

Reprint
as at 18 October 2016



Court Martial Appeal Court Rules 2008 (SR 2008/238)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 4th day of August 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 26 of the Court Martial Appeals Act 1953 and section 51C of the Judicature Act 1908, His 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	3
2	Commencement	3

Part 1

Preliminary provisions

3	Interpretation	4
4	Application of rules	4

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the New Zealand Defence Force.

5	Forms	4
Part 2		
Procedure		
<i>Institution of appeal</i>		
6	Notice of appeal and notice of application for leave to appeal	5
7	Other applications may be included in notice of appeal or application for leave to appeal	5
8	Persons required or authorised to sign notices and other documents	5
9	Notice of application for leave to appeal is sufficient notice of appeal	6
10	Mode of bringing appeal and effecting service	6
11	Application for extension of time	6
12	Form must be treated as application for extension of time if notice given out of time	6
13	Complaint against trial counsel	6
14	Fresh evidence	7
15	Deponent may be required to give evidence orally	7
16	Disparity of sentences	8
<i>Preparation for hearing</i>		
17	Documents required for general appeals and appeals by Director of Military Prosecutions against sentence	8
18	Documents required for other appeals	9
19	Documents required for extension of time	9
20	Judge Advocate General may direct delivery of documents, etc	9
21	Court may request Court Martial to provide report	9
22	Examination of witnesses otherwise than before court	10
23	Registrar may issue witness subpoenas	10
24	Authorities bundles	10
<i>Oral appeals</i>		
25	Registrar to give parties notice of fixture for oral appeals	10
26	Timing of submissions on merits	11
27	Right of reply at oral hearing	11
<i>Appeals on papers</i>		
28	Period allowed for making written submissions on merits: submissions by appellant	11
29	Period allowed for making submissions on merits: respondent's submissions and submissions in reply	11
30	Timing of appeal on papers	12
31	Panel for appeal on papers	12
<i>Decisions</i>		
32	Delivery of judgments	12

33	Refusal of 1 Judge to exercise certain powers of court	14
34	Judges to be identified	14

Part 3

Miscellaneous provisions

35	Abandonment of appeal	14
36	Persons to be heard by court before restitution order annulled or varied	14
37	Order for compensation	15
38	Order for restitution	15
39	Successful appellant entitled to return of amount paid towards fine	16
40	Security of documents, etc	16
41	Special commissioner	16
42	Presiding Judge	16
43	Right to be present	17
44	Right of audience	17
45	Register must be kept	17
46	Mode of giving notice to court	18
47	Mode of giving notice to parties	18
48	Court order may enforce rules	18
49	Effect of non-compliance with rules	18
50	Cases not provided for in rules	18
51	Power to extend or shorten time appointed by rules or fixed by order	18
52	Correction of accidental slip or omission	19
53	Form of warrant to arrest appellant absconding or breaching bail condition	19
54	Revocation and saving	19

Schedule	20
Forms	

Rules

1 Title

These rules are the Court Martial Appeal Court Rules 2008.

2 Commencement

These rules come into force on 1 July 2009.

Part 1

Preliminary provisions

3 Interpretation

- (1) In these rules, unless the context otherwise requires,—

Act means the Court Martial Appeals Act 1953

appeal on the papers means an appeal to be disposed of by way of hearing on the papers under section 12 of the Act

court means the Court Martial Appeal Court

general appeal means an appeal under section 9(1) of the Act

oral appeal means an appeal to be disposed of by way of a hearing involving oral submissions

registry means the registry of the court

working day means a day that is not—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's Birthday, or Waitangi Day; or
 - (b) a day in the period commencing on 25 December in one year and ending on 15 January in the next year.
- (2) In any judgment, order, direction, or other document forming part of any proceeding, unless the context otherwise requires, **working day** has the meaning given by subclause (1).

4 Application of rules

- (1) These rules apply to—

(a) all appeals to the court brought under the Act; and

(b) steps that are incidental to those appeals, including applications to the court for leave to appeal in relation to those appeals.

- (2) The court or a Judge of the court may direct, authorise, or accept a departure from these rules for reasons of urgency or for any other reason, on its, or his or her own initiative, or on the application of a party.

