

PRACTICE NOTE SC CCA 1

Court of Criminal Appeal – General

Commencement

1. This Practice Note commences 14 October 2005.

Application

2. This Practice Note applies to new and existing matters in the Court of Criminal Appeal.

Definitions

3. In this Practice Note:

Rules means the *Criminal Appeal Rules*

Introduction

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

Lodging Notices of Intention to Appeal against a Conviction or Sentence

5. Any person intending to appeal against a conviction or sentence may deliver, send or facsimile a Notice of Intention to Appeal (Form IVA in the Rules) to the Registrar. The Registrar will acknowledge receipt of every notice lodged. The Registrar will require the intending appellant to provide information as to legal representation and an address to which a copy of the transcript and exhibits from the proceedings in the Court of Trial may be forwarded.

6. The Proper Officer of the Court of Trial, upon the request of an intending appellant, or the solicitor acting for the intending appellant, will arrange for the supply of a copy of the transcript and exhibits from the trial and/or sentence proceedings.

7. Details of the Proper Officers of the relevant Courts of Trial are:

Supreme Court

- For copies of exhibits, Remarks on Sentence, Judgments, and any Summing Up to the Jury:
The Registrar
Supreme Court Criminal of Criminal Appeal Registry
Level 4 Law Courts Building
Queens Square
SYDNEY NSW 2000
(DX 829 SYDNEY)
- For copies of transcripts:
The Manager
Reporting Services, Attorney Generals Department
Goodsell Building, Chifley Square
Sydney 2000
(DX 1227 Sydney)

Land and Environment Court

- For copies of transcripts and exhibits:
The Registrar
Land and Environment Court
225 Macquarie Street
SYDNEY NSW 2000
(DX 264 SYDNEY)

District Court

- For copies of exhibits:
The Registrar
District Court Criminal Registry

Level 3 Downing Centre
143-147 Liverpool Street
SYDNEY NSW 2000
(DX 11518 SYDNEY DOWNTOWN)

- For copies of transcripts, Remarks on Sentence, Judgments, and any Summing Up to the Jury:
The Manager
Reporting Services, Attorney Generals Department
Goodsell Building, Chifley Square
Sydney 2000
(DX 1227 Sydney)

Drug Court

- For copies of transcripts and exhibits:
The Registrar
Drug Court of New South Wales
Court House
PARRAMATTA NSW 2150
(PO Box 92 PARRAMATTA NSW 2124)

8. Following receipt of a copy of the transcript and exhibits, the solicitor for an intending appellant should promptly arrange for a determination of merit to be obtained, and then seek instructions as to whether an appeal is to proceed.

Extension of the effect of a Notice of Intention

9. A Notice of Intention has effect for six months from the date of lodgement. An application for extension of time may be delivered, sent or facsimiled to the registrar (Form VF in the Rules). The application should set out the reasons for extension, and identify any difficulties in the receipt or preparation of documents for the purposes of the intended appeal.

Lodging an appeal.

10. If an appeal is to proceed, at least four copies of the notice of appeal or a notice of application for leave to appeal (as the case may be) must be lodged with or sent to the Registrar. The notice must be accompanied by the documents specified in Rule 23C of the Rules, namely, a Statement Nominating Legal Representation, the Grounds of Appeal, the Submissions in support of the appeal, and a Certificate stating that all transcripts and exhibits are available from the Proper Officer of the Trial Court.

11. Where the effect of a notice of intention has expired, an application for extension of time to appeal (Form V in the Rules) must be lodged with the notice of appeal or notice of application for leave to appeal.

12. The notice will be registered and the appeal listed for callover before the Registrar where a hearing date will be allocated.

13. In urgent appeals, the Registrar may waive or relax the requirements of Rule 23C.

14. If a decision is taken not to pursue an appeal or application for leave to appeal after a notice of intention has been given, no further documents need be sent to the Registrar; the effect of the notice of intention will lapse after 6 months (or if the effect of a notice has been extended, after that further extension).

15. The overall effect of the giving of a notice of intention to appeal is to facilitate the obtaining of necessary transcripts, exhibits and other documents so that a decision may be taken as to whether an appeal or application for leave to appeal should be instituted, and to ensure that, when instituted, all material is available to enable the expeditious listing and determination of the appeal or application.

Filing written submissions

16. The following paragraphs detail the procedures for filing written submissions in relation to matters in the Court of Criminal Appeal.

Direction to file written submissions

17. The Registrar, when fixing a date for the hearing of an appeal or applications, will direct both the appellant or the applicant (as the case may be) and the respondent to file and serve written submissions on or before particular dates prior to that hearing. In appeals against conviction, or applications for leave to appeal against sentence, ordinarily the

appellant's or applicant's submissions will have been filed with the notice of appeal or notice of application for leave to appeal, pursuant to clause 23C of the Rules.

18. The party filing written submissions shall lodge at least four copies of the submissions with the Registrar.

Written submissions in an appeal against conviction

19. In an appeal against conviction, the submissions by both the appellant and the Crown shall contain:

- a brief statement in narrative form of the Crown case and of the case raised or put forward by the appellant at the trial;
- an outline of the argument to be put in relation to each ground of appeal with:
 - the terms of that ground of appeal set out in full;
 - page references to the transcript relating to any evidence referred to; and
 - appropriate citations of authority relied upon for the propositions of law stated (including, where appropriate, page references);
- and a separate list of any authorities to which it is expected that the members of the Court may have to turn during the argument.

20. In an appeal against conviction the Crown shall file an index to the material evidence, a statement in summary form of the evidence of the material witnesses and a list of exhibits.

