



COURT OF APPEAL RULES 2012


Sir F. Goodwin, KBE
Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this *7th* day of *June* 2012

Present:
HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL

PURSUANT to section 102 of the Judicature Act 1980-81, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, and with the concurrence of at least two members of the Rules Committee, makes the following rules:

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RULES

1. Title - These rules are the Court of Appeal Rules 2012.
2. Commencement - These rules come into force on 1st June 2012.

PART 1

PRELIMINARY AND GENERAL MATTERS

3. Interpretation - In these rules, unless the context otherwise requires –

“Act” means the Judicature Act 1980-81 and any amendments thereto;

“Appellant” includes a person who would, on the giving of leave to appeal, be the appellant in an appeal;

“Constitution” means the Constitution of the Cook Islands;

“Court” means the Court of Appeal of the Cook Islands;

“High Court” means the High Court of the Cook Islands;

“Judge” means a Judge of the Court of Appeal;

“Record” means the aggregate of documents relating to an appeal (including in a civil appeal, the pleadings, proceedings evidence and judgments) properly to be laid before the Court on the hearing of an appeal; and including in a criminal appeal the documents referred to in section 71(2) of the Act.

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“Registrar” means the Registrar of the Court; and includes a Deputy Registrar of the Court;

“Registry” means the registry of the Court;

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

“Working day” means a day that is not –

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Constitution Days, the Sovereign’s Birthday
- (b) a day in the period commencing on 25 December in one year and ending on 15 January in the next year.

4. Application of rules - (1) These Rules apply to all proceedings of the Court, except where indicated to apply only to criminal appeals.

(2) These Rules apply subject to any express provision in the enactment under which the appeal is brought or is sought to be brought.

(3) In applying these Rules to criminal appeals, the necessary modifications should be made.

5. Directions - (1) The Court may give any directions that seem necessary for the just and expeditious resolution of any matter that arises in an appeal.

(2) The Court 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 thinks just.

(3) The Court may exercise a power conferred by subclause (2) –

- (a) whether on application by a party or on the Court’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 referred to in that subclause, whether before or after that time has expired.

(4) If any matter arises in a proceeding for which no form of procedure is prescribed by these rules, the Court must dispose of the matter as nearly as practicable in accordance with the provisions of these Rules affecting any similar matter, or, if there are no such provisions, in the manner that the Court thinks best calculated to promote the ends of justice.

(5) The Court may give directions to determine the form of documents to be filed in proceedings.

6. Effect of non-compliance with Rules - (1) A document that does not comply with these rules may be received for filing only by leave of a Judge or the Registrar.

(2) Non-compliance with any of these rules does not render void the application or the appeal in which the non-compliance of these rules 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.

(3) The Court may, in any manner that it thinks fit, -

- (a) direct a party to remedy the non-compliance; and

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- (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.
- (4) Subclause (2) is subject to subclause (1).
7. 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 an 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 drawn up in a way that does not express what was actually decided and intended.
- (2) The Court or the Registrar may correct the judgment or order or the reasons for the judgment or order on –
- (a) the Court’s or Registrar’s own initiative; or
 - (b) an interlocutory application made for that purpose.
- (3) The Registrar may correct the judgment or order or the reasons for the judgment or order in accordance with subclause (2) only if the judgment or order in question was made by the Registrar.
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 Court of Appeal of the Cook Islands”; 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).
9. 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) by fax to a fax number published by the Registrar; or
 - (iii) by email to an email address published by the Registrar.
- (2) A document may be served on a party –
- (a) 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
 - (b) by sending it by mail to a postal address supplied by the party for the purposes of the appeal; or
 - (c) by fax to a fax number supplied by the party for the purposes of the appeal; or

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- (d) by email to an email address supplied by the party for the purposes of the appeal.
- (3) If a document is, in accordance with this rule, filed by sending it by mail to the Registry, the document is filed on the day on which the Registry receives it.
- (4) If a document is, in accordance with this rule, served by sending it by mail to a postal address, the document is 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.
- (5) If a document is, in accordance with this rule, filed or served by sending it to a fax number or to an email address, the document is filed or served at the time it is received by the relevant fax or email system.
- (6) However, if the document is received by the relevant fax or email system on a day that is not a working day or at a time that is not between 9 am or 5 pm, the document is filed or served at 9 am on the first working day after that receipt.
- (7) Despite subclauses (1) and (2), -
 - (a) an application for leave to appeal or a notice of appeal must be filed in hard copy under rule 15(1) hereof; and
 - (b) a bundle of authorities must be filed in hard copy at the Registry and served in hard copy on other parties.

