

PRACTICE NOTE SC CA 1

Court of Appeal – General

Commencement

1. This Practice Note commences 17 August 2005.

Application

2. This Practice Note applies to new and existing applications to be heard by the Court of Appeal.

Definitions

3. In this Practice Note:

Rules means the *Supreme Court Rules 1970*

Introduction

4. The purpose of this Practice Note is to:
 - assist practitioners and litigants to prepare and file appeal documents in compliance with the Rules, and
 - explain the case management procedures employed in the Court of Appeal.

Preparing documents

Preparing Written Submissions generally

5. In addition to the Rules governing preparation of written submissions in appeals, all submissions are to be included in the Orange Appeal book (Part 51 rr 44 and 46 for appeals).
6. Written submissions in applications for leave to appeal should be prepared in line with Part 51 rr4B – 4C of the Rules (summary of Claimant/Opponent's argument).

Written Submissions In Appeals Concerning Damages In Personal Injury Matters

7. In addition to the provisions under Part 51 r46(3), written submissions in appeals against damages in personal injury cases, whether or not liability is also in issue, should include:
 - the grounds of appeal which will be argued; and
 - in respect of any finding of fact by the primary judge which is challenged:
 - the finding of fact which is challenged;
 - in narrative form the findings of fact which it is argued the Court of Appeal should make in substitution for the finding challenged;
 - the evidence and references to transcript which support such substituted finding of fact; and
 - where appropriate, a recalculation of financial loss including precise particulars of claims made for components of the judgment which require mathematical calculation, such as wage loss and claims for interest.
8. The submissions should be in a form suitable for use by the Court in the delivery of an ex tempore judgment.

Chronology

9. The paragraphs below supplement the provisions in the Rules concerning filing chronologies (see Part 51 r45) of the Rules.
10. Part 51 r44 requires the appellant to file a chronology with the submissions. This chronology must be served on each other party the appeal.
11. Part 51 r44 permits any other party to the appeal who regards the appellant's chronology as inadequate or inaccurate to file an alternative or supplementary chronology. This chronology must be served on each other party the appeal.
12. All chronologies must be included in the Orange Appeal book (Part 51 rule 35A).

13. The chronology should be an objectively correct statement of 'the principal events leading up to the litigation' and should not be a chronology merely of those matters of assistance to one party or the other: *Woods v Harwin* (CA(NSW), Mahoney AP, Clarke and Meagher JJA, 5 November 1993, unreported.)

14. The following is the suggested form for chronologies to be used in appeals:

APPELLANT'S (or RESPONDENT'S) CHRONOLOGY

DATE	EVENT	APPEAL BOOK & PAGE No.
22.09.1981	Arrangements in Wagga between Smith and Co for financing of wheat purchases	Black at 62
23.11.1982	First request by Brown to Smith and Co for drawdown to pay for wheat purchases	Black at 71
30.11.1982	Telex Smith and Co to Brown re above	Blue at 15 (Exhibit 5)
01.12.1982	"Warehouse receipt" from Jones to Smith and Co	Blue at 18 (Exhibit D)
07.12.1982	Telex Brown to Smith and Co requesting drawdown to pay for further wheat	Blue at 20 (Exhibit 6)
06.01.1983	Letter Jones to Smith and Co concerning method of carrying out financial arrangements for barley	Blue at 12 (Exhibit 7)
07.01.1983	Internal memorandum of Smith and Co re meeting Allen in Wagga	Blue at 22 (Exhibit 8)

Lists of Authorities

15. The following paragraphs:

- set out the requirements for lists of authorities as referred to in Part 51 r4B(3)(h), Part 51 r4C(2)(b)(v) and (5)(h); and
- aim to avoid the unnecessary provision of law reports and other material to the Judges of Appeal, and to ensure, where materials are provided, that the copies are identical.

16. Lists of authorities may be filed separately, in addition to any list of authorities already included in the White folder (whether by claimant or opponent) or in the Orange Appeal book.

17. Lists of authorities must be filed not later than 10am on the working day before the hearing.

18. A list of authorities shall:

- indicate with an asterisk no more than five reported cases that the party expects will be referred to at some length and which the judges will need to have available in Court to follow the argument; and
- for each piece of legislation requested, indicate the dates at which that legislation is said to be applicable; and
- attach photocopies of the relevant pages if a reference is proposed to any of the following:
 - an unreported case;
 - interstate or overseas legislation;
 - a textbook;
 - a loose leaf service;
 - a journal article; and/ or
 - a second reading speech or other legislative history; and
- where a party expects to refer at some length to more than the five reported cases asterisked, and a copy has not otherwise been provided, photocopies of the additional cases (or relevant parts thereof).

