



New South Wales

Uniform Civil Procedure Rules (Amendment No 16) 2007

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 30 August 2007.

Jennifer Atkinson
Secretary of the Uniform Rules Committee

Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* to include provisions relating to practice and procedure in the Court of Appeal.

2007 No 448

Rule 1 Uniform Civil Procedure Rules (Amendment No 16) 2007

Uniform Civil Procedure Rules (Amendment No 16) 2007

under the

Civil Procedure Act 2005

1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 16) 2007*.

2 Commencement

These Rules commence on 1 January 2008.

3 Amendment of Uniform Civil Procedure Rules 2005

The *Uniform Civil Procedure Rules 2005* are amended as set out in Schedule 1.

Schedule 1 Amendments

(Rule 3)

[1] Part 51

Insert after Part 50:

Part 51 Court of Appeal

Division 1 Preliminary

51.1 Application of Part (cf SCR Part 51, rule 3)

- (1) This Part applies to any proceedings (whether or not appeal proceedings) that are assigned to the Court of Appeal.

Note 1. Part 50 applies to appeals to the Supreme Court that are not assigned to the Court of Appeal under the *Supreme Court Act 1970*. See rule 50.1 (a).

Note 2. References in this Part to proceedings in the Court generally are references to any proceedings in the Court (including appeal proceedings), except in so far as the context or subject-matter otherwise indicates or requires.

- (2) Subject to any relevant practice note, this Part extends to proceedings in the Court commenced before 1 January 2008.

Note. Section 14 of the *Civil Procedure Act 2005* also provides that, in relation to particular civil proceedings, a court may, by order, dispense with any requirement of rules of court if satisfied that it is appropriate to do so in the circumstances of the case.

- (3) Subject to this Part, the other provisions of these rules apply, so far as applicable, to proceedings in the Court.

- (4) For the avoidance of doubt, the rules referred to in subrule (3) have effect subject to the following modifications:

- (a) a reference to a plaintiff includes a reference to a person who commences proceedings in the Court (whether as an appellant or otherwise),
- (b) a reference to a defendant includes a reference to a respondent (or cross-respondent) in proceedings in the Court,
- (c) a reference to an originating process includes a reference to a notice of appeal or notice of cross-appeal,
- (d) such other modifications as are necessary.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

51.2 Interpretation (cf SCR Part 51, rule 2)

In this Part:

appeal:

- (a) includes an appeal from a decision in proceedings in the Supreme Court or a specified tribunal within the meaning of section 48 (1) (a) of the *Supreme Court Act 1970*, and
- (b) does not include proceedings to which Part 28 applies (except an appeal from a decision of the Supreme Court in proceedings to which that Part applies), and
- (c) does not include an application for the variation or discharge of an order of a Judge of Appeal or of the Registrar.

Appeal Book—see rules 51.25 and 51.26.

appeal proceedings means proceedings in the Court that are commenced by filing and serving a summons seeking leave to appeal or a notice of appeal.

appellant means:

- (a) a party that files a notice of appeal in the Court, and
- (b) any other party joined as an appellant.

applicant means:

- (a) in relation to a notice of intention to appeal, the person that files and serves the notice under this Part, or
- (b) in relation to any proceedings in the Court (other than an appeal or cross-appeal):
 - (i) a party that files originating process for the proceedings, and
 - (ii) any other party joined as an applicant.

Black Book—see rules 51.26 (1) (b) and 51.28.

Blue Book—see rules 51.26 (1) (c) and 51.29.

Combined Book—see rule 51.26 (2).

Court means the Court of Appeal.

Note. Section 13 of the *Civil Procedure Act 2005* enables the Chief Justice of the Supreme Court, by instrument in writing, to direct that any function of the Court under that Act or these rules may be exercised by such registrars or other officers of the Supreme Court, and in such circumstances and subject to such conditions, as are specified in the instrument.

court below means the court, person or body that made the decision to which a notice of intention to appeal or appeal proceedings relate.

cross-appellant means a respondent in appeal proceedings who has filed a notice of cross-appeal.

decision includes a judgment, order, verdict, opinion, direction or determination.

decision below means the decision of the court below to which a notice of intention to appeal or appeal proceedings relate.

exhibit includes a document or thing marked for identification (whether or not it is admitted in evidence).

interested party means an appellant or interested respondent.

interested respondent means a respondent (other than a respondent who is a submitting party).

material date, in relation to a decision below to which a notice of intention to appeal or appeal proceedings relate, means:

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

necessary party means a person required by rule 51.4 to be joined in the proceedings.

notice of intention to appeal—see rule 51.6.

Orange Book—see rules 51.26 (1) (d) and 51.30.

proper officer, in relation to a court or tribunal, means:

- (a) the registrar, or
- (b) if there is no registrar, the officer who is responsible for the custody of records and exhibits in the proceedings concerned.

prospective respondent, in relation to a notice of intention to appeal, means:

- (a) a party in the court below, and
- (b) any other person who would be required by rule 51.4 to be joined in appeal proceedings.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

Red Book—see rules 51.26 (1) (a) and 51.27.

Registrar means the Registrar of the Court.

Note. Section 13 of the *Civil Procedure Act 2005* enables the Chief Justice of the Supreme Court, by instrument in writing, to direct that any function of the Court under that Act or these rules may be exercised by such registrars or other officers of the Supreme Court, and in such circumstances and subject to such conditions, as are specified in the instrument.

relevant originating process means:

- (a) if leave to appeal or cross-appeal is required—a summons seeking leave to appeal or a cross-summons seeking leave to cross-appeal, or
- (b) in any other case—a notice of appeal or cross-appeal.

Reporting Services Branch means the Reporting Services Branch of the Attorney General's Department.

respondent means any party other than an appellant or applicant.

submitting party means a party that has submitted to the judgment of the Court by filing a notice of appearance under rule 6.11.

verdict includes a finding or assessment.

White Folder—see rule 51.12 (1).

51.3 Application of rules to notices of cross-appeal (cf SCR Part 51, rule 18 (3))

Subject to this Part (particularly, rule 51.17), the rules relating to a notice of appeal extend to a notice of cross-appeal with necessary modifications.