10. Affidavits - (1) Affidavits made in matters heard or pending in the High Court may be used in the Court of Appeal.

- (2) The provisions of the High Court Rules concerning affidavits apply, with any necessary modifications, to affidavits in the Court of Appeal.
- (3) Affidavits in the Court of Appeal may be sworn before –
 - (a) the Registrar; or
 - (b) any of the persons authorised to take affidavits under Section 30 of the Act.
- (4) All Rules regarding affidavits apply with necessary modifications to affirmations.

11. Stay of proceedings and execution - (1) None of the matters referred to in subclause (2) operate as –

- (a) a stay of a proceeding in which a decision was given; or
- (b) a stay of execution of that decision;
- (c) a stay of any sentence imposed by the High Court.
- (2) The matters are –
 - (a) an application for leave to appeal; or
 - (b) the giving of that leave; or
 - (c) an appeal.
- (3) Pending the determination of an application for leave to appeal or an appeal, a Judge of the High Court or a Judge of the 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;
 - (c) stay any sentence or grant bail in accordance with the provisions of section 72 of the Act.
- (4) An order or a grant under subclause 3 may –

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- (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 that the court appealed from or the Court thinks fit, including conditions relating to security for costs.
- (5) If a Judge of the High Court refuses to make an order under subclause (3), a Judge of the Court may, on application, make an order under that subclause.
- (6) If a Judge of the High Court makes an order under subclause (3), the Court or a Judge thereof may, on application, vary or rescind that order.
- (7) The Court, or a Judge thereof, may, at any time, vary or rescind an order made by it under this rule.

PART 2 APPEALS

Application of Part

12. Application of this Part - This Part applies to –
- (a) appeals to the Court as of right; and
 - (b) appeals to the Court where leave to appeal has been given, except where these rules provide otherwise.

Commencement of appeals

13. Commencement of appeals - (1) A party must bring an appeal –
- (a) In the case of an appeal to the Court as of right, within 20 working days after the date of the decision against which the party wishes to appeal in the case of a civil appeal and 20 working days after the date of conviction in the case of a criminal appeal against conviction and/or sentence.
 - (b) In the case of an appeal where leave to appeal or, as the case may be, to cross-appeal, has been given by the High Court or by the Court, -
 - (i) within the time specified by High Court or by the Court when giving leave; or
 - (ii) if no time was specified by High Court or by the Court, within 20 working days after the date of the decision giving leave.
- (2) A party who is entitled to bring a cross-appeal to the Court as of right and who wishes to bring the cross-appeal must bring the cross-appeal within 10 working days after the date on which a copy of the notice of appeal is served on the party.
- (3) For the purposes of subclause (1), the date of the decision in a civil appeal 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.
- (4) For the purposes of subclause (1), the date of conviction in a criminal appeal is as defined in section 70(3) of the Act.

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(5) A party may, after the appeal period prescribed in an enactment or the period prescribed by subclause 3 or subclause 2 has expired, apply for special leave to appeal out of time in accordance with Part 3 if that party wishes to have the period extended.

14. Form of appeal - (1) A notice of appeal or cross-appeal in civil appeals must be in Form 1 of the Schedule or in a form to similar effect.

(2) A notice of appeal in criminal appeals must be in Form 2 of the Schedule or in a form to similar effect.

15. Mode of bringing appeal – (1) An appeal is brought only when –

- (a) the appellant files the notice of appeal 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 notice of appeal is served on every person who is a party to the proceeding in the court appealed from.

(2) The appellant is responsible for serving the notice of appeal.

