

Reprint
as at 18 October 2016



Supreme Court Rules 2004 (SR 2004/199)

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 28th day of June 2004

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 51C of the Judicature Act 1908, Her Excellency the Administrator of the Government, 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.

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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 Ministry of Justice.

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Rules

1 Title

These rules are the Supreme Court Rules 2004.

2 Commencement

These rules come into force on 1 July 2004.

Part 1

Preliminary and general matters

3 Interpretation

In these rules, unless the context otherwise requires,—

appeal means an appeal brought or proposed to be brought to the Court by an appellant or a respondent

appellant includes a person who would, on the giving of leave to appeal, be the appellant in the appeal

civil appeal means an appeal to the Court against a decision given in a civil proceeding (within the meaning of the Supreme Court Act 2003, other than a proceeding under the Bail Act 2000)

court appealed from means the court from which an appeal is brought to the Supreme Court

criminal appeal means an appeal to the Court against a decision given in a criminal proceeding or in a proceeding under the Bail Act 2000 and includes a Solicitor-General's reference under subpart 11 of Part 6 of the Criminal Procedure Act 2011

decision means a judgment, decree, order, direction, or determination

electronic address includes an email or a fax address

permanent Judge has the same meaning as in the Supreme Court Act 2003

Registrar means the Registrar of the Supreme Court; and includes any Deputy Registrar of that Court

Registry means the registry of the Supreme Court

respondent includes a person who would, on the giving of leave to appeal, be the respondent in the appeal

Supreme Court or Court means the Supreme Court of New Zealand

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

- (ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; or
- (b) the day observed as anniversary day in Wellington; or
- (c) a day in the period commencing on 25 December in one year and ending with 15 January in the next year.

Rule 3 **criminal appeal**: amended, on 1 July 2013, by rule 4(1) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 3 **electronic address**: inserted, on 1 July 2013, by rule 4(2) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 3 **working day** paragraph (ab): inserted, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

4 Application to civil and criminal proceedings

Unless these rules provide otherwise, these rules apply to every application or appeal before the Court, whether the application or appeal arises out of a civil proceeding or a criminal proceeding.

5 Directions

- (1) The Court may, in relation to any matter that arises in a case, give any directions that seem necessary for the just and expeditious resolution of the matter.
- (1A) 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 the Judge thinks just.
- (2) If any case arises for which no form of procedure is prescribed by these rules, the Court must dispose of the case as nearly as practicable in accordance with provisions of these rules affecting any similar case, or, if there are no such rules, in the manner that the Court thinks best calculated to promote the ends of justice.
- (3) The Court may give directions to determine the form of documents to be filed in proceedings.

Compare: 1908 No 89 Schedule 2 r 9; SR 1997/180 r 25

Rule 5(1A): inserted, on 1 May 2009, by rule 4 of the Supreme Court Amendment Rules 2009 (SR 2009/63).

6 Effect of non-compliance with rules

- (1) Non-compliance with any of these rules does not render void the application or the appeal in which the non-compliance has occurred, but the application or the appeal may be set aside either wholly or in part or amended or otherwise dealt with in any manner and on any terms that the Court decides.
- (2) The Court may, in any manner that it thinks fit,—
 - (a) direct a party to remedy the non-compliance; and
 - (b) if a party was not present or represented in Court when the direction was given, direct the Registrar to transmit its direction to the party.

- (3) A document that does not comply with these rules may be received for filing only by leave of a Judge or the Registrar.
- (4) Subclause (1) is subject to subclause (3).
- (5) This rule is subject to section 338 of the Criminal Procedure Act 2011.

Compare: 1908 No 89 Schedule 2 r 23(1); SR 1997/180 r 27; SR 2001/371 r 44(2)

Rule 6(5): inserted, on 1 July 2013, by rule 5 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

7 Power under rules to determine ancillary matters may be exercised by a Judge

A power conferred on the Court by these rules to give directions or to decide a matter, other than the determination of an application for leave to appeal or an appeal, may be exercised by a permanent Judge of the Court.

8 Heading, point size, and margin

- (1) The first page of each document filed in the Registry must have a heading comprising—
 - (a) the words In the Supreme Court of New Zealand; and
 - (b) the name of each appellant, followed by the word Appellant; and
 - (c) the name of each respondent, followed by the word Respondent.
- (2) Every document must be in legible type of not less than 12 point size.
- (3) Every page of a document must have a margin that must be—
 - (a) at least one quarter of the width of the paper; and
 - (b) on the left-hand side of the page unless the page is on the reverse side of the paper, in which case the margin must be on the right-hand side of the page.

