Version
as at 23 June 2022

Court of Appeal (Civil) Rules 2005

(SR 2005/69)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 21st day of March 2005

Present:
Her Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

Contents

		Page
1	Title	5
2	Commencement	5
	Part 1 **Preliminary and general matters**	
3	Interpretation	5
3A	Transitional, savings, and related provisions	7

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These rules are administered by the Ministry of Justice.

4 Application of rules 7
4A Registry hours and Court holidays 7
4B Emergencies 8
5 Directions 9
5A Registrar's powers 9
6 Effect of non-compliance with rules 10
7 Judge may exercise certain powers under rules or other enactments 10
7A Judges to be identified 11
8 Correction of accidental slip or omission 11
8A Recalling or reopening judgment 11
9 Heading, point size, and margin 11
10 Filing and service of documents 12
10A Practice note about electronic format 14
10B Informal applications 14
11 Affidavits 14
12 Stay of proceedings and execution 15
12A Practice note about electronic format *[Revoked]* 15

Part 2
Applications for leave to appeal

Application of Part

[Revoked]

13 Application of this Part 16

Making applications for leave to appeal

[Revoked]

14 Time for making application for leave 16
15 Form of application for leave 17
16 When application for leave is brought 17
16A Extension of time for applying for leave 17
17 Matters to be stated in application for leave 17
18 Documents and fee that must accompany application for leave 18
19 Leave required for amendments to application for leave 18
19A Respondent must respond to application for leave 18
19B Disposal of application for leave 19

Applications for leave opposed by respondent

[Revoked]

20 Respondent opposes application for leave *[Revoked]* 19
21 Allocation of hearing date *[Revoked]* 20
22 Case for application for leave *[Revoked]* 20
23 Written submissions on contested application for leave 20
24 Bundle of authorities *[Revoked]* 21
25 Oral submissions on application for leave 21

Applications for leave where respondent consents

[Revoked]

26 Respondent consents to application for leave *[Revoked]* 21

Abandonment of applications for leave

[Revoked]

26A Abandonment of applications for leave 22
26B Effect of failing to pay fees of Court 22
26C Court's power to strike out or stay application for leave 23

Determination of applications for leave

[Revoked]

27 Determination of application for leave 23

Part 2A
Interlocutory applications

27A Application of this Part 24
27B Mode of bringing interlocutory application 24
27C Process for disposing of interlocutory applications 25

Part 3
Appeals

Application of Part

28 Application of this Part 25
28A Interpretation in this Part *[Revoked]* 25

Commencement of appeals

29 Time for appeal 25
29A Extension of time for appealing 26
30 Form of appeal 27
31 Mode of bringing appeal 27
31A Documents and fee that must accompany notice of appeal 28
32 Mode of bringing cross-appeal 28
33 Respondent who intends to support decision appealed against on other ground 29
33A Notice of appearance by respondent 29
34 Amendment of grounds of appeal 29

Steps to be taken before hearing

35 Security for costs: general 30
36 Security for costs: legal aid 31
37 Consequences of failure to comply with requirement to pay security for costs or prescribed fees 32
38 Allocation of hearing date 33
39 Obligations of parties in preparing case on appeal 34

39A Case on appeal and other documents must be provided electronically 35
40 Filing and form of case on appeal 35
40A Reuse of case on appeal used for leave application *[Revoked]* 37
40B Evidence included in case on appeal 37
40C Evidence volume 37
40D Exhibits volume 38
40E Written synopsis of argument on appeal 38
41 Written submissions on appeals *[Revoked]* 39
42 Bundle of authorities 39
42A Issues 40

Termination before hearing

43 Appeal abandoned if not pursued 40
44 Abandonment of appeal by party 42
44A Court's power to strike out or stay appeal 42

Matters of evidence and information

45 Application for leave to adduce further evidence 43
46 Court may call for exhibits, etc, and request report from court or tribunal of first instance 43

Part 4
Determination of appeals

47 Appeals to be by way of rehearing 44
47A Outline of oral argument on appeal 44
48 Powers of Court in hearing appeals 44
49 Delivery of judgment 45
50 Notification of result of appeal to other courts 46
51 Judgments to be sealed and dated 47
52 When judgment takes effect 47
52A Repayment of judgment sum and interest 48
52B Disposition of amounts held for security for costs 48

