



Practice Note No. SC CA 1

Court of Appeal

- 1 This Practice Note was issued on 13 December 2017 and commences on 1 January 2018. It replaces the previous Practice Note issued on 27 March 2009.
- 2 The procedural rules for appeals are contained in Part 51 of the Uniform Civil Procedure Rules 2005 (NSW) (UCPR). All parties to proceedings in the Court of Appeal are required to comply with the requirements of the rules which contain detailed provisions governing appeals. The procedural rules for judicial review are contained in Part 59 of the UCPR. This practice note makes additional provision for the preparation and conduct of proceedings in the Court of Appeal.

LEAVE TO APPEAL

- 3 Appeals from the Supreme Court, District Court, Dust Diseases Tribunal and the Workers Compensation Commission are subject to monetary limits. Where the subject matter is less than the statutory amount, parties must seek leave to appeal. Where the subject matter of an appeal is not a monetary sum or the matter at issue amounts to the value of less than \$100,000, parties must seek leave to appeal: s 101(2)(r) *Supreme Court Act 1970* (NSW).

CONCURRENT HEARING OF LEAVE APPLICATION AND APPEAL

- 4 The Court will determine whether to decide the question of leave at a separate hearing, or concurrently with the substantive appeal.
- 5 Each party should indicate in the summary of argument whether (and if so why) the matter is thought appropriate for a concurrent hearing: UCPR, r 51.12(4)(g). In particular, it should address the following matters:
 - (1) the extent to which the argument on the application for leave is expected to canvas the merits of the appeal;
 - (2) the extent to which the application for leave will require reference to materials which would be relevant to the appeal;
 - (3) whether the appeal will involve an issue of public importance;
 - (4) any prejudice which may be suffered as a result of delay flowing from a separate leave application; and

- (5) any matter relevant to the reason why leave is required in the circumstances of the case.
- 6 Parties will be advised as to whether a summons for leave to appeal will proceed by way of a leave only hearing or will be heard concurrently with the appeal by the Registrar, usually at the first directions hearing.
- 7 If a summons for leave to appeal is to be heard concurrently with the appeal, the Registrar will determine whether appeal books are to be filed or whether the White Book will be sufficient to constitute the appeal books.

MANAGEMENT OF PROCEEDINGS

(a) Interlocutory applications

- 8 Unless otherwise ordered, an interlocutory application will be listed at 9.00am in the motion list before the Registrar on a Monday. The parties should expect that the application will proceed to a hearing on the return date. Where an application has resolved or will not proceed, the Registrar should be promptly advised by email.
- 9 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.
- 10 The following applications will be assigned to the Referrals Judge for hearing:
- (1) expedition of the hearing of proceedings (where there is no consent);
 - (2) contested applications for stay or injunction; and
 - (3) other matters as determined by the Registrar.

(b) Case management

- 11 Parties to an appeal from the Commercial List and Corporations List should be prepared at the first directions hearing to be allocated a hearing date accompanied by a timetable.
- 12 A hearing date will be allocated for all other appeals by the Registrar having regard to the readiness of the matter. Parties should be in a position to accept a hearing date no later than the second directions hearing.

(c) Expedition

- 13 Expedition may be sought at a directions hearing, on an application for a stay or when leave to appeal is granted.

14 If an opposing party does not object to an appeal being expedited, it should promptly email the Registrar of the Court of Appeal to notify their non-objection.

(d) Extensions of time: appeals, summons seeking leave to appeal, summons for judicial review

15 An application for an extension of time to lodge an appeal or a summons will generally be heard concurrently with the hearing of the appeal or summons.

MATTERS OF WHICH THE COURT MUST BE INFORMED

(a) Amendments to grounds of appeal

16 If substantial grounds of appeal are abandoned prior to the hearing, the other parties and the Court should be informed immediately. If a party seeks to add to the grounds of appeal and those additions are not consented to a notice of motion seeking leave to rely upon the amended grounds must be filed.

(b) Challenges to earlier decisions of the Court of Appeal or other intermediate appellate courts

17 A party who proposes to seek leave to challenge the correctness of a decision of the Court of Appeal or of another Australian intermediate appellate court should notify the Registrar in writing by letter or email at the earliest opportunity, and no later than **6 weeks** prior to the hearing date. The letter should indicate the decision(s) likely to be challenged and their materiality to the notifying proceedings.

PREPARING MATERIALS FOR COURT

(a) Appeal books

18 Appellants are encouraged to file one of the four copies of the appeal books (the court copies) electronically. Acceptable forms of electronic delivery include a DVD or USB or as otherwise directed by the Court or the Registrar. Email is not an acceptable form of electronic delivery.

19 If the court copy of the appeal books is delivered electronically, appellants must file in hard copy 3 copies of each of the red, black, blue and orange books or such additional number of appeal books as is directed by the Registrar.