Division 2 Parties and appearances

51.4 Parties (cf SCR Part 51, rule 9)

- (1) Each person who:
 - (a) is directly affected by the relief sought, or
 - (b) is interested in maintaining the decision of the court below, must be joined as a respondent.
- (2) The court below or other decision-maker is not required to be joined as a respondent in appeal proceedings, but must be joined in other proceedings in the Court.
- (3) The Court may order the addition or removal of any party.
- (4) A person must not be made an applicant or appellant without that person's consent.

- (5) An applicant or appellant who considers that respondents need not be separately represented may notify them that objection will be taken to more than one set of costs being allowed between them.
- (6) An applicant or appellant who considers that a respondent should file a notice of appearance under rule 6.11 and take no active part in the proceedings may notify that party that objection will be taken to any order for costs, incurred after that date, other than costs as a submitting party, being made in favour of that respondent.
- (7) The failure by a party to give notice under subrule (5) or (6) does not limit the powers of the Court with respect to the costs of the proceedings.

51.5 No step without notice of appearance

- (1) Except by leave of the Court, a party may not take any step in proceedings in the Court (including an appearance before the Court) without entering an appearance in the proceedings.
- (2) Subrule (1) does not apply to a respondent who:
 - (a) applies for an order under rule 12.11 (Setting aside originating process etc), or
 - (b) makes an application in relation to the setting aside or enforcement of a judgment of the Court.
- (3) A person who is not a party may not take any step in the proceedings (including an appearance before the Court) unless the person has filed a notice of address for service.

Division 3 Notices of intention to appeal

51.6 Notices of intention to appeal

A *notice of intention to appeal* is a notice that the applicant intends to file:

- (a) a notice of appeal, or
- (b) if necessary, a summons seeking leave to appeal, within 3 months after the material date or such other period as the Court may order.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

51.7 Notices of intention to appeal cannot be served in certain cases

A notice of intention to appeal may not be filed if:

- (a) a summons seeking leave to appeal or a notice of appeal has been filed, or
- (b) an Act or statutory rule (other than these rules) specifies the period within which the appeal or an application for leave to appeal must be commenced.

51.8 Filing and service of a notice of intention to appeal (cf SCR Part 51, rules 4 (1) and (2) and 6 (1))

A notice of intention to appeal must be filed and served on each prospective respondent within 28 days after the material date.

Note. A person who files and serves a notice of intention to appeal must also file or lodge a copy of the notice with the court below—see rule 51.42.

51.9 Effect of service of notice of intention to appeal (cf SCR Part 51, rules 4 (3)–(7), 4A (2) and 6 (2) and (4))

- (1) An applicant who has filed and served a notice of intention to appeal must file and serve the relevant originating process on each necessary party:
 - (a) within 3 months after the material date, or
 - (b) within such other period as the Court may order.
- (2) An application under subrule (1) (b) may be included in the originating process.
- (3) The filing and service of a notice of intention to appeal does not operate to commence proceedings in the Court.

Division 4 Applications for leave to appeal or cross-appeal

Subdivision 1 Making applications for leave

51.10 Filing and service of summons seeking leave to appeal (cf SCR Part 51, rule 4 (1), (3) and (5)–(7))

- (1) A summons seeking leave to appeal must be filed and served on each necessary party:
 - (a) if a notice of intention to appeal has been filed and served under this Part—within the time allowed under rule 51.9, or

(b) in any other case—within 28 days after the material date.

Note. A person who files and serves a summons seeking leave to appeal must also file or lodge a copy of the summons with the court below—see rule 51.42.

(2) The Court may extend time under subrule (1) (b) at any time.

Note. Rule 51.9 provides for the extension of time for the filing and service of a relevant originating process where a notice of intention to appeal has been filed and served under this Part.

(3) An application under subrule (2) may be included in the summons seeking leave to appeal.

51.11 Filing and service of cross-summons seeking leave to cross-appeal (cf SCR Part 51, rule 4 (2), (4) and (5)–(7))

(1) A respondent who requires leave to cross-appeal must file a cross-summons seeking leave to cross-appeal and serve it on each necessary party within:

(a) 28 days after the filing of a summons seeking leave to appeal, or

(b) 28 days after the filing of a notice of appeal,
whichever is the earlier.

Note. A person who files and serves a cross-summons seeking leave to cross-appeal must also file or lodge a copy of the cross-summons with the court below—see rule 51.42.

(2) The Court may extend time under subrule (1) at any time.

(3) An application under subrule (2) may be included in the cross-summons seeking leave to cross-appeal.

Subdivision 2 Supporting documentation

51.12 Party to file and serve White Folder with summons seeking leave
(cf SCR Part 51, rule 4B)

(1) A person seeking leave to appeal or cross-appeal (the *applicant*) must file, in triplicate, a folder (the *White Folder*) and serve that folder with the summons or cross-summons (as the case may be).

Note. Rule 10.1 (1) requires a party that files a document to serve copies on each other active party as soon as is practicable, unless the court orders otherwise.

(2) The White Folder must contain:

(a) a copy of the summons seeking leave to appeal or cross-summons seeking leave to cross-appeal (as the case may be), and

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (b) a summary of the applicant's argument in accordance with subrule (3), and
 - (c) the reasons for judgment (if any) or the summing up (if any) in the court below, certified by or on behalf of the court below, and
 - (d) a draft notice of appeal or notice of cross-appeal (as the case may be), and
 - (e) any other documents (other than documents to be filed by the respondent) that are necessary for disposal of the application.
- (3) The summary of argument:
- (a) must not exceed 10 pages, and
 - (b) must be signed by the barrister or solicitor who prepares it or, where the applicant is not represented by a barrister or solicitor, by the applicant, and
 - (c) must have the following typed or printed in a neat and legible manner under the signature referred to in paragraph (b):
 - (i) the name of the signatory,
 - (ii) a telephone number at which the signatory can be contacted,
 - (iii) if available, the signatory's facsimile number,
 - (iv) if available, the signatory's email address.
- (4) The summary of argument must state:
- (a) the nature of the applicant's case, and
 - (b) the questions involved, and
 - (c) briefly, the applicant's argument, and
 - (d) the reasons why leave should be granted, and
 - (e) any reasons why an order for costs should not be made in favour of the respondent if the application is refused, and
 - (f) whether the applicant consents to the application for leave being dealt with in the absence of the public and without the attendance of any person, and
 - (g) whether the application should be heard with the argument on the appeal, and why, and
 - (h) a list of relevant authorities and legislation.
- (5) Each White Folder must:
- (a) be white in colour, and

-
- (b) be approximately A4 in size, and
 - (c) be covered with a clearview PVC (or similar) binder capable of holding an A4 insert, and
 - (d) be 38 millimetres wide and contain 2 D rings, to hold documents, and
 - (e) contain labelled dividers separating the contents in a convenient way, including dividers to receive the respondent's documents and the applicant's reply, and
 - (f) have its pages numbered consecutively.