Compare: 1908 No 89 Schedule 2 r 26; SR 1997/180 r 15

9 Index must be kept

- (1) The Registrar must keep an index, in any form the Registrar thinks fit, of all—
 - (a) applications for leave to appeal that the Registrar receives; and
 - (b) decisions of the Court given in those applications and appeals referred to in those applications.
- (2) The index must be open for public inspection during the Court's ordinary office hours.

Compare: SR 2001/371 r 40

10 Filing and service of documents

- (1) A document may be filed in the Registry—
 - (a) by delivering it to the Registry by hand; or

- (b) by sending it to the Registry—
 - (i) by mail to a postal address published by the Registrar; or
 - (ii) electronically to an electronic address published by the Registrar.
 - (iii) *[Revoked]*
- (2) A document may be served on a party—
 - (a) by delivering it to the party by hand; or
 - (b) at the address for service notified by the party in the proceeding in the court appealed from, or at an address for service notified by the party for the purposes of the appeal; or
 - (c) by sending it by mail to a postal address supplied by the party for the purposes of the appeal; or
 - (d) by sending it electronically to an electronic address supplied by the party for the purposes of the appeal.
 - (e) *[Revoked]*
- (3) In any case where a document is, in accordance with this rule, filed or served by sending it by mail to a postal address, the document is filed or served on the earlier of—
 - (a) the fifth working day after the day on which it is sent by mail; or
 - (b) the day on which it is received.
- (4) In any case where a document is, in accordance with this rule, filed or served by sending it to an electronic address, the document is filed or served at the time it is received by the relevant electronic system.
- (5) However, if the document is received by the relevant electronic system on a day that is not a working day or at a time that is not between 9 am and 5 pm, the document is filed or served at 9 am on the first working day after that receipt.
- (6) Despite subclause (1), an application for leave to appeal must be filed in accordance with rule 13(1)(a) or rule 14(1).

Compare: SR 2001/371 rr 41, 42

Rule 10(1)(b)(ii): amended, on 1 July 2013, by rule 6(1)(a) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(1)(b)(ii): amended, on 1 July 2013, by rule 6(1)(b) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(1)(b)(iii): revoked, on 1 July 2013, by rule 6(2) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(2)(d): amended, on 1 July 2013, by rule 6(3)(a) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(2)(d): amended, on 1 July 2013, by rule 6(3)(b) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(2)(e): revoked, on 1 July 2013, by rule 6(4) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(4): amended, on 1 July 2013, by rule 6(5)(a) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(4): amended, on 1 July 2013, by rule 6(5)(b) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 10(5): amended, on 1 July 2013, by rule 6(6) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

10A Practice note about electronic format

If, under these rules, or with the authority of the court, any document or bundles of documents are to be served or filed electronically by any party, the party must have regard to any practice note issued from time to time by the Chief Justice about electronic formats.

Rule 10A: inserted, on 3 June 2014, by rule 4 of the Supreme Court Amendment Rules 2014 (LI 2014/125).

Part 2 Applications for leave to appeal

11 Time for making application for leave

- (1) An appellant must apply for leave to appeal within 20 working days after the date of the decision against which the appellant wishes to appeal.
- (2) For the purposes of subclause (1), the date of the decision is the date on which the decision is given,—
 - (a) whether reasons for the decision are then given or are given later; or
 - (b) whether or not formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.
- (3) A respondent who wishes to appeal must apply for leave to appeal within 15 working days after the date on which a copy of the appellant's application for leave is served on the respondent.
- (4) The Court may, on application, extend the period prescribed by subclause (1) or subclause (3).
- (5) A party may apply for an extension before or after the period expires.

12 Forms for applications for leave

An application for leave to appeal must be in form 1 or form 2 of the Schedule (whichever is applicable) or in a form to the same effect.

13 Mode of bringing application for leave for civil appeal

- (1) An application for leave to bring a civil appeal is made only when—
 - (a) the applicant files the application in the Registry—
 - (i) by delivering it by hand to the Registry; or

- (ii) by sending it by mail to a postal address published by the Registrar; and
 - (b) a copy of the application is served on every person who is a party to the proceeding in the court appealed from.
- (2) The applicant is responsible for serving the application.
- (3) The Registrar must promptly transmit a copy of the application to the Registrar of the court appealed from.

