

## **Supreme Court (Court of Appeal) Rules 2005**

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## Supreme Court (Court of Appeal) Rules 2005

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Western Australia

Supreme Court Act 1935

## Supreme Court (Court of Appeal) Rules 2005

### Part 1 — Preliminary

#### 1. Citation

These rules are the *Supreme Court (Court of Appeal) Rules 2005*.

#### 2. Commencement

These rules come into operation on 2 May 2005, or on the day on which they are published in the *Gazette*, whichever is the later.

#### 3. Interpretation

(1) In these rules, unless the contrary intention appears —

“**Act**” means the *Supreme Court Act 1935*;

“**appeal**” includes an application for leave to appeal;

“**appeal notice**” means a notice in the form of Form 1 or 2, as the case requires;

“**appellant**” includes an applicant for leave to appeal or for an extension of time within which to appeal or apply for leave to appeal;

“**CA matter**” means any cause or matter, however described, that, under the Act section 58(1) or any other written law, the Court of Appeal has jurisdiction to hear and determine;

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**“civil appeal”** means any appeal to the Court of Appeal that is not a criminal appeal;

**“concluded”**, in relation to a CA matter, means decided, dismissed or discontinued;

**“criminal appeal”** means an appeal under the *Criminal Appeals Act 2004* Part 2 Division 3 or Part 3;

**“decision”** includes judgment, order and verdict;

**“file”** a document, means to file it at the Court of Appeal Office in the Supreme Court together with any fee required to be paid under the *Supreme Court (Fees) Regulations 2002*;

**“Form”**, if followed by a number, means the form of that number in Schedule 1 completed in accordance with these rules;

**“interim order”** in an appeal, means —

- (a) a suspension order made under the *Civil Judgments Enforcement Act 2004* section 15;
- (b) an order staying the proceedings in the primary court or the execution of the primary court’s decision;
- (c) an order made under the *Criminal Appeals Act 2004* section 12 or 29;
- (d) an order granting bail made under the *Bail Act 1982*;
- (e) an urgent appeal order;
- (f) an order that an appellant provide security for a respondent’s costs;
- (g) an order extending or shortening the time for obeying a requirement of these rules, other than the time for commencing an appeal;
- (h) any other order that the Court of Appeal may make before the appeal is concluded, other than an order giving or refusing to give leave to appeal;



**“interlocutory civil appeal”** means an appeal from an interlocutory decision made in civil proceedings in the General Division by a judge or master;

**“lawyer”** means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

**“party”** means a party to a CA matter;

**“primary court”**, in relation to an appeal, means the court, tribunal, person or body that made the decision being appealed;

**“primary court’s decision”** in an appeal, means the decision of the primary court that is the subject of the appeal;

**“primary court’s transcript”** means —

- (a) the transcript of the proceedings in the primary court; or
- (b) if there is no electronic recording of the proceedings that can be transcribed —
  - (i) the notes made by the judicial officer who presided at the proceedings; and
  - (ii) one or more affidavits of people who were present at the proceedings about what happened in the proceedings;

**“record”** means any thing or process —

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

**“registrar”** means the Court of Appeal Registrar;

**“RSC”** means the *Rules of the Supreme Court 1971*;

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**“sentence appeal”** means a criminal appeal that is solely an appeal against a sentence;

**“single judge”** means a judge of appeal sitting alone;

**“urgent appeal order”** has the meaning given by rule 46;

**“working day”** means a day other than a Saturday, a Sunday, or a public holiday in Perth.

- (2) A term defined in the RSC has the same meaning in these rules as it has in the RSC, unless the contrary intention appears.
- (3) Examples in these rules do not form part of them and are provided to assist understanding.

#### **4. Application of these rules**

- (1) These rules apply to and in respect of any CA matter.
- (2) If when these rules commence a CA matter is pending before the Court of Appeal, the RSC, or the *Criminal Procedure Rules 2000* Part 12, as the case may be, as in force immediately before these rules commence, continue to apply to and in respect of the matter unless —
  - (a) under a direction given under subrule (3), any of these rules apply to and in respect of the matter; or
  - (b) a single judge orders that any or all of these rules shall apply to and in respect of the matter.
- (3) The President may direct that some of these rules (specified in the direction) apply to and in respect of a class of CA matters (specified in the direction).

#### **5. Application of the *Rules of the Supreme Court 1971***

- (1) These rules must be read with the RSC.
- (2) For the purposes of subrule (1) —
  - (a) a reference in the RSC to the RSC (whether “these Rules” or other words are used) is to be taken as

- including a reference to these rules, unless the context requires otherwise;
- (b) a reference in these rules to these rules (whether “these rules” or other words are used) is to be taken as including a reference to the RSC, unless the context requires otherwise; and
  - (c) a single judge has jurisdiction to exercise any power of the Court or the Court of Appeal under those rules, unless the contrary intention appears.
- (3) If there is a conflict or inconsistency between these rules and the RSC, these rules prevail.
- (4) The RSC Order 3, other than rules 2(2) and 5(3), applies for the purposes of these rules.

## **Part 2 — Delegated jurisdiction**

### **Division 1 — General**

#### **6. Hearings by telephone**

- (1) A single judge or the registrar may conduct a hearing with one or more of the parties to a CA matter by telephone.
- (2) A hearing conducted by telephone is to be taken to be a hearing in the presence of the judge or registrar.
- (3) The registrar must confirm in writing any order made at such a hearing.

### **Division 2 — Single judge's jurisdiction**

#### **7. General jurisdiction**

- (1) For the purposes of exercising the jurisdiction conferred by any other rule on a single judge, a single judge has jurisdiction —
  - (a) to make a decision on the application of a party or on the judge's own initiative;
  - (b) to decide an application on the basis of the documents filed and without listing it for hearing;
  - (c) to make a decision on the judge's own initiative on the basis of the documents filed and without requiring the parties to attend a hearing;
  - (d) to hear and decide an application in the absence of any party other than the applicant;
  - (e) to order some or all of the parties to an application to do one or more of the following in respect of the application, or any aspect of it specified by the judge —
    - (i) to file, before a date set by the judge, any document specified by the judge that the judge considers will or may facilitate the application

- being conducted and concluded efficiently,  
economically and expeditiously;
- (ii) to appear and make oral submissions on a date  
set by the judge;
- (f) to limit the time a party has to make oral submissions at  
a hearing before a single judge.
- (2) If a single judge makes a decision on the basis of the documents  
filed without requiring the parties to attend a hearing, rule 19  
applies.

### **Division 3 — Reviewing decisions by a single judge**

#### **8. Application for review by Court of Appeal**

- (1) If under the Act section 61(3) a person who is dissatisfied with a  
decision made by a single judge in a CA matter wants to apply  
to the Court of Appeal to set aside or vary the decision, the  
person must file a Form 13 within 5 working days after the date  
of the decision.
- (2) If a single judge dismissed the CA matter, an application may  
be made under the Act section 61(3) despite the dismissal.
- (3) Except as provided in subrule (2), an application made under  
subrule (1) does not stay the single judge's decision or the CA  
matter unless the Court of Appeal orders otherwise.

#### **9. Dealing with the application**

- (1) Part 5 Division 4 applies to and in respect of an application  
made under rule 8 as if the application were an appeal.
- (2) The application will be decided —
- (a) if necessary, at a hearing before the CA matter itself is  
heard; or
- (b) otherwise at the hearing of the CA matter.

- (3) If the Court of Appeal decides that the application will be heard before the CA matter itself is heard, the registrar must notify the parties to the hearing.
- (4) If a single judge dismissed the CA matter and the Court of Appeal sets aside the decision, the CA matter is reinstated.

#### **Division 4 — Registrar's jurisdiction**

##### **10. General jurisdiction**

- (1) The registrar may refuse to accept for filing any document that is required or permitted by these rules if it does not obey these rules or any order made under these rules.
- (2) The registrar has the same jurisdiction in respect of a CA matter as a single judge has under these rules, but does not have jurisdiction —
  - (a) to make an order that concludes the CA matter;
  - (b) to extend or to refuse to extend the time within which to appeal;
  - (c) to give or refuse to give leave to appeal or to adjourn the question to the hearing of the appeal;
  - (d) to make a suspension order under the *Civil Judgments Enforcement Act 2004* section 15;
  - (e) to make an order in an appeal staying the proceedings in the primary court or the execution of the primary court's decision;
  - (f) to make an order under the *Criminal Appeals Act 2004* section 12, 27, 29 or 40(1)(d), (e), (f), (g), (h) or (l);
  - (g) to grant bail under the *Bail Act 1982*; or
  - (h) to exercise the jurisdiction conferred on a single judge by rule 49(2) or 64(5).

- (3) For the purposes of exercising the jurisdiction conferred on the registrar, the registrar has the same jurisdiction as a single judge has under rule 7(1).

**11. Registrar may refer appeal to single judge**

- (1) The registrar may at any time refer any of the following to a single judge —
- (a) any question arising in respect of a CA matter or its conduct, or of an order made under these rules;
  - (b) any breach of these rules or an order made under them;
  - (c) any application for an order that the registrar has jurisdiction to make,
- and may make an order pending the judge's decision.
- (2) The single judge may deal with it or refer it back to the registrar with or without directions.

**12. Hearing before single judge or registrar, parties to be notified**

- (1) If a single judge or the registrar decides that a hearing of any matter within, respectively, a single judge's or the registrar's jurisdiction is necessary, the registrar must notify the parties of the hearing.
- (2) The notice issued by the registrar —
- (a) must be in a form approved by the President; and
  - (b) must state the matters that will be dealt with at the hearing.
- (3) The notice must be served on the party at least 3 clear working days before the date of the hearing.
- (4) The notice to a party may be served —
- (a) by posting it to the party's address for service;

- (b) if the party has given a fax number for service, by sending the notice to the party by fax at that number;
- (c) if the party has given an email address for service, by sending the notice to the party as an attachment to an email sent to that address.

**13. Written order by registrar, issue and service of**

- (1) The registrar may at any time issue a written order to any or all of the parties to a CA matter for the purpose of requiring the party or parties to obey a requirement of these rules.
- (2) Such an order —
  - (a) may be issued to a party without having notified or heard the party;
  - (b) must state a date on or before which the written order must be obeyed; and
  - (c) must be served on the party at least 3 clear working days before the date on which the party has to obey it.
- (3) Rule 12(4), with any necessary changes, applies to the service of such an order.
- (4) This rule does not limit the registrar’s other powers under these rules to make orders at a hearing.

**Division 5 — Reviewing decisions by the registrar**

**14. Interpretation**

In this Division, unless the contrary intention appears —

“**reviewable decision**” means a decision by the registrar under these rules, other than a decision made as a Taxing Officer.

**15. Application for review by single judge**

- (1) A party who is dissatisfied with a reviewable decision may apply to a single judge to set aside or vary it.



- (2) An application under subrule (1) must be made by filing a Form 13 within 5 working days after the date of the reviewable decision.
- (3) An application made under subrule (1) does not stay the reviewable decision or the CA matter unless a single judge orders otherwise.

**16. Dealing with the application**

A single judge has jurisdiction to decide an application made under rule 15 and in doing so must consider afresh the matter that was decided by the registrar.

**Division 6 — Miscellaneous**

**17. Non-attendance by party, consequences of**

- (1) Subject to the *Criminal Appeals Act 2004* section 35, if a hearing before a single judge or the registrar is adjourned because a party who has been notified of it does not attend, the judge or registrar may order the party or the party's lawyer to pay the costs of any party who attended.
- (2) If a party who has been notified of a hearing does not attend the hearing before a single judge or the registrar, the judge or registrar may proceed in the party's absence.

**18. Decisions made in absence of a party**

- (1) If a single judge or the registrar makes a decision in a party's absence, whether or not at a hearing, the judge or registrar may subsequently, but before the decision is carried out, set aside the decision and again deal with the matter that gave rise to the decision.

- (2) If in a party's absence a single judge or the registrar makes a decision in a CA matter, whether or not at a hearing, the registrar must notify the party of the decision.

**19. Decisions made on the papers**

- (1) This rule applies if another rule says it applies.
- (2) If a decision is made under the other rule on the basis of the documents filed without requiring the parties to attend a hearing (the "**provisional decision**"), the registrar must serve the parties with written notice of the provisional decision.
- (3) If a party wants a hearing of the matter that gave rise to the provisional decision, the party must file a Form 12 within 5 working days after the date on which the party is served with the notice of the provisional decision.
- (4) If no party lodges a Form 12 under subrule (3), the provisional decision becomes the final decision on the matter.
- (5) If any party lodges a Form 12 under subrule (3), a registrar must list the matter for hearing by the judge who made the provisional decision or, if he or she is absent, before another, and notify the parties.
- (6) At the hearing the provisional decision may be confirmed, amended or set aside.
- (7) The decision made at the hearing is the final decision on the matter.
- (8) Any right to appeal against, or to make an application as a result of or in respect of, a final decision on a matter cannot be exercised in relation to a provisional decision until it becomes a final decision.

## Part 3 — Administrative matters

### 20. Forms, completion of

- (1) This rule is in addition to the RSC Order 69.
- (2) When completing a form in Schedule 1 —
  - (a) the name of a party must be capitalised according to the preference of the party; and
  - (b) the family name of a party must be underlined.

*[Examples: Vincent van Gogh; Wong Hei; Mary Jane Citizen.]*

- (3) A party completing a form in Schedule 1 must adapt the form to the circumstances of the CA matter, such as where there is more than one respondent.
- (4) If an item in a form in Schedule 1 does not have enough space to complete it, the party completing it must —
  - (a) insert in the item “See attachment [number]”; and
  - (b) attach to the form a separate document headed “[name of form] attachment [number] — [name of the item]”.

*[Example: A single attachment to Form 13 for the item “Grounds of this application” will be headed:*

“

*[Appeal No.]*

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*Form 13: Application for review of single judge’s decision  
Attachment 1 — Grounds of this application”.*

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”.]

- (5) If a form in Schedule 1 is filed to which is attached one or more other documents, each attached document —
  - (a) must not repeat the formal heading on the form;
  - (b) must bear the Court of Appeal’s file number; and
  - (c) must bear any heading required by subrule (4) or any other rule.

**21. Filed documents, technical requirements**

- (1) Unless these rules provide otherwise or a single judge orders otherwise, any document that is filed —
  - (a) must use durable white A4 paper;
  - (b) must, in order to allow the document to be bound with others, have a 5 cm margin on the left of the first side of each sheet of paper and, if the sheet is printed on both sides, a 5 cm margin on the right of the second side of each sheet of paper;
  - (c) must be typed in at least the size of type used for these rules (12 point Times New Roman);
  - (d) must be typed using single line spacing or more;
  - (e) if it is more than one page long —
    - (i) must have its pages numbered consecutively in the top right corner; and
    - (ii) may be printed on both sides of each sheet of paper;and
  - (f) if it contains more than one sheet of paper, must be stapled in the top left corner or otherwise bound.
- (2) Subrule (1) does not apply to a document that is not prepared for a CA matter by a party to the matter.
- (3) An affidavit that is filed must have a cover sheet in the form of Form 11.
- (4) If a document that is not a form in Schedule 1 is filed, it must be in a format that is consistent with the forms in Schedule 1.

**22. Filed documents to be served**

- (1) Unless these rules expressly provide otherwise or a single judge orders otherwise, a person who files a document in an appeal

must serve it on the other party or parties within 3 working days after the date on which it is filed.

- (2) The document must be served in accordance with the RSC Order 72.

## **Part 4 — Duties of lawyers who act for parties**

### **23. Duty to notify when acting for a party**

- (1) On being instructed to act for a party to an appeal as a solicitor, whether or not also as counsel, a lawyer must file a Form 5 as soon as practicable.
- (2) Subrule (1) does not apply to a lawyer whose name and address for service is on a Form 1, 2 or 4 that has been filed.

### **24. Presumptions as to who is acting for a party**

A lawyer who is said to be acting for a party by reason of a Form 1, 2, 4 or 5 that has been filed is to be taken to be acting for the party until —

- (a) another lawyer files a Form 5 under rule 23;
- (b) the party files a Form 6 notifying the court that the party is self-represented; or
- (c) the court gives leave for the lawyer to cease to act.

## **Part 5 — Procedure for appeals**

### **Division 1 — General**

#### **25. Nature of appeals**

An appeal to the Court of Appeal will be by way of a rehearing unless another written law provides otherwise.

#### **26. Time for appealing**

- (1) An interlocutory civil appeal to the Court of Appeal must be commenced within 14 days after the date of the decision being appealed.
- (2) Unless another written law expressly provides otherwise, any other appeal to the Court of Appeal must be commenced within 21 days after the date of the decision being appealed.

### **Division 2 — Commencing an appeal**

#### **27. When an appeal is taken to be commenced**

An appeal is not commenced until an appeal notice (with any other document required by rule 28 or 29) has been both filed and served in accordance with rule 28 or 29, as the case requires.

#### **28. Criminal appeal, how to commence**

- (1) To —
  - (a) commence a criminal appeal within time; or
  - (b) apply for an extension of time within which to commence a criminal appeal,

the appellant must file and then serve —

- (c) a Form 1; and
- (d) any document required by subrule (2).