51.13 Opposing party to file a response (cf SCR Part 51, rule 4C)

- (1) Subject to subrule (3), a party opposing an application for leave to appeal or cross-appeal (an *opposing party*) must, within 28 days after the filing of the White Folder or the documents referred to in subrule (3), file the opposing party's response unless the opposing party is a submitting party.

Note. Rule 10.1 (1) requires a party that files a document to serve copies on each other active party as soon as is practicable, unless the court orders otherwise.

- (2) A response must:
 - (a) state that the opposing party:
 - (i) consents to the leave sought, or
 - (ii) submits to the orders of the Court, or
 - (iii) submits to the orders of the Court save as to costs, or
 - (b) state:
 - (i) briefly, the opposing party's argument, and
 - (ii) the reasons why leave should or should not be granted, and
 - (iii) whether the opposing party consents to the application for leave being dealt with in the absence of the public and without the attendance of any person, and
 - (iv) whether the application should be heard with the argument on the appeal, and why, and
 - (v) any other relevant matters, including terms to which leave should be subject and contentions concerning costs, and
 - (vi) a list of relevant authorities and legislation.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (3) If the opposing party applies for leave to cross-appeal, the opposing party must file with the response the following documents:
- (a) a copy of the cross-summons seeking leave to cross-appeal,
 - (b) a summary of the opposing party's argument in favour of leave to cross-appeal,
 - (c) a draft notice of cross-appeal,
 - (d) any other documents, not already filed, other than documents to be filed by the other party, that are necessary for disposal of the application for leave to cross-appeal.
- Note.** Rule 10.1 (1) requires a party that files a document to serve copies on each other active party as soon as is practicable, unless the court orders otherwise.
- (4) An opposing party wishing to raise a matter that is required to be raised by notice of contention rather than by means of a cross-appeal must file a draft notice of contention with the response.
- (5) The response, and the summary referred to in subrule (3) (if any), must:
- (a) not exceed 10 pages, and
 - (b) be signed by the barrister or solicitor who prepares it or, where the opposing party is not represented by a barrister or solicitor, by the party, and
 - (c) have the following typed or printed in a neat and legible manner under the signature referred to in paragraph (b):
 - (i) the name of the signatory,
 - (ii) a telephone number at which the signatory can be contacted,
 - (iii) if available, the signatory's facsimile number,
 - (iv) if available, the signatory's email address, and
 - (d) be hole punched for insertion in the White Folder, and
 - (e) have its pages numbered consecutively.
- (6) The summary referred to in subrule (3) must state:
- (a) the nature of the opposing party's case, and
 - (b) the questions involved, and
 - (c) briefly, the opposing party's argument, and
 - (d) the reasons why leave to cross-appeal should be granted, and

-
- (e) any reasons why an order for costs should not be made in favour of the applicant for leave to appeal if the application for leave to cross-appeal is refused, and
 - (f) whether the opposing party consents to the application for leave to cross-appeal being dealt with in the absence of the public and without the attendance of any person, and
 - (g) where applicable, that, and the reasons why, it is suitable for oral argument of the cross-appeal to proceed concurrently with the leave application (the cross-appeal being subject to the granting of the application), and
 - (h) a list of relevant authorities and legislation in tabular form.
- (7) The summary referred to in subrule (3) must contain labelled dividers separating the contents in a convenient way including, if application is made for leave to cross-appeal, a divider to receive the applicant's response and the opposing party's reply.

Subdivision 3 Powers on applications for leave

51.14 Concurrent hearings in relation to leave applications

- (1) The Court may deal with applications for the following orders in the absence of the public and without the attendance of any person:
 - (a) an order that 2 or more applications for leave to appeal or cross-appeal be heard concurrently,
 - (b) an order that an application for leave to appeal or cross-appeal be heard concurrently with the argument on the appeal or cross-appeal.

Note. Section 46 of the *Supreme Court Act 1970* provides that a single Judge of Appeal may exercise the powers of the Court to make an order or give any direction concerning the institution of an appeal or other proceedings in the Court.

- (2) If the Court makes an order under subrule (1) (b), the parties must, within 28 days (but subject to any directions given by the Court), cause any necessary additional documents to be added to the White Folder.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

51.15 Court may determine application for leave without attendance (cf SCR Part 51, rule 4D)

An application for leave to appeal or to cross-appeal may be dealt with by the Court in the absence of the public and without the attendance of any person if:

- (a) the application is not opposed, or
- (b) each active party consents.

Division 5 Appeals and cross-appeals

Subdivision 1 Institution of appeals and cross-appeals

51.16 Time for filing and service of notice of appeal (cf SCR Part 51, rules 5 and 6 (1) and (3))

- (1) A notice of appeal must be filed and served on each necessary party:
 - (a) if the notice of appeal is filed pursuant to leave to appeal—within 7 days after leave is given or such other time as the Court may fix, or
 - (b) if a notice of intention to appeal has been filed and served under this Part and the notice of appeal is not filed pursuant to leave—as allowed under rule 51.9, or
 - (c) if a notice of intention to appeal has not been filed and served under this Part and the notice of appeal is not filed pursuant to leave to appeal—within 28 days after the material date or such other time as the Court may fix.

Note 1. Rule 51.20 requires any notice of appeal to specify a return day.

Note 2. A person who files and serves a notice of appeal must also file or lodge a copy of the notice with the court below—see rule 51.42

- (2) The Court may extend time under subrule (1) (a) or (c) at any time.

Note. Rule 51.9 provides for the extension of the time for the filing and service of a relevant originating process when a notice of intention to appeal has been filed and served under this Part.
- (3) A party applying for an extension under subrule (1) (a) or (c) must lodge and serve the draft notice of appeal with the application.