5 Forms

The forms set out in the Schedule are the forms to be used for matters under the Act to which those forms relate.

Part 2

Procedure

Institution of appeal

6 Notice of appeal and notice of application for leave to appeal

- (1) An appeal by an accused under section 6 of the Act must be brought by notice of appeal in form 1.
- (2) An application by an accused for leave to appeal under section 7 of the Act must be made by notice of application for leave to appeal in form 2.
- (3) A general appeal must be brought by notice of appeal in form 3.
- (4) The Director of Military Prosecutions must bring the following by notice of appeal or notice of application for leave to appeal (as the case requires) in form 4:
 - (a) an appeal under section 6 of the Act:
 - (b) an application for leave to appeal under section 7 of the Act:
 - (c) an appeal under section 9(2) of the Act.

7 Other applications may be included in notice of appeal or application for leave to appeal

A notice of appeal or notice of application for leave to appeal may include either or both of the following:

- (a) an application for leave to call a witness:
- (b) an application for leave to be present.

8 Persons required or authorised to sign notices and other documents

- (1) The appellant must sign a notice of appeal or a notice of application for leave to appeal, unless—
 - (a) subclause (2) applies; or
 - (b) another person signs the notice under subclause (3) or (4).
- (2) An appellant who is unable to write must affix his or her mark on the notice in the presence of a witness who must also sign the notice.
- (3) A notice required to be signed by an appellant who 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 may be signed by the appellant's solicitor or counsel, or by any other person authorised to act on the appellant's behalf.
- (4) A notice or other document required to be signed by the Director of Military Prosecutions may be signed by the Director or the Director's delegate.

9 Notice of application for leave to appeal is sufficient notice of appeal

An appellant's notice of application for leave to appeal is a sufficient notice of appeal if the court grants the appellant leave to appeal.

10 Mode of bringing appeal and effecting service

- (1) A person appeals by filing in the registry a notice of appeal or a notice of application for leave to appeal (as the case requires).
- (2) An appeal is brought, or an application for leave to appeal is made, when the notice of appeal, or the notice of application for leave to appeal, is received in the registry.
- (3) The Registrar is responsible for serving notices of appeal and notices of application for leave to appeal.

11 Application for extension of time

An appellant who seeks an extension of time within which to appeal, or to apply for leave to appeal, may include an application for an extension of time within his or her notice of appeal, or his or her notice of application for leave to appeal, by completing the relevant part of the form.

12 Form must be treated as application for extension of time if notice given out of time

A notice under rule 6 that is given out of time must be treated as if it contains an application for extension of time.

13 Complaint against trial counsel

- (1) This rule applies if a ground of appeal is that there was a miscarriage of justice because of the conduct of the appellant's counsel at the trial or sentencing.
- (2) Particulars of the conduct concerned must be given in—
 - (a) the notice of appeal; or
 - (b) a memorandum to be filed and served by the appellant within 30 working days of filing the notice of appeal.
- (3) The appellant must, within 30 working days of filing the notice of appeal,—
 - (a) provide to the Director of Military Prosecutions a written waiver of privilege addressed to the appellant's counsel at the trial or sentencing; and
 - (b) file and serve on the Director of Military Prosecutions any affidavits that relate to the ground of appeal.
- (4) If the appellant considers that a waiver of privilege is inappropriate, the appellant may apply for an exemption from subclause (3)(a) and the court, if it considers that an exemption is appropriate, may grant it.

- (5) The Director of Military Prosecutions must file and serve any affidavit in reply within 15 working days after service of the appellant's affidavit under sub-clause (3).

14 Fresh evidence

- (1) This rule applies if a ground of appeal is that there was a miscarriage of justice because further evidence has become available since the trial.
- (2) Particulars of the further evidence must be set out in—
 - (a) the notice of appeal; or
 - (b) a memorandum to be filed and served by the appellant within 30 working days of filing the notice of appeal.
- (3) The appellant must, within 30 working days of filing the notice of appeal, file and serve on the Director of Military Prosecutions any affidavits that relate to the ground of appeal.
- (4) The affidavits must—
 - (a) set out the further evidence; and
 - (b) explain why the further evidence was not available at the trial and why it could not, with reasonable diligence, have been called.
- (5) The Director of Military Prosecutions must file and serve any affidavit in reply within 15 working days after service of the appellant's affidavit under sub-clause (3).