(3) In criminal appeals where an appellant is in custody, the Superintendent of any prison shall ensure the prompt despatch to the Registrar of any notice of appeal from that appellant.

(4) In criminal appeals by a convicted person, the Registrar must immediately forward a copy of the notice of appeal to the Solicitor-General who then undertakes the conduct and carriage of the appeal on behalf of the prosecution.

(5) The Registrar must promptly –

- (a) transmit a copy of the notice of appeal to the Registrar of the High Court; and
- (b) advise the Registrar of that court of the date on which the notice of appeal was filed in the Registry.

(6) If the appeal relates only to a part of the decision concerned, that part must be identified in the notice of appeal.

(7) A notice of appeal is not required if the proceeding is an appeal by way of case stated under the authority of an enactment or is a proceeding removed from the High Court under section 62 of the Act.

16. Mode of bringing cross-appeal - (1) A cross-appeal in a civil appeal is brought only when –

- (a) the respondent files the notice of cross-appeal 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 notice of cross-appeal is served on every person who is a party to the proceeding in the Court appealed from.

(2) The respondent is responsible for serving the notice of cross-appeal.

(3) The Registrar must promptly –

- (a) transmit a copy of the notice of cross-appeal to the Registrar of the High Court; and
- (b) advise the Registrar of that court of the date on which the notice of cross-appeal was filed in the Registry.

(4) If the cross-appeal relates only to a part of the decision concerned, that part must be identified in the notice of cross-appeal.

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17. Respondent who intends to support decision appealed against on other ground - (1) If the respondent intends to support the decision appealed against on a ground other than the one upon which it is based, the respondent must, within the time specified in subclause (2), file and serve a memorandum setting out the ground upon which the respondent intends to support the decision appealed against.
- (2) The time is 10 working days after the date on which the appellant's notice of appeal is served on the respondent.
- (3) If the respondent brings a cross-appeal, the memorandum referred to in subclause (1) may be included in the notice of cross-appeal.
18. Amendment of grounds of appeal - (1) An appellant may amend the grounds of appeal by filing and serving a memorandum amending those grounds.
- (2) However, the grounds of appeal may be amended only by leave of the Court if –
- (a) a hearing date has been allocated; or
- (b) the appeal to the Court has been brought by leave.
- (3) The leave of the Court to amend the grounds of appeal is not required under subclause (2) if the other party consents to the amendment of those grounds.

PART 3 **APPLICATION FOR LEAVE TO APPEAL**

19. Application of this Part - This Part applies to -
- (a) applications to the High Court for leave to appeal under sections 58(3) and (4) and section 68 of the Act;
- (b) applications to the High Court for leave to appeal out of time in cases to which section 58(2) and section 67 of the Act;
- (c) applications to the Court for special leave to appeal out of time under Article 60(2) of the Constitution;
- (d) applications to the Court for leave to appeal where leave has been refused by the High Court.
20. Time for making application for leave - (1) An application for leave to appeal must be made, within 20 working days after a decision has been given by a Judge of the High Court in a civil case.
- (2) If the High Court refuses leave, an application for the Court's leave must be made within 20 working days after that refusal.
- (3) For the purposes of subclauses (1) and (2), the date of the decision appealed against or the date of the decision refusing leave, as the case may be, is the date on which that 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 a decision is given.
- (4) A respondent who wishes to cross-appeal in a civil appeal must apply for leave to cross-appeal within 10 working days after the date on which a copy of the appellant's application for leave to appeal has been served on the respondent.

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21. Form of Application for Leave - (1) An application for leave to appeal or cross-appeal in a civil appeal shall be in Form 3 of the Schedule or to like effect.

(2) An application for leave to appeal in a criminal appeal shall be in Form 2 of the Schedule or to like effect.

22. When application for leave is brought - (1) An application for leave to appeal is brought 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 was 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 High Court.

23. Matters to be stated in application for leave - (1) An application for leave to appeal must state –

- (a) the specific grounds of the appeal; and
- (b) why the Court should give leave; and
- (c) the judgment that the applicant seeks from the appeal, if leave is granted.

(2) If the appeal relates only to a part of the decision concerned, that part must be identified in the application.