14 Mode of bringing application for leave for criminal appeal

- (1) An application for leave to bring a criminal appeal is made when the applicant files the application in the Registry—
 - (a) by delivering it by hand to the Registry; or
 - (b) by sending it by mail to a postal address published by the Registrar.
- (2) If the applicant is the defendant or the person convicted, the Registrar must promptly transmit a copy of the application—
 - (a) to the Registrar of the court appealed from; and
 - (b) to the Solicitor-General or, if the prosecutor is a person other than the Crown, to that prosecutor.
- (3) If the applicant is the Solicitor-General or prosecutor,—
 - (a) the applicant must promptly serve a copy of the application on the defendant or the person convicted; and
 - (b) the Registrar must promptly transmit a copy of the application to the Registrar of the court appealed from.

15 Matters to be stated in application for leave

- (1) Every application for leave to appeal must state,—
 - (a) the specific grounds of the appeal; and
 - (b) by reference to the criteria for leave set out in section 13 of the Supreme Court Act 2003, why the Court should give leave; and
 - (c) the judgment that the applicant seeks for the appeal.
- (2) If the appeal relates only to a part of the decision concerned, that part must be identified in the application.

16 Documents required to accompany application for leave to bring civil appeal

- (1) An application for leave to bring a civil appeal must be accompanied by—
 - (a) 3 copies of the decision to which the appeal relates; and
 - (b) 3 copies of any separate reasons for the decision (if available); and

- (c) if that decision was given on appeal, 3 copies of every decision previously given in the proceeding on matters of relevance to the appeal; and
 - (d) 3 copies of any separate reasons for every decision referred to in paragraph (c).
- (2) The documents referred to in subclause (1) need not be served.

17 Documents to be supplied where leave sought for appeal under section 237(1) or 253(1) of Criminal Procedure Act 2011

Promptly after receiving a copy of an application for leave to appeal under section 237(1) or 253(1) of the Criminal Procedure Act 2011 (or both), the Registrar of the Court of Appeal must supply the Supreme Court with—

- (a) 3 copies of the final case on appeal prepared under rule 13 of the Court of Appeal (Criminal) Rules 2001; and
- (b) 3 copies of the decision to which the appeal relates; and
- (c) 3 copies of any separate reasons for the decision.

Rule 17 heading: amended, on 1 July 2013, by rule 7(1) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 17: amended, on 1 July 2013, by rule 7(2) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

18 Documents to be supplied where leave sought under section 229(1) or 244(1) of Criminal Procedure Act 2011 (direct appeal)

Promptly after receiving a copy of an application for leave to appeal under section 229(1) or 244(1) of the Criminal Procedure Act 2011 (or both), the Registrar of the court appealed from must supply the Supreme Court with 3 copies of the documents required by section 323(2) of that Act (which include the trial transcript, the trial Judge's summing up to the jury (if that Registrar considers it relevant to the grounds of the appeal), and the other documents, exhibits, and things connected with the proceeding that are, by that Registrar, considered to be relevant to the grounds of the appeal).

Rule 18 heading: amended, on 1 July 2013, by rule 8(1) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 18: amended, on 1 July 2013, by rule 8(2)(a) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 18: amended, on 1 July 2013, by rule 8(2)(b) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

19 Documents to be supplied in case of other application for leave for criminal appeal

Promptly after receiving a copy of an application for leave to bring a criminal appeal, under an enactment other than section 229(1), 237(1), 244(1), or 253(1) of the Criminal Procedure Act 2011, the Registrar of the court appealed from must supply the Supreme Court with the material that is relevant to the decision to which the appeal relates, including—

- (a) 3 copies of the decision; and
- (b) 3 copies of any separate reasons for the decision; and
- (c) if that decision was given on appeal, 3 copies of every decision previously given in the proceeding on matters of relevance to the appeal; and
- (d) 3 copies of any separate reasons for every decision referred to in paragraph (c).

Rule 19: amended, on 1 July 2013, by rule 9 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

20 Written submissions on leave application

- (1) Any written submissions by a party in support of an application for leave to appeal may not exceed 10 pages, and must—
 - (a) be filed in the Registry within 20 working days after filing that application; and
 - (b) be promptly served on the other party.
- (2) A party's written submission under subclause (1) must set out clearly and succinctly—
 - (a) a narrative of the facts of the case relevant to the appeal;
 - (b) the points of law involved;
 - (c) the decision to be appealed against;
 - (d) the reason why, in terms of the criteria set out in section 13 of the Supreme Court Act 2003, leave to appeal should be given.
- (3) Any written submissions by a party in response to the other party's written submissions under subclause (1) may not exceed 10 pages, and must—
 - (a) set out clearly and succinctly the reasons that support the arguments advanced in response; and
 - (b) be filed in the Registry within 15 working days after the date of service under subclause (1)(b); and
 - (c) be promptly served on the other party.
- (4) The written submissions of each party represented by counsel must provide an indication of counsel's preferred dates for the hearing of the appeal, in the event that leave is given.
- (5) This rule is subject to any contrary direction given by the Court in a particular case.

Rule 20(4): substituted, on 1 May 2009, by rule 5 of the Supreme Court Amendment Rules 2009 (SR 2009/63).

20A Notice in respondent's submission that judgment will be supported on other grounds

If a respondent does not wish the judgment appealed from to be varied but intends to support it on another ground (being a ground that the court appealed from did not decide or decided erroneously), the respondent must give notice of that intention in the respondent's written submissions.

Rule 20A: inserted, on 1 May 2009, by rule 6 of the Supreme Court Amendment Rules 2009 (SR 2009/63).

21 Leave may be given for amendments to applications

- (1) At any time before giving leave to appeal, the Court may grant a party leave to amend the application for leave.
- (2) In seeking leave under subclause (1), a party must, unless the Court otherwise directs, submit a draft of the application that sets out all the proposed grounds and incorporates the amendments sought.

22 Hearing dates for applications for leave that are to be heard orally

If the Court directs that an application for leave to appeal is to be heard orally, the Registrar must—

- (a) promptly notify the parties of that direction; and
- (b) after consultation with the parties, allocate a hearing date for the application.

23 Filing of bundle of authorities

- (1) If a hearing date is allocated under rule 22, the applicant must, not later than 5 working days before that date, file in the Registry 3 copies of a bundle of authorities that consists only of the authorities that the applicant considers essential to the applicant's argument in support of the application for leave.
- (2) If any authorities that the respondent considers essential to the respondent's argument in relation to any application for leave are not included in the bundle filed under subclause (1), the respondent must, not later than 3 working days before the date fixed for the hearing of the application, file in the Registry 3 copies of a bundle of those authorities.
- (3) If an official report (for example, NZLR, CLR, AC, SCR) of a case is available, that report is to be used for the bundle of authorities.

24 Oral submissions on leave application

- (1) Oral submissions made at the hearing of an application for leave to appeal may not exceed—
 - (a) 15 minutes, in the case of the applicant's opening submission;
 - (b) 15 minutes, in the case of the respondent's submission;
 - (c) 5 minutes, in the case of the applicant's submission in reply.

- (2) This rule is subject to any contrary direction given in a particular case by the Judges who hear the application for leave.

25 Respondent's appeal may be sole appeal

The Court may refuse to give the appellant leave to appeal but may give the respondent leave to appeal, in which case the party who, before the giving of that leave, was the respondent must then be treated as the appellant.

26 Leave may be given subject to conditions

- (1) The Court may make its leave to appeal subject to any conditions that it considers appropriate.
- (2) Leave for a civil appeal may include conditions relating to security for costs.

27 Delivery of judgment on leave to appeal

- (1) A judgment on an application for leave to appeal must be delivered by the Judges who heard the application—
- (a) through the Registrar of the Court; or
 - (b) in open court.
- (2) Before a judgment is delivered, the Registrar must attempt to notify the parties of the time of its delivery.

Part 3

Institution and prosecution of appeals

Appeal instituted by leave and confined to approved grounds

28 Notice of appeal not required if leave given

- (1) If the Court gives leave to appeal, the appeal is commenced by the giving of that leave, and no notice of appeal need be filed.
- (2) The Registrar must promptly advise the parties and the Registrar of the court appealed from whether or not leave has been given.

Compare: SR 2001/371 r 9

29 Appeal confined to approved grounds

- (1) The grounds that may be argued in support of an appeal are confined to the grounds approved in the order by which leave is given.
- (2) Despite subclause (1), the Court may at any time allow the grounds for an appeal to be amended.