15 Deponent may be required to give evidence orally

- (1) This rule applies if, in an appeal based on a ground described in rule 13 or 14, an affidavit is filed on behalf of a party (**party A**) and served on the other party (**party B**).
- (2) If party B requires the deponent who has sworn the affidavit to give his or her evidence orally, party B must, within 15 working days of service of the affidavit, file and serve on party A a notice (an **oral evidence notice**) stating that requirement.
- (3) If party B consents to the deponent giving his or her evidence in chief by the affidavit but requires the deponent to be cross-examined, party B must, within 15 working days of service of the affidavit, file and serve on party A a notice (a **cross-examination notice**) stating that requirement.
- (4) If party A is served with an oral evidence notice or a cross-examination notice, party A must—
 - (a) immediately advise the deponent that he or she is required to give evidence orally or be available for cross-examination (as the case may be); and
 - (b) advise the deponent of the hearing date of the appeal as soon as it is known; and

- (c) ensure that the deponent is present at the hearing.
- (5) If party B does not serve an oral evidence notice with respect to the affidavit, party A may assume that party B consents to the deponent giving his or her evidence by the affidavit.

16 Disparity of sentences

If a ground of appeal is that a different sentence should have been imposed on the appellant because of disparity with a sentence imposed on a co-offender, that ground of appeal must be stated in the notice of appeal.

Preparation for hearing

17 Documents required for general appeals and appeals by Director of Military Prosecutions against sentence

- (1) This rule applies to a notice of appeal for a general appeal or a notice of appeal by the Director of Military Prosecutions under section 9(2) of the Act.
- (2) The Registrar must, on receiving a notice of appeal to which this rule applies, obtain for the use of the court the record of proceedings of the Court Martial that relates to the appeal, and the other documents, exhibits, and things connected with the proceeding that the Registrar considers relevant to the grounds of appeal and appropriate for inclusion in the preliminary case on appeal.
- (3) If the notice of appeal states in accordance with rule 18 that a ground of appeal is disparity of sentence, the Registrar must obtain, for the use of the court, documents relevant to the sentences imposed on all the appellant's co-offenders, including, in respect of each of the appellant's co-offenders,—
 - (a) the statement of facts or evidence on which the sentence imposed on the co-offender was based:
 - (b) information submitted to the Judge under section 21 of the Victims' Rights Act 2002 for the sentencing of the co-offender:
 - (c) the evidence admitted by the Court Martial in respect of the co-offender under rules 113 and 114 of the Armed Forces Discipline Rules of Procedure 2008:
 - (d) the Judge's sentencing remarks in respect of the co-offender.
- (4) The Registrar must include the following material in the preliminary case on appeal or, if the preliminary case on appeal has been prepared, in a supplementary case on appeal:
 - (a) in the case of a general appeal, material filed under rules 13 and 14:
 - (b) material obtained under subclause (2):
 - (c) material obtained under subclause (3)(a), (c), and (d).
- (5) The preliminary case on appeal, together with any supplementary case on appeal, constitutes the final case on appeal.

- (6) Counsel for the parties must ensure that all material relevant to the appeal has been included in the final case on appeal.

18 Documents required for other appeals

On receiving a notice of appeal (except a notice of appeal to which rule 16 applies) or notice of application for leave to appeal, the Registrar must obtain for the use of the court the material relevant to the decision or ruling under appeal.

19 Documents required for extension of time

On receiving an application for extension of time under rule 11 or a form having that effect under rule 12, the Registrar must comply with rule 17 (in the case of a general appeal or an appeal by the Director of Military Prosecutions under section 9(2) of the Act) or rule 18 (in the case of any other appeal), and the relevant rules apply with the necessary modifications.

20 Judge Advocate General may direct delivery of documents, etc

- (1) The Judge Advocate General may direct that a document, exhibit, or other thing be delivered out of the Court Martial to any person the Judge Advocate General considers entitled to delivery.
- (2) A direction for delivery under subclause (1) may be made subject to conditions, as the Judge Advocate General thinks fit.
- (3) However, subclause (1) does not apply to property that could be made subject to an order under section 87 of the Armed Forces Discipline Act 1971 (which relates to orders for the restitution of property).

