



New South Wales

SUPREME COURT RULES (AMENDMENT No 310) 1997

1. These rules are made by the Rule Committee on 19 May 1997.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 40 rule 12
Omit the rule and insert instead:
Certificate under s. 208J or S. 208JA of the Legal Profession Act 1987
 12. (1) A certificate filed in the Court under section 208J (3) or section 208JA (4) of the Legal Profession Act 1987 shall be filed:
 - (a) where the certificate relates to costs of proceedings in the Court—in the proceedings; or
 - (b) otherwise—in the Common Law Division.
 - (2) Notwithstanding Part 41 rule 13 (3), where:
 - (a) a certificate under section 208J or section 208JA of the Legal Profession Act 1987; and
 - (b) an affidavit, sworn not earlier than 14 days before it is filed, stating:
 - (i) if the affidavit is filed with the certificate—how much of the amount of costs included in the certificate has not been paid; and
 - (ii) otherwise—the amount of the costs included in the certificate that, at the time the certificate was filed, had not been paid,are filed in the Court, the registrar may file and seal a minute of the resulting judgment without a direction of the Court or request of a party.
 - (3) A document filed in the Court relating to:
 - (a) the certificate; or
 - (b) judgment entered in relation to the certificate,shall be entitled between:
 - (c) as plaintiff, the person to whom the costs included in the certificate are payable; and
 - (d) as defendant, the person by whom the costs are payable.

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- (b) Part 41 rule 13 (3)
After “Subject to” insert “Part 40 rule 12 (2),”.
- (c) Part 52A rule 40
Before “Registrar” insert “Principal”.
3. The Supreme Court Rules 1970 are further amended as follows:
- (a) Part 60 rule 17
- (i) From paragraph (e), Omit “or”.
 - (ii) From paragraph (f) omit “.” and insert instead “; or”.
 - (iii) After paragraph (f) insert:
 - (g) in proceedings under section 208L or section 208M or section 208N of the Legal Profession Act 1987.
- (b) SCHEDULE D Part 1
- (i) From the matter relating to Act No. 109, 1987, omit:

Part 11 Divisions 5 Bill of costs
and 6

(ii) At the end of the matter relating to Act No. 109, 1987, insert:

Section 209C Order for barrister or solicitor
to give to a client a bill of
costs or certain documents
4. The amendment contained in paragraph 3 (a) shall apply to decisions of a master given on or after 1 July 1997.
5. The Supreme Court Rules 1970 are further amended as follows:
- (a) Part 4 rule 4
Omit the rule and insert instead:
Proceeding by solicitor or in person
4. Subject to rules 4A and 5 (1) and subject to Part 63 rules 2 and 3 (which relate to disability), any person may proceed in the Court by a solicitor or in person.

Corporations

4A. (1) Except as provided by this rule or by or under any Act, a corporation (other than a solicitor corporation) may not commence or carry on any proceedings otherwise than by a solicitor.

(2) A corporation may commence or carry on proceedings by a director (referred to in this rule as the authorised director) if

- (a) the authorised director is also a plaintiff in the proceedings;
- (b) the authorised director has the authority of the corporation to commence and carry on the proceedings; and
- (c) there is filed with the originating process an affidavit, made by the authorised director within 2 days before the date of commencement of the proceedings, containing statements to the effect set out in either paragraph (a) or (b) of subrule (3).

(3) The affidavit shall contain statements to the effect either:

- (a) (i) that the authorised director is a director of the corporation;
- (ii) that the authorised director has been authorised by a resolution of the directors duly passed at a meeting of directors held on a specified date (which shall not be earlier than 21 days before the date of the affidavit) to commence and carry on the proceedings;
- (iii) that the authority has not been revoked; and
- (iv) that the authorised director is aware that he or she may be liable to pay some or all of the costs of the proceedings, or
- (b) (i) that the authorised director is the managing or governing director of the corporation and has authority to exercise the powers of the directors; and
- (ii) that the authorised director is aware that he or she may be liable to pay some or all of the costs of the proceedings.

(4) The authorised director may join as a plaintiff with the corporation for the purpose of permitting the corporation to take advantage of this rule.

(5) Without limiting the powers of the Court under section 76 of the Act, the Court may make against the corporation and the authorised director any order for costs which, if the authorised director had not been a party, it would have made against the corporation.

(6) Subject to subrule (7), these rules apply to a corporation which commences or carries on proceedings by an authorised director as if the corporation were a party proceeding in person.

(7) The authority of a person who purports to have commenced, or to be carrying on, proceedings for a corporation under this rule may be challenged in the same manner as the retainer of a solicitor purporting to act for a party may be challenged.

(8) A corporation that has complied with subrule (2) in any proceedings may defend, by the authorised director, a cross-claim in the proceedings.

(b) Part 11 rule 1

Omit the rule and insert instead:

Appearance by solicitor or in person

1. Subject to rule 1A and subject to Part 63 rules 2 and 3 (which relate to disability), any person may enter an appearance and may defend proceedings by a solicitor or in person.

Corporations

1A. (1) Except as provided by this rule or by or under any Act, a corporation (other than a solicitor Corporation) may not enter an appearance in, or defend, any proceedings otherwise than by a solicitor.

(2) A corporation may enter an appearance in, or defend, proceedings by a director (referred to in this rule as the authorised director) if

- (a) the authorised director has the authority of the corporation to enter an appearance in, and defend, the proceedings; and
- (b) there is filed with the appearance an affidavit, made by the authorised director within 2 days before the date of entering the appearance, containing statements to the effect set out in either paragraph (a) or (b) of subrule (3).

(3) The affidavit shall contain statements to the effect either:

- (a) (i) that the authorised director is a director of the corporation;
- (ii) that the authorised director has been authorised by a resolution of the directors duly passed at a meeting of directors held on a specified date (which shall not be earlier than 21 days before the date of the affidavit) to enter an appearance in and defend, the proceedings;

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- (iii) that the authority has not been revoked; and
 - (iv) that the authorised director is aware that he or she may be liable to pay some or all of the costs of the proceedings, or
 - (b)
 - (i) that the authorised director is the managing or governing director of the corporation and has authority to exercise the powers of the directors; and
 - (ii) that the authorised director is aware that he or she may be liable to pay some or all of the costs of the proceedings.
 - (4) The plaintiff may, within 28 days after service of the notice of appearance, amend the originating process to add the authorised director as a defendant.
 - (5) Without limiting the powers of the Court under section 76 of the Act, the Court may make against the corporation and the authorised director any order for costs which, if the authorised director had not been a party, it would have made against the corporation.
 - (6) These rules apply to a corporation which enters an appearance in, or defends, proceedings by an authorised director as if the corporation were a party defending in person.
 - (7) A corporation that has complied with subrule (2) in any proceeding may, by the authorised director, make a cross-claim in the proceedings.
 - (c) Part 52A rule 4 (3)
After “subrule (4),” insert “Part 4 rule 4A and Part 11 rule 1A,”.
 - (d) Part 52A rule 4 (5)
 - (i) From paragraph (e) omit “or”.
 - (ii) From paragraph (f) omit “,” and insert instead “; or”.
 - (iii) After paragraph (f) insert:
 - (g) against a person who commences, carries on, enters an appearance in, or defends proceedings as the authorised director of a corporation, or purports to do so.
6. The Supreme Court Rules 1970 are further amended as follows:
- (a) Part 23 rule 4 (c)
Omit “.” and insert instead “;”.