51.17 Filing and service of notice of cross-appeal (cf SCR Part 51, rule 18)

- (1) A respondent who wishes to seek the discharge or variation of the decision below (or part of the decision below) may file and serve a notice of cross-appeal.

Note. A respondent to an appeal who is entitled to cross-appeal should file a notice of cross-appeal only if the respondent wishes to vary the decision below. If the respondent wishes to have the decision below affirmed on grounds other than those relied on by the court below, the respondent should file and serve a notice of contention as provided by rule 51.40 rather than a notice of cross-appeal. If the respondent objects to the competency of the appeal, the respondent should file and serve a notice of objection to the competency of the appeal as provided by rule 51.41.

- (2) A notice of cross-appeal must be filed and served on each necessary party:

(a) if the notice of cross-appeal is filed pursuant to leave to cross-appeal—within 7 days after leave to cross-appeal is given or such other time as the Court may fix, or

(b) in any other case—within:

(i) 14 days after the filing of a summons seeking leave to appeal or a notice of appeal, whichever is the earlier, or

(ii) such other time as the Court may fix.

Note. A person who files and serves a notice of cross-appeal must also file or lodge a copy of the notice with the court below—see rule 51.42.

- (3) The Court may extend time under subrule (2) (a) or (b) (ii) at any time.

Note. Rule 51.9 provides for the extension of the time for the filing and service of a relevant originating process when a notice of intention to appeal has been filed and served under this Part.

- (4) A party applying for an extension under subrule (2) must lodge and serve the draft notice of cross-appeal with the application.

Subdivision 2 Notices of appeal and cross-appeal**51.18 Contents of notice of appeal** (cf SCR Part 51, rule 11)

A notice of appeal must state:

(a) the statutory provision under which the appeal is brought, and

(b) whether it is filed pursuant to leave, and the date leave was given, and

(c) whether the appellant has filed and served a notice of intention to appeal, and the date it was served on the

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

prospective respondent or on the last of the prospective respondents, and

- (d) whether the appeal is from the whole or part only, and what part, of the decision below, and
- (e) briefly, but specifically, the grounds relied on in support of the appeal, and
- (f) what judgment, order, verdict or determination the appellant seeks, and
- (g) that, before any attendance before the Court by or on behalf of the respondent, a notice of appearance must be filed if required.

Note. Rule 51.5 (2) provides for circumstances in which a respondent need not file a notice of appearance.

51.19 How claims for reinstatement or restitution to be made in appeal or cross-appeal

An appellant or cross-appellant who seeks an order for reinstatement or restitution must include in the notice of appeal or notice of cross-appeal:

- (a) a claim for the order and the form of the order, and
- (b) where restitution is sought—any claim for interest that is at a rate other than the relevant rate set out in Schedule 5.

Note. As to the practice of the Court in awarding interest where money is ordered to be repaid by way of restitution on the setting aside of a judgment, see *Heydon v NRMA Ltd (No 2)* (2001) 53 NSWLR 600 at 609.

51.20 Notice of appeal to specify return day (cf SCR Part 51, rule 42 (1))

- (1) A notice of appeal must state a return day.
- (2) The return day may be fixed by the Court or obtained from the registry.
- (3) If a return day is obtained from the registry and the notice of appeal is to be served outside New South Wales, the return day is to be not less than one month after the date of filing of the notice of appeal.

Note. Rule 10.18 permits the service of documents (including originating process) to be effected in certain circumstances at the address for service provided for the court below.

51.21 Alteration of return day in notice of appeal (cf SCR Part 5, rule 5A)

The Court may, by notice given to the parties by telephone or otherwise, vary the return day for a notice of appeal to a different day, and may authorise the parties' solicitors to make corresponding alterations to the copies of the notices of appeal held by them.

51.22 Absence of restrictions on appeals as of right to be shown by affidavit (cf SCR Part 51, rule 8)

- (1) This rule applies if an appeal or cross-appeal as of right is restricted by any Act by reference to:
 - (a) a specified amount or value, or
 - (b) any other specified circumstance or matter (such as a restriction based on questions of law).
- (2) The appellant or cross-appellant must, on filing the notice of appeal or cross-appeal, file and serve on each necessary party an affidavit that:
 - (a) identifies the nature of the restriction (including a reference to the provision of the Act that imposes the restriction), and
 - (b) sets out the material facts on which the appellant or cross-appellant relies to show that the restriction does not apply.

51.23 Amendment of notice of appeal (cf SCR Part 51, rule 17)

Part 19 (Amendment) applies to the amendment of a notice of appeal in the same way it applies to the amendment of a statement of claim.

Note. For example, rule 19.1 provides that a plaintiff may, without leave, amend a statement of claim once within 28 days after the date on which it was filed, but, unless the court otherwise orders, may not amend it after a date has been fixed for trial.

Subdivision 3 Appeal Books and other supporting documentation**51.24 Registrar to collect certain papers when notice of appeal filed** (cf SCR Part 51, rules 30 and 30A)

- (1) On the filing of a notice of appeal, the Registrar:
 - (a) may obtain from the Reporting Services Branch the original of the transcript (if any) of the proceedings in the court below, and

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (b) must obtain from the proper officer of the court below:
 - (i) the exhibits, and
 - (ii) the list of exhibits and certificate under rule 51.43, and
 - (iii) all other relevant documents before the court below, together with a list, 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 or on behalf of the court below.
- (2) Unless the Appeal Book is prepared by the Registrar, the Registrar must allow the party required to prepare the Appeal Book to have custody of the documents necessary to prepare it.
- (3) The party having custody of documents pursuant to subrule (2) must return them intact to the Registrar on completion of the Red Book, at which time the Registrar must make them available to other interested parties for the purpose of preparing written submissions and chronologies.
- (4) Documents are to be made available to more than one party in accordance with an agreed schedule of access or as determined by the Registrar.
- (5) Subject to this rule, the Registrar must retain the documents obtained under subrule (1) until disposal of the appeal and then return them to the officers or persons from whom they were obtained.