24. Documents required to accompany application for leave - (1) An application for leave to appeal in a civil appeal must be accompanied by –

- (a) a copy of the decision to which the appeal relates; and
- (b) a copy of any separate reasons for the decision (if available); and
- (c) if that decision was given on appeal, a copy of every decision previously given in the proceeding on matters of relevance to the appeal; and
- (d) a copy of any separate reasons for every decision referred to in paragraph (c); and
- (e) any affidavit relevant to the application.

(2) The documents referred to in subclause (1)(a) to (d) need not be served.

(3) The applicant must serve an affidavit filed under subclause 1(e).

(4) In applications for leave to appeal in a criminal appeal, the Registrar of the High Court shall prepare the documents referred to in subclause (1) hereof and supply them to the Registrar of the Court of Appeal and to the appellant and to the Solicitor-General.

25. Leave required for amendments to application for leave - (1) A party may amend an application for leave only with the leave of the Court.

(2) In seeking leave to amend the application for leave under subclause (1), the 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.

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(3) At any time before giving leave to appeal, the Court may grant the party leave to amend the application for leave.

Applications for leave opposed by respondent

26. Respondent opposes application for leave - (1) If the respondent in a civil appeal or the Solicitor-General in a criminal appeal opposes the application for leave to appeal, they must, within the time specified in subclause (2), file and serve -

- (a) a memorandum setting out why the Court should not give leave; and
- (b) any affidavit relevant to the respondent's opposition to the application.

(2) The time referred to in subclause (1) is 10 working days after the date on which a copy of the application for leave is served on the respondent in the case of a civil appeal or the Solicitor-General in the case of a criminal appeal.

27. Hearing - (1) Any Judge may give directions as to the prompt resolution of the application for leave to appeal.

(2) Without limiting the power of a Judge under subclause (1) above, the Judge may dispense with all or any of the requirements of these Rules as the justice of the case requires.

28. Respondent consents to application for leave - (1) If the respondent in a civil appeal or the Solicitor-General in a criminal appeal consents to the application for leave to appeal, the respondent or the Solicitor-General (as the case may be) must, within the time specified in subclause (2), file and serve a memorandum notifying that consent.

(2) The time is 10 working days after the date on which the copy of the application for leave is served on the respondent.

(3) The Registrar must promptly submit the application for leave and the memorandum referred to in subclause (1) to a Judge for directions on how the application is to be dealt with.

29. Determination of application for leave - (1) The Court may –

- (a) give leave to appeal; or
- (b) refuse to give leave to appeal.

(2) If the Court gives leave to appeal –

- (a) the Court may make the leave subject to any conditions that it considers appropriate, including conditions relating to security for costs; and
- (b) the Court need not give its reasons for giving leave.

(3) If the Court refuses to give leave to appeal, it must state its reasons for refusing to give leave to appeal, but those reasons may be stated briefly and in general terms only.

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

(5) The Registrar must promptly advise the parties and the Registrar of the court appealed from whether or not leave has been given.

30. Security for costs: general - (1) This rule applies to every civil appeal except –

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- (a) an appeal where the High Court or the Court of Appeal has fixed security for costs when granting leave to appeal; and
 - (b) where a Judge or the Registrar has determined that no security be given.
- (2) The appellant in an appeal to which this rule applies must, within the time specified in subclause (3), pay to the Registrar security for the respondent's costs in the Court or give security acceptable to the Registrar in the amount as determined by the Court.
- (3) The time is 20 working days after the notice of appeal has been filed in the Registry.
- (4) If there is more than one respondent, each of them is entitled to security for their costs in the Court unless they have the same solicitor, in which case they must be treated, for the purposes of calculating the amount of security, as a single respondent.
- (5) The amount of security payable under subclause (2) shall be such sum as the Judge or Registrar considers just in all the circumstances.
- (6) However, the Registrar may, on application, if satisfied that the circumstances warrant it, make an order –
- (a) increasing the amount of security;
 - (b) reducing the amount of security;
 - (c) dispensing with security;
 - (d) deferring the date by which security must be paid.
- (7) An application under subclause (6) –
- (a) must be made and served within 20 working days after the notice of appeal has been filed in the Registry; and
 - (b) may be made on an informal basis.
- (8) The Registrar must notify the respondent as soon as –
- (a) the appellant pays security;
 - (b) an order is made under subclause (6).
- (9) If a respondent has brought a cross-appeal, this rule and rules 36 and 37 must be read as if references to –
- (a) an appellant were references to that respondent; and
 - (b) the appeal were references to the cross-appeal; and
 - (c) the respondent were references to the respondent on the cross-appeal.