Part 4A
Costs

53 Costs at discretion of Court 48
53A Principles applying to determination of costs 49
53B Categorisation of appeals 50
53C Appropriate daily recovery rates 50
53D Determination of reasonable time 51
53E Increased costs and indemnity costs 51
53F Refusal of, or reduction in, costs 52
53G Principles applying to costs on application for leave to appeal 53
53GA Principles applying to costs on interlocutory applications 54
53H Disbursements 55

53I Joint and several liability for costs 55
53J Costs in court appealed from 55

Part 5
Revocation and transitional provision relating to rules as made

55 Revocation 55
56 Transitional provision relating to rules as made 55

Schedule 1AA 57
Transitional, savings, and related provisions

Schedule 1 59
Forms

Schedule 2 67
Time allocations

Rules

1 Title

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

2 Commencement

These rules come into force on 1 May 2005.

Part 1
Preliminary and general matters

3 Interpretation

(1) In these rules, unless the context otherwise requires,—

affidavit includes an affirmation

appellant includes a person who would, on the giving of leave to appeal, be the appellant in the appeal

application for leave to appeal means an application brought under Part 2

court appealed from means the court or tribunal from which the appeal is brought directly to the Court of Appeal, whether as of right or by leave

Court of Appeal or **Court** means the Court of Appeal of New Zealand

informal application means an application made in the manner described in rule 10B

interlocutory application—

(a) means an application brought under these rules relating to any procedural matter; and

(b) includes an application for an order striking out an appeal; but

(c) does not include—

(i) an application for leave to appeal; or

(ii) an informal application

Judge means a Judge of the Court

legal aid means legal aid under the Legal Services Act 2011

month means a calendar month

Registrar—

(a) means the Registrar of the Court; and

(b) includes a Deputy Registrar of the Court

Registry means the registry of the Court

respondent includes a person who would, on the giving of leave to appeal, be the respondent in the appeal

specified number of court copies means,—

(a) if the case on appeal will be provided electronically under rule 39A(1), 1 paper copy and 1 electronic copy:

(b) if the appeal will be heard by a Court of 3 Judges and the case on appeal will not be provided electronically under rule 39A(1), 4 paper copies:

(c) if the appeal will be heard by a Court of 5 Judges and the case on appeal will not be provided electronically under rule 39A(1), 6 paper copies

specified number of party copies means,—

(a) if the case on appeal will be provided electronically under rule 39A(1), 1 paper copy and 1 electronic copy:

(b) if the case on appeal will not be provided electronically under rule 39A(1), 1 paper copy

working day has the same meaning as in section 4(1) of the Senior Courts Act 2016

(2) In any judgment, order, direction, or other document forming part of a proceeding, unless the context otherwise requires, the terms **month** and **working day** have the same meanings as given to those terms in subclause (1).

Rule 3(1) **affidavit**: inserted, on 1 March 2019, by rule 4(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 3(1) **application for leave to appeal**: inserted, on 1 March 2019, by rule 4(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 3(1) **informal application**: inserted, on 1 March 2019, by rule 4(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 3(1) **interlocutory application**: inserted, on 1 March 2019, by rule 4(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 3(1) **legal aid**: amended, on 1 March 2019, by rule 4(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 3(1) **month**: inserted, on 1 March 2019, by rule 4(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 3(1) **specified number of court copies**: replaced, on 7 April 2022, by rule 4 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 3(1) **specified number of party copies**: replaced, on 7 April 2022, by rule 4 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 3(1) **working day**: replaced, on 1 March 2019, by rule 4(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 3(2): replaced, on 1 March 2019, by rule 4(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Rule 3A: inserted, on 1 March 2019, by rule 5 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

4 Application of rules

(1) These rules apply to all proceedings of the Court, except proceedings to which the Court of Appeal (Criminal) Rules 2001 apply.

(2) *[Revoked]*

Compare: SR 1997/180 r 3

Rule 4(2): revoked, on 1 March 2019, by rule 6 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

4A Registry hours and Court holidays

(1) The Registry must be open from 9 am to 5 pm on every day that is not a Court holiday.