*Proceedings not stayed by appeal***30 Stay of proceedings and execution**

- (1) Neither an application for leave to appeal nor the giving of leave operates as a stay of the proceeding in which the decision was given or as a stay of execution of that decision.
- (2) Pending the determination of the application or the appeal, the court appealed from or the Supreme Court may, on application,—
 - (a) order a stay of the proceeding in which the decision was given or a stay of the execution of the decision; or
 - (b) grant any interim relief.
- (3) A determination under subclause (2) may—
 - (a) relate to execution of the whole or part of the decision or to a particular form of execution;
 - (b) be subject to any conditions for the giving of security the court appealed from or the Supreme Court thinks fit.
- (4) If the court appealed from refuses to make an order under subclause (2), the Supreme Court may, on application, make an order under that subclause.
- (5) If the court appealed from makes an order under subclause (2), the Supreme Court may, on application, vary or rescind the order.
- (6) The Supreme Court may at any time vary or rescind an order made by it under this rule.

Compare: SR 1997/180 r 9

*Steps to be taken before hearing***31 Security for costs in civil appeal**

- (1) This rule applies to every civil appeal other than an appeal in which the Court directs that no security for costs is required to be paid.
- (2) If in an appeal the Court does not deal with security for costs by imposing a condition under rule 26(2) or by giving another direction, the Registrar must, within 15 working days after the date on which leave for the appeal is given, fix the security that the appellant must give for the costs of the respondent in the Court.
- (3) The appellant must pay any security fixed to the Registrar, or secure it to the satisfaction of the Registrar, not later than 10 working days after the date on which it is fixed.
- (4) If an appellant fails to comply with this rule or with a condition or direction imposed or given by the Court in relation to security for costs, the Court may, on application of the respondent, order that the appeal be treated as abandoned.

32 Allocation of hearing date

- (1) Within 10 working days after the date on which the Court gives leave to appeal, any party may make submissions to the Registrar on the appropriate hearing date for the appeal.
- (2) After the expiry of the period allowed for submissions under subclause (1), the Registrar must promptly—
 - (a) allocate a hearing date; and
 - (b) give the parties written notification of that hearing date.

Rule 32: substituted, on 1 May 2009, by rule 7 of the Supreme Court Amendment Rules 2009 (SR 2009/63).

33 Timetable may be fixed for criminal appeals

The Court may, on an application or on its own initiative, fix a timetable for a criminal appeal.

34 Obligations of parties in preparing draft case on appeal in civil appeals

- (1) The appellant in a civil appeal must prepare the draft case on appeal in consultation with the respondent.
- (2) The parties may not include in the case on appeal any document that is not relevant to the grounds to be argued in accordance with the leave given by the Court.
- (3) The parties must endeavour to avoid the unnecessary duplication of documents.
- (4) If the parties do not agree whether a document should be excluded, the document must be included but the fact of the objection must be noted and may be taken into account for the purpose of fixing costs.
- (5) Within 20 working days after the date on which the Court gives leave to appeal, the appellant must submit the draft of the case on appeal to the Registrar for approval.
- (6) The Registrar must promptly consider the draft and then advise the parties in writing—
 - (a) that the draft is approved; or
 - (b) that specified changes are required to be made to the draft.

Rule 34 heading: amended, on 1 July 2013, by rule 10(1) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 34(1): amended, on 1 July 2013, by rule 10(2) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Rule 34(5): substituted, on 1 May 2009, by rule 8 of the Supreme Court Amendment Rules 2009 (SR 2009/63).

35 Filing and form of case on appeal in civil appeals

- (1) The appellant must, within 10 working days after receipt of the Registrar's advice under rule 34(6), file in the Registry 6 copies of the case on appeal, which must—
 - (a) include any changes required by the Registrar; and
 - (b) be in the form prescribed by this rule.
- (2) The pages contained in a case on appeal must be A4 in size and every page must be numbered consecutively from volume to volume.
- (3) Each volume must—
 - (a) be bound by cloth-binding or by a flexibinding or spiral binding process; and
 - (b) be limited to a maximum of 250 pages; and
 - (c) have a title page as the cover showing a heading and the names of the solicitors and the address for service of each party; and
 - (d) have a table of contents that—
 - (i) appears immediately after the title page; and
 - (ii) consists of a complete list of all documents contained in the case on appeal.
- (4) If the appeal involves a question of fact, the evidence bearing on the question that was taken in the court or tribunal of first instance, or the court appealed from, must be shown 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, any other material as the court or tribunal of first instance or the court appealed from or the Supreme Court directs.
- (5) The list of documents described in subclause (3)(d) must include references to each page—
 - (a) at which the evidence in chief, cross-examination, and re-examination of a witness commences; and
 - (b) at which any exhibit appears.
- (6) If there is more than 1 volume, there is to be a separate volume containing only—
 - (a) the application by the appellant for leave to appeal;
 - (b) if applicable, the application by the respondent for leave to appeal;
 - (c) the order or orders of the Court giving leave;
 - (d) the pleadings;
 - (e) all relevant decisions that have been made in the proceeding;
 - (f) any separate reasons for the decisions described in paragraph (e):

- (g) all relevant orders made in the proceeding.
- (7) So far as possible and subject to subclause (6), all documents must be arranged in chronological order.

Rule 35 heading: amended, on 1 July 2013, by rule 11 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

35A Case on appeal in criminal appeals

- (1) The Registrar must prepare a draft index for the case on appeal in a criminal appeal.
- (2) The Registrar must provide a copy of the draft index to each party.
- (3) The parties must check the draft index and endeavour to agree whether any additional documents should be included.
- (4) Within 20 working days after the date on which the Registrar has provided the draft index to the parties, each party must advise the Registrar of—
- (a) any proposed changes to the draft index; and
 - (b) any additional documents to be included in the draft index; and
 - (c) any objection to the inclusion of a document in the draft index.
- (5) After considering the parties' advice, the Registrar must prepare the case on appeal.
- (6) The case on appeal must not include any document that is irrelevant to the grounds to be argued in accordance with the leave given by the Court.

Rule 35A: inserted, on 1 July 2013, by rule 12 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

36 Written submissions on appeals

- (1) Each party to an appeal must file in the Registry the party's written submissions, which must be contained in a document of not more than 30 pages that sets out—
- (a) at the beginning of the document, a summary of the argument; and
 - (b) a narrative of facts relevant to the issues on appeal; and
 - (c) the party's submissions; and
 - (d) at the end of the document, a list of authorities to be cited by the party.
- (2) The appellant's written submissions must, whenever appropriate, be accompanied by a chronology; if counsel are unable to agree on the chronology, the respondent must include, with the respondent's written submissions, a memorandum detailing areas of disagreement.
- (3) The appellant's written submissions must be filed and served on the other party not later than 30 working days after the date on which the Court gives leave to appeal.

- (4) The respondent's written submissions must be filed and served on the other party not later than 15 working days after the date on which the appellant's written submissions are filed.
- (5) In any case where a respondent has been given leave to appeal—
 - (a) the respondent is to be treated as the appellant for the purposes of subclause (3); and
 - (b) the appellant is to be treated as the respondent for the purposes of subclause (4).
- (5A) No further written submission may be filed by the parties without the leave of the Court given on written application.
- (6) This rule is subject to any contrary direction given by the Court in a particular case.

Compare: SR 2001/371 r 27

Rule 36(3): substituted, on 1 May 2009, by rule 9(1) of the Supreme Court Amendment Rules 2009 (SR 2009/63).

Rule 36(4): substituted, on 1 May 2009, by rule 9(1) of the Supreme Court Amendment Rules 2009 (SR 2009/63).

Rule 36(5A): inserted, on 1 May 2009, by rule 9(2) of the Supreme Court Amendment Rules 2009 (SR 2009/63).

37 Filing of bundle of authorities

- (1) The appellant must, at the time of filing the appellant's submissions under rule 36(1), file in the Registry 6 copies of a bundle of authorities that consists only of the authorities that the appellant considers essential to the appellant's case.
- (2) If any authorities that the respondent considers essential to the respondent's case are not included in the bundle filed under subclause (1), the respondent must, at the time of filing the respondent's submissions under rule 36(1), file in the Registry 6 copies of a bundle of those authorities.
- (3) If an official report (for example, NZLR, CLR, AC, SCR) of a case is available, that report is to be used for the bundle of authorities.