21 Court may request Court Martial to provide report

- (1) If the court makes an order under section 11(1)(b) of the Act, the Registrar must—
- (a) take all necessary steps to obtain a report in accordance with the order; and
 - (b) disclose the report—
 - (i) to a party who requests a copy of it unless the court otherwise directs; and
 - (ii) to any other person the court directs.
- (2) To enable the Judge at the trial in the Court Martial or the military member who sat in the Court Martial to prepare the report, the Registrar must provide the Judge or the military member with any document concerning the proceeding and in the Registrar's possession if—
- (a) the Judge at the trial in the Court Martial or the military member requests the document; and

- (b) the court or a Judge of the court directs the Registrar to provide the document.

22 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 reasonably practicable in the same manner as the examination of witnesses by an examiner under the High Court Rules 2016.
- (2) The parties or their counsel are entitled to be present at, and take part in, the examination of any witness.

Rule 22(1): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

23 Registrar may issue witness subpoenas

The Registrar may issue a writ of subpoena in the name of the court if the court makes an order under section 11(1)(c) of the Act to secure the attendance of a person as a witness either before—

- (a) the court; or
- (b) any officer of the court or any other person appointed by the court for that purpose.

24 Authorities bundles

- (1) In this rule, **authorities bundle** means a bundle of authorities and legislation on which a party relies.
- (2) This rule applies if written submissions are filed, whether for the purpose of an appeal on the papers or of an oral appeal.
- (3) At the time a party provides his or her submissions to the court, he or she must also provide to the court 4 copies of an authorities bundle for court use.
- (4) An authorities bundle must contain—
 - (a) only cases to which counsel intends to refer the court and to rely on for more than a general principle; and
 - (b) as its first page, a list of the authorities, including their citations.

Oral appeals

25 Registrar to give parties notice of fixture for oral appeals

- (1) This rule and rule 26 apply to oral appeals.
- (2) The Registrar must allocate a fixture for every oral appeal.
- (3) Notice of the time and place fixed for the hearing must be given by the Registrar to—
 - (a) the Director of Military Prosecutions; and

- (b) the appellant; and
- (c) if the appellant is in custody and the court has granted the appellant leave to be present at the hearing, the person in charge of the place where the appellant is being held in custody.

26 Timing of submissions on merits

- (1) The appellant must provide full written submissions on the appeal.
- (2) The appellant must provide his or her written submissions to the court and to the respondent no less than 15 working days before the hearing date.
- (3) The respondent must provide his or her written submissions to the court and to the appellant no less than 10 working days before the hearing date.
- (4) Four copies of the submissions must be provided for court use.

27 Right of reply at oral hearing

A party who wishes to exercise the right of reply in an appeal that is to be heard as an oral appeal must exercise that right orally at the hearing.

Appeals on papers

28 Period allowed for making written submissions on merits: submissions by appellant

- (1) This rule and rule 29 apply to appeals on the papers.
- (2) For the purposes of this rule and rule 29,—
 - (a) the time allowed for making submissions begins to run on the date on which the appellant or respondent receives the relevant notice or material;
 - (b) if sent by mail or fax, the notice or material must be treated as having been received 3 days after the date on which it is sent to that party's last known postal address or fax number.
- (3) The Registrar must appoint a period of no less than 20 working days within which submissions may be made by the appellant in support of the appeal.
- (4) Notice of the period appointed by the Registrar under subclause (3) must be given by the Registrar to—
 - (a) the appellant; and
 - (b) the respondent.

29 Period allowed for making submissions on merits: respondent's submissions and submissions in reply

- (1) The Registrar must send to the respondent a copy of all written submissions received by the court from the appellant within the period appointed under rule 28(3).