(2) The following are **Court holidays** for the Court and the Registry:

(a) the period beginning on Good Friday and ending on the close of the Tuesday after Easter Monday:

(b) the period beginning on 24 December and ending on the close of 3 January:

(c) Saturdays and Sundays:

(d) the Sovereign's birthday:

(e) Anzac Day:

(f) Labour Day:

(g) Waitangi Day:

(h) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday:

(ha) Te Rā Aro ki a Matariki/Matariki Observance Day:

(i) the day observed as Wellington Anniversary Day:

(j) any day that in Wellington is a public holiday or a day observed by the Government as a holiday:

(k) any day on which the Court or the Registry, or both, are closed under an order made under rule 4B.

(3) The Holidays Act 2003 overrides subclause (2).

(4) The Court may sit on a Court holiday if a Judge considers it desirable to do so.

(5) Despite subclause (4), the Court may sit on a Sunday, Christmas Day, New Year's Day, or Good Friday only if a Judge considers that the business to be carried out by the Court is extremely urgent.

(6) If the Court sits on a Court holiday, it may—

(a) authorise the receipt or issue of any document that complies with these rules; and

(b) authorise the service of any document received or issued under paragraph (a).

(7) The Court has a long vacation, which begins on 20 December and ends on the close of 31 January.

(8) The Court has an Easter vacation, which begins on the Thursday before Good Friday and ends on the close of the Saturday following Easter Sunday.

Rule 4A: inserted, on 7 April 2022, by rule 5 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 4A(2)(ha): inserted, on 23 June 2022, by rule 4 of the Court Rules (Te Kāhui o Matariki Public Holiday) Amendment Rules 2022 (SL 2022/154).

4B Emergencies

(1) The President of the Court of Appeal may order the closure of the Court or the Registry if an emergency exists in the place where the Court or the Registry is located.

(2) The order must specify the dates of the closure, which must not exceed 1 week.

(3) The President of the Court of Appeal may make orders under subclause (1) for consecutive periods.

(4) In this rule, an **emergency** exists in a place if, in respect of that place,—

(a) an emergency is declared, or an epidemic notice is given, under legislation; or

(b) a situation exists that—

(i) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or dis-

ruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and

(ii) affects, or may affect, the operation of the Court or the Registry.

(5) The Registrar must ensure that an order made under subclause (1) is immediately advertised in the manner the President of the Court of Appeal directs.

Rule 4B: inserted, on 7 April 2022, by rule 5 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

5 Directions

(1) The Court may give any directions that seem necessary for the just and expeditious resolution of any matter that arises in a proceeding, whether on application by a party or on the Court's own initiative.

(2) The Court may extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any step in a proceeding on any terms that the Court thinks just.

(3) The Court may exercise a power conferred by subclause (2)—

(a) whether on application by a party or on the Court's own initiative; and

(b) whether for reasons of urgency or for any other reason; and

(c) in the case of an extension of the time referred to in that subclause, whether before or after that time has expired.

(3A) An application under subclause (3)(a) may be an informal application, unless these rules state otherwise.

(4) If any matter arises in a proceeding for which no form of procedure is prescribed by these rules, the Court must dispose of the matter as nearly as practicable in accordance with the provisions of these rules affecting any similar matter, or, if there are no such provisions, in the manner that the Court thinks best calculated to promote the ends of justice.

(5) The Court may give directions to determine the form of documents to be filed in proceedings.

Compare: SR 1997/180 r 25; SR 2004/199 r 5

Rule 5(1): amended, on 1 March 2019, by rule 7(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 5(2): amended, on 7 April 2022, by rule 6 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 5(3A): inserted, on 1 March 2019, by rule 7(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

5A Registrar's powers

(1) The Registrar may, unless otherwise directed by a Judge,—

(a) exercise any power given to the Registrar by these rules, an Act, or regulations:

(b) decline to accept a document for filing—

(i) that contains plainly abusive material unless that material is removed:

(ii) if the Court lacks jurisdiction in the matter to which the document relates:

(c) extend the time for complying with any rule, direction, or order of the Court—

(i) by consent; or

(ii) by up to 5 working days, despite the absence of consent.

(2) The Registrar's power under subclause (1)(c)—

(a) may be exercised before the time for complying with the rule, direction, or order ends or after that time has ended; and

(b) is in addition to any express power to extend time under these rules.