Written submissions in applications for Leave to Appeal Against Sentence

21. In an application for leave to appeal against sentence, the applicant's submissions shall contain:

- a brief statement in narrative form of the Crown case which led to the conviction, but only where such case is not sufficiently apparent from the sentencing judge's remarks on sentence;
- a statement of the particular objections to the sentence and to the reasons of the sentencing judge which are to be argued;
- a brief statement of the argument as to why leave to appeal should be granted; and
- a separate list of any authorities to which it is expected that the members of the Court may have to turn during the argument.

22. The Crown need not file written submissions in relation to applications for leave to appeal against sentence, but it may do so, and it should do so if it is suggested that there is some significant error of fact or principle in the applicant's submissions.

Written submissions in a Crown appeal against sentence

23. In a Crown appeal against sentence, the Crown's submissions shall contain:

- a brief statement in narrative form of the Crown case which led to the conviction, but only where such case is not sufficiently apparent from the sentencing judge's remarks on sentence;
- a statement of the particular objections to the sentence and to the reasons of the sentencing judge which are to be argued;
- a brief statement of the argument as to why the Court should interfere with the sentence imposed (including, if appropriate, details of the range of sentences imposed in other relevant cases);
- details of when and how the respondent was notified of the Crown's intention to appeal; and
- a separate list of any authorities to which it is expected that the members of the Court may have to turn during the argument.

24. The respondent need not file written submissions in relation to Crown appeals, but may do so, and should do so if it is suggested that there is some significant error of fact or principle in the Crown's submissions.

Other Appeals Which Are Not Rehearings

25. In cases stated for the determination of the Court and other proceedings in the nature of an appeal which is not a rehearing, the submissions of both parties are to contain:

- a brief statement in narrative form of the factual background against which the questions are raised for the determination of the Court, but only where that background is not sufficiently apparent from the stated case or from some other document already filed;

- an outline of the argument to be put in support of each question for determination with:
 - the terms of that question set out in full;
 - 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, where appropriate, page references); and
 - a separate list of any authorities to which it is expected that the members of the Court may have to turn during the argument.

Appeals by Way of Rehearing

26. In appeals which are to be heard in effect by way of rehearing, the submissions of the appellant are to contain:

- a brief statement in narrative form of the prosecution case and of the case raised or put forward by the appellant at the trial;
- a brief statement in narrative form of the facts which the appellant contends should have been found at first instance;
- an outline of the argument to be put in relation to each ground of appeal with:
 - the terms of that ground of appeal set out in full;
 - page references to the transcript relating to any evidence referred to, and appropriate citations of authority relied upon for the propositions of law stated (including, where appropriate, page references);
 - an index to the material evidence and a list of exhibits; and
 - a separate list of any authorities to which it is expected that the members of the Court may have to turn during the argument.

27. The submissions of the respondent are to contain:

- a brief statement in narrative form of the prosecution case and of the case raised or put forward by the appellant at the trial;
- an outline of the argument to be put in opposition to the appeal, with page references to the transcript relating to any evidence referred to and with appropriate citations of authority for the propositions of law stated (including, where appropriate, page references); and
- a separate list of any authorities to which it is expected that the members of the Court may have to turn during the argument.

Other Applications

28. In other applications, the submissions of the applicant shall contain:

- a brief statement in narrative form of the factual background against which the application is to be determined by the Court, in sufficient detail as to permit the application to be heard by the Court without the need to read any other material;
- a statement as to the orders sought and (if expected that it will be of assistance to the Court) a brief outline of the argument to be put relating to each such order; and
- a separate list of any authorities to which it is expected that the members of the Court may have to turn during the argument.

29. The respondent need not file written submissions in relation to such applications, but should do so where it is expected that they will be of assistance to the Court.

List of Authorities

30. Authorities cited in submissions which are not likely to be needed in Court should *not* be included in a list of authorities. The list should only include authorities to which it is expected the Court will have to turn to during oral argument.

31. Where reliance is to be placed on an authority which is unreported, 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 case neutral citation is not considered by the Court to be a reported judgment.

32. Lists of authorities need not be filed at the same time as the written submissions but must be filed not later than one full working day before the hearing.

33. The party filing a List of Authorities shall file at least four copies of the List with the Registrar.

Interlocutory Appeals.

34. Interlocutory appeals will be heard by the Court as expeditiously as possible. Appellants at the first callover must be ready to take a date for hearing, particularly 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 tight timeframe.

35. Appeals will not be adjourned on the basis of the appellant obtaining a “merits advice”.

36. Where an interlocutory appeal is urgent, the appellant should contact the registrar and inform the registrar of a realistic time estimate, together with the availability of counsel for all parties. The registrar will determine the urgency of the matter and will make suitable arrangements for the listing of the appeal.

Interlocutory appeals against the discharge of a jury.

37. Where a trial judge proposes to discharge a jury, a party may ask the judge to delay the making of the order pending an application for leave to appeal.

38. The Court is able to hear any application against a decision to discharge a jury on an urgent basis. To minimise the inconvenience to jurors the Court will hear the appeal expeditiously, with the aim that the jury will not be held over for more than seven days, usually not beyond the Monday following the trial judge’s decision.

39. The registrar will be able to give an indication to the trial judge, if required, when an appeal can be held. The appellant should contact the registrar to give a realistic time estimate for the hearing of the appeal to enable this indication to be given. Counsel’s availability will not be a factor in determining the hearing date.

J J Spigelman AC
Chief Justice of NSW
14 October 2005

Related information

- Practice Note SC CCA 1 was issued and commenced on 14 October 2005.
- This Practice Note replaces Practice Note SC CCA 1 that was issued and commenced on 17 August 2005.
- Practice Note SC CCA 1 replaced Former Practice Notes numbered 57, 98 & 112 on 17 August 2005.

See also:

- Practice Note SC Gen1 Supreme Court – Application of Practice Notes