



## Senior Courts (Access to Court Documents) Rules 2017

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 7th day of August 2017

Present:

Her Excellency the Governor-General in Council

These rules are made under section 386(1) of the Criminal Procedure Act 2011 and section 148 of the Senior Courts Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee continued under section 155 of the Senior Courts Act 2016 (of whom at least 1 was a Judge of the High Court).

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## Rules

### 1 Title

These rules are the Senior Courts (Access to Court Documents) Rules 2017.

### 2 Commencement

These rules come into force on 1 September 2017.

### 3 Application

- (1) These rules apply to—
  - (a) the High Court, the Court of Appeal, and the Supreme Court; and
  - (b) documents while they are in the custody and control of the court, including documents transferred from Archives New Zealand to the court.
- (2) These rules do not apply to documents transferred from the court to, or back to, Archives New Zealand from the court.
- (3) These rules do not require a Registrar or any other person to prepare a document that is not in existence at the time a person asks to access it.

### 4 Interpretation

In these rules, unless the context otherwise requires,—

**access** means to search, inspect, or copy under the supervision of an officer of the court

**appeal** includes an application for leave to appeal

**civil proceeding—**

- (a) means any proceeding other than a criminal proceeding; and
- (b) does not include an interlocutory application

**court** means the High Court, the Court of Appeal, or the Supreme Court, whichever court has custody or control of the court file, document, or formal court record that a person wants to access under these rules, and **the court** has a corresponding meaning

**court file** means a collection of documents in the custody or control of the court that relate to a civil proceeding or a criminal proceeding (including an interlocutory application associated with the proceeding) or an appeal

**criminal proceeding—**

- (a) means a proceeding under the Criminal Procedure Act 2011; and
- (b) includes—
  - (i) all steps in a proceeding within the meaning of paragraph (a); and
  - (ii) the sentencing of a defendant under the Sentencing Act 2002; and
- (c) includes a proceeding under—
  - (i) the Bail Act 2000;
  - (ii) the Criminal Investigations (Bodily Samples) Act 1995;
  - (iii) the Criminal Procedure (Mentally Impaired Persons) Act 2003;
  - (iv) the Extradition Act 1999;
  - (v) Parts 4 to 6 of the International Crimes and International Criminal Court Act 2000;
  - (vi) the Parole Act 2002;
  - (vii) any other enactment, but only to the extent (if any) determined by a Judge

**document,—**

- (a) in relation to a civil proceeding,—
  - (i) means any written material in the custody or control of the court that relates to the proceeding (including any interlocutory application associated with the proceeding), whether or not it is kept on a court file; and
  - (ii) includes documentary exhibits, video recordings, records in electronic form, films, photographs, and images in electronic form; and
- (b) in relation to a criminal proceeding, has the meaning set out in section 5 of the Criminal Procedure Act 2011; and

- (c) in relation to an appeal, means a document in any form that is in the custody or control of the court and that relates to an appeal, whether or not the document is on a court file; and
- (d) in relation to a civil proceeding, a criminal proceeding, or an appeal, does not include—
  - (i) notes made by or for a Judge for his or her personal use; or
  - (ii) any material that relates to the administration of the court

**formal court record** means any of the following kept in a registry of the court:

- (a) a register or an index:
- (b) a published list that gives notice of a hearing:
- (c) a document that—
  - (i) may be accessed under an enactment other than these rules; or
  - (ii) constitutes notice of its contents to the public:
- (d) a judgment, an order, or a minute of the court, including any record of the reasons given by a Judge:
- (e) the permanent court record under Part 7 of the Criminal Procedure Rules 2012:
- (f) the rolls of barristers and solicitors kept under section 56 of the Lawyers and Conveyancers Act 2006 or any former corresponding enactment

**interlocutory application**—

- (a) means any application that is made to the court in a civil or criminal proceeding, an intended civil or criminal proceeding, or an appeal or intended appeal in respect of a civil or criminal proceeding,—
  - (i) for an order or a direction relating to a matter of procedure; or
  - (ii) in the case of a civil proceeding, for some relief ancillary to that claimed in a pleading; and
- (b) includes an application to review an order made, or a direction given, on an application to which paragraph (a) applies

**Judge** means a Judge of the court

**originating application** has the same meaning as in the High Court Rules 2016

**Registrar** means a Registrar of the court

**substantive hearing** means,—

- (a) in relation to a civil proceeding,—
  - (i) a hearing (other than the hearing of an interlocutory application) at which issues that will decide the ultimate outcome of the proceeding are determined; and

- (ii) from the start of that hearing until the court finishes delivering its judgment in the proceeding (unless the proceeding is earlier discontinued, in which case until the discontinuance); and
- (b) in relation to a criminal proceeding,—
  - (i) from the start of the trial by a judicial officer or a Judge and jury to the end of the trial, whether by acquittal, a finding of guilt, conviction, dismissal, or withdrawal of the charges; and
  - (ii) if the defendant pleads or is found guilty, the sentencing hearing, from the start of that hearing to when the Judge finishes sentencing or otherwise dealing with the defendant; and
- (c) in relation to an appeal (other than an application for leave to appeal), the hearing of the appeal, from the start of that hearing until the court finishes delivering its judgment in the appeal (unless the appeal is earlier abandoned, in which case until the abandonment).

