here as fully as you think fit your case and argument in support of your application. Additional sheets may be attached to this form.]

Dated this day of 19 . Signature of Appellant:

SCHEDULE—continued

Rule 4 (b)

FORM 2

The Queen
v
[Full Name],
Respondent

NOTICE OF APPLICATION BY SOLICITOR-GENERAL FOR LEAVE TO APPEAL
Section 383 (2), Crimes Act 1961

To the Registrar of the Court of Appeal
And To

[Full name] of [Address], Respondent

Take notice that the Solicitor-General applies to the Court of Appeal for leave to appeal against the sentence of [Specify sentence] imposed on [Full name of respondent] in the High (or District) Court at [Place] on [Date] following the respondent's conviction in that Court (or the High (or District) Court at [Place]) on [Date] for the following offences: [Specify the offences in respect of which the respondent was convicted]. This application is made on the ground that the sentence imposed was manifestly inadequate (or wrong in principle) for the following reasons:

[State reasons]

Dated this day of 19 .

.....
Solicitor-General
(or Crown Counsel on behalf of
the Solicitor-General).

SCHEDULE—continued

Form 3

Rule 4 (c)

The Crimes Act 1961

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL BY PERSON CONVICTED

Name of Appellant:

Offence of which convicted:

Place of conviction:

Date of conviction:

Date when sentence passed:

Sentence:

Name of penal institution (or, if not in a penal institution, full postal address of appellant):

To the Registrar of the Court of Appeal.

I, the above-named appellant, give you notice that I wish to appeal to the Court of Appeal against my [conviction] [sentence] [conviction and sentence] on the grounds set out below, and I give answers as follows to the following questions:

1. Did the Judge before whom you were tried grant you a certificate that it was a fit case for appeal?
2. (a) Do you wish the Court of Appeal to assign you legal aid?
 (b) If so,—
 - (1) What was your occupation and what wages, salary, or income were you receiving before your conviction?
 - (2) Have you any means to enable you to obtain legal aid for yourself?
 - (3) If so, state particulars:
3. (a) Is any solicitor or counsel now acting for you?
 (b) If so, give his or her name and address:
4. (a) If you are in custody, do you wish the Court of Appeal to grant you leave to be present at the hearing of your appeal or application for leave to appeal?
 (b) If so, what are your reasons for seeking leave to be present? [If you wish to be admitted to bail, you must apply separately in writing setting out the reasons and grounds for your application.]
5. (a) Do you wish to apply for leave to call any witnesses on your appeal?
 (b) If so, then state—
 - (1) Name and address of the witness:
 - (2) Whether the witness was examined at the trial:
 - (3) If not, the reason why the witness was not so examined:
 - (4) On what matters you wish the witness to be examined:
 - (5) Briefly, what evidence you think the witness can give:
6. If your appeal or application is out of time, what grounds do you submit as reasons why the Court should nevertheless consider your appeal or application?
7. What are the grounds of your appeal or application for leave to appeal?

SCHEDULE—continued

Form 3—continued

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

Dated this day of 19 .

Signature of Appellant:

Rule 15

Form 4

NOTIFICATION TO APPELLANT OR RESPONDENT OF RESULT OF APPEAL

R v [Name of appellant]

To the above-named appellant

The Court of Appeal has considered your appeal and given judgment that: [your appeal be dismissed/allowed and/or your sentence be altered from to (or as the case may require)].

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

Rules 20, 22, 24

Form 5

WARRANT TO ARREST

In the Court of Appeal of New Zealand

R v [Name of party]

This warrant authorises the addressee to arrest [Name of party], who has been released on bail, and to deliver him/her to prison at where he/she must be detained until further order of this Court.

Dated this day of 19 .

.....
Judge of the Court of Appeal
of New Zealand.

To [Name of constable], of, and to all other constables.

SCHEDULE—continued

Form 6

Rule 29

The Crimes Act 1961

NOTICE OF ABANDONMENT OF APPEAL

R v [Name of party]

To the Registrar of the Court of Appeal

I, [Full name], having been convicted in the High Court at
for the offence of, and having sent to the Court of
Appeal a notice of appeal, now give you notice that—

- 1. I do not intend further to prosecute my appeal; and
- 2. As from the date of this notice, I abandon all further proceedings concerning that appeal.

Dated this day of 19 .

Signature:

Witness to signature of [Full name]—

Signature of Witness:

Address:

Description:

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, consolidate and amend the rules of procedure of the Court of Appeal in criminal cases which were formerly set out in the Criminal Appeal Rules 1946.

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

The New Rules

Rules 4, 5, and 6 provide for applications to be in the appropriate form set out in the Schedule. The old forms 1, 1A, and 1B have been replaced by new forms 1, 2, and 3, and the procedure formerly contained in old rules 4 and 5, which required applications to be brought by motion, has not been carried over. Attention is drawn to the note in forms 1 and 3 which requires applications for bail to be made separately in writing rather than in the numbered form.

Rule 8 specifies the documents the Registrar must obtain from the Trial Court, and updates and simplifies old rule 17.

Rule 10 requires the Registrar to allocate a fixture and prepare a case on appeal, and replaces old rules 20 and 23. The new rule should be read in conjunction with paragraphs 1 and 2 of the current Practice Note which deal with the allocation of fixtures and the material forming the case on appeal.

Rule 15 requires the Registrar to notify certain persons of the Court's determination in each case and updates the list of persons formerly referred to in old rule 27.

Rules 19 to 24 relate to bail and update old rules 32 to 38. Attention is drawn to new *rule 23* which makes it clear that the Court of Appeal may revoke or alter an order concerning bail whether the order was made in that Court or the High Court.

Rule 25 provides for the examination of witnesses otherwise than before the Court and applies the examiner procedure under rule 372 of the High Court Rules.

Rules 27 and 28 apply to applications referred to in section 393 of the Crimes Act 1961 (matters that may be determined by a Judge of the Court), and replace old rules 42 and 43. The new rules remove the need to use a numbered form in the Schedule in such cases. Instead, the notices and applications under those rules need only be in writing.

Matters not Carried Over from Old Rules

The old rules not carried over in the new rules are as follows.

Old rules 4 and 5, which related to the motion procedure.

Old rule 7, which provided for the use of registered post.

Old rules 9 and 16, which referred to certificates formerly but no longer given in the lower Courts.

Old rule 10, which provided for the printing of documents for appeal and is now covered by paragraphs 2 to 4 of the current Practice Note.

Old rule 18, which required the Registrar of the High Court to retain relevant documents until the expiration of the time for appealing and is covered by existing obligations on the lower Court.

Old rule 23, which provided for the manner of allocating fixtures and is covered by paragraph 1 of the current Practice Note.

Old rule 37, which set out the obligations of an appellant released on bail and need not be covered by a general rule.

Old rule 50, which provided for a High Court Judge to give a certificate and make orders where the appellant was appealing against a conviction and sentence of payment of a fine and is now dealt with by that Court.

Old rule 51, which provided for the forfeiture of recognizances and is now dealt with by the High Court.