

PRACTICE DIRECTION FOR APPEALS TO THE VANUATU COURT OF APPEAL
NO. 01 OF 2020

A. INTRODUCTION

1. The Chief Justice has previously issued a Practice Direction for Civil Appeals to the Court of Appeal, dated 2 April 2004. There has been no previous or subsequent Practice Direction concerning Criminal Appeals.
2. In the interests of dealing with all appeals to the Court of Appeal justly and consistently with the overriding objective explained in Rule 1.2 of the Civil Procedure Rules of the Supreme Court, this Practice Direction is in substitution for the prior Practice Direction. It covers both Civil Appeals and Criminal Appeals.
3. For the purposes of this Practice Direction, a Civil Appeal is any appeal from a judgment, decision or order of the Supreme Court that is not a Criminal Appeal. A Criminal Appeal is any appeal from a judgment, decision or order of the Supreme Court in a matter which concerned the charging of an accused person with a criminal offence.

B. ALL APPEALS

4. As soon as a Notice of Appeal is filed:
 - (i) The Chief Registrar will list the appeal for a conference before a judge of the Supreme Court;
 - (ii) The date for the conference will be as soon as practicable, having regard to the next sessions of the Court of Appeal; and will in any event be not more than 21 days from the date of the filing of the Notice of Appeal. The conference may be adjourned from time to time by the judge;
 - (iii) The appellant shall serve the notice of appeal as soon as practicable, and in any event not less than 4 clear working days before the date of the conference; and shall no later than the date of service give notice in writing to the respondent of the date and time of the conference;
 - (iv) The appellant shall prepare, file and serve the Part A Appeal Book no later than 4 clear working days before the date of the conference;

- (v) At the conference, or at any adjourned date for the conference, the judge may give directions to the parties to ensure that the appeal will be ready for hearing at the next session of the Court of Appeal, unless the appeal is to be stood over to a subsequent session of the Court of Appeal. At the conference, the judge may give directions regarding:
- The preparation and content of the Part B Appeal Book;
 - Access to records necessary for the proper preparation of the appeal, including access to the notes of the judge of the Supreme Court and documentary exhibits;
 - Any cross appeal or any application to join any other person to the appeal;
 - The filing of written submissions on the appeal;
 - The date and time for the hearing of the appeal;
 - Any other matter necessary or convenient for the hearing of the appeal;
 - Any order for costs in relation to any Appeal where there has been default in complying with this Practice Direction, and if the default is that of the counsel for either the appellant or the respondent, including any order for that counsel personally pay the costs so ordered to be paid, so that the issue of costs consequent upon any default of a party to the appeal or of counsel may be appropriately considered, the party in default (and the counsel if it may be the default of counsel) shall be prepared at the conference to address the issues of costs consequential upon any default; and
 - In the event that the appeal is not properly prepared for hearing in accordance with this Practice Direction, the conference judge may refer the appeal to the Chief Justice for allocation to at least two judges sitting together or the judges of the Court of Appeal to determine whether the appeal should be dismissed for want of prosecution with or without costs, and may give directions about any written submissions to address that issue.

5. An Appeal Book shall:

- include a title page containing the title of the proceeding, the parties to the appeal and the names of the lawyers for each party (where appropriate) and their addresses for service;
- include an index of the documents in the Part A Appeal Book and the Part B Appeal Book, showing the page number of each document;
- number every page sequentially; and
- be filed with 5 copies (a total of 6 books).

C. CIVIL APPEALS

6. The Part A Appeal Book shall contain:

- The Notice of Appeal;
- The Grounds of Appeal;
- The judgment of the Supreme Court, including any interlocutory judgment, if it is directly relevant to any ground of appeal;
- If the order or orders appealed from are separately drawn up, the order or orders so made from which the appeal is brought; and
- The final version of the pleadings in the proceeding in the Supreme Court.

7. The Part B Appeal Book shall contain only such further materials as are necessary for the proper hearing of the appeal, and shall be in the following sequence:

- Any earlier versions of the pleadings;
- Any interlocutory orders;
- The agreed evidence (if any);

- The sworn written statements, including with each sworn statement the documents exhibited or annexed;
- The judge's notes;
- The other documentary material separately tendered, in the sequence in which each was received and marked as exhibits, and bearing the mark (letter or number or a combination of letter and number) given by the trial judge;
- The opening written submissions of the parties at the trial;
- The closing written submissions of the parties at the trial;
- If so directed, the written submissions of the appellant on the appeal; and
- Such other documents as may be necessary or desirable for the hearing of the appeal.

D. CRIMINAL APPEALS

8. The Part A Appeal Book shall contain:

- The Notice of Appeal;
- The Grounds of Appeal;
- The final version of the Information filed in the Supreme Court;
- In the case of an appeal against conviction, the judge's reasons for verdict or judgment; and
- In the case of an appeal against sentence, the judge's reasons for verdict (if any), the final version of the Summary of Facts or Agreed Facts and the judge's sentencing notes or judgment.

9. The Part B Appeal Book shall contain only such further materials as necessary for the proper hearing of the appeal, and shall be in the following sequence:

- In the case of an appeal against conviction:
 - Any agreed facts;
 - All relevant documentary exhibits;
 - The prosecution opening, if in writing;
 - Submissions filed by the defence and the prosecution in respect of a no case to answer submission, if such application is made, and if those submissions are in writing; and
 - The prosecution and defence closing submissions, if in writing.
- In the case of an appeal against sentence:
 - The prosecution submissions;
 - The defence submissions; and
 - The pre-sentence report.

10. This Practice Direction is effective on the date of its signature.

DATED at Port Vila, this 17th day of September, 2020.

Vincent LUNABEK
Chief Justice.