*Qualifications on application of rules*

**5 Rules do not limit court's powers**

- (1) These rules do not affect the court's inherent power to control its own proceedings.
- (2) Without limiting subclause (1), a Judge may, on his or her own initiative or on request, direct that judgments, orders, documents, or files of any kind may not be accessed without the permission of the Judge.

**6 General qualifications on all rights of access under rules**

Any right or permission given by or under these rules to access a document, a court file, or any part of the formal court record is subject to—

- (a) any enactment, court order, or direction limiting or prohibiting access or publication; and
- (b) rule 7 of these rules (which prohibits access to a document, court file, judgment or order relating to proceedings brought under specified enactments, except access by a party to those proceedings); and
- (c) rule 8(3) (which prohibits access to specified documents relating to criminal proceedings without the permission of a Judge); and
- (d) the payment of the prescribed fees (if any) for access.

**7 Restriction on access in proceedings under certain enactments**

- (1) A person may not access a document, a court file, or any judgment or order that relates to a proceeding brought under the enactments listed in subclause (2) unless—
  - (a) the Judge is satisfied that there is good reason for permitting access; or

- (b) the person is a party to that proceeding.
- (2) The enactments are—
- (a) Adoption Act 1955:
  - (b) Alcoholism and Drug Addiction Act 1966:
  - (c) Arbitration Act 1996:
  - (d) Care of Children Act 2004:
  - (e) Child Support Act 1991:
  - (f) Civil Union Act 2004:
  - (g) Family Violence Act 2018:
  - (h) Family Proceedings Act 1980:
  - (i) Family Protection Act 1955:
  - (j) Harassment Act 1997:
  - (k) Harmful Digital Communications Act 2015:
  - (l) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
  - (m) Law Reform (Testamentary Promises) Act 1949:
  - (n) Marriage Act 1955:
  - (o) Mental Health (Compulsory Assessment and Treatment) Act 1992:
  - (p) Property (Relationships) Act 1976:
  - (q) Protection of Personal and Property Rights Act 1988:
  - (r) Status of Children Act 1969:
  - (s) Victims' Orders Against Violent Offenders Act 2014:
  - (t) Wills Act 2007:
  - (u) any former provisions corresponding to current provisions of any of the Acts mentioned in this subclause.
- (3) This rule overrides rule 8.

### *General rights*

## **8 General rights of public**

### *Civil proceedings*

- (1) Every person has the right to access the formal court record relating to a civil proceeding.
- (2) Every person has the right to access any document or court file relating to an application for a grant of administration, or an action for a recall of a grant of administration, under the Administration Act 1969.

*Criminal proceedings*

- (3) Every person has the right to access the following relating to a criminal proceeding, except as provided in subclause (4):
  - (a) the permanent court record under Part 7 of the Criminal Procedure Rules 2012;
  - (b) any published list providing notice of a hearing;
  - (c) any judgment, order, or minute of the court given in the proceeding, including any records of the reasons given by a judicial officer;
  - (d) any judicial officer's sentencing notes.
- (4) Without limiting rule 6(a), a person may access the following documents in a criminal proceeding only if a Judge permits the person to do so:
  - (a) any pre-trial judgment, order, or minute in a criminal proceeding, including any bail judgment, order, or minute;
  - (b) any document containing evidence of a complainant or of a person who gives or intends to give propensity evidence;
  - (c) electronically recorded documents of interviews with a defendant;
  - (d) any document that identifies, or enables the identification of, a person if the publication of any matter relating to the person's identity (such as the person's name) is forbidden by an enactment or by an order of the court or a Registrar;
  - (e) any document received, or any record of anything said, in a proceeding while members of the public are excluded from the proceeding by an enactment or by an order of the court;
  - (f) any document containing evidence provisionally admitted into evidence and any document containing evidence that has been ruled inadmissible by the court.

*Appeals*

- (5) Every person has the right to access the formal court record relating to an appeal.

**9 General rights of parties to proceedings***Civil proceedings*

- (1) The parties to a civil proceeding and the parties' lawyers may, under the supervision of the Registrar or a person appointed by the Registrar,—
  - (a) search and inspect the court file or any document relating to the proceeding, without paying a fee; and
  - (b) copy any part of the court file or any document relating to the proceeding on paying the prescribed fee (if any).
- (2) The right under subclause (1) may be exercised at any time.