(3) A Judge may—

(a) review the Registrar's exercise of any power, on an informal application made by a person affected within 20 working days after the date of the Registrar's decision; and

(b) confirm, modify, or revoke that decision.

Rule 5A: inserted, on 1 March 2019, by rule 8 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 5A(1)(b)(ii): replaced, on 7 April 2022, by rule 7 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

6 Effect of non-compliance with rules

(1) If a document does not comply with these rules, the document cannot be accepted for filing unless a Judge or the Registrar gives leave for the document to be filed.

(2) An application or an appeal is not invalid merely because there has been a failure to comply with these rules in the course of the application or appeal.

(3) However, the Court may set aside, amend, or deal with the application or appeal, or part of the application or appeal, in any other manner and on any terms that the Court thinks appropriate.

Rule 6: replaced, on 1 March 2019, by rule 9 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

7 Judge may exercise certain powers under rules or other enactments

A Judge may exercise—

(a) any power given to a Judge by these rules or any Act or regulations:

(b) any power exercisable by the Registrar.

Rule 7: replaced, on 1 March 2019, by rule 10 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

7A Judges to be identified

Every judgment, minute, or direction must identify on the face of it the Judge or Judges who made the decision or minute or gave the direction.

Rule 7A: inserted, on 7 August 2006, by rule 4 of the Court of Appeal (Civil) Amendment Rules 2006 (SR 2006/181).

8 Correction of accidental slip or omission

(1) This rule applies if—

(a) any judgment or order contains, or the reasons for any judgment or order contain, a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the Court; or

(b) any judgment or order is drawn up in a way that does not express what was actually decided and intended.

(2) The Court or the Registrar may correct the judgment or order or the reasons for the judgment or order on—

(a) the Court's or Registrar's own initiative; or

(b) an informal application made for that purpose.

(3) The Registrar may correct the judgment or order or the reasons for the judgment or order in accordance with subclause (2) only if the judgment or order in question was made by the Registrar.

Rule 8(1)(a): replaced, on 1 March 2019, by rule 11 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 8(2)(b): amended, on 7 April 2022, by rule 8 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

8A Recalling or reopening judgment

(1) The Court may, on an interlocutory application or on its own initiative, recall or reopen a judgment given in writing or orally, at any time before a formal record of it is drawn up and sealed.

(2) Neither the parties nor their representatives have a right to appear before the Court on an application for a judgment to be recalled or reopened, unless the Court otherwise directs.

Rule 8A: inserted, on 1 March 2019, by rule 12 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

9 Heading, point size, and margin

(1) The first page of each document filed in the Registry must have a heading comprising—

(a) the words "In the Court of Appeal of New Zealand" and, in te reo Māori, the words "I te Kōti Pīra o Aotearoa"; and

(b) the name of each appellant, followed by the word "Appellant"; and

(c) the name of each respondent, followed by the word "Respondent".

(2) Every document must be in legible type of not less than 12 point size or be in neat and legible handwriting.

(3) Every page of a document must have a margin that must be—

(a) at least one quarter of the width of the paper; and

(b) on the left-hand side of the page.

(4) All documents must be printed or handwritten using only 1 side of every page except for authorities and the case on appeal, which may be double-sided.

Compare: SR 1997/180 r 15; SR 2004/199 r 8

Rule 9(1)(a): amended, on 1 March 2019, by rule 13(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 9(2): amended, on 1 March 2019, by rule 13(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 9(3)(b): amended, on 1 March 2019, by rule 13(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 9(4): inserted, on 1 March 2019, by rule 13(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

10 Filing and service of documents

(1) A document may be filed in the Registry—

(a) by delivering it to the Registry by hand; or

(b) by sending it to the Registry—

(i) by mail to a postal address published by the Registrar; or

(ii) in electronic form—

(A) to an electronic address to which the person filing the document has been directed by the Court or the Registrar to send any documents that are to be filed electronically in the proceeding; or

(B) where no such direction has been made in respect of the proceeding, to an electronic address published by the Registrar for the purpose of allowing the electronic filing of documents.

(2) A document may be served on a party—

(a) at the address for service notified by the party in the proceeding in the court appealed from, or at an address for service notified by the party for the purposes of the appeal; or

(b) by sending it by mail to a postal address supplied by the party for the purposes of the appeal; or

(c) by email to an email address supplied by the party for the purposes of the appeal.

(3) If a document is, in accordance with this rule, filed by sending it by mail to the Registry, the document is filed on the day on which the Registry receives it.

(4) If a document is, in accordance with this rule, served by sending it by mail to a postal address, the document is served on the earlier of—

(a) the fifth working day after the day on which it is sent by mail; or

(b) the day on which it is received.

(5) If a document is, in accordance with this rule, filed or served by sending it to an electronic address, the document is filed or served at the time it is received by the relevant electronic communications or information management, retrieval, or storage system.

(6) However, if the document is received by the relevant electronic communications or information management, retrieval, or storage system on a day that is not a working day or at a time that is not between 9 am and 5 pm, the document is filed or served at 9 am on the first working day after that receipt.

(7) The Court may require an original copy of a document filed electronically to be produced.

(7A) Despite subclause (1),—

(a) written submissions (and any accompanying authorities) on a contested application for leave to appeal must be filed in accordance with rule 23; and

(b) written submissions (and any accompanying authorities) on a contested interlocutory application made in accordance with Part 2A must (by virtue of rule 27C) be filed in accordance with rule 23.

(8) Despite subclauses (1) and (2),—

(a) a case on appeal must be filed and served in accordance with rule 40; and

(b) a written synopsis of argument on appeal must be filed and served in accordance with rule 40E; and

(c) a bundle of authorities must be filed and served in accordance with rule 42; and

(d) a list of issues to be determined on the appeal must be filed and served in accordance with rule 42A.

(9) In this rule,—

electronic address means any method by which a document communicated in electronic form may be directed to the attention of a particular user of an electronic communications or information management, retrieval, or storage system, and includes email addresses and remotely accessible locations in file directories located on computer hard drives, servers, or Internet-based servers

published means having been made available at all reasonable times on a website maintained by or on behalf of a Registrar.

Rule 10: replaced, on 20 May 2021, by rule 4 of the Court of Appeal (Civil) Amendment Rules 2021 (LI 2021/84).

Rule 10(7A): inserted, on 7 April 2022, by rule 9 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

10A Practice note about electronic format

If, under these rules, or with the authority of the Court, any document or bundle of documents is to be served or filed electronically by any party, the party must comply with any practice note issued from time to time by the President of the Court of Appeal about electronic format.

Rule 10A: replaced, on 20 May 2021, by rule 5 of the Court of Appeal (Civil) Amendment Rules 2021 (LI 2021/84).

10B Informal applications

(1) Where these rules, or a judgment, order, minute, or other direction of the Court, provides for a party or other person to make an informal application, the party or person may make that application by letter or by email.

(2) The letter or email does not need to be in any particular form.

(3) An informal application made by letter may be hand delivered to the Registry or sent to a postal address published by the Registrar.

(4) An informal application made by email may be sent to an email address published by the Registrar.

(5) A person making an informal application is not required to pay a fee for that application.

Rule 10B: inserted, on 1 March 2019, by rule 15 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

11 Affidavits

(1) Affidavits made in matters heard or pending in the court or tribunal of first instance or in the court appealed from may be used in the Court of Appeal.

(2) The provisions of the High Court Rules 2016 concerning affidavits apply, with any necessary modifications, to affidavits in the Court of Appeal.

(3) Affidavits in the Court of Appeal may be sworn before—

(a) the Registrar; or

(b) any of the persons authorised to take affidavits under rule 9.85 of the High Court Rules 2016.

Compare: SR 1997/180 r 16

Rule 11(2): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 11(3)(b): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

12 Stay of proceedings and execution

(1) None of the matters referred to in subclause (2) operate as—

(a) a stay of a proceeding in which a decision was given; or

(b) a stay of execution of that decision.

(2) The matters are—

(a) an application for leave to appeal; or

(b) the giving of that leave; or

(c) an appeal.

(3) Pending the determination of an application for leave to appeal or an appeal, the court appealed from or the Court may, on an interlocutory application,—

(a) order a stay of the proceeding in which the decision was given or a stay of the execution of the decision; or

(b) grant any interim relief.