**Supreme Court (Court of Appeal) Rules 2005**

**Part 5 0** Procedure for appeals

**Division 2 0** Commencing an appeal

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- (2) If the Form 1 says that an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's lawyer or both explaining why the appeal was not commenced within time.
- (3) A Form 1 may be filed together with an application, made in accordance with rule 44, for an interim order.
- (4) For the purposes of the *Criminal Appeals Act 2004* section 17 or 28(2), a Form 1 filed in accordance with this rule is to be taken to be an application for leave to appeal.
- (5) In a criminal appeal the appellant, when preparing the grounds of appeal for the appellant's case under rule 32, may amend or omit any of the draft grounds of appeal in the appellant's Form 1, and may include additional grounds of appeal.
- (6) Any document filed under this rule must be served on the respondent personally but, if the appellant is in custody, it may be served on the respondent by post.
- (7) As soon as practicable after serving the respondent the appellant must file a Form 3 (Service certificate).
- (8) This rule does not affect the operation of the *Criminal Appeals Act 2004* section 28.

**29. Civil appeal, how to commence**

- (1) To —
  - (a) commence a civil appeal (including an appeal that requires leave to appeal) within time; or
  - (b) apply for an extension of time within which to commence a civil appeal (including an appeal that requires leave to appeal),the appellant must file and then serve —
  - (c) a Form 2; and
  - (d) any document required by subrule (2).



- (2) If the Form 2 says that an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's lawyer or both explaining why the appeal was not commenced within time.
- (3) A Form 2 may be filed together with an application, made in accordance with rule 44, for an interim order.
- (4) Any document filed under this rule must be served on the respondent personally.
- (5) As soon as practicable after serving the respondent the appellant must file a Form 3.

**30. Primary court to be notified and to supply records**

- (1) In this rule —  
    **“primary court case”** means the action, case, matter or proceedings in the primary court in which the decision being appealed was made.
- (2) As soon as practicable after an appeal notice is filed, the registrar must give the primary court concerned —
  - (a) a copy of the appeal notice; and
  - (b) a notice that specifies —
    - (i) the records or things held by the primary court in relation to the primary court case that the primary court must give to the Court of Appeal for the purposes of the appeal; and
    - (ii) the date by which the primary court must provide the records or things.
- (3) Any copy of a document given by the primary court to the Court of Appeal need not be certified by the primary court.
- (4) If any record given to the Court of Appeal contains information to which access by any person is or should be restricted, the primary court must advise the Court of Appeal.

**31. Respondent's options**

- (1) On being served with an appeal notice, a respondent may file a Form 4.
- (2) If the respondent files a Form 4, it must be filed within 7 days after the date on which the respondent is served with the appeal notice.
- (3) A Form 4 may be filed together with an application, made in accordance with rule 44, for an interim order.
- (4) If a respondent does not file a Form 4, the respondent is not entitled to take part or be heard in the appeal and is not a party to the appeal for the purposes of these rules.
- (5) If a respondent files a Form 4 in which the respondent also appeals against the decision specified in the appellant's appeal notice, the registrar may order —
  - (a) the respondent to file documents in respect of the respondent's appeal that correspond to the "Appellant's case" referred to in rule 32; and
  - (b) the appellant to file documents in respect of the respondent's appeal that correspond to the "Respondent's answer" referred to in rule 33,within such periods as the registrar may order.

**32. "Appellant's case" to be filed**

- (1) After an appeal notice is filed, the appellant must file the "Appellant's case".
- (2) The appellant's case must be filed —
  - (a) in an interlocutory civil appeal, within 7 days after the date on which the appeal notice is filed;
  - (b) in any other appeal, within 35 days after the date on which the appeal notice is filed.

- (3) The appellant's case consists of a Form 7 to which is attached —
- (a) in an interlocutory civil appeal or a sentence appeal, these documents —
    - (i) a document titled “Appellant’s grounds of appeal”;
    - (ii) a document titled “Appellant’s submissions”;
    - (iii) a document titled “Appellant’s legal authorities”;
    - (iv) a document titled “Orders wanted”;
  - (b) in any other appeal, these documents —
    - (i) a document titled “Appellant’s grounds of appeal”;
    - (ii) a document titled “Appellant’s submissions”;
    - (iii) a document titled “Appellant’s legal authorities”;
    - (iv) a document titled “Orders wanted”;
    - (v) a document titled “Draft chronology”;
    - (vi) a document titled “Draft appeal book indexes”.
- (4) The document titled “Appellant’s grounds of appeal” —
- (a) must contain all of the grounds of appeal on which the appellant intends to rely at the hearing of the appeal;
  - (b) must state the grounds, and concise particulars of them, succinctly in numbered paragraphs and must not merely allege —
    - (i) that the primary court erred in fact or in law;
    - (ii) that the primary court’s decision is against the evidence or the weight of evidence or is unreasonable and cannot be supported having regard to the evidence;
    - (iii) that the primary court’s decision is unsafe or unsatisfactory; or

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- (iv) in the case of an appeal against a sentence, that the sentence is excessive or inadequate;
  - and
  - (c) must state, for each ground, whether it is —
    - (i) an error of fact;
    - (ii) an error of law; or
    - (iii) an error of mixed fact and law.
- (5) The document titled “Appellant’s submissions” —
- (a) must, for each ground of appeal, contain the appellant’s written submissions (or argument) expressed so as to convey the substance of them clearly and as succinctly as possible;
  - (b) must set out the submissions about the ground in numbered paragraphs;
  - (c) must include references to —
    - (i) each page number of the primary court’s transcript on which relevant material appears;
    - (ii) the number of each exhibit in the primary court that is relevant; and
    - (iii) each principal legal authority on which the appellant relies in support of the ground;
  - (d) must not be more than 20 pages long; and
  - (e) must be signed by the person who prepared it.
- (6) The document titled “Appellant’s legal authorities” —
- (a) must list, and number consecutively, each principal legal authority to which the court is referred, under these headings in this order —
    - (i) “Written laws”;
    - (ii) “Judgments”;
    - (iii) “Legal texts”;

- (b) must mark with an asterisk any legal authority from which it is intended to read any text to the court at the hearing;
- (c) for each written law listed, include its short title, its jurisdiction and each relevant section or provision of it;

[*Example:*

Written laws:

\*1. *Interpretation Act 1984* (WA) s. 5 “under”; s. 61.

2. *Acts Interpretation Act 1901* (Cth) s. 22(1).]

- (d) for each judgment listed, include —
  - (i) first, its citation in an authorised law report (if any) and any page of it on which is a relevant passage; and
  - (ii) second, its media neutral citation (if any).

[*Example:*

Judgments:

\*3. *Ward v The Queen* (2000) 23 WAR 254 at 274;

[2000] WASCA 413 at [106].

4. *Talbot v Lane* (1994) 14 WAR 120.]

and

- (e) for each authoritative legal text listed, refer to the edition concerned and to each relevant passage.
- (7) The document titled “Orders wanted” must set out —
    - (a) the orders that the appellant wants the Court of Appeal to make; and
    - (b) if in a criminal appeal the appellant wants the Court of Appeal to give a guideline judgment — the guidelines that it is proposed the court should give.
  - (8) The document titled “Draft chronology” must state succinctly in numbered paragraphs arranged in date order the date and facts of each event that is material to the appeal.

- (9) The document titled “Draft appeal book indexes” must set out for each of the 3 parts of the appeal book a draft index of the proposed contents of the part, being the documents required by rule 38 to be in the part.

**33. “Respondent’s answer” to be filed**

- (1) In this rule —

“**appellant’s grounds of appeal**” means the appellant’s grounds of appeal as modified by any order made under rule 43.

- (2) After being served with the appellant’s case, the respondent must file the “Respondent’s answer”.

- (3) The respondent’s answer must be filed —

- (a) in an interlocutory civil appeal, within 7 days after;  
(b) in any other appeal within 21 days after,

the date the respondent is served with a notice issued by the registrar requiring the answer to be filed.

- (4) The respondent’s answer consists of a Form 8 to which is attached —

- (a) in an interlocutory civil appeal, these documents —

- (i) a document titled “Respondent’s submissions”;  
(ii) if the respondent seeks to uphold the primary court’s decision on a ground not relied on by the primary court — a document titled “Respondent’s notice of contention”;  
(iii) a document titled “Respondent’s legal authorities”;

- (b) in a sentence appeal, these documents —

- (i) a document titled “Respondent’s submissions”;  
(ii) a document titled “Respondent’s legal authorities”;

- (c) in any other appeal, these documents —
  - (i) a document titled “Respondent’s submissions”;
  - (ii) if the respondent seeks to uphold the primary court’s decision on a ground not relied on by the primary court — a document titled “Respondent’s notice of contention”;
  - (iii) a document titled “Respondent’s legal authorities”;
  - (iv) a document titled “Reply to the appellant’s draft chronology”;
  - (v) a document titled “Reply to the appellant’s draft indexes”.
- (5) The document titled “Respondent’s submissions” must, in respect of each of the appellant’s grounds of appeal, either concede the allegation in the ground or —
  - (a) set out in numbered paragraphs all of the submissions that the respondent makes about the ground; and
  - (b) include references to —
    - (i) each page number of the primary court’s transcript on which relevant material appears;
    - (ii) the number of each exhibit in the primary court that is relevant; and
    - (iii) each principal legal authority on which the respondent relies.
- (6) Rule 32(5), with any necessary changes, applies to the document titled “Respondent’s submissions”.
- (7) The document titled “Respondent’s notice of contention” must —
  - (a) state succinctly in numbered paragraphs each ground, not relied on by the primary court, on which the respondent relies to uphold the primary court’s decision; and

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- (b) in respect of each such ground, set out in numbered paragraphs the respondent's submissions together with references to —
  - (i) each page number of the primary court's transcript on which relevant material appears;
  - (ii) the number of each exhibit in the primary court that is relevant; and
  - (iii) each principal legal authority on which the respondent relies in support of the ground.
- (8) Rule 32(6), with any necessary changes, applies to the document titled "Respondent's legal authorities".
- (9) The document titled "Reply to the appellant's draft chronology" must, in respect of the appellant's chronology, either state that the respondent agrees the chronology is correct or —
  - (a) identify any errors the respondent alleges exists; and
  - (b) list any events that the respondent alleges ought to be included or excluded.
- (10) The document titled "Reply to the appellant's draft indexes" must, in respect of each of the appellant's draft appeal book indexes, either state that the respondent agrees the indexes are correct or —
  - (a) identify any errors the respondent alleges exists; and
  - (b) list any documents that the respondent alleges ought to be included or excluded from the contents of the appeal book.

