

1993—No. 464

SUPREME COURT RULES (AMENDMENT No. 278) 1993

NEW SOUTH WALES



[Published in Gazette No. 98 of 3 September 1993]

1. These rules are made by the Rule Committee on 31 August 1993.

2. The Supreme Court Rules 1970 are amended as follows:

(a) Part 51 rule 5

Omit the rule and insert instead:

Institution and discontinuance of appeal

5. (1) An appeal to the Court of Appeal shall be instituted by filing in the registry of the Court of Appeal:

(a) where the appeal is instituted pursuant to leave to appeal—
a notice of appeal with appointment in Form 60; or

(b) otherwise:

- (i) a notice of appeal with appointment in Form 60; or
- (ii) a notice of appeal without appointment in Form 60A;

(2) An appellant who files a notice of appeal without appointment shall within:

(a) 3 months after filing the notice of appeal; or

(b) such shorter period as the Court of Appeal may in special circumstances order,

file a notice of appeal with appointment in Form 60.

(3) The appellant shall, on filing the notice of appeal with appointment:

- (a) obtain from the proper officer in the registry an appointment to settle the appeal papers; and
- (b) subscribe it to the notice.

(4) If the appellant fails to comply with subrule (2), the appeal shall thereupon be taken to be discontinued.

See Pt. 52 r. 11C as to costs.

(b) Part 51 rule 8

- (i) In subrule (1), after “notice of appeal” insert “with appointment”.
- (ii) In subrule (3) (b) omit “filing the notice of appeal” and insert instead “obtaining an appointment under rule 5 (3)”.

(c) Part 51 rule 9

Omit the rule and insert instead:

Notice of appeal: filing or lodgment with court below

9. An appellant who files a notice of appeal, with or without appointment, in the registry of the Court of Appeal shall:

- (a) in the case of an appeal from a decision in proceedings in a Division—on the day of filing the notice of appeal, file a copy of the notice of appeal in the registry of the Division; or
- (b) in any other case:
 - (i) file a copy of the notice of appeal in the registry or office of the court below; or
 - (ii) if compliance without subparagraph (i) is not in accordance with the practice or organisation of the court below, lodge a copy of the notice of appeal with an officer of the court below concerned with its records or process.

(d) Part 51 rule 11 (1)

Omit the subrule and insert instead:

Security for costs

11. (1) Where a notice of appeal with appointment has been filed under rule 5, the Court of Appeal may, in special circumstances, order that such security as the Court of Appeal thinks fit be given for the costs of the appeal.

(e) Part 51 rule 12 (1)

- (i) Omit “the” where secondly appearing and insert instead “any”.
- (ii) Omit “20” and insert instead “5 (3)”.

(f) Part 51 rules 13 (2), 14 (1), 15 (2) and 17A (1)

After “notice of appeal”, wherever appearing, insert “with appointment”.

(g) Part 51 rule 13 (4)

Omit “Rule 4 does” and insert instead “Rules 4 and 5 (2)–(4) do”.

(h) Part 51

After rule 18, insert:

Unopposed application for expedition etc.

18A. (1) A party to an appeal who seeks an order expediting the appeal, or shortening time under rule 5 (2), may:

- (a) serve on each other party to the appeal whose notice of appearance does not contain a statement under rule 13B (which relates to a submitting appearance):
 - (i) notice of motion for the order, being a notice which does not state the date or time when, or the place where, the motion is to be made; and
 - (ii) the affidavits in support of the motion; and
- (b) file:
 - (i) the documents referred to in paragraph (a); and
 - (ii) a notice of non-objection, in Form 61AA, by each party referred to in paragraph (a).

(2) An application made in accordance with subrule (1) may be determined or dealt with by a Judge of Appeal in the absence of the public and without any attendance by or on behalf of any person.

(3) Where an application is determined or dealt with in accordance with subrule (2), reasons for the decision need not be given.

(4) This rule does not restrict any other power of the Court of Appeal to order that an appeal be expedited.