- (2) The respondent may make written submissions within 10 working days.
- (3) The Registrar must send to the appellant a copy of all written submissions received by the court from the respondent within the period referred to in subclause (2).
- (4) The appellant may make written submissions in reply within a period of no less than 10 working days appointed by the Registrar.
- (5) The Registrar must send the respondent a copy of all submissions in reply received by the court from the appellant within the period appointed under subclause (4).
- (6) Each party must file in the court—
 - (a) 4 copies of that party’s submissions for court use; and
 - (b) sufficient additional copies so that the Registrar can provide 1 copy for every other party.

30 Timing of appeal on papers

The court must not begin hearing an appeal on the papers until all the periods prescribed or directed under rules 28 and 29 have expired.

31 Panel for appeal on papers

An appeal on the papers must be conducted by 3 Judges and may take the form of each Judge separately considering the relevant materials (including any written submissions) before the Judges arrive at their decision.

Decisions

32 Delivery of judgments

- (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, fax, 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) 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—
- (a) any party who has given an address for service but who has not made a request under subclause (6); and
 - (b) the Registrar of the Court Martial; and
 - (c) if appropriate and if the party is in custody, the person in charge of the place where the party is being held in custody.
- (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 does not apply to minutes or procedural orders.

33 Refusal of 1 Judge to exercise certain powers of court

- (1) If a Judge refuses an application for the exercise of any of the powers of the court specified in section 25(1)(a) to (c) of the Act, the Registrar must, at the same time as giving notice of the Judge's decision, inform the party of his or her right under section 25(2) of the Act to request that the application be determined by the court.
- (2) A request that the application be determined by the court must be made—
 - (a) within 10 working days after receipt of notification of the Judge's decision; and
 - (b) in writing.

34 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 who gave the direction.

Part 3**Miscellaneous provisions****35 Abandonment of appeal**

- (1) An appellant may, at any time, abandon an appeal by filing in the registry a notice advising that he or she—
 - (a) does not intend to prosecute the appeal further; and
 - (b) abandons all further proceedings concerning that appeal.
- (2) The notice must be signed by—
 - (a) the appellant personally; or
 - (b) the appellant's solicitor or counsel.
- (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.
- (4) A notice under this rule must be in form 5.

36 Persons to be heard by court before restitution order annulled or varied

Before an order is made by the court under section 19(2) of the Act (which relates to orders for payment of compensation or restitution of property), the following persons are entitled to be heard before the court:

- (a) a person in whose favour the order has been made;
- (b) a person against whom the order has been made;
- (c) any other person, with the leave of the court.

37 Order for compensation

- (1) This rule applies if the court makes an order for compensation under section 86 of the Armed Forces Discipline Act 1971.
- (2) The operation of the order is suspended in accordance with subclause (3) unless the appellant consents in writing to the operation of the order not being suspended.
- (3) If the consent referred to in subclause (2) is not given, the operation of the order is suspended until the later of—
 - (a) the expiry of the 28-day period within which an application for leave to appeal against the order to the Court of Appeal or the Supreme Court must be made; or
 - (b) if an application for leave to appeal is made within the 28-day period,—
 - (i) the close of the day on which the application for leave to appeal is refused; or
 - (ii) if leave to appeal is granted, the close of the day on which the appeal is determined or abandoned; or
 - (c) if an appeal against the order is determined by the Court of Appeal, until the expiry of the 20-working-day period within which an application to the Supreme Court for leave to appeal under section 10A of the Act must be made; or
 - (d) if an application to the Supreme Court for leave to appeal under section 10A of the Act against the decision of the Court of Appeal is made within the 20-working-day period,—
 - (i) the close of the day on which the application for leave to appeal is refused; or
 - (ii) if leave to appeal is granted, until the close of the day on which the appeal is determined or abandoned.

38 Order for restitution

- (1) This rule applies if the court makes an order for restitution (with or without an order for compensation) under section 87 of the Armed Forces Discipline Act 1971.
- (2) The operation of the order is suspended in accordance with subclause (4) unless the court states in writing that, in its opinion, the right to possession of the property is not in dispute.
- (3) The property that is subject to the order must, while the order is suspended, be held in safe custody as directed by the court.
- (4) If no statement of the kind referred to in subclause (2) is made, the operation of the order is suspended until the later of the times referred to in rule 37(3).

39 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.