51.25 Preparation of Appeal Book (cf SCR Part 51, rule 31)

- (1) Unless the Court directs otherwise, the Appeal Book must be prepared by the appellant in accordance with this rule.
- (2) It must be divided into sections in accordance with rule 51.26.
- (3) The pages in each section must be numbered consecutively and, if a section exceeds 300 pages, it must be bound in separate volumes of not more than 250 pages.
- (4) The contents must be printed, or otherwise reproduced, with a 50 millimetre margin on the right hand side of each page and evenly marked in the margin with the letters “A” to “Z”.
- (5) Each section must have a title page setting out the full and correct title of the proceedings, including the following:
 - (a) title of the court below,

-
- (b) names of the solicitors for each party,
 - (c) the address for service for each party,
 - (d) the telephone, telex, email address, facsimile and reference number of each party.
- (6) The index must follow, showing the page number where each document is reproduced and, in the case of exhibits, the page of the Black or Combined Book containing the transcript where the exhibit was marked.
- (7) If a section is bound in 2 or more volumes, each volume must contain an index of the entire section, unless otherwise directed by the Court.
- (8) This Subdivision prevails over rule 4.3 to the extent of any inconsistency.

51.26 Division of Appeal Book (cf SCR Part 51, rules 32 and 32A)

- (1) Subject to subrule (2), the Appeal Book must be divided into the following 4 sections:
- (a) the formal section in a red cover (the *Red Book*),
 - (b) the transcript section in a black or grey cover (the *Black Book*),
 - (c) the document section in a blue cover (the *Blue Book*),
 - (d) the submissions and chronology section in an orange cover (the *Orange Book*).
- (2) If the total number of pages in the Black and Blue Books would not exceed 300, they may be combined in one book with a black or grey cover (the *Combined Book*).

51.27 Contents of Red Book (cf SCR Part 51, rule 33)

The Red Book must contain:

- (a) an index, and
- (b) the process and pleadings of every party as last amended and any relevant earlier versions, and
- (c) a sealed or certified copy of the judgment or order, and
- (d) the reasons for judgment or summing up below, and
- (e) the notice of appeal and any notice of cross-appeal and, if available, the notice of contention, and
- (f) the transcript of the application for leave to appeal or to cross-appeal, if applicable, and

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (g) any affidavit filed pursuant to rule 51.22, and
- (h) any notice of appearance under rule 6.11 (1).

51.28 Contents of Black Book (cf SCR Part 51, rule 34)

- (1) Subject to subrules (2) and (3), the Black Book must contain:
 - (a) an index, and
 - (b) the evidence of each witness, and
 - (c) cross-examination, and
 - (d) re-examination, and
 - (e) written submissions, and
 - (f) addresses (if available), and
 - (g) the transcript of the hearing including, where the trial is with a jury, the return of the jury's verdict, and
 - (h) any written questions submitted to the jury.
- (2) The transcript, written submissions and addresses are to be included in the Black Book only to the extent that they are necessary for the hearing and determination of the proceedings.
- (3) If there is no such transcript:
 - (a) a Black Book does not have to be prepared, and
 - (b) a statement to the effect that a Black Book has not been prepared because there is no transcript is to be included in the Orange Book.

51.29 Contents of Blue Book (cf SCR Part 51, rule 35)

- (1) Subject to subrule (5), the Blue Book must contain:
 - (a) an index, and
 - (b) all documents before the court below (other than those in the Red and Black Books) relevant and necessary for the hearing and determination of the proceedings.
- (2) An index of the Blue Book must:
 - (a) in the case of affidavits or statements:
 - (i) include reference to each annexure including the first page at which it appears in the book, and
 - (ii) indicate which parts of affidavits, statements and annexures were rejected, not read, or admitted for a limited purpose, and

-
- (b) in the case of exhibits:
- (i) give the date of each exhibit and indicate whether it is reproduced in the Appeal Book and the page on which it is located, and
 - (ii) refer to the exhibits in the order they have been lettered or numbered as exhibits, and
 - (iii) refer to the pages of the Black Book where the exhibits were marked, and
 - (iv) where an exhibit consists of a bundle of documents—list each document that forms part of the exhibit and the page on which it is located.
- (3) If the text of affidavits or statements is reproduced, pages or annexures not admitted in evidence must be excluded or marked to indicate their evidentiary status (as rejected, not read, or admitted for a limited purpose) unless they are relevant to a ground of appeal, cross-appeal or contention.
- (4) The following provisions apply to exhibits:
- (a) exhibits must be arranged, not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to their dates or, in the case of manifestly or admittedly misdated documents, their known date,
 - (b) if a document is undated, it must be placed in the sequence contended for by the appellant, but the appellant must inform the respondent of the proposed position 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 that should be read consecutively and not interspersed among other documents, the correspondence must 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:
 - (i) where provided by only one doctor—they must be arranged in chronological order and given a position together, at a convenient place, in relation to the other exhibits, and
 - (ii) where provided by more than one doctor—they must be grouped together by doctor in alphabetical order by surname at a convenient place in relation to the other exhibits and chronologically for each doctor,

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (e) any photographs and plans must be included unless irrelevant to the grounds of appeal, cross-appeal or contention, and if necessary reduced in size,
 - (f) interrogatories, answers and affidavits of documents must only be included to the extent they were put in evidence.
- (5) If there are no such documents, a Blue Book does not have to be prepared.

51.30 Contents of Orange Book (cf SCR Part 51, rule 35A)

The Orange Book must contain:

- (a) the consolidated index or, if applicable, an index of its contents, and
- (b) the appellant's submissions and chronology in their final form with references that comply with rule 51.36 (1) (b), and
- (c) the submissions and chronologies served on the appellant by other parties in their final form, and
- (d) any amended notice of appeal, notice of cross-appeal or notice of contention, in their final form, and
- (e) any statement required by rule 51.28 (3) (b).

51.31 Disputes as to contents of Appeal Book (cf SCR Part 51, rule 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,must, within 7 days of service of the relevant part of the Appeal Book on the party, serve a written notice containing the party's objection or assertion on any other interested party.
- (2) The party preparing the Appeal Books may, with the consent of all other parties (other than a submitting party) add pages to, or delete pages from, the Appeal Book:
 - (a) at any time at least 14 days before the hearing of the appeal, or
 - (b) after that time, with the leave of the Court.
- (3) If an Appeal Book is amended in accordance with subrule (2), the index to the relevant section and the consolidated index are to be amended accordingly.

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

51.32 Filing, lodgment and service of sections of Appeal Book (cf SCR Part 51, rules 37 and 37AA)

- (1) The appellant must:
 - (a) within 6 weeks of filing the notice of appeal:
 - (i) file a copy of the Red Book, and
 - (ii) serve 3 copies on each other interested party, and
 - (b) not less than 4 weeks before the date fixed for hearing of the appeal, lodge a further 3 copies of the Red Book with the Registrar.
- (2) The appellant must, not less than 10 weeks before the date fixed for the hearing of the appeal, serve on each interested party 3 copies of each of the Blue and Black Books or, where relevant, the Combined Book.
- (3) The appellant must, not less than 4 weeks before the date fixed for the hearing of the appeal:
 - (a) file 4 copies of:
 - (i) each of the Black and Blue Books or, if relevant, the Combined Book, and
 - (ii) the Orange Book, and
 - (b) serve on each interested party 3 copies of the Orange Book.

51.33 Overriding obligation to file Orange Book (cf SCR Part 51, rule 37A)

- (1) The appellant must ensure that the Orange Book is filed in accordance with rule 51.32 (3) and, where necessary, must arrange to have the timetable prescribed by this Part varied by consent, or by direction of the Court, in order to achieve this overriding obligation.
- (2) All other parties must cooperate with the appellant to enable the appellant to comply with subrule (1).

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (3) If any default by another party prevents, or is likely to prevent, compliance with subrule (1), the appellant must apply promptly for a directions hearing.

Subdivision 4 Written submissions and chronologies

51.34 Filing written submissions and chronologies (cf SCR Part 51, rules 44 and 44A)

- (1) In any proceedings in which a notice of appeal is filed:
 - (a) each interested party must, unless otherwise directed, file written submissions in accordance with rule 51.36, and
 - (b) the appellant must file a chronology in accordance with rule 51.35.
- (2) A respondent may file an alternative or supplementary chronology.
- (3) A party may file one set of amended submissions:
 - (a) if the amendment is of a minor or formal nature or inserts Appeal Book references—without leave, or
 - (b) otherwise—by leave of the Court or with the consent of all other interested parties.

51.35 Appellant's chronology (cf SCR Part 51, rule 45)

The appellant's chronology must 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 references to the Appeal Book.

51.36 Content of written submissions (cf SCR Part 51, rules 46 and 46A)

- (1) Written submissions filed in an appeal must:
 - (a) be divided into paragraphs numbered consecutively, and
 - (b) so far as practicable, refer to matter in the Appeal Book by section name, volume number (if any), page number and letter, and not extract that matter, and
 - (c) so far as practicable, not extract matter in a judicial authority, and
 - (d) be signed by the barrister or solicitor who prepares it or, where the party is not represented by a barrister or solicitor, by the party, and
 - (e) have the following typed or printed in a neat and legible manner under the signature referred to in paragraph (d):

-
- (i) the name of the signatory,
 - (ii) a telephone number at which the signatory can be contacted,
 - (iii) if available, the signatory's facsimile number,
 - (iv) if available, the signatory's email address, and
 - (f) not exceed 20 pages (not counting the pages of any statement included in the submissions for the purposes of subrule (2)).
- (2) Submissions raising substantial challenges to findings of fact must include a statement in narrative form (not exceeding 20 pages) setting out:
- (a) the findings challenged, and
 - (b) the findings contended for and the reasons why the Court should substitute those findings, and
 - (c) supporting references to the transcript and other evidence.
- (3) If damages for death or bodily injury are in issue:
- (a) the appellant's written submissions must state:
 - (i) the manner in which the damages were assessed, or in the case of trial by jury, may be supposed to have been assessed, and
 - (ii) the heads of damages that are in issue in the appeal, and
 - (iii) briefly but specifically, the basis of the challenge, and
 - (iv) where applicable—the alternative assessment contended for, and
 - (b) the respondent's written submissions must state:
 - (i) the extent to which the assessment will be challenged or supported by cross-appeal or contention, and
 - (ii) any alternative assessment sought, and briefly but specifically, the basis for it.
- (4) The written submissions must address:
- (a) any claim for an order for reinstatement or restitution and the form of the order sought, and
 - (b) where restitution is sought with interest that is at a rate other than the relevant rate set out in Schedule 5—the rate of interest that should be applied.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

51.37 Time for filing of written submissions and chronologies (cf SCR Part 51, rules 47 and 47A)

- (1) Written submissions must be filed:
 - (a) by the appellant—within 6 weeks of the notice of appeal being filed, and
 - (b) by the respondent—within 10 weeks of the notice of appeal being filed.
- (2) Chronologies and amended written submissions must be filed:
 - (a) by the appellant—not less than 10 weeks before the hearing date, and
 - (b) by the respondent—not less than 8 weeks before the hearing date.
- (3) Compliance with subrule (1) or (2) does not dispense with compliance with rule 51.30 (b) or (c).

Note. See also rule 51.33, which contains an overriding obligation to ensure that the Orange Book is filed on time.

51.38 Service of written submissions and chronologies (cf SCR Part 51, rule 48)

A party who files a chronology or written submissions must, on the day of filing, serve 3 copies on every other interested party.

Subdivision 5 Use of material from leave applications

51.39 Court may order use of White Folder instead of preparation of Appeal Book and submissions

The Court may:

- (a) order that a White Folder be treated as an Appeal Book or written submissions (or both), and
- (b) make such other ancillary orders as the Court thinks fit.

Subdivision 6 Notices of contention and objections to competency

51.40 Notices of contention (cf SCR Part 51, rule 21)

A respondent who wishes to contend that the decision below should be affirmed on grounds other than those relied on by the court below, but does not seek a discharge or variation of any part of the orders of the court below:

- (a) need not file a notice of cross-appeal, and

-
- (b) must, within 28 days after service on the respondent of the notice of appeal, file and serve on each interested party notice of that contention stating briefly, but specifically, the grounds relied on.

51.41 Objections to competency of appeal (cf SCR Part 51, rule 25)

- (1) A respondent who objects to the competency of an appeal must, by notice of motion filed and served on all other parties to the appeal within 28 days after service on the respondent of the notice of appeal, apply to the Court for an order dismissing the appeal as incompetent.
- (2) If the respondent fails to comply with subrule (1) and the appeal is nevertheless dismissed as incompetent:
 - (a) the respondent is not entitled to costs of the appeal unless the Court otherwise orders, and
 - (b) the Court may order the respondent to pay the appellant any costs of the appeal proving useless or unnecessary.