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- (b) Part 23 rule 4

After paragraph (c) insert:

- (d) inspect any document in relation to which a question arises under this Part, for the purpose of determining the question, and order that the document be produced to the Court for the purpose of inspection by the Court.

7. The Supreme Court Rules 1970 are further amended as follows:

- (a) Part 1 rule 10A (3)

Omit “and Part 51 Rule 29” and insert instead “, Part 51 rule 47 and Part 51AA rule 29”.

- (b) Part 5 rule 2 (1)

Omit “Part 51 rule 32 (4) (which relates” and insert instead “Part 51 rule 50 (4) and Part 51AA rule 32 (4) (which relate”.

- (c) Part 5 rule 2 (2)

Omit “Part 51 rule 32 (5) (which relates” and insert instead “Part 51 rule 50 (5) and Part 51AA rule 32 (5) (which relate”.

- (d) Part 40 rule 8 (1)

Omit “Part 51 rule 17 (a) and (b)” and insert instead “Part 51 rule 24 (a) and (b) and Part 51AA rule 17 (a) and (b)”.

- (e) Part 51

Renumber the Part as 51AA.

- (f) Part 51AA

Before rule 1 insert:

1A. This Part applies to proceedings commenced in the Court of Appeal before 1 September 1997.

- (g) After Part 50 insert:

PART 51—COURT OF APPEAL

Division 1—Preliminary

Application

1. This Part applies to proceedings commenced in the Court of Appeal on or after 1 September 1997.

Interpretation

2. (1) In this Part, unless the context or subject matter otherwise indicates or requires:

“court below” means, in relation to an appeal or application for leave to appeal from a decision in any proceedings, the court in which, or the judge, justice or other person before whom, the proceedings were heard;

“decision” includes a judgment, order, verdict, opinion, decision, direction or determination;

“exhibit” includes a document or thing marked for identification, notwithstanding that it is not admitted in evidence;

“material date”, in relation to an appeal or an application for leave to appeal, means:

- (a) in the case of a judgment given in proceedings in the Court, the date on which the judgment is given;
- (b) in the case of any other judgment in proceedings in the Court, the date of entry;
- (c) in the case of an order in proceedings in the Court, the date on which the order is made;
- (d) in the case of a verdict in proceedings in the Court, the date on which the verdict is given; and
- (e) in the case of any other decision, whether in proceedings in the Court or not, the date on which the decision is pronounced or given;

“verdict” includes a finding or assessment.

(2) In this Part, unless the context or subject matter otherwise indicates or requires, “appeal” includes:

- (a) an appeal from a decision in proceedings in the Court;
- (b) an appeal from a specified tribunal within the meaning of section 48 (1) (a) of the Act.

(3) For the purposes of the Act and the rules, an application under section 127 (1) of the District Court Act 1973 shall be an appeal.

(4) Notwithstanding subrule (2), in this Part “appeal” does not include:

- (a) proceedings to which Part 31 (which relates to the separate decision of questions) or Part 32 (which relates to stated cases) applies, except an appeal to the Court of Appeal from the decision of the Court in a Division in proceedings to which Part 31 or Part 32 applies;

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- (b) an application for the variation or discharge of an order of a Judge of Appeal or of the registrar.

Rules generally

3. (1) The provisions of Parts other than this Part apply, so far as applicable, to proceedings in the Court of Appeal.

(2) For the purposes of subrule (1):

- (a) a person who commences proceedings in the Court of Appeal, as appellant or otherwise, shall be a plaintiff;
- (b) a person against whom proceedings are commenced in the Court of Appeal, as respondent to an appeal or otherwise, shall be a defendant; and
- (c) a notice of appeal shall be an originating process.

Division 2—Appeals

Leave to appeal or cross-appeal

4. (1) An application for leave to appeal, and subject to subrule (2), to cross-appeal to the Court of Appeal, shall be made by summons.

(2) A party served with a summons for leave to appeal who wishes to apply for leave to cross-appeal may do so by motion on the hearing of the summons, supported by an affidavit stating the questions involved and the reasons why leave should be given, without filing or serving a summons or notice of the motion.

(3) The summons for leave to appeal shall be filed within 14 days after the material date.

(4) A summons for leave to cross-appeal shall be filed within 14 days after service of the notice of appeal, or the summons for leave to appeal.

(5) The Court below may extend time under subrule (3) only within 14 days after the material date or on a notice of motion or other application filed within 14 days after the material date.

(6) The Court of Appeal may extend time under subrule (3) or (4) at any time.

(7) The applicant shall file with or subscribe to the summons a statement of:

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why leave should be given.

(8) Unless the registrar otherwise directs, the applicant for leave to appeal shall, not later than 3 days before the date fixed for the hearing of the application for leave to appeal, file 4 copies of the reasons for decision in the court below.

(9) The Court of Appeal may give leave to appeal or to cross-appeal on terms.

(10) A party applying for an extension of time under subrule (6) may include that application in the summons for leave to appeal. or cross-appeal.

Time for appeal

5. (1) Subject to subrule (2), an appeal must be instituted within 28 days after the material date or within such extended time as the court below or the Court of Appeal may fix.

(2) An appeal by leave must be instituted within 14 days after leave is given or within such extended or abridged time as the Court of Appeal may fix.

(3) The court below may extend time under subrule (1) only within 28 days after the material date or on a notice of motion or other application filed within 28 days after the material date.

(4) The Court of Appeal may extend time under subrule (1) or under subrule (2) at any time.

(5) A party applying to the Court of Appeal for an extension of time under subrule (1) or subrule (2) shall lodge with the notice of motion a draft, completed as far as possible, of the notice of appeal to be filed if an extended time is fixed.

Institution and discontinuance of appeal

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

(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. Part 2 rule 5 shall not apply to the calculation of the period of 3 months under paragraph (a).

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

(a) obtain from the proper officer in the registry a date for the appeal to be called over; 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.

(5) The appellant may discontinue the appeal by filing a notice of discontinuance in Form 60C and serving it on each respondent who has been served with the notice of appeal.

(6) The discontinuance of an appeal shall not affect any cross-appeal.

Applications

7. Notwithstanding anything in these rules, where an application made under subrule (2) of Part 19 rule 2 for any of the forms of relief specified in Part 28 rule 1, rule 2 and rule 3 has been refused, an application for a similar purpose may be made to the Court of Appeal within seven days of the refusal, or within such extended time as the Court of Appeal may within such seven days allow, without service of any notice of appeal, summons or notice of motion.

cf. R.S.C. (Rev.) 1965, O. 59, rr. 14 (3), 15 (1).

Appeals as of right

8. Where an appeal to the Court of Appeal is restricted by reference in any Act to a specified amount or value, the appellant shall, within the time limited for instituting the appeal, file an affidavit stating facts which show that the restriction does not apply.

Parties (cf. Pt. 52A, rr. 12 & 13: costs)

9. (1) Each party to the proceedings in the court below who is affected by the relief sought by a notice of appeal or is interested in maintaining the decision under appeal shall be joined as a party appellant or respondent to the appeal.