19. Where the list of authorities is included in the White folder (whether by the claimant or the opponent), the associated photocopies may be filed as a separate bundle or included in the folder. Photocopies to be included in the white folder must be hole punched and referred to in the Index.

20. Where the list of authorities is included in the Orange Appeal book, the associated photocopies shall be filed as a separate bundle.

21. Where a party submits a supplementary list of authorities, if photocopies have already been provided with an earlier list of authorities, further photocopies need not be provided. The supplementary list should indicate the material that has previously been provided to the Court.
22. Application may be made to the President, through the President's Associate, for leave to:
 - hand up additional cases and/or materials in court;
 - submit a list of authorities later than the time referred to above; and
 - in exceptional cases, and in good time before the hearing, mark additional reported cases with an asterisk on the applicant's list.
23. All lists of authorities shall contain a clear indication of the name and telephone contact of the counsel, solicitor or party providing the list to the Court. This applies whether or not the list of authorities appears in the White folder or in the Orange Appeal book.

Filing documents

Numbers of copies to be filed

24. The following paragraphs supplement the Rules. Practitioners should note in particular Part 51 r4B, Part 51 r37, Part 51 r48. In addition to these rules, the Registrar may make a direction under Part 51 r54 as to the number of copies to be filed.
25. An appellant filing a notice of appeal shall lodge with the copies for sealing and service, six additional copies.
26. The documents referred to in Part 51 r4C must be filed in triplicate.
27. Lists of authorities must be provided in triplicate.
28. Where no Rule, practice note, or other order is applicable, only one copy of a document should be filed.

Manner of Filing Of Written Submissions, Chronology And Associated Documents

29. Part 51 r47 deals with the filing of submissions and chronologies in appeals generally, which in the normal course of events will be filed in the Registry on Level 5 well before the hearing date. For applications for leave to appeal, Part 51 rr4B and 4C deal with the filing of White folders/material for inclusion in the White folder, which is to be filed in the Registry with the summons/response.
30. The following paragraphs apply to written submissions, chronologies, lists of authorities, narrative of facts and other documents of an argumentative nature not already included in the Orange Appeal book.
31. Where a matter is to be heard in the next seven days, is currently being heard, or has already been heard, all original and copy of the following documents shall be filed or lodged by placing them in the locked box labelled "Appeal Submissions," provided on Level 12 of the Law Courts Building:
 - written submissions;
 - chronologies;
 - lists of authorities;
 - narrative of facts;
 - supplementary submissions provided with the leave of the Court; and
 - other documents of an argumentative nature.
32. All other submissions are to be filed in the Registry on Level 5.
33. Evidence shall not be placed in the submissions box.
34. Where the matter is currently being heard or has already been heard, the bench shall be identified on documents lodged or filed in the submissions box.
35. The submissions box will be cleared at least daily and the contents stamped with the date of receipt and distributed to the judges assigned to the appeal in question.

36. Documents may be provided by facsimile directed to the Court of Appeal where:

- a barrister or solicitor for a party who desires to file written submissions does not have an office within three kilometres of the General Post Office, Sydney;
- leave of the Court has been given for filing documents by facsimile; or
- in other cases of urgent necessity.

The facsimile number is to be found at the website www.lawlink.nsw.gov.au/sc.

Motions

Motions List and Referrals

37. An interlocutory application by summons, notice of motion or otherwise, will be listed in the Motion List before the Registrar on a motion day, a Monday unless otherwise ordered, at 9.45 am. The parties should expect that it will proceed on the return date.

38. At 9:45 am the Registrar will commence to call over all matters in the list.

39. Applications for the following may be dealt with by the Registrar:

- consent orders;
- extensions of time;
- competency of appeals;
- security for costs; and
- non-compliance with directions.

40. The following applications will be assigned to the Referrals Judge for hearing:

- expedition of the hearing of proceedings, where there is no consent;
- stays of judgments/injunctive orders, which are opposed; and
- other matters as determined.

41. Where a legal representative is aware that a matter has settled or is not to proceed on the motion day, the representative shall inform the Registrar as soon as practicable. If the Registrar cannot be contacted, the President's Associate should be contacted.

J J Spigelman AC
Chief Justice of New South Wales
17 August 2005

Related information

Practice Note SC CA 1 was issued and commenced on 17 August 2005.

This Practice Note replaced Former Practice Note Nos. 22, 42, 65, 74 and 77 on 17 August 2005

See also:

Practice Note SC Gen1 Supreme Court – Application of Practice Notes
Supreme Court Rules 1970

Amendment history: