

PRACTICE NOTE SC Gen 2
Supreme Court – Access to Court Files

Commencement

1. This Practice Note commences on 17 August 2005.

Application

2. This Practice Note applies to the Court of Appeal, the Court of Criminal Appeal, and each of the Divisions of the Supreme Court.

Definitions

3. In this Practice Note:

Tender bundle means a bundle of affidavits that a party intends to rely upon at a hearing (including an interlocutory hearing), whether previously filed or not

UCPR means the *Uniform Civil Procedure Rules 2005*

Introduction

4. The purpose of this Practice Note is to prescribe the procedures surrounding the provision of access to court files.

Search

5. A person may not search in a registry for or inspect any document or thing in any proceedings except with the leave of the Court.

Access

6. Access to material in any proceedings is restricted to parties, except with the leave of the Court.

7. Access will normally be granted to non-parties in respect of:

- pleadings and judgments in proceedings that have been concluded, except in so far as an order has been made that they or portions of them be kept confidential;
- documents that record what was said or done in open court;
- material that was admitted into evidence; and
- information that would have been heard or seen by any person present in open court.
- unless the Judge or registrar dealing with the application considers that the material or portions of it should be kept confidential. Access to other material will not be allowed unless a registrar or Judge is satisfied that exceptional circumstances exist.

8. Subject to paragraphs 10 and 11, 6 does not apply to a party to the proceedings or to the Registrar General or the Registrar of Births, Deaths and Marriages.

9. A party must not search in the registry for or inspect any document in relation to an application under section 9 of the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth except with the leave of the Court.

10. A party may not search in the registry for or inspect any document in any proceedings for orders under UCPR 1.9 (which relates to privilege from production) or UCPR 31.18 (which relates to experts' reports) or under UCPR 31.4 (which relates to witness statements) except with the leave of the Court.

11. Subject to paragraph 12, a person may not, except with the leave of the Court, inspect any order filed in the Court:

made by:

- the Professional Standards Board under section 149, or
- the Disciplinary Tribunal under section 154 (1), of the *Legal Profession Act 1987* as in force from time to time prior to 1 July 1994, or
- made by the Legal Services Tribunal under section 171C of the *Legal Profession Act 1987*.

12. Any person may inspect any order filed in the Court:

- made by the Disciplinary Tribunal under section 163 of the *Legal Profession Act 1987* as in force from time to time prior to 1 July 1994, or
- made by the Legal Services Tribunal under section 171C of the *Legal Profession Act 1987*, if the order involves a finding of professional misconduct within the meaning of:
 - that Act, or
 - the Conveyancers Licensing Act 1995.

13. A person to whom any document or thing is produced by the Court for inspection may make copies of or take extracts from the document or thing.

14. It should not be assumed that material held by the Court comes within paragraph 7. Affidavits and witness statements that are filed in proceedings are often never read in open court. This can occur because they contain matter that is objected to and rejected on any one of a number of grounds or because the proceedings have settled before coming on for hearing. Affidavits, statements, exhibits and pleadings may contain matter that is scandalous, frivolous, vexatious, irrelevant or otherwise oppressive. UCPR 4.15 allows the Court to order this type of matter to be struck out of a document.

15. If access to material were to be given prior to the conclusion of the proceedings to which it relates, material that is ultimately not read in open court or admitted into evidence would be seen. Thus, access will not normally be allowed prior to the conclusion of the proceedings.

16. Even where material has been read in open court or is included in pleadings, there may be good reason for refusing access. Material that has been rejected or not used or struck out as being scandalous, frivolous, vexatious, irrelevant or otherwise oppressive, may still be legible. Where access to material would be otherwise unobjectionable, it may concern matters that are required to be kept confidential by statute (eg the *Criminal Records Act 1991*) or by public interest immunity considerations (eg applications to authorise listening devices, affidavits in support of suppression orders).

17. Application by a person, who is not a party to proceedings, for access to material held by the Court in the proceedings shall be made in the attached form to the registrar of the appropriate Division, who will refer doubtful cases to the Chief Justice or to a Judge nominated by the Chief Justice. The registrar or Judge may notify interested parties before dealing with the application. The applicant must demonstrate that access should be granted in respect of the particular documents the subject of the application and state why the applicant desires access. Enquires may be made to the Court's Public Information Officer.

18. The person to whom access to material is granted normally may copy or take extracts from the material and the registry may assist with copying.

APPLICATION BY A NON-PARTY FOR ACCESS TO MATERIAL HELD BY THE COURT

I (applicant's full name)
(occupation).....of (business address)
(residential address)

apply for leave to inspect the documents described below in the following proceedings
Division or Court of Appeal or Court of Criminal Appeal
File No
Names of parties

Identify documents

My reason for requesting leave is

I submit that access to the documents should be granted because (state grounds)

Signature of applicant
Date of application

NOTE: Application must be made at least 1 day prior to inspection and in some cases a longer period will be required

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

Related Information

Practice Note SC Gen 2 was issued and commenced on 17 August 2005.
This Practice Note replaced Former Practice Note No. 97 on 17 August 2005.

See also:

Practice Note SC Gen1 Supreme Court – Application of Practice Notes
Practice Note SC Gen4 Supreme Court - Affidavits
Uniform Civil Procedure Rules 2005