(2) The Court of Appeal may order the addition or removal of any person as a party appellant or respondent to an appeal.

(3) A person shall not be made an appellant without his consent.

(4) An appellant who considers that respondents need not be separately represented on the appeal may notify such respondents that objection will be taken to more than one set of costs being allowed between them.

(5) An appellant who considers that a respondent should enter a submitting appearance and take no further active part in the proceedings may notify that respondent that objection will be taken to any order for costs, incurred after that date, other than for costs as a submitting party, being made in favour of that respondent.

(6) The failure by:

- (a) an appellant to give notice under subrules (4) or (5); or
- (b) a claimant to give a corresponding notice pursuant to subrule (7),

does not limit the powers of the Court with respect to the costs of the proceedings.

(7) Subrules (4) and (5) apply, making such changes as are necessary, to a claimant who applies for leave to appeal and to the opponents in the proceedings.

Service

10. (1) A notice of appeal, a notice of cross-appeal and an affidavit referred to in rule 8 shall, on the day of filing, be served on each party mentioned in rule 9 (1).

(2) The Court of Appeal may direct that any notice of appeal or cross-appeal be served on any person whether or not a party to the proceedings in which the decision under appeal was given.

(3) Where the Court of Appeal makes an order granting leave to appeal or to cross-appeal or an extension of time for appealing or for cross-appealing or for applying for leave to appeal or to cross-appeal, the Court of Appeal may, at the same time or afterwards, give directions for service other than personal service of any notice of appeal or of cross-appeal or summons by which, pursuant to the order, proceedings are commenced for an appeal or for leave to appeal or to cross-appeal, and of any other document in the proceedings so commenced.

Notices of appeal: contents

11. (1) A notice of appeal with appointment shall state:

- (a) whether it is filed pursuant to leave, and the date leave was given;
- (b) whether the appeal is from the whole or part only, and what part, of the decision in the court below;
- (c) briefly, but specifically the grounds relied upon in support of the appeal; and
- (d) what judgment, order, verdict or determination the appellant seeks in place of the decision in the court below.

(2) The notice of appeal shall bear a note that before taking any step in the proceedings the respondent must enter an appearance in the registry.

Judiciary Act 1903 of the Commonwealth (s. 78B)

12. Where a ground of appeal involves a matter arising under the Constitution of the Commonwealth or involves its interpretation:

- (a) the statement of the ground in a notice of appeal shall indicate that it involves a matter within section 78B of the Judiciary Act 1903 of the Commonwealth; and
- (b) the appellant shall, forthwith after obtaining an appointment under rule 6 (3), give the notices required by that section and promptly file an affidavit of service of the notices.

Intervention by the ASC

13. (1) Where a ground of appeal involves a matter arising under the Corporations Law and the Australian Securities Commission ("the ASC") did not intervene in the proceedings in the court below, the Court of Appeal or a Judge of Appeal may direct service of a copy of the notice of appeal or cross-appeal on the ASC.

(2) A party directed to serve a copy of a notice under subrule (1) shall:

- (a) serve the copy, endorsed "Served pursuant to SCR Pt 51 r 13 (2)" and marked for the attention of its General Counsel for New South Wales, on the ASC; and
- (b) promptly file an affidavit of service of the copy.

(3) The copy notice may be served on the ASC by leaving it, addressed to the ASC, in an exchange box of the ASC in a document exchange of Australian Document Exchange Pty Limited or at another exchange box for transmission to that exchange box.

(4) The ASC may intervene under section 1330 (1) of the Corporations Law in an appeal by filing, before the date of call-over subscribed to the notice of appeal, a notice of appearance that includes a statement that the ASC intervenes under the section.

(5) Upon complying with subrule (4), the ASC shall be added as a respondent.

Notice of appeal: filing or lodgment with court below

14. 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 with 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.

Stay

15. An application for leave to appeal to the Court of Appeal or an appeal to the Court of Appeal shall not:

- (a) operate as a stay of execution or of proceedings under the decision of the court below;
- (b) invalidate any intermediate act or proceeding, except so far as the Court of Appeal may direct or, subject to any direction of the Court of Appeal, as the court below may direct.

Security for costs

16. (1) Where a notice of appeal with appointment has been filed under rule 6, 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.

cf. R.S.C. (Rev.) 1965, O. 59, r. 10 (5).

(2) Subject to subrule (1), no security for the costs of an appeal to the Court of Appeal shall be required.

(3) Subrules (1) and (2) do not affect the powers of the Court under Part 53 Division 1 (which relates to security for costs).

Amendment of notice of appeal

17. (1) A notice of appeal may, before the date of call-over, be amended without leave by filing a supplementary notice.

(2) A party who files a supplementary notice under subrule (1) must serve it on the other parties.

Cross-appeal

18. (1) Where a respondent to an appeal from any decision wishes to cross-appeal from the whole or any part of the decision and is entitled to do so as of right, he or she shall file a notice of cross-appeal.

(2) A notice of cross-appeal must be filed within:

- (a) 14 days after service of a notice of appeal with or without appointment;
- (b) 14 days after leave to cross-appeal is given; or
- (c) such extended or abridged time as the Court of Appeal may fix.

(3) Subject to subrules (1), (2) and (4), the provisions of these rules relating to a notice of appeal apply to a notice of cross-appeal.

(4) Rules 5 and 6 (2)-(4) do not apply to a cross-appeal.

Further evidence on appeal

19. (1) This rule applies to any application to the Court of Appeal to receive evidence in proceedings on an appeal additional to evidence in the court below.

(2) This rule applies unless the Court of Appeal otherwise directs.

(3) The application shall be made by motion on the hearing of the appeal without filing or serving notice of the motion.

(4) The grounds of the application shall be stated in an affidavit.

(5) Any evidence necessary to establish the grounds of the application, and the evidence which the applicant wants the Court of Appeal to receive shall be given by affidavit.

(6) The applicant shall file any affidavit not later than 21 days before the hearing of the appeal.

(7) The evidence of any other party to the appeal shall be given by affidavit filed not later than 14 days before the hearing of the appeal.

(8) A party to the appeal shall, not later than the time limited for him or her to file an affidavit under this rule:

- (a) lodge as many copies of the affidavit as the registrar may direct; and
- (b) serve three copies of the affidavit on each other party to the appeal.

Submitting appearance (cf. Pt. 52A, r. 12: costs)

20. A respondent to an appeal or an opponent to proceedings commenced by summons who wishes to submit to the orders of the Court of Appeal, save as to costs, may file a notice of appearance with a statement that the party submits to the orders of the Court, save as to costs.

Notice of contention

21. (1) Where a respondent to an appeal wishes to contend that the decision of the court below should be affirmed on grounds other than those relied upon by the court below, but does not seek a discharge or variation of any part of the decision of the court below, he need not file a notice of cross-appeal but he must, within 14 days after service of the notice of appeal with or without appointment, file notice of that contention stating briefly but specifically, the grounds relied upon in support of the contention.

(2) Where a ground relied on in support of the contention involves a matter arising under the Constitution of the Commonwealth or involves its interpretation:

- (a) the statement of the ground shall indicate that it involves a matter within section 78B of the Judiciary Act 1903 of the Commonwealth; and
- (b) the respondent shall, forthwith after filing the notice of contention, give the notices required by that section and promptly file an affidavit of service of the notices.

cf. R.S.C. (Rev.) 1965, O. 59, r. 6 (2).

Notice of appeal etc. not to limit powers

22. (1) In an appeal from any decision, the Court of Appeal may exercise its powers under the Act and under these rules notwithstanding:

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- (a) that there is no appeal from some part of the decision;
 - (b) that any party to the proceedings in the court below has not appealed;
 - (c) that any ground for allowing or dismissing the appeal or varying the decision is not stated in any notice of appeal, notice of cross-appeal or notice of contention; or
 - (d) that there has been no appeal from some other decision in the proceedings.

cf. R.S.C. (Rev.) 1965, O. 59, r. 10 (4), (6).

(2) Where a person is not a party to the proceedings in which the decision under appeal is given, but is served with a notice of appeal with appointment pursuant to a direction of the Court of Appeal, the Court of Appeal may give such decision as might have been given in the court below if the person served had been a party to the proceedings in the court below.

cf. R.S.C. (Rev.) 1965, O. 59, r. 8 (3) (b).

(3) In any appeal the Court of Appeal may, on terms, make any order to ensure the determination on the merits of the real question in controversy.

cf. R.S.C. (Rev.) 1965, O. 59, r. 10 (4).

(4) The Court of Appeal may, in any appeal, make any order which the Court of Appeal might make on an application for a new trial or for the setting aside of a verdict or judgment.

cf. R.S.C. (Rev.) 1965, O. 59, r. 11 (1).

(5) This rule applies subject to the provisions of any Act.

New trial

23. (1) The Court of Appeal shall not order a new trial:

- (a) on the ground of misdirection, non-direction or other error of law;
- (b) on the ground of the improper admission or rejection of evidence;
- (c) where there has been a trial before a jury, on the ground that the verdict of the jury was not taken upon a question which the trial judge was not asked to leave to the jury; or
- (d) on any other ground,

unless it appears to the Court of Appeal that some substantial wrong or miscarriage has been thereby occasioned.

cf. R.S.C. (Rev.) 1965, O. 59, r. 11 (2).

(2) The Court of Appeal may order a new trial on any question without interfering with the decision on any other question.

cf. R.S.C. (Rev.) 1965, O. 59, r. 11 (3);
Act No. 21, 1899, s. 160 (b).

(3) Where it appears to the Court of Appeal that some ground for a new trial affects part only of the matter in controversy, or one or some only of the parties, the Court of Appeal may order a new trial as to that part only, or as to that party or those parties only.

cf. R.S.C. (Rev.) 1965, O. 59, r. 11 (3);
Act No. 21, 1899, s. 160 (b).

(4) Where the Court of Appeal makes an order under subrule (2) or subrule (3), the Court of Appeal may give such judgment or make such order as the nature of the case requires for the disposal of the remainder of the appeal.

cf. R.S.C. (Rev.) 1965, O. 59, r. 11 (3).

(5) Where the Court of Appeal orders a new trial, the Court of Appeal may:

- (a) impose conditions on any party for the purposes of the new trial;
- (b) direct admissions to be made by any party for the purpose of the new trial;
- (c) order that the testimony of any witness examined at the former trial may be read from the notes of the testimony, instead of the witness being again examined; and
- (d) for the purposes of subparagraphs (a) to (c) from time to time make such orders as the Court of Appeal thinks fit.

cf. Act No. 21, 1899, s. 160.

Time: want of prosecution

24. Where an appellant has not done any act required to be done by or under these rules, or otherwise has not prosecuted his appeal with due diligence, the Court of Appeal may on application by any party or of its own motion:

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- (a) order that the appeal shall be dismissed for want of prosecution;
 - (b) fix a time peremptorily for the doing of the act and:
 - (i) in the event of non-compliance, subsequently order that it be so dismissed; or
 - (ii) in special circumstances order that in the event of non-compliance the appeal be dismissed; or
 - (c) make such further or other order as in the circumstances may seem just.

Competency

25. (1) A respondent who objects to the competency of an appeal shall, by motion on notice filed and served on all other parties to the appeal within 21 days after service upon the respondent of the notice of appeal with appointment, apply to the Court of Appeal for an order striking out the appeal as incompetent.

(2) If the respondent fails to comply with subrule (1), but the appeal nevertheless is dismissed as incompetent, he shall not, unless the Court of Appeal otherwise orders, receive any costs of the appeal, and the Court of Appeal may order that he pay to the appellant any costs of the appeal proving useless or unnecessary.

Reinstatement and restitution

26. Where any step has been taken for the enforcement of a judgment or order and the Court of Appeal varies or sets aside the judgment or order, the Court of Appeal may make such orders for reinstatement or restitution as the Court of Appeal thinks fit.

Unopposed application for expedition etc.

27. (1) Subject to rule 28, a party to an appeal who seeks an order expediting the appeal, or shortening time under rule 6 (2), may:

- (a) serve on each other non-submitting party to the appeal:
 - (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.

Unopposed application for expedition at call-over

28. (1) A party to an appeal who:

- (a) seeks an order expediting the appeal; and
 - (b) has, not less than 3 days prior to the call-over, obtained a notice of non-objection, in Form 61AA, by each non-submitting party,
- shall apply for the order by motion on notice returnable at the call-over.

(2) The applicant shall:

- (a) serve notice of the motion, affidavits in support and the notices of non-objection upon each non-submitting party; and
- (b) file:
 - (i) the documents referred to in paragraph (a); and
 - (ii) the notices of non-objection referred to in subrule (1) (b).

Division 3—Appeal Book

Retention of exhibits

29. (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 14—three months after the filing of the notice.

(2) Upon filing or lodgment under rule 14 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.

(3) Where an exhibit is not available for delivery to the registry of the Court of Appeal, the officer certifying under subrule (2) shall, in the certificate, state the circumstances and give such information as he can to enable the registrar to cause the exhibits to be available to the Court of Appeal.

Collection of papers

30. (1) Upon the filing of notice of appeal with appointment, the registrar:

- (a) may obtain from the Court Reporting Branch the original of the transcript (if any) of the proceedings in the court below; and
- (b) shall obtain from the proper officer of the court below:
 - (i) the exhibits;
 - (ii) the list of exhibits and certificate under rule 29;
 - (iii) all the other documents before the court below, together with a list of them, certified by the proper officer of the court below; and
 - (iv) the reasons for judgment (if any) or the summing up (if any) in the court below certified by the proper officer of the court below.

(2) Where oral evidence was given in the court below but was not transcribed in the Court Reporting Branch:

- (a) if notes of the evidence were taken by or for the judge, justice or other person presiding in the court below, the appellant shall, subject to any direction in the court below, obtain a copy of the notes and deliver the copy to the registry; or
- (b) if notes of the evidence are not obtainable pursuant to paragraph (a), the registrar shall obtain a report of the evidence from the associate or other proper officer of the court below.

(3) The registrar shall retain the documents obtained under subrules (1) and (2) and shall, unless the appeal book is prepared by the registrar, allow the party who is required to prepare the appeal book to have custody of such of those documents as are necessary for that purpose.

(4) The party having custody of documents pursuant to subrule (3) shall return them intact to the registrar upon completion of the appeal book.

(5) Subject to subrule (3), the registrar shall retain the documents obtained under subrule (1) until disposal of the appeal and shall thereupon return them to the offices or persons from whom he obtained them.

Preparation of appeal book

31. (1) The appeal book shall, unless a Judge of Appeal or the registrar otherwise directs, be prepared by the appellant in accordance with this rule.

(2) It shall be printed or reproduced by a photocopying, roneograph, or some other multi-graphic process which gives uniform copies of pages in a clear and legible type.

(3) It shall be divided into sections in accordance with rule 32.

(4) The pages in each section shall be numbered consecutively and, where a section exceeds 300 pages, it shall be bound in separate volumes of not more than 250 pages.

(5) The contents shall be printed, or otherwise reproduced, with a 50 millimetres margin on the right hand side of each page and evenly marked in the margin with the letters "A" to "Z".

(6) Each section shall have a title page setting out the full and correct title of the proceedings, including the title of the court below, names of the solicitors for each party, the address for service for each party, and the telephone, telex, facsimile and reference number of each party.

(7) The index shall follow, showing the page number where each document is reproduced and, in the case of exhibits, the page of the appeal book containing the transcript where the exhibit was admitted or marked.

(8) Where a section is bound in 2 or more volumes, each volume shall contain, at the beginning, an index of the entire section, unless otherwise directed by the registrar.

(9) One or more sections may be in a lever arch folder.

Division of appeal book

32. (1) Subject to subrule (2), the appeal book shall be divided into the following 3 sections:

- (a) the formal section which shall be bound in a red cover ("the Red Book");

- (b) the transcript section which shall be bound in a black cover (“the Black Book”); and
- (c) the document section which shall be bound in a blue cover (“the Blue Book”);

(2) If the total number of pages to be contained in the Black and Blue Books would not exceed 300, those pages may be combined in one book with a black cover (“the Combined Book”).

(3) The party filing the Black and Blue Books shall include in the Black Book a consolidated index of all Books. The Court may direct that a separate Book incorporating the consolidated index be filed, in which case it shall be in a green cover.

Red book

33. The Red Book shall contain:

- (a) an index of its contents;
- (b) the process and pleadings of every party as last amended at the trial and any intermediate versions that are relevant to the grounds of appeal, cross-appeal or contention;
- (c) the reasons for judgment or summing up of the primary Judge or court;
- (d) the formal judgment of the primary Judge or court;
- (e) the notice of appeal, and any notice of cross-appeal and notice of contention;
- (f) the transcript of the application for leave to appeal or to cross-appeal if applicable;
- (g) any submitting appearance;
- (h) any schedule filed pursuant to rule 40; and
- (i) any document filed pursuant to rule 41.

Black book

34. (1) Subject to subrule (2), the Black Book shall contain an index of its contents, which shall include reference to:

- (a) the evidence of each witness in chief;
- (b) cross-examination;
- (c) re-examination;
- (d) submissions;
- (e) addresses;

- (f) the transcript of the hearing including, where the trial is with a jury, the return of the jury's verdict; and
- (g) any written questions submitted to the jury for their determination.

(2) Only such of the transcript as is necessary for the hearing or determination of the appeal, cross-appeal and notice of contention shall be included in the Black Book and, if there is no such transcript, no Black Book shall be prepared.

Blue book

35. (1) Subject to subrule (4), the Blue Book shall contain:

- (a) an index of its contents which:
 - (i) in the case of affidavits or statements:
 - (A) shall include reference to each annexure thereto including the first page at which it appears in the book; and
 - (B) indicate which parts of affidavits, statements and annexures were rejected, not read, or admitted for a limited purpose;
 - (ii) in the case of exhibits—shall:
 - (A) give the date of each exhibit and indicate whether or not its text is reproduced in the appeal book;
 - (B) arrange the exhibits in the order in which they have been lettered or numbered; and
 - (C) refer to the pages of the transcript where the exhibits were admitted or marked;
- (b) all documents before the court appealed from (other than those contained in the Red and Black Books) that are relevant and necessary for the hearing or determination of the appeal, cross-appeal or contention.

(2) Where the text of affidavits or statements is reproduced, pages or annexures not admitted in evidence shall be excluded, unless relevant to a ground of appeal, cross-appeal or contention.

(3) The following provisions apply to exhibits:

- (a) exhibits shall be arranged, not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to the dates borne by the documents or, in the case of manifestly or admittedly misdated documents, their known date;

- (b) if a document is undated, it shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document and the respondent may require that a “date or order disputed” be inserted in the index against the document;
- (c) if the exhibits include correspondence between, or among, 2 or more persons that should be read consecutively and not interspersed among other documents, the documents forming the correspondence may be arranged in chronological order and given a position together, at a convenient place, in relation to the other exhibits;
- (d) if the exhibits include medical reports by a group of doctors, or by 1 doctor, tendered on behalf of a party that should be read consecutively and not interspersed among other documents, those medical reports may be arranged in chronological order and given a position together, at a convenient place, in relation to the other exhibits;
- (e) any photographs and plans, shall be included unless irrelevant to the proposed grounds of appeal, cross-appeal or contention and if possible shall be reduced in size if necessary for including in the appeal book; and
- (f) interrogatories, answers and affidavits of documents shall not be included, except so far as they were put in evidence.

(4) Only such of the documents described in this rule as are relevant to or necessary for the hearing or determination of the appeal shall be included in the Blue Book and, if there are no such documents, no Blue Book shall be prepared.

Disputes as to contents of appeal book

36. (1) A party who:

- (a) objects to the inclusion of material in the appeal book on the ground that it is unnecessary or irrelevant; or
- (b) asserts that further material should be included,

shall, within 7 days of service of the appeal book upon the party, file and serve a written notice containing the party’s objection or assertion on the appellant and any other party who has not submitted.

(2) The party preparing the appeal books may, with the consent of all other parties other than a submitting respondent, add pages to, or

delete pages from, the appeal book at any time at least 14 days prior to the hearing of the appeal or after that time with the leave of the Court or the registrar. If an appeal book is so amended, the index to the relevant section and the consolidated index are to be amended accordingly.

(3) A party who asserts that additional material should be included in the appeal book shall, unless all other parties who have not submitted have agreed to the inclusion, at least 7 days prior to the hearing lodge 4 copies of the additional material and serve 3 copies on each other party who has not submitted. The additional material shall be indexed and, if it consists of more than 30 pages, bound as a supplementary Black Book or Blue Book, as the case requires.

Filing, lodgment and service of appeal book

37. (1) The appellant shall:

- (a) within 8 weeks of filing a notice of appeal with appointment:
 - (i) file a copy of the Red Book; and
 - (ii) serve 3 copies thereof on each other party, other than a submitting respondent; and
- (b) not less than one month before the date fixed for hearing of the appeal, lodge a further 3 copies of the Red Book with the registrar.

(2) The appellant shall not less than one month before the date fixed for the hearing of the appeal:

- (a) file a copy of
 - (i) the Black and Blue Books or, if those books are combined, the Combined Book; and
 - (ii) the consolidated index, if contained in a separate book;
- (b) lodge 3 copies with the registrar;
- (c) serve 3 copies of the Blue Book or the Combined Book on each other party, other than a submitting respondent; and
- (d) if there is a Black Book—serve 3 copies on any other party who has, not later than 7 days after the date of call-over, required the same.

