



PRACTICE NOTE No. SC CCA 1

Court of Criminal Appeal – General

Commencement

1. This Practice Note was issued on 22 July 2021 and commences on 22 July 2021.

Application

2. This Practice Note applies to all new and existing matters in the Court of Criminal Appeal save that its requirements do not apply to documents filed on or before 1 May 2021.

Definitions

3. In this Practice Note:

Appellant has the same meaning as in the *Rules*, and includes an Appellant’s legal representative

Act means the *Criminal Appeal Act 1912*

Court means the Court of Criminal Appeal

Crown refers to all prosecuting bodies

Registrar means the Registrar of the Court of Criminal Appeal

Registry means the Registry of the Court of Criminal Appeal

Respondent has the same meaning as in the *Rules*, and includes a Respondent’s legal representative

Rules means the *Supreme Court (Criminal Appeal) Rules 2021*

Trial Court has the same meaning as in the *Rules*

Introduction

4. The purpose of this Practice Note is to explain the administrative and case management procedures followed in the Court.

Filing Documents (Rules, Division 2.2)

5. A Notice of Intention to Appeal (“NIA”) and an Application for an Extension of Time for the filing of an NIA can be filed by sending it electronically to niacourtofcriminalappeal@justice.nsw.gov.au, or by delivering it or posting it to the Registry. The Registrar will acknowledge receipt of every Notice lodged.
6. Subject to any orders which may be made by the Court or the Registrar pursuant to Rule 2.3(1)(c) and 2.3(3)(b), all documents that are to be filed with the Court may be filed by email (“e-filing”), except the following:
 - Appeal Books
 - Colour exhibits
 - Non-documentary exhibits (such as audio-visual exhibits)
 - Sensitive, Confidential and/or Court-sealed documents (only the original is required);

Three hard copies of these documents and a fourth copy on an electronic storage device must be filed at the Registry (by hand delivery or post).

- (a) Three copies and the original of the following documents must be provided to the Court either at the time of filing at the Registry or within 24 hours of e-filing:
 - Notice of Appeal
 - Application to the Court
 - Written submissions
 - Affidavits
 - Particulars of Trial
 - Summary of Trial
- (b) When e-filing, documents should be emailed to both the following email addresses:

sc.emailfiling@justice.nsw.gov.au and cca@justice.nsw.gov.au
- (c) Unrepresented parties need only file one copy of a document.

Provision of Transcripts and Exhibits after filing Notice of Intention to Appeal

7. (a) It is the responsibility of intending Appellants to request transcripts and exhibits from the Trial Court;
- (b) The Trial Court will, upon the request of an intending Appellant, and upon receipt of a sealed copy of a filed NIA, arrange for the supply of a copy of the transcript and exhibits from the trial and/or sentence proceedings (Rules, Division 2.5);
- (c) If no NIA has been filed with the Registry, or the NIA has been rejected for filing by the Court, the intending Appellant should contact the Trial Court for information

as to what that Court's requirements are for the provision of transcripts and exhibits;

(d) The intending Appellant should forward the sealed copy of the filed NIA to the relevant Trial Court, as follows:

- **Appeals from the District Court**
Email the Trial Court where the matter was finalised
- **Appeals from the Drug Court**
Email the Drug Court at Drug.Court.Registry@justice.nsw.gov.au
- **Appeals from the Supreme Court**
Email the Supreme Court at niacourtofcriminalappeal@justice.nsw.gov.au
- **Appeals from the Land and Environment Court**
Email the Land and Environment Court at lecourt@justice.nsw.gov.au

Intending Appellants should contact the above courts for up to date postal addresses if they propose to send their sealed NIA by post.

(e) The Registrar should be contacted if difficulties persist in obtaining transcripts and/or exhibits.