31. Consequences of failure to comply with requirement to pay security for costs -
- (1) The Court may, on application, make an order striking out an appeal if security for costs is not paid by the time payment is due.
- (2) The appellant may not apply for the allocation of a hearing date under rule 38(1) if the appellant is in default of any obligation to pay security for costs.

32. Allocation of hearing date for civil appeals - (1) A party to a civil appeal may, at any time, apply to the Registrar for the allocation of a hearing date and at the same time give notice to all other parties to the appeal.
- (2) In criminal appeals, as soon as the record has been prepared, the Registrar shall notify the appellant and shall notify the Chief Justice, who will then make appropriate arrangements for the hearing of the appeal.
- (3) Notwithstanding subclause (2), any appellant in a criminal appeal may apply at any time to the Registrar for the allocation of a hearing date.

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(4) Upon receipt of a request under subclauses (1) and (3), the Registrar shall inform the Chief Justice who shall make appropriate arrangements for the hearing of the appeal.

33. Obligations of parties in preparing case on civil appeal - (1) The appellant in a civil appeal must prepare the 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 on the appeal.

(3) The parties must endeavour to avoid the unnecessary duplication of documents.

(4) If the parties do not agree on whether a document should be excluded, the document must be included but the fact of the disagreement must be noted and may be taken into account for the purpose of fixing costs.

34. Filing and form of case on appeal - (1) The appellant in the case of a civil appeal must –

- (a) file in the Registry four copies of the case on appeal; and
- (b) as soon as practicable after complying with paragraph (a), serve a copy of the case on appeal on the other party.

(2) The case on appeal must be filed on the earlier of –

- (a) a date not later than 30 working days before the date allocated for the hearing of the appeal; or
- (b) a date that is within 6 months after the appeal is brought.

(3) The pages contained in a case on appeal must be A4 in size and every page must be numbered consecutively from volume to volume.

(4) 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 –
 - (i) a heading; and
 - (ii) the names of the solicitors; and
 - (iii) 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.

(5) If the appeal involves a question of fact, the evidence bearing on the question that was taken in the High Court 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 High Court or the Court of Appeal directs.

(6) The list of documents in subclause 4(d)(ii) 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.

(7) If there is more than one volume, there is to be a separate volume containing only –

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- (a) the notice of appeal or the order or orders of the court giving leave;
 - (b) the notice of cross-appeal (if any);
 - (c) the pleadings;
 - (d) all relevant decisions that have been made in the proceeding;
 - (e) any separate reasons for the decisions described in paragraph (d);
 - (f) all relevant orders made in the proceeding.
- (8) So far as possible and subject to subclause 7, all documents must be arranged in chronological order.
- (9) If a case on appeal was prepared for the hearing of an application for leave, that case may be reused for the hearing of the appeal –
- (a) if the Registrar so approves; and
 - (b) subject to any directions and conditions that the Registrar or a Judge may impose.
- (10) If subclause (9)(a) applies, a supplementary case on appeal may be prepared containing additional documents relevant to the appeal but which were not relevant to the application for leave.
35. Written submissions on appeals - (1) Each party to an appeal must file in the Registry four copies of 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; but if counsels 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 10 working days before the date allocated for the hearing of the appeal.
- (4) The respondent's written submissions must be filed and served on the other party not later than 10 working days before the date allocated for the hearing of the appeal.
- (5) In any case where a respondent has brought a cross-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).
- (6) This rule is subject to any contrary direction given by the Court in a particular case.