Dispensation with Rules

38. Without limiting the generality of Part 1 rule 12, a Judge of Appeal may dispense with or vary any of the rules in this Division.

Division 3A—Damages Appeals

Application

39. This Division applies to an appeal solely on the issue of the amount of damages claimed or awarded in respect of the death of or bodily injury to a person that is commenced on or after 1 January, 1995.

Documents to be filed with notice of appeal

40. An appellant must file with the notice of appeal with appointment a schedule, signed by counsel (if any), or solicitor (if any), or by the appellant, in Form 61B:

- (a) setting out the manner in which the damages were assessed, or in the case of trial by jury, may be supposed to have been assessed;
- (b) indicating the items which are challenged in the appeal;
- (c) containing a brief but specific statement of the basis of the challenge;
- (d) where applicable—showing the alternative assessment contended for; and
- (e) containing an estimate of the likely length of hearing.

Documents to be filed in reply

41. The respondent must, within 28 days of the date of service of a notice of appeal with appointment and the other documents required by rule 40, where applicable file and serve a document, signed by counsel (if any), or solicitor (if any), or by the respondent, and headed “Notice of Intention to Challenge or Support Judgment”, indicating the extent, if any, to which the judgment will be challenged or supported by cross-appeal or contention, any alternative assessment sought, with a brief but specific statement of the basis for it, and the respondent’s estimate of the likely length of hearing.

Division 3B—Call-over and Lists

Call-over

42. (1) Unless a Judge of Appeal or the registrar otherwise directs, all appeals will be called over on a date fixed by the registrar and subscribed to the notice of appeal.

(2) The call-over must be attended by:

- (a) if a party is represented—the party’s counsel or solicitor; or
- (b) otherwise—the party.

(3) At the call-over appeals will be assigned to one of the lists referred to in rule 43.

(4) At least 3 days before the day fixed for call-over, the appellant shall file and serve on all parties, other than a submitting respondent, a notice containing:

- (a) an estimate of the likely length of hearing of the appeal, divided into time for:
 - (i) the submissions of the appellant; and
 - (ii) the submissions of all other parties;
- (b) any proposed amendments to the appeal;
- (c) any proposed variation to the time table otherwise prescribed by the rules for the filing and service of the appeal books; and
- (d) if the full appeal book has not been filed — a brief description of what the appellant contends should constitute the appeal book, indicating as far as possible how many volumes the appellant anticipates will constitute each section of the appeal book.

(5) Any party who takes issue with any matter set out in the appellant's notice under subrule (4), and any respondent or cross-appellant who proposes to amend their notice of cross-appeal or contention, shall:

- (a) serve on every other party other than a submitting respondent, at least 1 day prior to the call-over, a notice particularising the matter in issue or the proposed amendment; and
- (b) file a notice at the call-over.

(6) Without in any way limiting the power of the Judge or the registrar on call-over to make such orders as are appropriate, the Judge or the registrar may:

- (a) assign the appeal to a list;
- (b) fix a timetable;
- (c) fix a date for hearing of the appeal;
- (d) stand over the appeal for further call-over at a later date;
- (e) order a party to pay the costs of the call-over;
- (f) determine any dispute concerning the accuracy of the transcript;
- (g) give directions as to the contents of the appeal book; and
- (h) dispense with compliance with the rules, and in particular with any specific rules relating to the appeal books.

Lists

43. (1) Appeals will be assigned to one of the following lists:

- (a) damages appeals list;
- (b) Compensation Court appeals list;
- (c) short appeals list;
- (d) expedited appeals list;
- (e) long appeals list;
- (f) general list; or
- (g) such other list as the President shall from time to time decide.

(2) The damages appeal list will consist of appeals in which the sole issue is the amount of damages awarded in respect of the death of, or bodily injury to, a person and will include appeals to which Division 3A applies.

(3) The Compensation Court appeals list will consist of appeals from the Compensation Court.

(4) The short appeals list will consist of appeals estimated to require no more than 2 hours' hearing time.

(5) The expedited appeals list will consist of appeals expedited at the call-over, or by the Judge of Appeal acting as Expedition Judge or by the Court.

(6) The long specially fixed appeals list will consist of appeals expected to require 3 days' or more hearing time.

(7) The general list shall consist of all appeals not assigned to any other list.

(8) Notwithstanding subrules (2) to (7), a Judge of Appeal may, at any time, assign or re-assign any appeal to any list and, in particular, may assign or re-assign any appeal to the general list.

Division 4—Written submissions

Written submissions and chronology

44. Each party, other than a submitting respondent, shall, unless otherwise directed, file and serve written submissions, and the appellant shall file and serve a chronology. The respondent may file and serve an amended or supplementary chronology.

Appellant's chronology

45. The appellant's chronology shall comprise a list of the principal events leading up to the litigation and, where appropriate, events during the litigation, numbered consecutively with the date, a short description of each event, and appropriate references to the appeal book including exhibit marks where applicable.

Preparation

46. (1) Written submissions:

- (a) shall be divided into paragraphs numbered consecutively;
- (b) shall, so far as practicable, refer to matter in the appeal book by section name, volume number (if any), page number and letter, and shall not extract that matter;
- (c) shall, so far as practicable, where an authority is cited, not extract matter in the authority; and
- (d) shall be signed by the barrister or solicitor who prepares them or, where they are not prepared by a barrister or solicitor, by or on behalf of the party on which behalf they are signed, and
 - (i) the name of the signatory;
 - (ii) a telephone number at which the signatory can be contacted; and
 - (iii) if available, the signatory's facsimile number,shall be typed or printed in a neat and legible manner under his signature.

(2) In appeals raising substantial challenges to findings of fact, the submissions of the party making those challenges shall include a statement in narrative form setting out the findings challenged, those contended for, the reasons why the Court of Appeal should substitute those findings and supporting references to the transcript and other evidence.

Filing and lodgment

47. Written submissions and chronologies shall be filed as follows:

- (a) by the appellant—not later than 9 days before the date fixed for hearing; and
- (b) by the respondent—not later than 4 days before the date fixed for the hearing,

by placing 4 copies in the box marked "Appeal Submissions" located on the 12th Level of the Law Courts Building.

Service

48. A party who files his written submissions and chronology shall, on the day of filing, serve 3 copies on every party to the appeal other than a submitting respondent.

Division 5—General

Motions

49. (1) Subject to the rules and in particular rule 4, but notwithstanding rule 50, any application to the Court of Appeal or to a Judge of Appeal in or for the purposes of or in relation to proceedings in the Court shall be made by motion in the proceedings.

(2) In proceedings on a motion in the Court of Appeal (except a motion in proceedings commenced in the Court of Appeal by summons or in proceedings for leave to appeal or to cross-appeal from a decision in proceedings in the Court), the party applying shall be called the claimant and any other party shall be called an opponent and documents in the proceedings on that motion (except any minute of order) shall be entitled accordingly.

Summons

50. (1) Subject to the rules, proceedings (except appeals) in the Court of Appeal shall be commenced by summons under Part 5 rule 4A.

(2) Proceedings referred to in paragraph (h) of section 48 (2) of the Act (which paragraph relates to a stated case) shall be commenced by summons in Form 62A.

(3) In proceedings to which subrule (2) applies:

- (a) Part 5 rules 4, 4C and 5 shall not apply; and
- (b) the registrar shall give notice of hearing to the parties, subject to any direction of the Court of Appeal.

(4) A party claiming relief by summons in the Court of Appeal shall be called a claimant.

(5) A party against whom relief is claimed by summons in the Court of Appeal shall be called an opponent.

Proceedings other than appeals

51. (1) A claimant in proceedings commenced by summons in the Court of Appeal shall file with the summons an affidavit in support of the claim for relief.

(2) Where a ground on which relief is claimed involves a matter arising under the Constitution of the Commonwealth or involves its interpretation:

- (a) the statement of the ground shall indicate that it involves a matter within section 78B of the Judiciary Act 1903 of the Commonwealth; and
- (b) the claimant shall, forthwith after filing the summons and affidavit in support, give the notices required by that section and promptly file an affidavit of service of the notices.

(3) Where the proceedings are for relief of the nature referred to in section 48 (2) (b), (c), (d), (e) or (g) of the Act, the affidavit in support of the summons shall conclude with a brief but specific statement of the grounds on which relief is claimed.

(4) Rule 9 applies, making such changes as are necessary, to proceedings of the kind referred to in subrule (3).

Hearing in fixed vacation

52. (1) An application for an order under Part 1A rule 2 (4) that an appeal or other proceeding in the Court of Appeal be heard during the fixed vacation shall, unless the Court otherwise orders, be made by filing:

- (a) an affidavit showing the grounds upon which the application is based;
- (b) a draft order; and
- (c) where applicable—a draft of the summons, notice of appeal, or notice of motion proposed to be filed.

(2) The applicant may proceed without service of the documents on any party.

(3) The registrar shall deliver the documents to the vacation Judge of Appeal for determination of the application.

(4) The application may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of any person.

Consent adjournments of matters in Monday motions list

53. (1) Where:

- (a) a motion or summons is returnable in a Monday motions list;

-
- (b) the counsel or solicitor for each party who is not a submitting party signs a consent (which need not be in the form of a Court document) to the motion or summons being adjourned to a specified Monday on which the Court of Appeal will be taking a motions list; and
 - (c) each consent is filed, or a copy of it is produced in the Sydney Registry by a facsimile transmission machine, before 1 pm on the Friday preceding the hearing date,

the registrar shall adjourn the proceedings to the agreed date.

(2) Costs of the adjournment shall be costs in the proceedings unless all parties other than submitting parties have otherwise agreed.

Papers

54. (1) A person filing a document in the registry shall, in addition, lodge so many copies of the document as the registrar may direct.

(2) The provisions of Division 3 (which relates to appeal books) shall, if the registrar so directs, apply to any proceedings in the Court of Appeal, with such modification as the registrar may direct.

Consent orders

55. Any judgment or order which may be made by a Judge of Appeal by consent of the parties may be made by the registrar.

Review of order of Judge of Appeal

56. An application to the Court of Appeal for the variation or discharge of an order of a Judge of Appeal shall not be made except on notice of motion filed within 14 days after the date on which the order is made or within such extended time as the Court of Appeal may fix.

Forms

57. A summons or notice of motion in proceedings in the Court of Appeal, shall:

- (a) notwithstanding subrules (2) and (3) of Part 65 rule 1 (which relates to the title), where the claimant is proceeding under an Act, be entitled "In the matter of" together with a reference to the Act and section of it under which the claimant is proceeding;
- (b) unless the grounds of the application are stated in an affidavit and, except in a summons under rule 50 (2), state those grounds.

Powers of the registrar

58. (1) Subject to subrule (1A), the registrar may exercise the powers of a Judge of Appeal under section 46 (1) and (2) of the Act.

(1A) The registrar shall not grant a stay or an injunction in exercising the powers granted under:

- (a) subrule (1), except in respect of Part 40 rule 8; or
- (b) Part 44 rule 5, except in respect of a judgment or order of the Court of Appeal.

(2) The registrar shall, on the direction of the President or the Judge for the time being responsible for the Court of Appeal's list, refer any motion to the Court of Appeal or a Judge of Appeal.

- (h) Part 52A rule 12 (1)
Omit "Part 51 rule 13B (which relates" and insert instead "Part 51 rule 20 and Part 51AA rule 13B (which relate".
- (i) Part 52A rule 14 (1)
Omit "Part 51 rule 5 (4) or is discontinued under Part 51 rule 5 (5)" and insert instead "Part 51 rule 6 (4) or Part 51AA rule 5 (4) or is discontinued under Part 51 rule 6 (5) or under Part 51AA rule 5 (5)".
- (j) SCHEDULE D Part 2
After "Part 51" insert "and Part 51AA".
- (k) SCHEDULE F Explanatory Notes
From paragraph 3 omit "Part 51 rules 31 and 35 and forms 60" and insert instead "Part 51 rules 49 and 57 and Forms 60, 60AA,".
- (l) SCHEDULE F Form 16
Omit "Part 51 rule 13B" and insert instead "Part 51 rule 20 or Part 51AA rule 13B".
- (m) SCHEDULE F Form 59
Omit "P. 51, r. 3 (7)" and insert instead "P. 51, r. 4 (7), P. 51AA, r. 3 (7)".
- (n) SCHEDULE F Form 60
Renumber the form as 60AA.
- (o) SCHEDULE F
After Form 59 insert:

Form 60

(Notice of appeal with appointment)

P. 51, r. 6 (1) (a), (1) (b) (ii), (2) (b).

(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 .

(Where leave to appeal has been granted, add—

Leave to appeal was granted on 12 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)).

GROUND(S): *(state briefly but specifically the grounds relied upon in support of the appeal).*

ORDER SOUGHT *(state what judgment, order, verdict or determination the appellant seeks in place of the decision in the court below).*

The appeal will be called over at *(address)* on *(date)* *(time)*.

To the respondent, *(address)*—

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

Appellant: *(name, address)*

Solicitor: *(name, address, telephone and fax numbers and the name of the person in the solicitor's office handling the matter)*

Solicitor's agent: *(name, address and telephone number)*

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

Address of Registry:

(p) SCHEDULE F Form 60B

Omit "*P. 51*" and insert instead "*P. 51AA*".

(q) SCHEDULE F Form 60C

Omit "*P. 51, r. 5 (5)*" and insert instead "*P. 51, r. 6 (5), P. 51AA, r. 5 (5)*".

(r) SCHEDULE F Form 61

Omit "*P. 51, r. 12*" and insert instead "*P. 51, r. 17 (1), P. 51AA, r. 12 (1)*".

(s) SCHEDULE F Form 61AA

Omit "*Part 51, r. 18A (1) (b)*" and insert instead "*Part 51, r. 27 (1) (b) (ii), P. 51AA, r. 18A (1) (b)*".

(t) SCHEDULE F Form 61A

(i) Omit "*P. 51*" and insert instead "*P. 51AA*".

(ii) Omit "*Part 51*" and insert instead "*Part 51AA*".

(u) SCHEDULE F Form 61B

Omit "*P. 51, r 25B*" and insert instead "*P. 51, r. 40, P. 51AA, r 25B*".

(v) SCHEDULE F Form 62

(i) Omit "*Part 51 rule 35 (2)*" and insert instead "*Part 51, rule 57 (a) or Part 51AA, rule 35 (a)*".