40 Security of documents, etc

- (1) Subclause (2) applies if the Minister of Defence or any person authorised in that behalf by the Minister certifies that, for reasons of security, the whole or part of the proceedings, or other document, exhibit, or other thing, —
 - (a) should not be disclosed except to the court; or
 - (b) should only be disclosed subject to certain conditions specified by the person certifying.
- (2) If this subclause applies, despite any provision in these rules to the contrary, the Registrar must not permit inspection or supply a copy of the material to which the certificate relates without seeking a direction from the court.
- (3) Nothing in these rules affects any rule of law that authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

41 Special commissioner

- (1) An order for reference made by the court under section 11(e) of the Act must specify—
 - (a) the question to be referred; and
 - (b) the person to whom, as special commissioner, the question is to be referred.
- (2) The court may require the special commissioner to make interim reports to the court from time to time.
- (3) The court may order that copies of any report made by a special commissioner must be provided to the appellant and the respondent.

42 Presiding Judge

At any sitting of the court,—

- (a) if only 1 of the Judges is a High Court Judge, he or she must preside;
- (b) if 2 or more of the Judges are Judges of the High Court, the senior of those Judges must preside;
- (c) if the court consists exclusively of appointed Judges, the Judge who the Chief High Court Judge directs must preside.

43 Right to be present

- (1) An accused person or a convicted person (as the case may be) has a right to be present at the hearing of an appeal under any of sections 6, 7, and 9 of the Act in which he or she is an appellant or a respondent unless—
 - (a) the court deals with the appeal by way of hearing on the papers; or
 - (b) the court is satisfied that there are exceptional circumstances that justify the person not being accorded that right.
- (2) For the purposes of subclause (1), a person is present at a hearing if he or she is at the hearing in person or by video link.
- (3) In this rule, **video link** means facilities that enable audio and visual communication between the courtroom, or other place where the court hearing the appeal is located, and the accused person or convicted person at a remote location.

44 Right of audience

- (1) In any proceedings before the court, the following persons may address the court:
 - (a) a lawyer (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006) retained by or on behalf of the appellant or respondent;
 - (b) if the court is directed to sit at a place outside New Zealand, any other person allowed, by leave of the court, to appear on behalf of the appellant or respondent;
 - (c) if the appellant or respondent is not represented by a lawyer or a person allowed to appear on his or her behalf under paragraph (b), the appellant or respondent.
- (2) Subclause (1)(c) is subject to rule 43(1)(b).
- (3) However, if rule 43(1)(b) applies and the appellant or respondent is not represented by a lawyer or person allowed to appear on his or her behalf under subclause (1)(b) of this rule, the appellant or respondent may make submissions to the court in writing.

45 Register must be kept

- (1) The Registrar must keep a register, in any form 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.
- (3) Subclause (2) is subject to rule 40.

46 Mode of giving notice to court

Notices may be given to the court by—

- (a) serving them by hand; or
- (b) sending them to the Registrar at his or her office by—
 - (i) mail; or
 - (ii) fax; or
 - (iii) any other written or printed means.

47 Mode of giving notice to parties

A notice may be given to a party—

- (a) at his or her postal address by mail or by any other written or printed means; or
- (b) by faxing it to a fax number supplied by the party.

48 Court order may enforce rules

The performance of any duty imposed on any person under the Act or these rules may be enforced by order of the court.

49 Effect of non-compliance with rules

- (1) Non-compliance by a party with these rules does not prevent that party from continuing to take part in the appeal if the court considers that the non-compliance was of a trifling character or was not wilful and that it may be waived or remedied by amendment or otherwise.
- (2) The court may, in any manner that it thinks fit,—
 - (a) direct the party to remedy the non-compliance; and
 - (b) if the party was not present in court when the direction was given, direct the Registrar to transmit its direction to the party.

50 Cases not provided for in rules

In any matter not expressly provided for by these rules, the court may give any direction that it thinks is best calculated to carry out the purposes of the Act, the Court Martial Act 2007, or the Armed Forces Discipline Act 1971.

51 Power to extend or shorten time appointed by rules or fixed by order

- (1) The court or a Judge may extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding, or any step in a proceeding, on any terms that the court or Judge thinks just.
- (2) The court or a Judge may exercise a power conferred by subclause (1)—
 - (a) whether on application by a party or on the court's or Judge's own initiative; and

- (b) whether for reasons of urgency or for any other reason; and
- (c) in the case of an extension of the time, whether before or after that time has expired.