*Criminal proceedings*

- (3) The parties to a criminal proceeding and the parties' lawyers have the same rights to search, inspect, and copy documents as do parties to a civil proceeding and their lawyers under subclause (1), subject to the following qualifications:
  - (a) a Judge may direct that the prosecutor, defendant, or defendant's lawyer may not access the court file or any document relating to the criminal proceeding without the permission of the Judge:
  - (b) if there is more than 1 defendant in the criminal proceeding, a defendant or the defendant's lawyer may access the court file or a document relating to the criminal proceeding only with the permission of a Judge.

*Appeals: civil and criminal proceedings*

- (4) The parties to an appeal (whether arising out of a civil proceeding or a criminal proceeding) to the High Court, the Court of Appeal, or the Supreme Court and the parties' lawyers have the same rights to search, inspect, and copy documents as do parties to a civil proceeding and their lawyers under subclause (1).

*Qualifications on all general rights of parties to proceedings*

- (5) The general rights of the parties to civil proceedings, criminal proceedings and appeals, set out in subclauses (1) to (4), are subject to the following qualifications:
  - (a) a record of a court proceeding in electronic form that is in the custody and control of the court may be copied only with the permission of a Judge:
  - (b) a Judge may direct that the court file or any document relating to the appeal not be accessed by the parties or their lawyers without the permission of a Judge.
- (6) *See also* rule 6, which concerns general qualifications on all rights of access under these rules.

*Relationship with rule 7*

- (7) This rule overrides rule 7.

**10 Exercising general rights**

- (1) A person may exercise the rights to access documents under rule 8 or 9 by orally asking the Registrar of the relevant court registry that holds the file for access to 1 or more documents.
- (2) However, if rule 6 or 7 applies to the document, the Registrar may require the person to ask for access in writing, setting out—
  - (a) sufficient particulars of the document to enable the Registrar to identify it; and
  - (b) the person's reasons for asking to access the document.

- (3) A corporate party to a civil proceeding, a corporate defendant in a criminal proceeding, or a corporate party to an appeal may exercise rights of access under rule 8 or 9 through a representative appointed in accordance with section 12 of the Criminal Procedure Act 2011 as if every reference in that section to the Act were a reference to these rules.

*Accessing documents not covered by general rights*

**11 Any person may ask to access documents**

- (1) This rule applies if a person is not entitled to access a document relating to a proceeding or an appeal under rule 8 or 9.
- (2) A person may ask to access any document by providing the Registrar of the relevant court registry with a letter, an email, or any other written form of request that—
  - (a) identifies the person and gives the person's address; and
  - (b) sets out sufficient particulars of the document to enable the Registrar to identify it; and
  - (c) gives reasons for asking to access the document, which must set out the purpose for which the access is sought; and
  - (d) sets out any conditions of the right of access that the person proposes as conditions that he or she would be prepared to meet were a Judge to impose those conditions (for example, conditions that prevent or restrict the person from disclosing the document or contents of the document, or conditions that enable the person to view but not copy the document).
- (3) The Registrar must promptly give a copy of the request to the parties to the relevant proceeding or appeal, or to their lawyers.
- (4) A Judge may dispense with the requirement in subclause (3) if it would be impractical to require notice to be served.
- (5) A party who receives a copy of a request and who wants to object to it must give written notice of the objection to the Registrar, setting out the grounds on which the party objects,—
  - (a) before 3 pm on the third working day after the day on which the copy is received; or
  - (b) if the copy is received on a day on which a hearing relating to the document is proceeding, before 3 pm on the first working day after the day on which the copy is received.
- (6) For the purposes of subclause (5), a person is deemed to receive a copy of a request on the day on which it is sent electronically or handed to the person.
- (7) A Judge may—
  - (a) grant a request for access under this rule in whole or in part—
    - (i) without conditions; or

- (ii) subject to any conditions that the Judge thinks appropriate; or
  - (b) refuse the request; or
  - (c) refer the request to a Registrar for determination by that Registrar.
- (8) Without limiting the powers in subclause (7), the Judge may refuse a request for access under this rule solely for the reason that the request does not comply with subclause (2)(a), (b), (c), or (d).

*Determining requests for access*

**12 Matters to be considered**

In determining a request for access under rule 11, the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

- (a) the orderly and fair administration of justice:
- (b) the right of a defendant in a criminal proceeding to a fair trial:
- (c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice:
- (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:
- (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):
- (f) the freedom to seek, receive, and impart information:
- (g) whether a document to which the request relates is subject to any restriction under rule 7:
- (h) any other matter that the Judge thinks appropriate.