**34. Appellant's reply to notice of contention, when required**

- (1) If as part of the respondent's answer, a respondent files a "Respondent's notice of contention", the appellant must file a document titled "Appellant's reply to respondent's notice of contention" within 21 days after the day on which the appellant is served with it.



- (2) The document titled “Appellant’s reply to respondent’s notice of contention” must, in respect of each ground in the “Respondent’s notice of contention”, either concede the allegation in the ground or —
- (a) set out in numbered paragraphs all of the submissions that the appellant makes about the ground; and
  - (b) include references to —
    - (i) each page number of the primary court’s transcript on which relevant material appears;
    - (ii) the number of each exhibit in the primary court that is relevant; and
    - (iii) each principal legal authority on which the appellant relies.

### **Division 3 — Appeal books**

#### **35. Appeal book, when required**

An appeal book, containing the documents required for the hearing of the appeal, is required for every appeal except an interlocutory civil appeal, unless a single judge orders otherwise in a particular appeal.

#### **36. Indexes, settling of**

- (1) If draft appeal book indexes are filed in an appeal, the registrar must settle the indexes as soon as practicable after the respondent’s case is filed.
- (2) When settling the appeal book indexes the registrar must —
  - (a) ensure rule 37(2) is obeyed;
  - (b) reduce as far as possible the number and length of the documents to be included in the appeal book;
  - (c) avoid unnecessary duplication in the appeal book of documents or the information in them; and

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- (d) if the respondent also appeals against the primary court's decision, ensure that the appeal book also contains the documents required for the hearing of the respondent's appeal.
- (3) The registrar has jurisdiction —
  - (a) to order that any document that is or may be needed to decide the appeal, including a document not mentioned in or excluded by rule 38(2), (3) or (4), be included in an appeal book;
  - (b) to order that any document, including a document mentioned in rule 38(2), (3) or (4), be excluded from an appeal book;
  - (c) to order that the documents in an appeal book be in a different order to that required by rule 38(2), (3), (4) or (5);
  - (d) to order that the contents of one or more parts of an appeal book be amalgamated in one part.
- (4) If the registrar settles the appeal book indexes in the absence of a party the registrar must give the party a copy of them and may do so by fax or email.
- (5) The appellant must file a clean copy of the settled appeal book indexes on or before the date set by the registrar when settling them.

**37. Appeal book, general provisions**

- (1) The appeal book for an appeal must conform to this rule and rules 38 and 39 except to the extent that rule 40 provides otherwise or a single judge orders otherwise.
- (2) The documents required for the hearing of an appeal must be only those, or those parts of those, that are needed to consider and decide the issues in the appeal specified in the documents filed by the parties.

- (3) A single judge has jurisdiction to order that a document which is to be included in an appeal book and which is not clearly legible be typed or retyped, checked against the original, and certified as correct, before it is included.

**38. Appeal book, contents of**

- (1) Subject to rule 40, an appeal book must be comprised of 3 separate parts as follows —
- (a) the first part, comprised of as many numbered volumes as are necessary with white covers, to be referred to as the “White Appeal Book”;
  - (b) the second part, comprised of as many numbered volumes as are necessary with light blue covers, to be referred to as the “Blue Appeal Book”;
  - (c) the third part, comprised of as many numbered volumes as are necessary with light green covers, to be referred to as the “Green Appeal Book”.
- (2) The White Appeal Book must contain these documents in this order —
- (a) a cover page;
  - (b) an index, with page numbers, of the book’s contents;
  - (c) the appeal notice;
  - (d) any order extending the time within which to appeal;
  - (e) any order giving leave to appeal;
  - (f) any notice of the respondent’s intention (Form 4);
  - (g) the appellant’s case filed under rule 32 as amended by any order made under rule 43 but without —
    - (i) the draft chronology; and
    - (ii) the draft appeal book indexes;
  - (h) the respondent’s answer filed under rule 33 but without —

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- (i) the reply to the appellant's draft chronology; and
    - (ii) the reply to the appellant's draft indexes;
  - (i) the chronology, if it is required and has been agreed by the parties;
  - (j) if a chronology is required but has not been agreed by the parties —
    - (i) the draft chronology filed under rule 32 as part of the appellant's case; and
    - (ii) the reply to the appellant's draft chronology filed under rule 33 as part of the respondent's answer;
  - (k) the signed certificate, required by rule 41(c), as to the correctness of the appeal book;
  - (l) any other document filed in the Court of Appeal that the registrar orders to be included.
- (3) The Blue Appeal Book must contain these documents in this order —
- (a) a cover page;
  - (b) an index, with page numbers, of the book's contents;
  - (c) the primary court's formal decision;
  - (d) the primary court's written reasons for its decision, if any;
  - (e) if the appeal is against a primary court's decision in civil proceedings at first instance — the relevant pleadings in the primary court in their final form;
  - (f) if the appeal is against a primary court's decision in criminal proceedings at first instance the prosecution notice or indictment, as the case requires;
  - (g) if the appeal is against a primary court's decision in an appeal — the documents filed in the primary court for the appeal;
  - (h) any other document filed in the primary court that the registrar orders to be included.

- (4) The Green Appeal Book must contain these documents in this order —
- (a) a cover page;
  - (b) an index, with page numbers, of the book’s contents;
  - (c) the relevant parts of the primary court’s transcript;
  - (d) a copy of any relevant documentary exhibit in the primary court arranged in accordance with subrule (5);
  - (e) if the appeal is a sentence appeal or a criminal appeal that includes an appeal against a sentence — the accused’s antecedent report and criminal record, as provided to the primary court;
  - (f) any other document containing evidence considered by the primary court when making its decision that the registrar orders to be included.
- (5) The documentary exhibits in the primary court must be arranged in the Green Appeal Book as follows —
- (a) they must not be in the order in which they are lettered or numbered as exhibits in the primary court;
  - (b) they must be in chronological order according to the dates borne by each document or if a document is manifestly or admittedly misdated, its known date;
  - (c) if a document is undated —
    - (i) it must be put among the other documents in the place contended for by the appellant;
    - (ii) the appellant must notify the respondent of the proposed place; and
    - (iii) the respondent may require the appellant to insert “Date unknown, chronological position disputed” at the head of the document in the appeal book;
  - (d) if there is correspondence between or among 2 or more people which should be read consecutively and not

interspersed among the other documents, the correspondence may be arranged chronologically and placed together among the other documents at a convenient place in relation to the other documents.

- (6) The Green Appeal Book must not contain —
- (a) in a civil appeal — interrogatories or answers to them, an affidavit verifying discovery, or any other affidavit, unless and to the extent that they or it were admitted in evidence in the primary court;
  - (b) in a criminal appeal — a pre-sentence report or a victim impact statement or a confidential medical report.

**39. Appeal book, technical requirements**

- (1) Each document in an appeal book must be clearly legible.
- (2) Unless it is a form in Schedule 1, each page in an appeal book must have every fifth line on the page numbered, or letters placed beside the text at 50 mm intervals, in the left margin.
- (3) The pages in each part of an appeal book, other than the cover page and the pages of the index, must be numbered consecutively, even if the part comprises 2 or more volumes.
- (4) Each volume of each part of an appeal book —
  - (a) may but need not have a clear plastic sheet over the cover page and on the back of the volume;
  - (b) must start with the cover page for that part and volume;
  - (c) must contain the index for that part;
  - (d) must not comprise more than more than 500 pages (which is to say 250 sheets of paper);
  - (e) must have a back sheet of the colour required for that part; and
  - (f) must be bound so that when it is opened at a page, both sides of the volume lie flat and open at the page.

- (5) The cover page of each volume of each part of an appeal book must —
  - (a) be in the form of Form 14; and
  - (b) be of durable paper of the colour required for that part.
- (6) The index in each volume of each part of an appeal book must —
  - (a) be typed using one and a half line spacing or more; and
  - (b) if there are 2 or more volumes in the part, indicate which pages of the part are in which volume.

**40. Sentence appeal, appeal book for**

- (1) The appeal book for a sentence appeal must conform to this rule except to the extent that a single judge orders otherwise.
- (2) In a sentence appeal —
  - (a) the 3 parts of the appeal book referred to in rule 38(1) must be in one volume and in the order set out in that rule;
  - (b) there must be only one cover page for the appeal book;
  - (c) the indexes for the 3 parts of appeal book must be consolidated into one document;
  - (d) the pages in the appeal book, other than the cover page and the pages of the index, must be numbered consecutively;
  - (e) the appeal book must have white covers and be titled the “Appeal Book”; and
  - (f) rules 37 and 39, with any necessary changes, apply to the appeal book subject to this rule.

**41. Appeal books to be prepared etc. by appellant**

The appellant must —

- (a) prepare the parts of the appeal book in accordance with the settled indexes for it and this Division;
- (b) prepare as many copies of the appeal book as the registrar orders when settling the indexes for it;
- (c) ensure that each party to the appeal, or its lawyer, checks the appeal book and signs a certificate that it is correct before it is filed; and
- (d) file the appeal book on or before the date set by the registrar when settling the indexes for it.

**Division 4 — Matters prior to the hearing of any appeal**

**42. Application of Division**

This Division applies to any appeal, civil or criminal, unless the contrary intention appears.

**43. Single judge's jurisdiction**

- (1) In this rule a reference to making an interim order includes a reference to amending or cancelling an interim order.
- (2) A single judge has jurisdiction to do any of the following —
  - (a) to extend or to refuse to extend the time within which the appeal can be commenced or to adjourn the question to the hearing of the appeal;
  - (b) to give or to refuse to give leave to appeal or to adjourn the question to the hearing of the appeal;
  - (c) in a criminal appeal, to exercise the Court of Appeal's functions under the *Criminal Appeals Act 2004* section 27;
  - (d) to amend any ground of appeal;
  - (e) to add any ground of appeal;



- (f) to strike out any ground of appeal that does not have a reasonable prospect of succeeding;
  - (g) to dismiss the appeal if —
    - (i) none of the grounds of appeal has a reasonable prospect of succeeding; or
    - (ii) the appellant has not obeyed these rules or any order made under them;
  - (h) to make an interim order in an appeal;
  - (i) to make an interim order before a respondent is served with the appeal notice;
  - (j) to make an interim order subject to a condition, including, without limiting that power, a condition that requires —
    - (i) a party to give an undertaking;
    - (ii) a party to give security for the costs of the other party to the appeal;
  - (k) to adjourn proceedings in relation to the making of an interim order from time to time;
  - (l) to make any order that it is necessary or convenient to make as a result of an order made under any of the above paragraphs.
- (3) An order made under subrule (2), as varied by the Court of Appeal under the Act section 61(4), is to be taken to be an order made by the Court of Appeal unless it is set aside by the Court of Appeal under that section.

**44. Interim order, applying for**

- (1) At any time after an appeal is commenced and before it is concluded a party may apply for an interim order or an order amending or cancelling an interim order.
- (2) To make such an application, the party must file a Form 9 with —

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(a) an affidavit by the applicant or the applicant's lawyer or both explaining why the interim order is wanted; and

(b) a document setting out the proposed order,

unless —

(c) these rules (other than the RSC) provide otherwise;

(d) another written law provides otherwise; or

(e) a single judge orders otherwise.

**45. Consenting to orders**

(1) The parties to an appeal may consent to an interim or other order, other than an urgent appeal order, being made by filing a Form 10.

(2) If the order is not one the registrar can make, the registrar must refer the Form 10 to a single judge who may make the order if it is just to do so.

(3) If the order is one the registrar can make, the registrar may make the order if it is just to do so.

**46. Urgent appeal order, nature of**

(1) An urgent appeal order in relation to an appeal is an order that the appeal is an urgent appeal that must be heard as quickly as practicable consistent with the proper administration of justice.

(2) An urgent appeal order must include an order setting a timetable for the various requirements of these rules and may include —

(a) an order dispensing with or modifying any such requirement;

(b) any order that will or may facilitate the appeal being heard as quickly as practicable consistent with the proper administration of justice.

**47. Case management**

- (1) In this rule —
- “approved mediator”** means the Court of Appeal Registrar, or a person appointed by the Chief Justice to be a Mediation Registrar or a mediator for the purposes of the RSC Order 29.
- (2) At any time after an appeal is commenced, a single judge has jurisdiction to make any order that will or may facilitate the appeal, or any application for an interim order in the appeal, being conducted and concluded efficiently, economically and expeditiously.
- (3) Without limiting subrule (2), a single judge has jurisdiction —
- (a) to order a party to file an affidavit as to any matter;
  - (b) to dispense with or modify a requirement of these rules;
  - (c) to require any or all of the parties to confer or exchange letters in order to identify the issues between them, to resolve as many of them as possible, and to identify the issues to be decided by the Court of Appeal;
  - (d) to make an order relating to the admission of additional evidence, either before or at the hearing of the appeal, by the Court of Appeal;
  - (e) to limit the time that a party has to present oral submissions at the hearing of the appeal;
  - (f) to limit the issues on which oral submissions may be made at the hearing of the appeal;
  - (g) if the appeal has been listed for hearing, to cancel the hearing on that date;
  - (h) to make any order it is necessary or convenient to make as a result of an order made under any of the above paragraphs.
- (4) An order made under subrule (3)(c) requiring the parties to confer may require them to confer before an approved mediator

but, unless the party consents, the order must not result in a party being liable to remunerate a mediator.

**48. Applications for adjournments to be made promptly**

An application for an adjournment of the hearing of an appeal must be made immediately it is known that an adjournment is wanted.

**49. Offers of compromise**

- (1) In a civil appeal, the RSC Order 24A applies as if —
  - (a) any reference to “plaintiff” were a reference to “appellant”;
  - (b) any reference to “defendant” were a reference to “respondent”;
  - (c) any reference to “the trial” were a reference to “the hearing of the appeal”;
  - (d) the time prescribed for paragraphs (1) and (5) of Order 24A rule 3 were immediately before the Court of Appeal’s judgment is, or reasons for judgment are, first made known to the parties to the appeal;
  - (e) the reference in Order 24A rule 8(1)(a)(i) to “the proceedings” were a reference to “the appeal”;
  - (f) the reference in Order 24A rule 8(1)(a)(ii) to “the defence” were a reference to “the respondent’s answer”.
- (2) For the purposes of subrule (1), a single judge has the jurisdiction conferred on “the Court” under the RSC Order 24A.
- (3) In a civil appeal where the respondent also appeals against the primary court’s decision, subrule (1) applies as if any reference to “appellant” were a reference to “respondent”.

**50. Court to be advised immediately of settlement etc.**

If the parties to an appeal agree to settle the whole or any part of an appeal, they must notify the Court of Appeal Office immediately.

**Division 5 — Matters prior to the hearing of a criminal appeal**

**51. Application of Division**

This Division applies to criminal appeals.

**52. Applications for certain orders under CAA s. 40(1)**

An application for an order under the *Criminal Appeals Act 2004* section 40(1)(a) to (e) must be filed with an affidavit stating the evidence to be produced or given and how it is relevant to the grounds of appeal or to an issue in the appeal.

**53. Single judge's jurisdiction**

A single judge has jurisdiction to make any order under the *Criminal Appeals Act 2004* section 40 or 43(3) or (4).

**54. Witnesses required by the Court of Appeal**

- (1) The *Criminal Procedure Act 2004* Part 5 Division 7 and Schedule 4, and the *Criminal Procedure Rules 2005*, apply for the purpose of compelling a witness to attend the Court of Appeal, or an examiner appointed by an appeal court under the *Criminal Appeals Act 2004* section 40.
- (2) If under the *Criminal Appeals Act 2004* section 40(1) the Court of Appeal orders a witness to attend the court or an examiner appointed by the court, then unless the court orders otherwise —
  - (a) the party that applied for the order under section 40(1) must serve the witness summons; and
  - (b) the witness summons must be served under the *Criminal Procedure Act 2004* section 162.

**55. Proceedings before an examiner**

- (1) If under the *Criminal Appeals Act 2004* section 40(1)(c) the Court of Appeal orders that a witness is to be examined before a person other than the court (the “**examiner**”), the registrar must —
  - (a) fix the time and place for the examination;
  - (b) notify the examiner;
  - (c) notify the parties;
  - (d) issue a witness summons to the witness; and
  - (e) if necessary, notify the party that applied for the order of the party’s duty under rule 54(2)(a) to serve the summons.
- (2) An examination of a witness before an examiner must be on oath and be recorded.
- (3) The examiner may administer an oath to the witness.
- (4) A party to the appeal is entitled to be present at and take part in the examination unless it is ordered otherwise.
- (5) On completing the examination, the examiner must —
  - (a) certify that the recorded version of the witness’s evidence is accurate; and
  - (b) give the registrar the certified recorded version and any record or thing referred to by the witness.
- (6) The registrar must keep the material supplied by the examiner in safe custody and deal with it in accordance with the directions of the Court of Appeal.

**56. Special commissioners and assessors (CAA s. 40(1))**

- (1) If the Court of Appeal makes an order under the *Criminal Appeals Act 2004* section 40(1)(f), the order —

- (a) must identify the special commissioner who has been appointed;
  - (b) must specify the records to be examined, or the scientific or local investigation to be conducted;
  - (c) may give orders as to how and when the examination or investigation is to be conducted and as to whether and how any party to the appeal or matter may participate in it;
  - (d) may give any other orders necessary for the conduct of the examination or investigation.
- (2) If the Court of Appeal makes an order under the *Criminal Appeals Act 2004* section 40(1)(g), the order —
- (a) must identify the assessor who has been appointed;
  - (b) must specify the special expert knowledge for which the assessor has been appointed;
  - (c) may specify any question that the assessor is to assist the Court of Appeal with;
  - (d) may give orders as to how and when the assessor is to assist the court;
  - (e) may give any other orders necessary for the use by the Court of Appeal of the assessor.
- (3) The registrar must serve the order on the special commissioner or the assessor together with any records that the Court of Appeal orders to be served.
- (4) A special commissioner or assessor must give any report required of him or her by the Court of Appeal to the registrar who must deal with it in accordance with the court's orders.

### **Division 6 — Hearing an appeal**

**57. Hearing date to be set**

When a date for hearing an appeal is set, the registrar must send each party a Form 15.

**58. Unreported judgments to be provided**

At least 7 days before the date on which the hearing of an appeal is to begin, each party must file 3 copies of any unreported judgment referred to in any document filed by the party under rule 32 or 33 or an order made by the registrar.

### **Division 7 — Concluding an appeal**

**59. Discontinuing an appeal**

- (1) The appellant may discontinue an appeal by filing and serving a Form 16.
- (2) If the appellant is a person under disability (as defined in the RSC Order 70 rule 1), the Form 16 does not have effect unless it is approved by a single judge.
- (3) An application for the approval of a single judge must be filed with an affidavit and, unless a single judge orders otherwise, an opinion by an independent lawyer.
- (4) Unless the *Criminal Appeals Act 2004* section 35 applies or a single judge orders otherwise, an appellant who discontinues an appeal must pay the respondent's costs in respect of the appeal which must be taxed if they are not agreed.
- (5) In an appeal where the respondent also appeals against the primary court's decision, subrules (1) to (4) and Form 16 apply with any necessary changes.



- (6) The discontinuance of an appeal by the appellant does not affect any appeal by a respondent who also appeals against the primary court's decision.

**60. Settling an appeal**

- (1) The parties to an appeal may file a Form 10, modified as necessary, stating the final order that the parties consent to being made in the appeal.
- (2) When a consent notice is filed, the registrar must refer it to a single judge who may direct the registrar —
- (a) to issue a final order in accordance with the notice; or
  - (b) to notify the parties that the judge will decide the final orders at a hearing.
- (3) A settlement or compromise of an appeal to which a person under disability (as defined in the RSC Order 70 rule 1) is a party has no effect unless it is approved by a single judge.
- (4) An application for the approval of a single judge must be filed with an affidavit and, unless a single judge orders otherwise, an opinion by an independent lawyer.

**61. Guideline judgments**

- (1) This rule does not limit the *Sentencing Act 1995* section 143.
- (2) A guideline judgment may be given in respect of one appeal or in respect of a number of appeals, even if they are not heard together.
- (3) A guideline judgment may be given on the application of a party to an appeal or by the Court of Appeal on its own initiative.

**62. Criminal appeals, certificate of conclusion of**

- (1) This rule applies to any criminal appeal.

**Supreme Court (Court of Appeal) Rules 2005**

**Part 5 0** Procedure for appeals

**Division 7 0** Concluding an appeal

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- (2) When the appeal is concluded, the registrar must issue a Form 17.
- (3) The Form 17 is the formal record of the Court of Appeal and forms part of the Supreme Court's record.
- (4) The registrar must send a copy of the Form 17 to —
  - (a) the primary court, unless it is the Supreme Court;
  - (b) the Commissioner of Police;
  - (c) the chief executive officer of the department of the public service principally assisting the Minister who administers the *Sentence Administration Act 2003*;
  - (d) the chairperson of the Parole Board;
  - (e) if the case requires, the chairperson of the Mentally Impaired Accused Review Board; and
  - (f) any other person to whom an order made by the Court of Appeal in the appeal is directed.
- (5) If a warrant is issued to enforce a judgment or order of the Court of Appeal, a copy of the Form 17 must be sent with the warrant to any person to whom the warrant is directed.

**63. Other appeals, final orders on**

- (1) This rule applies to any appeal that is not a criminal appeal.
- (2) When the appeal is concluded, the RSC Order 43 (other than rule 16) applies subject to this rule.
- (3) The party lodging the draft judgment or order under the RSC Order 43 rule 6 may lodge it by sending it to the Court of Appeal as an attachment to an email.
- (4) The registrar must send a copy of the Court of Appeal's judgment or order to the primary court, unless it is the Supreme Court.

**64. Return of exhibits**

- (1) After an appeal is concluded, the registrar must, unless the Court of Appeal has ordered otherwise —
  - (a) return any record or thing given to the Court of Appeal by the primary court to the primary court;
  - (b) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court of Appeal to collect it from the court; and
  - (c) by a written notice, require any person who, under a summons or subpoena, produced any record or thing to the Court of Appeal that was not admitted in evidence, to collect it from the court
- (2) The registrar must not act under subrule (1) until —
  - (a) the time for commencing proceedings in the High Court in relation to the appeal has expired; or
  - (b) if proceedings in the High Court in relation to the appeal are commenced before that time expires, the proceedings are concluded.
- (3) Despite subrule (2), the registrar —
  - (a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or
  - (b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —
    - (i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or
    - (ii) it is necessary for that person to have use of the record or thing.
- (4) If under subrule (3)(b) the registrar releases a record or thing to a person, the registrar may require the person, as a condition of being given it, to give a written undertaking to the Court of Appeal as to the care maintenance and custody of it and its re-delivery to the court.

**Supreme Court (Court of Appeal) Rules 2005**

**Part 5 0** Procedure for appeals

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- (5) If a record or thing remains in the possession of the Court of Appeal after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a single judge may order the registrar to destroy it or dispose of it in some other way.

**65. Enforcing judgments and orders**

- (1) A single judge has jurisdiction to make any order, and to issue any warrant or other document, to enforce a judgment or order of the Court of Appeal.
- (2) A warrant to arrest an accused must be in the form of Form 1 in the *Criminal Procedure Regulations 2005* Schedule 1.
- (3) A warrant to remand an accused in custody must be in the form of Form 2 in the *Criminal Procedure Regulations 2005* Schedule 1.
- (4) A warrant of commitment to imprison an offender must be in the form of Form 1 in the *Sentencing Regulations 1996* Schedule 1.

**66. Costs**

- (1) In this rule —  
“costs” includes disbursements.
- (2) A party who does not file a document required by these rules within the time specified in or under these rules for doing so is not entitled to the costs of preparing and filing the document unless the Court of Appeal orders otherwise.
- (3) Subrule (2) does not prevent the Court of Appeal from making an order under the RSC Order 66 rule 5 in respect of the costs of preparing and filing the document concerned.
- (4) The costs of preparing and settling the indexes to, and of preparing, filing and serving, the appeal book are costs in the cause unless the Court of Appeal orders otherwise.

- (5) The costs of copies of unnecessary documents or of copies of unnecessary parts of documents will not be allowed.

## **Part 6 — Referred and other CA matters**

### **67. Referring a legal issue to the Court of Appeal**

- (1) In this rule —  
“**legal issue**” includes a question or point of law, a stated case and a petition;  
“**refer to**” includes to reserve for.
- (2) This rule applies to and in respect of any legal issue that may be referred to the Court of Appeal under any written law.
- (3) The requirements of this rule are in addition to any requirements of the written law under which a legal issue may be referred to the Court of Appeal.
- (4) To refer a legal issue to the Court of Appeal, the court or person who may refer the issue must file a Form 18.
- (5) The Form 18 and any documents attached to it must be served on the parties in the referring court and on any person who the referring person considers has a direct interest in the issue.
- (6) When completing a Form 18 —
  - (a) if there is more than one legal issue being referred, they must be in numbered paragraphs;
  - (b) the circumstances out of which the legal issue being referred arose must refer to all the facts out of which the issue arose;
  - (c) the circumstances out of which the legal issue being referred arose must be set out in numbered paragraphs;
  - (d) the list of materials to be considered must include any document to which the Court of Appeal may need to refer to decide the legal issue;
  - (e) all the documents to which the Court of Appeal may need to refer to decide the legal issue must be attached to the form.

**68. Dealing with referred and other CA matters**

- (1) This rule applies to the following CA matters —
  - (a) a legal issue to which rule 67 applies and that has been referred to the Court of Appeal under that rule;
  - (b) an application for a prerogative writ that, under the RSC Order 56, is directed to be decided by the Court of Appeal;
  - (c) a rule nisi or an order to show cause that, under the Act section 43(2) or the RSC Order 56, is made returnable before the Court of Appeal;
  - (d) a review order that, under an order made under the RSC Order 56A, is to be heard by the Court of Appeal;
  - (e) an application for a writ of *habeas corpus ad subjiciendum* that, under the RSC Order 57 —
    - (i) is directed to be made to the Court of Appeal; or
    - (ii) is made to the Court of Appeal;
  - (f) a writ of *habeas corpus ad subjiciendum* that, under an order made under the RSC Order 57, is returnable before the Court of Appeal;
  - (g) an appeal that, under the *Criminal Appeals Act 2004* section 13, has been ordered to be dealt with by the Court of Appeal;
  - (h) any other CA matter that is neither a criminal appeal nor a civil appeal.
- (2) A single judge has jurisdiction to make any order that will or may facilitate the CA matter being conducted and decided efficiently, economically and expeditiously.
- (3) Without limiting subrule (2), a single judge has jurisdiction —
  - (a) if it is uncertain who are the parties to the proceedings in the Court of Appeal in respect of the CA matter, to decide the question;

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- (b) to order a particular party to have the conduct of the CA matter;
- (c) to order that a rule in Part 5, with or without modifications, applies to the CA matter;
- (d) to modify or dispense with the operation of a rule in, or any order made by the General Division under, the RSC in respect of the CA matter.



## **Part 7 — Miscellaneous**

### **69. Removal of District Court appeal into Court of Appeal**

- (1) An application under the *Magistrates Court (Civil Proceedings) Act 2004* section 41 must be made by filing a Form 9, modified as necessary and excluding the item “Conference between parties”, within 28 days after the date on which the appeal to the District Court was commenced.
- (2) If the Court of Appeal makes an order under the *Magistrates Court (Civil Proceedings) Act 2004* section 41(3) —
  - (a) the appellant in the appeal to the District Court must file a Form 2 within 3 days after the date of the order; and
  - (b) these rules apply to the conduct of the appeal in the Court of Appeal.

cl. 1

**Schedule 1 — Forms**

[r. 3]

**1. Appeal notice (criminal) (r. 28)**

Supreme Court of Western Australia Court of Appeal		No:
<b>Appeal notice (criminal)</b>		
Parties to the appeal	Appellant Respondent	
Offender	Full name:	Date of birth:
<b>Primary court's decision</b>		
Primary court	at	
Indictment No.		
Date of decision		
Judicial officer		
<b>Decision details<sup>1</sup></b>		
Conviction recorded <sup>2</sup>		
Sentence imposed <sup>3</sup>		
Other orders made <sup>4</sup>		
<b>Appeal details</b>		
Notice of appeal  [Tick one or more boxes]	<input type="checkbox"/> The appellant applies to the Court of Appeal for leave to appeal against the above conviction. <input type="checkbox"/> The appellant applies to the Court of Appeal for leave to appeal against — <input type="checkbox"/> the above sentence <input type="checkbox"/> the above order <input type="checkbox"/> <sup>5</sup> The appellant applies to the Court of Appeal for leave to appeal against the above decision.	
Draft grounds of appeal <sup>6</sup>	1.	
Notice to the respondent	If you want to take part in this appeal you must file a Form 4 under the <i>Supreme Court (Court of Appeal) Rules 2005</i> within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Legal representation	Is the appellant legally represented in this appeal? Yes/No <sup>7</sup> Is the appellant applying for legal aid? Yes/No	

<b>Appellant's details for service<sup>7</sup></b>		
Name <sup>9</sup> Street address Telephone Email address Reference No.	Fax No.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form 1 —

1. If the appeal is not against a conviction or sentence or other order made as a result of a conviction (e.g. an appeal under the *Criminal Appeals Act 2004* s. 23(1)(c), 23(2)(c), 24(1)(c), 24(2), 25(2), 25(3) or 26), delete the following and describe the decision being appealed.
2. Describe the offence. E.g. Dangerous driving causing death. If there is more than one conviction, put the details of the other convictions, sentences and orders on an attachment.
3. State the sentence. E.g. Imprisonment for 18 months with a parol eligibility order cumulative on the sentence for robbery.
4. State any other order made. E.g. Disqualified from holding or obtaining a driver's licence for 4 years.
5. Tick this box if the appeal is against a decision other than a conviction or sentence or other order made as a result of a conviction. See note 1.
6. Set out the draft grounds in numbered paragraphs.
7. If the appellant is represented by a lawyer, the appellant's details below must be the lawyer's. If the appellant is self-represented, the details must be the appellant's personal details.
8. Leave this line blank if the appellant is self-represented.

**cl. 2**

**2. Appeal notice (civil) (r. 29)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Appeal notice (civil)</b>
Parties to the appeal	Appellant Respondent	
<b>Primary court's decision</b>		
Primary court Case number Parties Date of decision Judicial officer		
Decision details <sup>1</sup>		
<b>Appeal details</b>		
Notice of appeal	The appellant appeals to the Court of Appeal against the above decision.	
Act that allows the appeal <sup>2</sup>	section:	
Notice to the respondent	If you want to take part in this appeal you must file a Form 4 under the <i>Supreme Court (Court of Appeal) Rules 2005</i> within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Leave to appeal	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the appellant legally represented in this appeal? Yes/No <sup>3</sup> Is the appellant applying for legal aid? Yes/No	
<b>Appellant's details for service<sup>3</sup></b>		
Name <sup>4</sup> Street address Telephone Email address Reference No.	Fax No.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form 2 —

1. Examples:
  - Judgment against the defendant for \$70 000.
  - Dismissal of negligence action.
2. State the short title of the Act under which the appeal is being made.

3. If the appellant is represented by a lawyer, the appellant’s details below must be the lawyer’s. If the appellant is self-represented, the details must be the appellant’s personal details.
4. Leave this line blank if the appellant is self-represented.

**3. Service certificate (r. 28(7) & 29(5))**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Service certificate</b>
Parties to the appeal	Appellant Respondent	
Certificate	I certify that on [date] at [place] [name of server] served the respondent personally with — <ul style="list-style-type: none"> <li>● a copy of an appeal notice dated [date]; and</li> <li>● a copy of every other document that was filed with the appeal notice.</li> </ul> I undertake to file an affidavit of service if the Court requires me to.	
Signature of appellant or lawyer	Appellant/Appellant’s lawyer	Date:

Notes to Form 3 —

1. Delete if no documents are required under rule 28(1)(d) or 29(1)(d). Refer to rule 28(1)(d) in a criminal appeal and to rule 29(1)(d) in a civil appeal.

**cl. 4**

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**4. Notice of respondent's intention (r. 31)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Notice of respondent's intention</b>
Parties to the appeal	Appellant Respondent	
Notice [Tick one box]	<input type="checkbox"/> The respondent intends to take part in this appeal. <input type="checkbox"/> The respondent does not intend to take part in this appeal and will accept any order made by the court in the appeal other than as to costs.	
Cross appeal [Tick one box]	<input type="checkbox"/> The respondent is not appealing against the primary court's decision specified in the appellant's appeal notice. <input type="checkbox"/> The respondent also appeals against the primary court's decision specified in the appellant's appeal notice.	
Last date for appealing <sup>1</sup>	Last date: Is an extension of time needed? Yes/No	
Leave to appeal <sup>1</sup>	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the respondent legally represented in this appeal? Yes/No <sup>2</sup> Is the respondent applying for legal aid? Yes/No	
<b>Respondent's details for service<sup>2</sup></b>		
Name <sup>3</sup> Street address Telephone Email address Reference No.	Fax No.	
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Notes to Form 4 —

1. Complete this only if the respondent also appeals against the primary court's decision.
2. If the respondent is represented by a lawyer, the respondent's details below must be the lawyer's. If the respondent is self-represented, the details must be the respondent's personal details.
3. Leave this line blank if the respondent is self-represented.