20 If a DVD or USB is the mode of electronic delivery, the DVD or USB must be placed inside a sealed A4 envelope. The envelope should clearly state the matter name, the matter number, and a list of the books that are contained on the DVD or USB. In addition, the DVD or USB should *itself* be labelled with the matter number (and matter name where practicable).

21 If the court copy of the appeal book is delivered electronically, each appeal book (red, orange, black and blue) should be saved as a separate PDF file. Where an

appeal book is separated into multiple volumes, the party should include a separate PDF file for each volume.

- 22 If an electronic version of the appeal books is used, the documents uploaded must be in text searchable format (i.e, by way of optical character recognition (OCR) or similar).
- 23 Parties to an appeal are encouraged to liaise in relation to the provision to the other of an electronic version of the appeal books, either in addition to or substitution for hard copies as they may agree.

NOTE: These provisions of the practice note apply to a respondent who undertakes responsibility for filing the appeal books or files any supplementary book.

(b) Written submissions

- 24 If used, footnotes in the written submissions are only to be used for citing references.
- 25 In written submissions, references to the judgment below should be to paragraph numbers. Reference may also be made to the page number of the red book. References to the transcript should note the page number of the black book and the line number of the relevant passage.

(c) Chronology

- 26 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* [1993] NSWCA 291. The chronology should also include key events in the litigation, such as the commencement of the proceedings in the court below. Reference should be made to the Red, Blue and Black books. The following is the suggested form for chronologies:

DATE	EVENT	APPEAL BOOK & PAGE NO.
22.09.2011	Arrangements in Wagga between Smith and Co for financing of wheat purchases	Black 62
23.11.2011	First request by Brown to Smith and Co for drawdown to pay for wheat purchases	Black 71
30.11.2011 at 0930 hrs	Fax Smith and Co to Brown re above	Blue 15 (Exhibit 5)

(d) List of authorities: appeals, concurrent hearings and Judicial Review

- 27 No later than **10:00 AM** on the business day before the hearing, each party must supply a list of authorities. A template list of authorities is available [here](#).

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- 28 The list should be supplied via email to the President's Researcher: coa.researcher@courts.nsw.gov.au, and should be in word document or text searchable format.
- 29 Where email facilities are not available, four copies must be lodged in the authorities' box provided on level 12 of the Supreme Court building.
- 30 The list of authorities must identify:
- (1) any Commonwealth or New South Wales statutes, identifying the relevant reprint or date and relevant sections;
 - (2) any legislation from other jurisdictions;
 - (3) cases from which passages will be read in the course of oral submissions, being:
 - (a) cases reported in the CLRs and NSWLRs (maximum 10 without leave);
 - (b) up to five cases from other reports;
 - (c) other cases, whether reported or unreported; and
 - (4) cases to be cited but not read in oral submissions.
- 31 The party providing the list of authorities must place their name and contact details (including email and telephone number) at the foot of the list.
- 32 Where a party intends to rely on:
- (1) legislation from other jurisdictions;
 - (2) cases not reported in the CLRs or NSWLRs; or
 - (3) other secondary sources (eg sections of textbooks or second reading speeches),
- the party must lodge four copies of each authority in the authorities' box on level 12 of the Supreme Court Building, by **10:00 AM** on the business day before the hearing. Where it is impractical to provide the entire authority, the relevant section or chapter should be provided.
- 33 If a party decides to read from a case not included in its list of authorities, copies are to be provided to the Court at the hearing. For reported cases, only the headnote and relevant passage are to be copied.

NOTE: A separate list of authorities is not required for leave only hearings.

JUDICIAL REVIEW

- 34 Judicial review invokes the Court's supervisory jurisdiction over an inferior court or tribunal. Note that where a matter is heard on appeal from the Local Court to the District Court, there is no appeal from the District Court to the Court of Appeal. Parties must proceed by way of judicial review.
- 35 The Court or Tribunal whose decision is to be judicially reviewed must be joined as a respondent in the summons for judicial review, and should be listed as the last party on the summons.
- 36 In judicial review proceedings in relation to matters under the *Children and Young Persons (Care and Protection) Act 1998* (NSW), an independent legal representative should not be joined as a party.



T F BATHURST AC

Chief Justice of New South Wales

13 December 2017

Related information

Practice Note SC Gen1 Supreme Court – Application of Practice Notes

Amendment history:

13 December 2017: This Practice Note replaces the previous version of SC CA 1 issued on 27 March 2009.

27 March 2009: This Practice Note replaced the previous version of SC CA 1 issued on 7 April 2008.

7 April 2008: This Practice Note replaced the previous version of SC CA 1 issued on 17 August 2005

17 August 2005: Practice Note SC CA 1 replaced Former Practice Note Nos. 22, 42, 65, 74 and 77 on 17 August 2005.