Termination before hearing

38 Appeal abandoned if not pursued

- (1) A civil appeal is to be treated as having been abandoned if the appellant does not—
 - (a) submit the draft case on appeal for approval within the period required by rule 34(5); or
 - (b) file the case on appeal within the period required by rule 35(1).
- (2) The Court—
 - (a) may, by leave, grant an extension of any period referred to in subclause (1); and

- (b) may then, by leave, grant 1 or more further extensions of any extended period.
- (3) An application for the grant of an extension may be made before the expiry of the period to which the application relates or within 3 months after that expiry; but no extension may be granted on an application that is made later than 3 months after that expiry.
- (4) *[Revoked]*
- (5) This rule overrides rule 6.
Compare: SR 1997/180 r 10
Rule 38(4): revoked, on 1 July 2013, by rule 13 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

39 Abandonment of civil appeal by party

- (1) A party may, at any time, abandon a civil appeal brought by the party by filing in the Registry a notice advising that the party—
 - (a) does not intend further to prosecute the appeal; and
 - (b) abandons all further proceedings concerning that appeal.
- (2) The notice must be authenticated by—
 - (a) the party personally; or
 - (b) the party's lawyer.
- (3) The abandonment of the appeal does not affect the power of the Court to make any order as to costs in respect of the appeal.
Rule 39: replaced, on 1 July 2013, by rule 14 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Matters of evidence and information

40 Application for leave to adduce further evidence

- (1) The Court may, on the application of any party, grant leave for the admission of 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 9.17 to 9.26 of the High Court Rules 2016.
- (2) The parties and their counsel are entitled to be present at, and take part in, the examination of any witness.
Compare: SR 1997/180 r 24
Rule 40(1)(c): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).
Rule 40(1)(c): amended, on 1 July 2013, by rule 15 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

41 Court may call for exhibits, etc, and request report from court or tribunal of first instance

[Revoked]

Rule 41: revoked, on 1 July 2013, by rule 16 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

**Part 4
Determination of appeal****42 Delivery of judgment**

- (1) A judgment of the Court on appeal must be delivered on behalf of the Court in open court by not fewer than 2 permanent Judges.
- (2) Before a judgment is delivered, the Registrar must attempt to notify the parties of the time of its delivery.

Compare: SR 1997/180 r 20

43 Notification of result of appeal to other courts

Promptly after the result of an appeal is known, the Registrar must notify that result to the Registrar of the court appealed from and to the Registrar of any other court or tribunal that determined a matter in the proceeding.

Compare: SR 1997/180 r 23

44 Costs and disbursements

- (1) The Court may, in its discretion, make any orders that seem just concerning the whole or any part of the costs and disbursements of a civil appeal or an application to bring such an appeal.
- (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.

Compare: SR 1997/180 r 21

45 Repayment of judgment sum and interest

- (1) If an appellant has, in accordance with a judgment of a court appealed from, paid a judgment debt and any interest payable on that debt, and the appellant successfully appeals from that judgment, the Court may make the orders described in subclause (2).
- (2) The Court may, in its discretion, make any orders that seem just 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.

Compare: SR 1997/180 r 22

46 Successful appellant entitled to return of amount paid under sentence

[Revoked]

Rule 46: revoked, on 1 July 2013, by rule 17 of the Supreme Court Amendment Rules 2013 (SR 2013/185).

**Schedule
Forms**

r 12

Form 1

Notice of application for leave to bring civil appeal

r 12

In the Supreme Court of New Zealand

[Identify proceeding to which application relates]

To the Registrar of the Supreme Court

I, [full name], the [state your role in the proceeding, eg, appellant] in the proceeding identified above, give you notice that I apply for the leave of the Supreme Court to appeal to the Court against [state particulars of the decision against which you wish to appeal, including the date on which, and the court where, it was given; if that decision was given on appeal, also state particulars of every decision previously given in the proceeding on matters relevant to that appeal, and the date on which, and the court where, the decision (or each decision) was given].

- 1 What are the specific grounds of your proposed appeal?
- 2 Why should the Supreme Court give leave to hear your proposed appeal? In giving your reasons, refer to the criteria set out in section 13 of the Supreme Court Act 2003.*
- 3 What judgment do you seek from the Supreme Court?
- 4 If the decision you wish to appeal against was not made by the Court of Appeal, what exceptional circumstances justify taking the proposed appeal directly to the Supreme Court?
- 5 You have 20 working days from the date of the decision against which you wish to appeal in which to file your application. (If you are the respondent, the time for filing your application is 15 working days after the appellant's application is served on you.) The Court may extend this time. If your application is

out of time, what are your reasons for saying that the Court should nevertheless extend the time and consider your application?