Lodging a Notice of Appeal or Notice of Application for Leave to Appeal

8. A Notice of Appeal must be accompanied by all the documents listed in the approved form. If not, it will have effect only as a Notice of Intention to Appeal (Rule 3.6).
9. Where a Notice of Intention to Appeal has expired, then a Notice of Application to file a Notice of Appeal after the expiry of the filing period under subrule 3.5(5) must be filed.
10. New Notices of Appeals filed before 5:00 PM on a Thursday will be listed for call-over on the Thursday in the following week before the Registrar with a view to fixing the first available hearing date.
11. Available hearing dates will be posted on the Supreme Court website two days prior to the call over. It is expected that parties will be ready to take a hearing date at the first call-over. It should not be assumed that dates will be allocated to suit the convenience of Counsel.

Directions and case management

12. At the call-over, the Registrar may make directions including directions for:
 - the filing of exhibits;
 - the filing of any outstanding submissions or submissions in reply;

- the filing of ancillary applications such as applications for orders to attend or produce documents under s 12 of the Act;
 - the filing of evidence;
 - the filing of Particulars of Trial by the Crown;
 - the filing of a Summary of Trial (see 20 below);
 - the filing of appeal book indexes and exhibits;
 - the preparation and filing of appeal books; and
 - the referral of the matter to a judge for case management.
13. Where there are sealed exhibits, the moving party must make arrangements with the Trial Court for the sealed exhibits to be sent to the Registrar.

Appeal Books and Appeal Book Indexes

14. Appeal Book indexes and Appeal Books must be paginated, and must include:
- all relevant transcripts and judgments from the Trial Court;
 - all relevant exhibits from the Trial Court (including – where an exhibit was an audio/visual item – an agreed transcript);
 - all relevant MFIs from the Trial Court;
 - all relevant Motions and affidavits in support of interlocutory proceedings in the Trial Court;
 - all written directions to the jury;
 - all relevant written submissions from the Trial Court; and
 - where parity is raised on an appeal against sentence, all relevant transcripts, judgments and exhibits for co-offenders

Changes to Counsel in Conviction Appeals

15. Where, after the filing of written submissions, a different legal representative is engaged to appear for the Appellant at the hearing of a conviction appeal, the Court shall be notified of the representative appearing no later than five working days prior to the hearing and be provided with a written submission from the new counsel which confirms that reliance is to be placed upon the existing grounds of appeal and the submissions already filed, accompanied by any short additional written submissions which are intended to be made.

Filing and Format of Written Submissions

16. All written submissions shall:
- (a) use a minimum font size of 12;

- (b) have a minimum line spacing of 1.5 save that quotes should be single spaced and indented;
 - (c) use headings;
 - (d) use paragraph numbering;
 - (e) use pagination for pages; and
 - (f) be signed by the legal representative(s) who prepared or settled the submissions and include the name and email address of the signatory.
17. Written submissions by all parties (except persons who do not have legal representation) should be emailed to the Registry (at cca@justice.nsw.gov.au) in WORD format no later than three working days before the hearing (unless they have previously been electronically filed in that format).

Written submissions in an Appeal or Application for Leave to Appeal against Conviction

18. The submissions of the Appellant or Applicant for leave to appeal against conviction shall contain:
- (a) a statement as to whether:
 - (i) any party to the appeal or application is serving a sentence in custody and, if so, their earliest release date;
 - (ii) any party to the appeal or application is on bail pending appeal and, if so, the terms of that bail;
 - (iii) there is any non-publication or suppression order made in the Court below that is relevant to the matters raised on appeal and, if so, the terms of that order and whether it is necessary for that order to remain in force;
 - (iv) there is any other prohibition or restriction on publication or dissemination of any matter relevant to the appeal including the identity of any victim and, if so, the terms of the prohibition or restriction (eg, *Crimes Act 1900*, s 578A);
 - (v) any suppression or non-publication order is sought in relation to any part of the proceedings or any judgment in the proceedings and, if so, the terms of the order sought;
 - (vi) the party requests that any judgment in the proceedings not be published on www.caselaw.nsw.gov.au for a specified period (see *Matthews v R (No 2)* [2013] NSWCCA 194);
 - (vii) there is any objection to a grant of third party access, including the press, to the parties' submissions and, if so, the basis for that opposition; and
 - (viii) the party contends that there is some matter that warrants the sitting of five judges and, if so, the basis for that contention;