(ii) Omit "*P. 51, rr. 32, 35*" and insert instead "*P. 51, rr. 50, 57, P. 51AA, rr. 32, 35*".

(iii) Omit "*Part 51 rule 35 (b)*" and insert instead "*Part 51 rule 57 (b) or Part 51AA rule 35 (b)*".

(iv) Omit "*Part 51 rule 3 (7)*" and insert instead "*Part 51 rule 4 (7) or Part 51AA rule 3 (7)*".

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- (w) SCHEDULE F Form 62A
- (i) Omit “*Part 51 rule 35 (a)*” and insert instead “*Part 51 rule 56 (a) or Part 51AA rule 35 (a)*”.
 - (ii) Omit “*P 51, rr. 32 (2), 35*” and insert instead “*P. 51, rr. 50 (2), 57, P. 51AA, rr. 32 (2), 35*”.
- (x) Form 62AA
- (i) Omit “*P. 51, r. 31*” and insert instead “*P. 51, r. 49, P. 51AA, r. 31*”.
 - (ii) Omit “*Part 51 rule 35 (a)*” and insert instead “*Part 51 rule 57 (a) or Part 51AA rule 35 (a)*”.
 - (iii) Omit “*Part 51 rule 31(2)*” and insert instead “*Part 51 rule 49 (2) or Part 51AA rule 31 (2)*”.
 - (iv) Omit “*Part 51 rule 31 (2)*” and insert instead “*neither Part 51 rule 49 (2) nor Part 51AA rule 31 (2)*”.
- (y) SCHEDULE F Index of Forms
- (i) Omit the reference to Form 60 and the matter relating to it and insert instead:
 - 60. Notice of Appeal (P. 51, r. 6 (1) (a), (b) (ii), (2) (b)).
 - 60AA. Notice of Appeal (P. 51AA, r. 5 (1) (a), (b) (ii), (2) (c)).
 - (ii) From the matter relating to Form 59 omit “*P. 51, r. 3 (7)*” and insert instead “*P. 51, r. 4 (7), P. 51AA, r. 3 (7)*”.
 - (iii) From the matter relating to Form 60, omit “*P. 51, r. 5 (1) (a), (b) (ii)*” and insert instead “*P. 51, r. 6 (1) (a), (b) (ii), P. 51 AA, r. 5 (1) (a), (b) (ii)*”.
 - (iv) From the matter relating to Form 60A, omit “*P. 51, r. 5 (1)*” and insert instead “*P.51, r. 6 (1), P. 51AA, r. 5 (1)*”.
 - (v) From the matter relating to Form 60B, omit “*51*” and insert instead “*51AA*”.
 - (vi) From the matter relating to Form 60C, omit “*P.51, r. 5 (5)*” and insert instead “*P. 51, r. 6 (5), P. 51AA, r. 5 (5)*”.
 - (vii) From the matter relating to Form 61, omit “*P. 51, r. 12*” and insert instead “*P.51, r. 17, P. 51AA, r. 12*”.

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- (viii) From the matter relating to Form 61AA, omit “51 r. 18A (1) (b)” and insert instead “P. 51, r. 27 (1) (b), P. 51AA, r. 18A (1) (b)”.
 - (xi) From the matter relating to Form 61A, omit “51” and insert instead “51AA”.
 - (xii) From the matter relating to Form 61B, omit “P. 51, r. 25B” and insert instead “P. 51, r. 40, P. 51AA, r. 25B”.
 - (xiii) From the matter relating to Form 62, omit “P. 51, rr. 32, 33” and insert instead “P. 51, rr. 50, 57, P. 51AA, rr. 32, 35”.
 - (xiv) From the matter relating to Form 62A, omit “P. 51, rr. 32 (2), 35” and insert instead “P. 51, r. 50 (2), r. 57, P. 51AA, r.32 (2), 35”.
 - (xv) From the matter relating to Form 62AA, omit “P. 51, r. 31” and insert instead “P. 51, r. 49, P. 51AA, r. 31”.

EXPLANATORY NOTE

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

1. The object of the amendment contained in paragraph 2 is:
 - (a) to allow judgment for the amount outstanding under a costs certificate to be entered upon an affidavit being filed which states the amount, thus dispensing with the present requirement for a draft minute of the judgment to be filed by the filing party and simplifying the entry of judgment; and
 - (b) to appoint the Principal Registrar (in place of a registrar as is presently the case) as the proper officer of the Court for the purposes of Division 6 of Part 11 of the Legal Profession Act 1987 (which deals with assessment and collection of costs), reflecting the greater responsibility placed on the proper officer following the Legal Profession Amendment Act 1996.
2. The object of the amendment Contained in paragraph 3 (a) is to provide for an appeal from a master to the Court of Appeal in respect of a decision under s. 208L, s. 208M or s. 208N of the Legal Profession Act 1987 (which relate to appeals from costs assessors). This amendment places appeals from costs assessors on the same footing as appeals in respect of the former procedure of taxation of costs.
3. The object of the amendment contained in paragraph 3 (b) (i) is to omit a superfluous reference.
4. The object of the amendment contained in paragraph 3 (b) (ii) is to allow a master to exercise the powers of the Court to order a barrister or solicitor to give to a client a bill of costs and to give to a client such of the client’s documents as are held by the barrister or solicitor. Masters had this power prior to the 1994 amendments to the Legal Profession Act 1987 and the amendment reinstates it.

5. The object of the amendment contained in paragraph 5 is to allow an authorised director of a corporation to carry on or defend proceedings on behalf of the corporation. Presently the corporation can act only by a solicitor. The amendment will allow a corporation to take advantage of recent changes to the Legal Practitioners Act 1987, which allow a barrister to act for a client without a solicitor also acting.

6. The object of the amendment contained in paragraph 6 is to make it clear that the Court has power:

- (a) to inspect documents in relation to which a question arises, in order to determine the question; and
- (b) to order the document to be produced to the Court for the purpose of inspection by the Court,

following in this respect s. 133 of the Evidence Act 1995.

7. The object of the amendment contained in paragraph 7 is to provide that:

- (a) the appellant shall prepare the appeal book and index (with provision for objection by the other party) in place of the present system where the appellant files a draft index which is settled by the registrar and which determines the content and order of the appeal book;
- (b) the appeal book be divided into sections with identifying coloured covers in order to assist the Court and parties to locate documents at the hearing.
- (c) lever arch files may be used for the appeal book;
- (d) appeals be called over prior to being heard and that each party file notices containing information designed to assist the Court in expeditiously disposing of the appeal;
- (e) appeals be assigned to specified lists (each of which will contain appeals of a similar type);
- (f) the time filing a Notice of Contention and Notice of Cross-Appeal shall be 14 days after service of a Notice of appeal (rather than the present 28 day period); and
- (g) the time for filing written submissions and chronologies:
 - (i) by the appellant, be not later than 9 days before the date fixed for hearing (presently 4 days); and
 - (ii) by the respondent, be not later than 4 days before the date fixed for hearing (presently 2 days),

and to spell out various existing powers and practices and make minor drafting improvements.

The amendments were prepared following full consultation between the Rule Committee and members of the profession with a view to making appeals quicker and cheaper.

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