Division 6 Effect of applications for leave and appeals on court below

51.42 Copies of notices of intention to appeal, leave applications and summonses to be filed or lodged with court below (cf SCR Part 51, rule 14)

A person who files and serves a notice of intention to appeal or relevant originating process must:

- (a) where it relates to a decision in a Division of the Supreme Court—file a copy of it in the registry of the Division at the same time, or
- (b) in any other case:
 - (i) file a copy of it in the registry or office of the court below, or
 - (ii) lodge a copy of it with an officer of the court below concerned with its records or process.

51.43 Court below to retain exhibits if its decision is appealable (cf SCR Part 51, rule 29)

- (1) If an appeal from a decision lies to the Court, by leave or otherwise, the officer of the court below who has custody of the exhibits in the proceedings must, unless the court below orders otherwise, retain them for:
 - (a) 28 days after the material date, and

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (b) if a notice of intention to appeal is filed or lodged—a further 3 months.
- (2) On the filing or lodgment under rule 51.42 of a copy of a notice of appeal, the proper officer of the court below must make out and certify a list of the exhibits.
- (3) If an exhibit is not available, the officer certifying must include such information as the officer can to enable the Registrar to obtain the exhibit.

51.44 Appeal proceedings do not operate as stay unless Court or court below directs (cf SCR Part 51, rule 15)

- (1) Subject to the filing of a relevant originating process, the Court may order that the decision below or the proceedings under the decision be stayed.
- (2) The filing of a relevant originating process does not:
 - (a) operate as a stay of proceedings under the decision below, or
 - (b) invalidate any intermediate act or proceedings.

Division 7 Proceedings other than appeal proceedings

51.45 Summons and written submissions to be filed (cf SCR Part 51, rule 51)

- (1) Proceedings in the Court (other than appeal proceedings) must be commenced by summons.
- (2) An applicant in any such proceedings must file written submissions with the summons in accordance with subrule (3).
- (3) The written submissions must:
 - (a) not exceed 20 pages, and
 - (b) state the jurisdictional basis for the proceedings (whether legislative or at general law), and
 - (c) state the grounds on which relief is sought and, briefly, the applicant's argument in support of those grounds, and
 - (d) be signed by the barrister or solicitor who prepares the submissions or, where the party is not represented by a barrister or solicitor, by the party, and
 - (e) have the following typed or printed in a neat and legible manner under the signature referred to in paragraph (d):
 - (i) the name of the signatory,

-
- (ii) a telephone number at which the signatory can be contacted,
 - (iii) if available, the signatory's facsimile number,
 - (iv) if available, the signatory's email address.

Division 8 Miscellaneous

Subdivision 1 Offers of compromise

51.46 Interpretation

In this Subdivision:

initiating party means an applicant, appellant or cross-appellant (as the case may be).

opposite party means a prospective respondent, respondent or cross-respondent (as the case may be).

party means an initiating party or opposite party.

proceedings in the Court includes a notice of intention to appeal that has been filed even if proceedings in the Court have not been formally commenced.

51.47 Making of offers of compromise

- (1) In any proceedings in the Court, any party may, by notice in writing, make an offer to any other party to compromise any claim in the proceedings, in whole or in part, on specified terms.
- (2) The provisions of Division 4 (Compromise) of Part 20 apply to any offer of compromise made under subrule (1), subject to the following modifications:
 - (a) a reference to a court is a reference to the Court,
 - (b) a reference to proceedings is a reference to proceedings in the Court,
 - (c) a reference to a plaintiff is a reference to an initiating party in the Court,
 - (d) a reference to a defendant is a reference to an opposite party in the Court,
 - (e) a reference to a trial is a reference to a hearing in the Court that is not limited to questions of practice or procedure,
 - (f) a reference to a verdict for the defendant is a reference to a judgment for the opposite party,
 - (g) a reference to the period for acceptance for an offer is a reference to the period until:

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (i) the expiration of the time limited by the offer or otherwise 28 days, or
- (ii) the time when the Court begins to give its decision or reasons for decision, whichever is the earlier, on a judgment (except an interlocutory judgment),
whichever first occurs,
- (h) such other modifications as are necessary.

51.48 Application of Division 3 of Part 42 to offers of compromise made in proceedings in Court

- (1) If an offer of compromise is made under rule 51.47, Division 3 of Part 42 applies, subject to subrule (2), rule 51.49 and the following modifications:
 - (a) rule 42.13 is to be read as if it provided that the Division applies where an offer of compromise (the *offer concerned*) is made as provided by rule 51.47 with respect to a plaintiff's claim (the *claim concerned*),
 - (b) a reference to a court is a reference to the Court,
 - (c) a reference to proceedings is a reference to proceedings in the Court,
 - (d) in the case of appeal proceedings:
 - (i) a reference to the plaintiff is a reference to the party who was a plaintiff in the court below, and
 - (ii) a reference to the defendant is a reference to the party who was a defendant in the court below,
 - (e) in the case of proceedings in the Court other than appeal proceedings:
 - (i) a reference to the plaintiff is a reference to the applicant, and
 - (ii) a reference to the defendant is a reference to the respondent,
 - (f) a reference to a trial is a reference to a hearing in the Court that is not limited to questions of practice or procedure,
 - (g) a reference to a verdict for the defendant is a reference to a judgment for the defendant,
 - (h) such other modifications as are necessary.
- (2) If the judgment does not permit the Court to determine whether a provision of Division 3 of Part 42 applies to an offer of compromise under rule 51.47 (for example, because the Court has ordered a retrial or remittal for assessment of damages):

-
- (a) an order for costs must disregard the offer, and
 - (b) where the Court has ordered a retrial or remittal for assessment of damages:
 - (i) if the offer was made by the plaintiff below—the court below may make a further or different order under rule 42.14 with respect to the plaintiff's costs in the Court, or
 - (ii) if the offer was made by the defendant below—the Court may stay its order with respect to costs from the relevant date under rule 42.15 (2) (b) or rule 42.15A (2) (b) (as appropriate) and the court below may make a further or different order, or lift the stay, as appropriate.

51.49 Relevance of offers of compromise made in proceedings in court below

The Court may have regard to any offer of compromise made (whether under these rules or otherwise) in the court below.

Subdivision 2 Powers of Court

51.50 Security for costs (cf SCR Part 51, rule 16)

- (1) In special circumstances, the Court may order that such security as the Court thinks fit be given for costs of an appeal.
- (2) Subject to subrules (1) and (3), no security for costs of an appeal is to be required.
- (3) Subrules (1) and (2) do not affect the powers of the Court under rule 42.21 (which relates to security for costs).

51.51 Additional evidence (cf SCR Part 51, rule 19)

- (1) This rule applies to an application to receive additional evidence.
- (2) The application must be made by motion returnable on the return day or, with leave of the Court, on a later day.

Note. Part 18 makes provision with respect to motions and notices of motion.
- (3) The grounds must be stated in an affidavit.
- (4) Evidence necessary to establish the grounds of the application, and the evidence the applicant wants the Court to receive, must be given by affidavit.
- (5) The evidence of any party in response must be given by affidavit filed within the time directed by the Court.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (6) A party must, not later than the time limited for filing an affidavit under this rule:
 - (a) file as many copies of the affidavit as the Court may direct, and
 - (b) serve 3 copies of the affidavit on each other interested party.

51.52 Powers of Court on appeal not limited by certain procedural matters (cf SCR Part 51, rule 22)

- (1) The Court may exercise its powers under the *Civil Procedure Act 2005*, the *Supreme Court Act 1970* and these rules even if:
 - (a) there is no appeal from some part of the decision below, or
 - (b) a party to the proceedings below has not appealed, or
 - (c) a ground for allowing or dismissing the appeal or varying the decision is not included in any notice of appeal, notice of cross-appeal or notice of contention, or
 - (d) there has been no appeal from some other decision in the proceedings.
- (2) If a person was not a party to the proceedings in which the decision below was given, but is served with a notice of appeal pursuant to a direction of the Court, the Court may give such decision as might have been given in the court below if the person served had been a party below.
- (3) The Court may, on terms, make any order to ensure the determination on the merits of the real question in controversy.
- (4) The Court may make any order that it might make on an application for a new trial or for the setting aside of a verdict or judgment.
- (5) This rule applies subject to any Act.

51.53 Circumstances in which Court may order new trial (cf SCR Part 51, rule 23)

- (1) The Court must not order a new trial on any of the following grounds:
 - (a) misdirection, non-direction or other error of law,
 - (b) improper admission or rejection of evidence,
 - (c) that the verdict of the jury below was not taken on a question that the trial judge was not asked to leave to the jury,
 - (d) on any other ground,

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

- (2) The Court may order a new trial on any question without interfering with the decision on any other question.
- (3) If it appears to the Court 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 may order a new trial as to that part only, or as to that party or those parties only.
- (4) If the Court makes an order under subrule (2) or (3), it may give such judgment or make such order as the nature of the case requires for the disposal of the remainder of the appeal.
- (5) If the Court orders a new trial, the Court may:
 - (a) impose conditions on any party for the purposes of the new trial, and
 - (b) direct admissions to be made by any party for the purpose of the new trial, and
 - (c) order that the testimony of any witness examined at the former trial may be read from the transcript, instead of the witness being again examined.

51.54 Reinstatement and restitution (cf SCR Part 51, rule 26)

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

Note. Rule 51.19 provides for how claims for an order for reinstatement or restitution are to be made in appeals and cross-appeals.

51.55 Short reasons for decision (cf SCR Part 51, rule 59)

The Court may, when dismissing an appeal, exercise its power under section 45 (4) of the *Supreme Court Act 1970* to give reasons for its decision in short form.

Subdivision 3 Discontinuances

51.56 Discontinuance of proceedings in Court (cf SCR Part 51, rules 4A and 6 (5) and (6))

- (1) An appellant may discontinue an appeal by filing a notice of discontinuance and serving it on each respondent who has been served with the notice of appeal.
- (2) The discontinuance of an appeal does not affect any cross-appeal.

2007 No 448

Uniform Civil Procedure Rules (Amendment No 16) 2007

Schedule 1 Amendments

- (3) An application for leave to cross-appeal to the Court is taken to be discontinued when an application for leave to appeal to the Court is discontinued, but only if the party who made the application for leave to cross-appeal has not been served with a notice of appeal in the proceedings.
- (4) An application for leave to cross-appeal that is taken to be discontinued may be reinstated on application made within 21 days.
- (5) An application for leave to cross-appeal to the Court is not affected by the discontinuance of any application for leave to appeal to the Court if a notice of appeal has been filed in the proceedings and served on the party who made the application for leave to cross-appeal.
- (6) This rule does not limit the operation of rule 12.1 in relation to proceedings in the Court.
Note. Rules 12.1, 12.3, 12.4 and 42.19 apply, with necessary modifications, in relation to proceedings in the Court. See rule 51.1 (3) and (4).

Subdivision 4 Other

51.57 Hearing in fixed vacation (cf SCR Part 51, rule 52)

- (1) An application for an order that an appeal or other proceedings be heard during the fixed vacation must, unless the Court otherwise orders, be accompanied by:
 - (a) an affidavit showing the grounds on which the application is based, and
 - (b) a draft order.**Note.** Rule 18.1 requires an interlocutory or other application to a court to be made by motion unless the rules otherwise provide.
- (2) The application may be dealt with by the Court in the absence of the public and without the attendance of any person.

51.58 Review of order of Judge of Appeal (cf SCR Part 51, rule 56)

An application to the Court for the variation or discharge of an order of a Judge of Appeal must be made on notice of motion filed:

- (a) within 14 days after the date on which the order is made, or
- (b) within such extended time as the Court may fix.

51.59 Review of decisions of Registrar (cf SCR Part 61, rule 4)

- (1) A Judge of Appeal may exercise the powers of the Court under Part 49 to review a decision of the Registrar.
- (2) This rule does not limit the powers of the Court to review decisions of the Registrar under Part 49.

[2] Schedule 2 Local rules that prevail over these rules

Omit the matter relating to Part 51 (Court of Appeal) of the *Supreme Court Rules 1970*.