52 Correction of accidental slip or omission

- (1) This rule applies if—
 - (a) any judgment or order, or the reasons for any judgment or order, contain a clerical mistake or an error arising from any accidental slip or omission (whether the mistake, error, slip, or omission was made by an officer of the court or not); or
 - (b) any judgment or order is so drawn up as not to express what was actually decided and intended.
- (2) The court may correct the judgment or order, or the reasons for the judgment or order, on—
 - (a) the court's own initiative; or
 - (b) an interlocutory application made for that purpose.

53 Form of warrant to arrest appellant absconding or breaching bail condition

A warrant issued pursuant to section 20B of the Act for the arrest of an appellant who has been released on bail must be in form 6.

54 Revocation and saving

- (1) The Courts-Martial Appeal Rules 1954 (SR 1954/215) are revoked.
- (2) The revocation of the Courts-Martial Appeal Rules 1954 does not affect the validity of any document made or thing done under those rules.

Schedule Forms

r 5

Form 1 Notice of appeal relating to bail

r 6(1)

Section 6(2), Court Martial Appeals Act 1953

In the Court Martial Appeal Court

R v

Name of appellant:

Decision being appealed:

[Describe the decision against which you are appealing. You may appeal against a decision of a Judge of the Court Martial to—

- *refuse bail; or*
- *impose or substitute or revoke or vary any condition of bail; or*
- *refuse to impose any condition of bail or any particular condition of bail; or*
- *refuse to vary or revoke any condition of bail.]*

Date of decision:

To the Registrar of the Court Martial Appeal Court

I, the appellant named above, give you notice under section 6(2) of the Court Martial Appeals Act 1953 that I wish to appeal to the Court Martial Appeal Court against the bail decision described above on the grounds set out below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number:
(c) Have you applied, or do you intend to apply, to the Registrar of the Court Martial for a grant of legal aid?
- 2 If you are currently in a prison or service penal establishment, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody, do you wish the Court Martial Appeal Court to grant you leave to be present at the hearing of your appeal?
(b) If so, what are your reasons for seeking leave to be present?
- 5 If your appeal or application is out of time, what are your reasons for saying that the Court Martial Appeal Court should nevertheless consider your appeal?

6 What are the grounds of your appeal?

Dated: [*day/month/year*]

Signature of appellant:

Form 2
Notice of application for leave to appeal

r 6(2)

Section 7, Court Martial Appeals Act 1953

In the Court Martial Appeal Court

R v

To the Registrar of the Court Martial Appeal Court

I, [full name], the person named in the proceeding described above, give you notice that I apply for the leave of the Court Martial Appeal Court to appeal to that Court against [give particulars of the ruling against which you wish to appeal, including the date on which and the place at which it was given] on the grounds set out below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number:
(c) Have you applied, or do you intend to apply, to the Registrar of the Court Martial for a grant of legal aid?
- 2 If you are currently in a prison or service penal establishment, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
(b) If so, what are your reasons for seeking leave to be present? [If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.]
- 5 You have 10 days from the date of the ruling against which you wish to appeal in which to file your application with the Court Martial Appeal Court. The Court Martial Appeal Court may extend this time. If your application is out of time, what are your reasons for saying that the Court Martial Appeal Court should nevertheless extend the time and consider your application?
- 6 What are the grounds of your application for leave to appeal?
- 7 Do you wish your appeal to be considered at an oral hearing or be dealt with on the papers?

Dated: [day/month/year]

Signature of applicant:

Form 3
Notice of appeal by person convicted

r 6(3)

Section 9(1), Court Martial Appeals Act 1953

In the Court Martial Appeal Court

R v

Name of appellant:

Offence(s) of which convicted:

Date of conviction by Court Martial:

Date when sentence passed:

Sentence:

To the Registrar of the Court Martial Appeal Court

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

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number:
(c) Have you applied, or do you intend to apply, to the Registrar of the Court Martial for a grant of legal aid?
- 2 If you are currently in a prison or service penal establishment, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
(b) If so, what are your reasons for seeking leave to be present? [*If you wish to have 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—
 - (i) the name and address of the witness(es):
 - (ii) whether the witness(es) gave evidence at the trial:
 - (iii) if not, the reason why the witness(es) did not give evidence:
 - (iv) on what matters you wish the witness(es) to give evidence:
 - (v) briefly, what evidence you think the witness(es) can give.