36. Bundle of authorities - (1) The appellant must, at the time of filing the appellant's written submissions under rule 35(1) –

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- (a) file in the Registry four copies of a bundle of authorities that consists only of the authorities that the appellant considers essential to the appellant's case; and
- (b) serve a copy of the bundle on the other party.
- (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 written submissions under rule 35(1) –
 - (a) file in the Registry four copies of a bundle of those authorities; and
 - (b) serve a copy of the bundle on the other party.
- (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.
- (4) A bundle of authorities under subclause (1) or subclause (2) must be filed in the Registry –
 - (a) by delivering it to the Registry by hand; or
 - (b) by sending it to the Registry by mail to a postal address published by the Registrar.
- (5) A bundle of authorities under subclause (1) or subclause (2) must be served –
 - (a) by delivering it by hand to the other party's address for service; or
 - (b) by sending it by mail to the postal address supplied by the other party for the purposes of the appeal.

37. Appeal abandoned if not pursued - (1) A civil appeal is to be treated as having been abandoned if the appellant does not apply for the allocation of a hearing date and file the case on appeal within 6 months after the appeal is brought.

- (2) The Court, on application, may –
 - (a) grant an extension of the period referred to in subclause (1); and
 - (b) grant one 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.

38. Abandonment of appeal by party - (1) A party may, at any time, abandon an appeal brought by the party by filing in the Registry a notice advising that the party –

- (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 party personally; or
 - (b) the party's solicitor or counsel.
- (3) The abandonment of an appeal does not affect the power of the Court to make any order as to costs in respect of the appeal.

39. Application for leave to adduce further evidence - (1) The Court may, on the application of a party, grant leave for the admission of further evidence on questions of fact by –

- (a) oral examination in Court; or

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- (b) affidavit; or
 - (c) depositions taken before an examiner or examiners in accordance with the High Court Rules; or
 - (d) video or telephone conferencing.
- (2) The parties and their counsel are entitled to be present at, and take part in, the examination of a witness.

40. Hearings by Video-Conferencing of Appeals - The Court, whether on application or on its own volition or otherwise, may order that a hearing, or any part of a hearing, be conducted by way of video-link. In such a case, the Court shall give such directions as are necessary including as to which party, if any, is to arrange and pay for the link.

PART 4 **DETERMINATION OF APPEALS**

41. Appeals to be by way of rehearing - All appeals are to be by way of rehearing.
42. Powers of Court in hearing appeals - (1) The Court may –
- (a) direct the service of a notice of appeal or cross-appeal on –
 - (i) a party to the proceeding appealed from who has not been served; or
 - (ii) a person who is not a party; and
 - (b) in the meantime, postpone or adjourn the hearing of the appeal on any terms that may seem just, and give any judgment and make any orders that might have been given or made if the persons served in this manner had originally been parties.
- (2) The Court has all the powers and duties of the court of first instance concerning procedure, including the amendment of pleadings.
- (3) The Court may draw inferences of fact.
- (4) The Court may give any judgment and make any order which ought to have been given or made, and make any further or other orders that the case may require.
- (5) The powers of the Court may be exercised –
- (a) even though the notice of appeal or cross-appeal may state that only part of a decision is appealed from; and
 - (b) in favour of all or any respondents or parties although they may not have appealed from the decision or contended that it should be varied; and
 - (c) despite any interlocutory ruling or order that has not been appealed.
 - (d) Nothing in this rule limits any other powers of the Court.
43. Delivery of judgment - Any Judge or the Registrar may deliver a judgment of the Court.
44. Application of High Court Rules - Subject to these Rules, the High Court Rules shall apply to proceedings in and before the Court of Appeal in civil cases or appeals.

PART 5 **REVOCATION AND TRANSITIONAL PROVISION**

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45. Revocation – The Court of Appeal Rules 1981 are revoked.

46. Transitional provision - (1) These rules apply to –

- (a) all existing proceedings; and
- (b) all proceedings brought on or after the date of commencement of these rules.

(2) Despite subclause (1)(a), these rules do not apply to an existing proceeding if the Registrar or a Judge, on an application made in accordance with subclause (4), considers that the application of these rules to the proceeding, or to any particular matter or step in the proceeding, would lead to an unjust result.