(i) Part 51 rule 19

Omit subrules (1) and (2) and insert instead:

Retention of exhibits

19. (1) Where an appeal from a decision in any proceedings lies, by leave or without leave, to the Court of Appeal, the officer of the court below who has custody of the exhibits in the proceedings shall, unless the court below otherwise orders, retain the exhibits for:

- (a) 28 days after the material date; or
- (b) if a notice of appeal without appointment is filed or lodged under rule 9—three months after the filing of the notice.

(2) Upon filing or lodgment under rule 9 of a copy of a notice of appeal with appointment, the proper officer of the court below shall make out and certify a list of the exhibits.

- (j) Part 51 rule 20
 - Omit the rule.
- (k) Part 51 rule 21
 - (i) In subrule (1), after “notice of appeal”, insert “with appointment”.
 - (ii) In subrule (3) after “14” insert “(1)”.
- (l) Part 51 rule 23 (1)
 - (i) Omit paragraph (c) and insert instead:
 - (c) ascertain whether any other appeal or cross-appeal has been brought or is likely to be brought against:
 - (i) the decision in question; or
 - (ii) the decision in any other proceedings heard with the proceedings in which the decision in question was made,
 - and, with the consent of all affected parties, order that the proceedings in which the decision in question was made and any proceedings on any other such appeal or cross-appeal be consolidated;
 - (ii) In paragraph (e), after “notice of appeal”, insert “with appointment”.
- (m) Part 52 rule 9 (1) (c1)
 - After “11A (1A),” insert “rule 11C (3),”.
- (n) Part 52 rule 11A (1)
 - Omit “Where” and insert instead “Subject to rule 11C, where”.
- (o) Part 52
 - After rule 11B, insert:

Discontinuance of appeal

- 11C. (1) Where an appeal is taken to be discontinued under Part 51 rule 5 (4), the appellant shall, unless the Court of Appeal otherwise orders, pay the respondent’s costs of the appeal.
- (2) The costs payable under subrule (1) shall not include the costs of any work which could reasonably have awaited the filing of a notice of appeal with appointment, unless the Court of Appeal otherwise orders.
- (3) A party whose costs are payable under subrule (1) may tax the costs after the conclusion of the Proceedings and, if the taxed costs are not paid within 4 days after the signing of a certificate of the taxation, may enter judgment for the taxed costs.

(p) SCHEDULE F Form 60

(i) Omit “**Form 60**” and insert instead:

Form 60

(Notice of appeal with appointment)

(ii) Omit “Mr Justice” wherever appearing.

(q) SCHEDULE F

After Form 60 insert:

Form 60A

(Notice of appeal without appointment)

P. 51, r. 5 (1)

(To be set out in accordance with Form 1.)

JAMES STYLES

appellant

JOHN LEE

respondent

in the Court below:

JOHN LEE

plaintiff

JAMES STYLES

defendant

NOTICE OF APPEAL

The proceedings appealed from were heard on 7 and 8 May 19 and decided on May 19 .

The appellant appeals from the decision of
(or as the case may be)

(or the following part of the decision of
(or as the case may be):
state the part)).

(Where Part 51 rule 8 (2) applies, add:

To the respondent, (address):

Before you take any step in these proceedings you must enter an appearance in the Registry.

Appellant: (name, address)

Appellant's Address for Service: (Part 9 rule 6)

Address of Registry:

(r) SCHEDULE F

After Form 61 insert:

FORM 61AA*P. 51, r. 18A (1) (b).***NOTICE OF NON-OBJECTION**

The respondent (*or as the case may be*) does not object to the hearing of the appeal being expedited.

EXPLANATORY NOTE

(This note does not form part of the rules).

1. The object of the amendments contained in paragraph (a) to (g), (i) to (k), and (m) to (q) is to:
 - (a) provide a procedure whereby a party to proceedings may institute an appeal, without incurring all of the expense involved in a full appeal, and may then decide within a period of 3 months whether to proceed with the appeal or not; and
 - (b) provide for ancillary and consequential matters.
2. The object of the amendment contained in paragraph (h) is to provide a quick, economical procedure to deal with unopposed applications for expedition of appeals.
3. The object of the amendment contained in paragraphs (1) and (r) is to facilitate the consolidation by consent of related appeals.
4. Words and figures underlined in the above rules are intended to be represented in italics when printed.

M. A. Blay, Secretary of the Rule Committee.