-
- 6 You have 21 days from the date of the decision against which you are appealing in which to file your notice of appeal with the Court Martial Appeal Court. The Court Martial Appeal Court may extend this time. If your appeal is out of time, what are your reasons for saying that the Court Martial Appeal Court should nevertheless extend the time and consider your appeal?
 - 7 What are the grounds of your appeal?
 - 8 Do you wish your appeal to be considered at an oral hearing or be dealt with on the papers?

Dated: [*day/month/year*]

Signature of appellant:

Form 4
Appeal/notice of application for leave to appeal by Director of Military
Prosecutions

r 6(4)

Sections 6, 7, and 9(2), Court Martial Appeals Act 1953

In the Court Martial Appeal Court

R

Appellant/Applicant

v

[Name and full address]

Respondent

Take notice that under *[specify section]* of the Court Martial Appeals Act 1953 the Director of Military Prosecutions appeals/applies for leave to appeal* against *[specify decision or ruling to be appealed]* upon the grounds that *[identify grounds of appeal or application]*.

[If the appeal or application is out of time, state that fact here and give the reasons for saying that the Court Martial Appeal Court should extend the time and consider the appeal or application.]

*Select one.

Dated: *[day/month/year]*

Signature of Director of Military Prosecutions:

The address for service is *[address]*.

Form 5
Notice of abandonment of appeal

r 35(4)

In the Court Martial Appeal Court

R v

To the Registrar of the Court Martial Appeal Court

I, [*full name*], having sent to the Court Martial Appeal Court a notice of appeal/application for leave to appeal* against [*set out the decision or ruling to which the notice of appeal or application for leave to appeal relates*] now give notice that—

- (a) I do not intend to prosecute the appeal/application*; and
- (b) as from the date of this notice, I abandon all further proceedings concerning that appeal/application*.

*Select one.

Dated: [*day/month/year*]

Signature:

*Witness to signature of [*full name*]

Signature of witness:

Address:

Description:

*Signature of the appellant or applicant must be witnessed only if the appellant or applicant signs the notice.

Form 6

Warrant to arrest for absconding, breaching bail condition, or failing to appear

r 53

Section 20B, Court Martial Appeals Act 1953

To every constable

and

To every provost officer

*On [date] a sworn complaint was made that [full name], of [address] (the **appellant**), at [place] on [date], has engaged in behaviour of a kind described in section 20B(1)(a) of the Court Martial Appeals Act 1953, namely that the appellant—

- (a) has absconded or is about to abscond for the purpose of evading justice; or
- (b) has contravened or failed to comply with a condition of bail.

or

*On [date] a complaint was made that [full name], of [address] (the **appellant**), engaged in behaviour of a kind described in section 20B(1)(b) of the Court Martial Appeals Act 1953, namely that the appellant did not attend personally at the time and place specified in the grant of bail.

*Select the paragraph that applies.

I am satisfied that there are grounds for the issue of a warrant to arrest the appellant.

I direct you to arrest the appellant and bring him or her before a Judge of the Court Martial Appeal Court as soon as possible under section 20C of the Court Martial Appeals Act 1953.

For the purpose of executing this warrant, the member of the police, the provost officer, or a person lawfully exercising the authority under or on behalf of a provost officer, may at any time enter on to any premises, by force if necessary, if the member of the police, the provost officer, or the person lawfully exercising authority under or on behalf of a provost officer has reasonable grounds to believe that the appellant released on bail is on those premises.

Dated: [day/month/year]

Signature:

(Judge of the Court Martial Appeal Court)

Michael Webster,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 7 August 2008.

Reprints notes

1 *General*

This is a reprint of the Court Martial Appeal Court Rules 2008 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Senior Courts Act 2016 (2016 No 48): section 183(c)