- (b) a brief statement in narrative form of the Crown case and of the case raised or put forward by the Appellant at the trial;
 - (c) an outline of the argument to be put in relation to each ground of appeal with:
 - (i) the terms of that ground of appeal set out in full;
 - (ii) page references to the transcript relating to any evidence referred to;
 - (iii) appropriate citations of authority relied upon for the propositions of law stated (including page or paragraph references);
 - (iv) where a ground of appeal involves a contention that a judicial direction was inadequate or omitted, a statement of the terms of the direction that is asserted the trial judge should have given; and
 - (v) a statement as to whether Rule 4.15 is engaged and, if so, what step, if any, should have been taken by the trial judge and why leave to raise the ground should be granted;
 - (d) reference to any relevant legislative provisions and whether they have been amended since the events the subject of the trial or hearing; and
 - (e) a statement of the orders sought.
19. The written submissions of the Crown should address the same topics as those specified in [18], as well as the application of the proviso in s 6 of the Act if that is relied on, although, where there is no dispute with the relevant section of the Applicant's submissions, only that should be stated.
20. Subject to any order to the contrary, in appeals against conviction after a trial and appeals by the Crown against acquittals, the Crown shall file a "Summary of Trial" with a statement in summary form of the evidence of the material witnesses, and an index to the material evidence.

Written submissions in an Application for Leave to Appeal against Sentence

21. The Applicant's submissions shall contain:
- (a) a statement addressing the matters noted in [18(a)];
 - (b) a statement of the offence and the relevant legislative provision(s) that specify the offence in respect of which the Applicant was convicted, the relevant maximum penalty, any applicable standard non-parole period and whether the provisions have been amended since the events the subject of the trial (or sentence);
 - (c) a brief statement in narrative form of the Crown case which led to the conviction, but only where it is not sufficiently apparent from the sentencing judge's remarks on sentence;

- (d) a statement of the grounds of appeal in respect of the sentence and the argument in support of those grounds;
 - (e) a brief statement of whether, if the Court proceeds to resentence the Applicant, any of the sentencing judge's findings are disputed and, if so, what findings are sought in their stead;
 - (f) a statement of what findings are sought in reliance on any evidence filed on the "usual basis" (see *Betts v The Queen* [2016] HCA 25; 258 CLR 420 at [2]); and
 - (g) a statement as to whether the application involves any question concerning the issue of assistance to the authorities and if so, specify:
 - (i) what steps, if any, were taken in the sentencing court to restrict disclosure of those matters; and
 - (ii) what steps are proposed to be taken in this Court in relation to those matters (see *Brown v R (a pseudonym) (No 2)* [2019] NSWCCA 69).
22. The written submissions of the Crown should address the same topics as those specified in [21] although, where there is no dispute with the relevant section of the Applicant's submissions, only that should be stated.

Written submissions in a Crown appeal against Sentence

23. The Crown's submissions shall address the matters specified in [21] and shall specify:
- (a) when and how the Respondent was notified of the Crown's intention to appeal; and
 - (b) any matter which bears upon the exercise of the Court's residual discretion not to intervene.
24. The written submissions of the Respondent should address the same topics as those specified in [21] and [23] although, where there is no dispute with the relevant section of the Crown's submissions, only that should be stated.