**5. Lawyer's notice of acting (Part 4)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Lawyer's notice of acting</b>
Parties to the appeal	Appellant Respondent	
Client	Appellant/Respondent	
Notice [Tick one box]	The lawyer or firm of practitioners named below — <input type="checkbox"/> is acting for the above client in this appeal. <input type="checkbox"/> has ceased to act for the above client in this appeal and the client's address for service now is:	
<b>Lawyer or firm of practitioners</b>		
Name Street address Telephone Email address Reference No.	Fax No.	
Signature of lawyer		Date:

**cl. 6**

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**6. Notice of self-representation (r. 24)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Notice of self-representation</b>
Parties to the appeal	Appellant Respondent	
Notice	I, the [party], no longer have a lawyer acting for me in this appeal. My address for service is set out below.	
<b>Address for service</b>		
Street address		
Telephone		
Email address	Fax No.	
Reference No.		
Signature of party		Date:



**7. Appellant’s case (r. 32)**

Supreme Court of Western Australia Court of Appeal	No:
	<b>Appellant’s case</b>
Parties to the appeal	Appellant Respondent
Notice	Attached to this form are these documents in this order — <ul style="list-style-type: none"> <li>• Appellant’s grounds of appeal</li> <li>• Appellant’s submissions</li> <li>• Appellant’s legal authorities</li> <li>• Orders wanted</li> <li>• <sup>1</sup> Draft chronology</li> <li>• <sup>1</sup> Draft appeal book indexes</li> </ul>
Certificate	I certify — <ul style="list-style-type: none"> <li>• that in preparing the attached documents I have fully prepared the appellant’s case; and</li> <li>• that in all respects, other than the preparation of the appeal book, the appellant is ready for the hearing of the appeal.</li> </ul>
Time estimate	I estimate it will take    minutes/hours to orally present the appellant’s case at the hearing of this appeal.
Signature of appellant or lawyer	<div style="display: flex; justify-content: space-between;"> <div style="width: 70%;">Appellant/Appellant’s lawyer</div> <div style="width: 25%;">Date:</div> </div>

Notes to Form 7 —

1. Delete this if the appeal is an interlocutory civil appeal or a sentence appeal.

**cl. 8**

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**8.            Respondent’s answer (r. 33)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Respondent’s answer</b>
Parties to the appeal	Appellant Respondent	
Notice	Attached to this form are these documents in this order — <ul style="list-style-type: none"> <li>• Respondent’s submissions</li> <li>• Respondent’s notice of contention</li> <li>• Respondent’s legal authorities</li> <li>• <sup>1</sup> Reply to the appellant’s draft chronology</li> <li>• <sup>1</sup> Reply to the appellant’s draft indexes</li> </ul>	
Certificate	I certify — <ul style="list-style-type: none"> <li>• that in preparing the attached documents I have fully prepared the respondent’s answer; and</li> <li>• that in all respects the respondent is ready for the hearing of the appeal.</li> </ul>	
Time estimate	I estimate it will take    minutes/hours to orally present the respondent’s answer at the hearing of this appeal.	
Signature of respondent or lawyer	Respondent/Respondent’s lawyer	Date:

Notes to Form 8 —

1. Delete this if the appeal is an interlocutory civil appeal or a sentence appeal.

**9. Application in an appeal (r. 44)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Application in an appeal</b>
Parties to the appeal	Appellant Respondent	
Applicant	Appellant/Respondent	
Application <sup>1</sup>	The applicant applies for —	
Conference between parties [Tick one box]	<input type="checkbox"/> The parties to this application have conferred about the issues giving rise to this application and have not resolved them. <input type="checkbox"/> The parties to this application have not conferred about the issues giving rise to this application because <sup>2</sup>	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:

Notes to Form 9 —

1. State —
  - the order or orders sought; and
  - the written law and provision under which the application is made.
2. State the reasons why the parties have not conferred.

**10. Consent notice (r. 45 & 60)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Consent notice</b>
Parties to the appeal	Appellant Respondent	
Consent	We consent to the following order being made —	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

**cl. 11**

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**11.          Affidavit cover sheet (r. 21(3))**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Affidavit<sup>1</sup></b>
Parties to the appeal	Appellant Respondent	
Person making affidavit		
Date made		
Purpose		
Filed by	Appellant/Respondent	
Index <sup>2</sup>	Contents	Page
	<i>1. Affidavit of Vincent van Gogh</i>	<i>1</i>
	<i>2. Annexure VVG 1 — M J Citizen's birth certificate</i>	<i>7</i>
	<i>3. Annexure VVG 2 — Letter from J Smith to T Jones dated 3 March 1999</i>	<i>8</i>

Notes to Form 11 —

1. The affidavit must comply with the RSC Order 37.
2. The index must comply with the RSC Order 37 Rule 2(7). The above form contains in italics an example of an index.

**12.          Request for hearing (r. 19)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Request for hearing</b>
Parties to the appeal	Appellant Respondent	
Request	The appellant/respondent requests a hearing of the matter decided provisionally by [ <i>name of judge</i> ] on [ <i>date</i> ] in this appeal.	
Signature of party requesting or lawyer	Appellant/Respondent/ Appellant's lawyer/Respondent's lawyer	Date:

**13. Application for review of single judge's or registrar's decision  
(r. 8 & 15)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Application for review of single judge's or registrar's decision</b>
Parties to the appeal	Appellant Respondent	
<b>Decision to be reviewed</b>		
Decision maker		
Date of decision		
Brief description		
Applicant	Appellant/Respondent	
Application [*Delete one]	The applicant applies to the *Court of Appeal/a single judge of appeal to set aside or vary the above decision.	
Grounds of this application <sup>1</sup>	1.	
Stay	Is a stay of proceedings needed? Yes/No If yes, state the order and why it is needed:	
Orders wanted		
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:

Notes to Form 13 —

1. Set out the grounds in numbered paragraphs.

**cl. 14**

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**14.      Appeal book, cover page (r. 39(5))**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Green Appeal Book Volume 2 of 3<sup>1</sup></b>
Parties to the appeal	Appellant Respondent	
<b>Appellant's details for service<sup>2</sup></b>		
Name Street address Telephone Email address Reference No.	Fax No.	
<b>Respondent's details for service<sup>2</sup></b>		
Name Street address Telephone Email address Reference No.	Fax No.	

Notes to Form 14 —

1. This must reflect the part [*E.g. White Appeal Book*], and the number of the volume of the part in which the cover page appears. If the part consists of only one volume, omit the reference to "Volume". If the appeal is a sentence appeal and the appeal book is one volume only, this must read "Appeal Book".
2. If the party is represented by a lawyer, these details must be the lawyer's. If the party is self-represented, these details must be the party's personal details.

**15. Notice of hearing date (r. 57)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Notice of hearing date</b>
Parties to the appeal	Appellant Respondent	
Hearing date	This appeal will be heard by the Court of Appeal at [ <i>place</i> ] on [ <i>date</i> ] at [ <i>time</i> ] or as soon after then as possible.	
Time limits	The following time limits will apply to the parties when making oral submissions to the court —	
Signature of registrar	Court of Appeal Registrar	Date:

**16. Discontinuance notice (r. 59)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Discontinuance notice</b>
Parties to the appeal	Appellant Respondent	
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

**cl. 17**

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**17. Certificate of conclusion of criminal appeal (r. 62)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Certificate of conclusion of criminal appeal</b>
Parties to the appeal	Appellant Respondent	
<b>Primary court's decision that was appealed</b>		
Primary court Indictment No. Case name Date of decision Judicial officer		
<b>Result of appeal</b>		
Court of Appeal proceedings <sup>1</sup>	Date(s): Presiding judges of appeal:	
Final outcome <sup>2</sup>	Date:	
Certificate	I certify that the information in this certificate is true and correct.	
Signature	Court of Appeal Registrar	Date:

Notes to Form 17 —

1. Do not complete if appeal is discontinued.
2. Set out the Court of Appeal's judgment and any consequential orders made or, if the appeal was discontinued, that it was discontinued.



**18. Referral of legal issue to Court of Appeal (r. 67)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Referral of legal issue to Court of Appeal</b>
Parties to the primary court case		
Primary court case details <sup>1</sup>	In the [ <i>name of court</i> ] at [ <i>place</i> ] on [ <i>date</i> ],	
Law allowing the referral <sup>2</sup>	This referral is made under:	
Legal issue referred	The following legal issue is referred to the Court of Appeal:	
How the issue arose	The legal issue arose out of the following circumstances:	
Material to be considered <sup>3</sup>	The material that ought to be considered by the Court of Appeal is:	
Signature of judge or person referring	[ <i>Name and title of person referring</i> ]	Date:

Notes to Form 18 —

1. Set out the nature of the primary court case. Examples:
  - ... the accused was indicted on the attached indictment ...
  - ... the plaintiff sued the defendant in negligence ...
2. State the short title and section of the Act under which the referral is being made.
3. List the records, documents, transcripts and exhibits to be considered by the Court of Appeal.

**Notes**

- <sup>1</sup> This is a compilation of the *Supreme Court (Court of Appeal) Rules 2005*. The following table contains information about those rules.

**Compilation table**

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<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Supreme Court (Court of Appeal) Rules 2005</i>	29 Apr 2005 p. 1803-75	2 May 2005 (see r. 2)

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