(3) If these rules do not apply to an existing proceeding, the Court of Appeal Rules 1981 (as in force immediately before the commencement of these rules) apply –

- (a) despite their revocation by rule 45; and
- (b) as if these rules had not been made.

(4) An application under subclause (2) may be made on an informal basis.

(5) In this rule, existing proceeding means a proceeding brought before the date of commencement of these Rules.



Clerk of the Executive Council

These Rules are administered by the Ministry of Justice

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SCHEDULE

Rule 8

Court of Appeal

Form 1

Notice of Civil Appeal

I, *[full name]*, the appellant in the proceeding identified above, give notice that I am appealing 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 appeal?

[If your appeal is brought by leave and the court giving leave has set out the grounds of or questions on, appeal, those grounds or questions must be specified.]

2. What judgment do you seek from the Court of Appeal?

* I am bringing this appeal pursuant to leave to appeal given by the *[name of court]* on *[date]*.

* Insert as applicable.

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

.....
Signature of appellant or
appellant's solicitor or counsel

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

.....

Notes

1. In the case of a cross-appeal, modify this form as appropriate.
2. If the appeal or cross-appeal relates only to a part of the decision appealed against, that part must be identified in this notice: see rules [?] and [?].

If you have applied for legal aid for this appeal, you must promptly give the Registrar written notice of the outcome of the application for legal aid.

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Form 2

Notice of Appeal or of Leave to Appeal in Criminal Cases

In the Court of Appeal of the Cook Islands

R v

To the Registrar of the Court of Appeal

I, [*full name*], the person named in the proceeding described above, give you notice that I(or for leave to appeal) to appeal to the Court against [*give particulars of the decision against which you wish to appeal, including the date on which and the place at which it was made*] on the grounds set out below, and I give answers as follows to the following questions.

1. (a) 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 Legal Services Agency for a grant of legal aid?
2. If you are currently in a penal institution, 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 20 working days from the date of the decision against which you wish to appeal in which to file your application. 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?
6. What are the grounds of your application for leave to appeal?
7. Include in this application anything that is relevant to the decision about whether your appeal should be considered at an oral hearing or be dealt with on the papers, such as

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- (a) whether you have been assisted by counsel in preparing your application for leave;
- (b) (if relevant) whether you have been provided with copies of the relevant trial documentation;
- (c) the gravity of the offence;
- (d) the nature and complexity of the issues raised by your application;
- (e) whether any evidence should be called;
- (f) any relevant cultural or personal factors.

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

.....
Signature of applicant

Notes

Your application will be considered at an oral hearing (ie, a hearing at which oral submissions may be made) unless the Court or a Judge determines that the application can be fairly dealt with on the papers. This is a hearing at which the Court makes its decision solely on the basis of the written material before it.

Form 3

Application for leave to bring appeal

I, [full name], the applicant, give notice that I am applying for [special] leave 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].

I am seeking to appeal against [state whether you wish to appeal against all or part of the decision; if just part, identify that part].

I am making my application for [special] leave under section [number] of the [name] Act [year].

*I applied for leave to appeal to the Court of Appeal in the High Court, but that application was declined on [date].

The specific grounds of my appeal are [state grounds].

The Court of Appeal should grant me leave to appeal because [state reasons].

The judgment I seek from the Court of Appeal, if leave is granted, is [specify the form of judgment you seek].

I rely on the following affidavit(s) in support of my application for leave:

[list deponents, and the date on which each swore his or her affidavit].

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

.....
Signature of appellant or
appellant’s solicitor or counsel

My address for service is [insert address]:

.....

Court of Appeal Rules 2012**Notes**

1. In the case of an application for leave to cross-appeal, modify this form as appropriate.
 2. An application for leave must be accompanied by –
 - (a) a copy of the decision to which the appeal relates; and
 - (b) a copy of any separate reasons for the decision (if available); and
 - (c) if that decision was given on appeal, a copy of every decision previously given in the proceeding on matters of relevance to the appeal; and
 - (d) a copy of any separate reasons for every decision referred to in paragraph (c); and
 - (e) any affidavit relevant to the application.
-