Written submissions in other appeals and applications to the Court including bail and interlocutory applications

25. In all other matters, the submissions of the Applicant or Appellant are to contain:
- (a) a statement addressing the matters noted in [18(a)];
 - (b) a brief statement in narrative form of the factual background to the appeal or application;
 - (c) where applicable, the terms of any question of law submitted to the Court or the grounds of appeal as the case may be;
 - (d) an outline of the argument in support of each question for determination, each ground of appeal or the application as the case may be;

- (e) page references to any transcript relating to any evidence referred to, and appropriate citations of authority relied upon for the propositions of law stated (including page or paragraph references);
 - (f) reference to any relevant legislative provisions and whether they have been amended since the events the subject of the trial or hearing as the case may be; and
 - (g) the orders sought by the party.
26. The written submissions of the Respondent should address the same topics as those specified in [25] although, where there is no dispute with the relevant section of the Appellant's or Applicant's submissions, only that need be stated.

List of Authorities

27. The list of authorities should only include authorities to which it is expected the Court will be referred during oral argument. Authorities cited in submissions that are not likely to be referred to in oral argument should *not* be included in a list of authorities.
28. Where an unreported authority is to be referred to in oral argument, the party citing that authority shall attach a copy of the unreported judgment to the list of authorities. An authority published on Caselaw with a medium neutral citation is not considered to be a reported judgment.
29. Lists of authorities and unreported judgments (or embedded links to unreported judgments) should be emailed to the Registry (at cca@justice.nsw.gov.au) by no later than 10:00am on the working day before the hearing. The parties are not required to file a hard copy of that material if it has been sent by email.

Listing of Interlocutory Appeals

30. Interlocutory appeals will be heard by the Court as expeditiously as possible and directions may be made without the matter being placed into a call-over. Appellants and Respondents must be ready to take a date for hearing once the interlocutory appeal has been filed, especially where a pending appeal may have an effect on a trial pending or due to start. The parties will be expected to supply written submissions within a short timeframe. The moving party will also be expected to file and serve a paginated and indexed appeal book.
31. When filing a Notice of Appeal in relation to an interlocutory ruling, the Appellant must advise the Registrar (and the other parties) by email of the following matters:
- (a) Is there urgency to the application? If so, what is the urgency?
 - (b) What are the substantive charges?
 - (c) Over how many days was there legal argument and/or evidence in the Trial Court on the issue relevant to the judgment which is the subject of appeal?
 - (d) What is the status of any trial, and when is the next listing?

- (e) Is the trial judge aware of the application?
- (f) What is the status of the judgment and all transcript?
- (g) Who will appear on the application for the Appellant and Respondent and what is their availability?
- (h) What is the time estimate for the appeal?

The Registrar will determine the urgency of the matter and will make suitable arrangements for the listing of the interlocutory appeal. Counsel's availability will not be a factor in determining the hearing date.

- 32. Interlocutory Appeals will not be adjourned on the basis of the Appellant obtaining a "merits advice" from the Legal Aid Commission of New South Wales.

Listing of Interlocutory appeals against the discharge of a jury

- 33. Where a trial judge proposes to discharge a jury, a party may ask the judge to delay the making of the order pending the filing of an Application for Leave to Appeal.
- 34. The Court will hear any appeal against a decision to discharge a jury on an urgent basis. Counsel's availability will not be a factor in determining the hearing date.



T F Bathurst AC
Chief Justice of New South Wales

22 July 2021

Related Information:

Criminal Appeal Act 1912
Supreme Court (Criminal Appeal) Rules 2021

Amendment History:

22 July 2021: This Practice Note replaces former Practice Note SC CCA 1, which was issued on 30 April 2021 and commenced on 1 May 2021.

30 April 2021: This Practice Note replaces former Practice Note SC CCA 1, which was issued on 30 September 2013 and commenced on 7 October 2013.

30 September 2013: This Practice Note replaces former Practice Note SC CCA 1 which was issued and commenced on 14 October 2005.

14 October 2005: This Practice Note replaced former Practice Note SC CCA 1 that was issued and commenced on 17 August 2005.

17 August 2005: Practice Note SC CCA 1 was issued and commenced. It replaced former Practice Notes numbered 57, 98 and 112.