[Your attention is drawn to rule 16 of the Supreme Court Rules 2004, which requires you to provide 3 copies of every decision given in the proceeding.]

Dated this *[date]* day of *[month]* *[year]*.

.....
Signature of applicant

The address for service is *[insert address]*:

*Section 13 of the Supreme Court Act 2003 provides as follows:

13 Criteria for leave to appeal

- (1) The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.
- (2) It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—
 - (a) the appeal involves a matter of general or public importance; or
 - (b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
 - (c) the appeal involves a matter of general commercial significance.
- (3) For the purposes of subsection (2), a significant issue relating to the Treaty of Waitangi is a matter of general or public importance.
- (4) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.
- (5) Subsection (2) does not limit the generality of subsection (1); and subsection (3) does not limit the generality of subsection (2)(a).

Form 2
Notice of application for leave to bring criminal appeal

r 12

In the Supreme Court of New Zealand

[Identify proceeding to which application relates]

To the Registrar of the Supreme Court

I, [full name], the [state your role in the proceeding, eg, defendant, prosecutor] in the proceeding identified above, give you notice that I apply for the leave of the Supreme Court to appeal to the Court against [state particulars of the decision against which you wish to appeal, including the date on which, and the court where, it was given; if that decision was given on appeal, also state particulars of every decision (eg, conviction or sentence) previously given in the proceeding on matters relevant to that appeal, and the date on which, and the court where, the decision (or each decision) was given].

- 1 What are the specific grounds of your proposed appeal?
- 2 Why should the Supreme Court give leave to hear your proposed appeal? In giving your reasons, refer to the criteria set out in section 13 of the Supreme Court Act 2003.*
- 3 What judgment do you seek from the Supreme Court?
- 4 If the decision you wish to appeal against was not made by the Court of Appeal, what exceptional circumstances justify taking the proposed appeal directly to the Supreme Court?
- 5 You have 20 working days from the date of the decision against which you wish to appeal in which to file your application. (If you are the respondent, the time for filing your application is 15 working days after the appellant's application is served on you.) The Court may extend this time. If your application is out of time, what are your reasons for saying that the Court should nevertheless extend the time and consider your application?

[Answer questions 6 to 8 if you are the defendant or person convicted]

- 6 (a) Is any lawyer now acting for you?
- (b) If so, give his or her name and address and electronic address, if any (such as an email address, or a fax address, or both):
- (c) Have you applied, or do you intend to apply, to the Legal Services Commissioner for a grant of legal aid?
- 7 If you are currently in a prison, which one?
- 8 If you do not currently have a lawyer, what is your current postal address and electronic address, if any (such as an email address, or a fax address, or both)?

Dated this *[date]* day of *[month]* *[year]*.

.....
Signature of applicant

[If applicable, insert address for service]:

*Section 13 of the Supreme Court Act 2003 provides as follows:

13 Criteria for leave to appeal

- (1) The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.
- (2) It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—
- (a) the appeal involves a matter of general or public importance; or
- (b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
- (c) the appeal involves a matter of general commercial significance.
- (3) For the purposes of subsection (2), a significant issue relating to the Treaty of Waitangi is a matter of general or public importance.
- (4) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.
- (5) Subsection (2) does not limit the generality of subsection (1); and subsection (3) does not limit the generality of subsection (2)(a).

Schedule form 2 question 6(b): amended, on 1 July 2013, by rule 18(1) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Schedule form 2 question 6(c): amended, on 1 July 2013, by rule 18(2) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Schedule form 2 question 7: amended, on 1 July 2013, by rule 18(3) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Schedule form 2 question 8: amended, on 1 July 2013, by rule 18(4) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Form 3
Notice of abandonment of appeal
[Revoked]

r 39

Schedule form 3: revoked, on 1 July 2013, by rule 18(5) of the Supreme Court Amendment Rules 2013 (SR 2013/185).

Diane Morcom,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 30 June 2004.

Reprints notes

1 *General*

This is a reprint of the Supreme Court Rules 2004 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)
Supreme Court Amendment Rules 2014 (LI 2014/125)
Supreme Court Amendment Rules 2013 (SR 2013/185)
Supreme Court Amendment Rules 2009 (SR 2009/63)