**13 Approach to balancing matters considered**

In applying rule 12, the Judge must have regard to the following:

- (a) before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited:
- (b) during the substantive hearing, open justice has—
  - (i) greater weight than at other stages of the proceeding; and
  - (ii) greater weight in relation to documents relied on in the hearing than other documents:
- (c) after the substantive hearing,—

- (i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but
- (ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

#### **14 Procedure for dealing with requests and objections**

A Judge may determine a request for access (and any objection received under rule 11(5) and referred to the Judge) in any manner the Judge considers just (including on the papers or at an oral hearing) and may—

- (a) require the person asking for access to—
  - (i) file an interlocutory application or originating application (if the request is being dealt with in the High Court);
  - (ii) file a written request providing, in detail, the reasons for the request, including the purpose for which the document is sought, and the matters in rule 12 that the person relies on as relevant to the request (if the request is being dealt with in the Court of Appeal or the Supreme Court); or
- (b) require the person asking for access or any other person concerned to give notice of the request to any person who, in the opinion of the Judge, may be adversely affected by the request; or
- (c) dispense with the giving of notice under paragraph (b), if the Judge thinks it is appropriate to do so.

#### **15 Application of rules to interlocutory and originating applications**

Rules 12 to 14 apply to every determination of a request for access to documents, whether under rule 11 or on an interlocutory application, an originating application, or a written application for access to documents referred to in rule 14(a).

#### **16 Application of rules 12 to 15 to Registrar's determination**

Rules 12 to 15 apply to a Registrar who makes a determination under rule 11(7)(c)—

- (a) as if every reference in those rules to the Judge were a reference to the Registrar; and
- (b) with any other necessary modifications.

#### **17 Proceedings on appeal transfers of certain requests back to court or tribunal appealed from**

- (1) This rule applies to—
  - (a) proceedings on appeal from a court or tribunal; and

- (b) any document in the custody and control of the appellate court that was originally received by the court or tribunal for the purposes of the proceedings appealed from (a **prior document**).
- (2) If a person asks to access a prior document under rule 11 and a Judge considers that it is more appropriate for the court or tribunal that originally received the document to determine the request, the Judge may direct that the request and any objection to it be transferred to the court or tribunal for determination.
- (3) When a direction under subclause (2) is made, the Registrar must inform the court or tribunal of the transfer and send it copies of the request, the objection, and any other document that the Judge may direct.
- (4) The court or tribunal must treat the request for access to the prior document as a request made under the rules governing access to documents in the custody or control of that court or tribunal.

*Amendments to other enactments and revocation*

**18 Amendments to Criminal Procedure Rules 2012**

- (1) This rule amends the Criminal Procedure Rules 2012.
- (2) Replace rule 6.1 with:

**6.1 Location of rules providing for access to court documents**

The rules providing for access to documents in the custody or control of the High Court, Court of Appeal, or Supreme Court in criminal proceedings are set out in the Senior Courts (Access to Court Documents) Rules 2017.

- (3) Revoke rules 6.2 to 6.10.

**19 Amendment to High Court Rules 2016**

- (1) This rule amends the High Court Rules 2016.
- (2) Revoke subpart 2 of Part 3.

**20 Revocation**

The Court of Appeal (Access to Court Documents) Rules 2009 (SR 2009/401) are revoked.

Michael Webster,  
Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules come into force on 1 September 2017. They replace subpart 2 of Part 3 of the High Court Rules 2016, the substantive provisions of Part 6 of the Criminal Procedure Rules 2012, and the Court of Appeal (Access to Court Documents) Rules 2009, which set out rules about access to documents in the control and custody of the court that relate to proceedings (**court documents**).

There is a concern that the existing rules governing access to court documents are unduly complex and do not give sufficient guidance about the approach to be adopted when assessing requests by the public for access to court documents. These rules, therefore,—

- simplify the provisions setting out the court documents that may be accessed, and by whom, how, and when they may be accessed;
- include more specific guidance about how Judges are to balance different considerations when assessing those requests (*rules 12 and 13*);
- apply to the High Court, Court of Appeal, and Supreme Court so that there is consistent treatment of court documents in proceedings throughout the court process, from the original filing of a proceeding to the disposition of any final appeal, and there is improved accessibility of the rules for users.

Under these rules, all substantive decisions on requests for access to documents by members of the public will be made by a Judge, rather than by a Registrar, unless a Judge first considers the request and decides that it is appropriate for the request to be referred to a Registrar for determination under *rule 11(7)(c)*.

It is intended that a parallel set of rules will be enacted for the District Court at the same time as these rules, and, as a consequence, Part 3 of the District Court Rules 2014 (access to court documents) will be revoked.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 10 August 2017.

These rules are administered by the Ministry of Justice.