(4) An order or a grant under subclause (3) may—

(a) relate to execution of the whole or part of the decision or to a particular form of execution:

(b) be subject to any conditions that the court appealed from or the Court thinks fit, including conditions relating to security for costs.

(5) If the court appealed from refuses to make an order under subclause (3), the Court may, on an interlocutory application, make an order under that subclause.

(6) If the court appealed from makes an order under subclause (3), the Court may, on an interlocutory application, vary or rescind that order.

(7) The Court may, at any time, vary or rescind an order made by it under this rule.

Compare: SR 1997/180 r 9; SR 2004/199 r 30

Rule 12(3): amended, on 1 March 2019, by rule 16 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 12(5): amended, on 1 March 2019, by rule 16 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 12(6): amended, on 1 March 2019, by rule 16 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

12A Practice note about electronic format

[Revoked]

Rule 12A: revoked, on 1 March 2019, by rule 17 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Part 2
Applications for leave to appeal

Application of Part

[Revoked]

Heading: revoked, on 1 March 2019, by rule 18 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

13 Application of this Part

(1) This Part applies if leave of the Court is required before a person may bring an appeal.

(2) *[Revoked]*

(3) In this Part, **leave** includes special leave.

Rule 13(2): revoked, on 7 August 2006, by rule 5 of the Court of Appeal (Civil) Amendment Rules 2006 (SR 2006/181).

Making applications for leave to appeal

[Revoked]

Heading: revoked, on 1 March 2019, by rule 19 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

14 Time for making application for leave

(1) If an enactment provides that the Court of Appeal may give leave to appeal against a decision, an application for that leave must be made to the Court—

(a) within the time specified in the enactment; or

(b) if the enactment does not specify the time within which the application must be made, within the appropriate time specified in subclause (2).

(2) The appropriate time is,—

(a) where leave may be given only by the Court, 20 working days after the date of the decision against which the party wishes to appeal:

(b) where the Court may give leave only if the court appealed from refuses leave, 20 working days after the date of that court's decision refusing leave:

(c) where either the Court or the court appealed from may give leave, 20 working days after the date of the decision against which the party wishes to appeal or, as the case may require, 20 working days after the date of that court's decision refusing leave.

(3) For the purposes of subclauses (1) and (2), the date of a decision is the date on which the decision is given, whether or not—

(a) reasons for the decision are given then or later; or

(b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

(4) A respondent who wishes to cross-appeal must apply for leave to cross-appeal within 10 working days after the date on which a copy of the appellant's application for leave is served on the respondent.

Rule 14: replaced, on 1 March 2019, by rule 20 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

15 Form of application for leave

An application for leave to appeal or cross-appeal must be in form 1 of Schedule 1 or in a form to similar effect.

Rule 15: amended, on 1 July 2008, by rule 11 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

16 When application for leave is brought

(1) An application for leave to appeal is brought only when—

(a) the applicant files the application in the Registry; and

(b) a copy of the application is served on every person who was a party to the proceeding in the court appealed from.

(2) The applicant is responsible for serving the application.

(3) The Registrar must promptly transmit a copy of the application to the Registrar of the court appealed from.

Compare: SR 2004/199 r 13

Rule 16(1)(a): replaced, on 20 May 2021, by rule 6 of the Court of Appeal (Civil) Amendment Rules 2021 (LI 2021/84).

16A Extension of time for applying for leave

(1) If the application for leave to appeal is not brought within the time specified in rule 14, the applicant may file an interlocutory application for an extension of that time.

(2) The applicant must, promptly after filing an application for an extension of time, serve a copy of the application on the respondent.

(3) If an application for leave to appeal has not already been filed, that application and the application for an extension of time may be included in a single application.

(4) Rules 19A, 19B, and 23 apply, with all necessary modifications, to an application under this rule.

Rule 16A: inserted, on 1 March 2019, by rule 21 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

17 Matters to be stated in application for leave

(1) An application for leave to appeal must state—

(a) the specific grounds of the appeal; and

(b) why the Court should give leave; and

(c) the judgment that the applicant seeks for the appeal, if leave is granted.

(2) If the appeal relates only to a part of the decision concerned, that part must be identified in the application.

Compare: SR 2004/199 r 15

18 Documents and fee that must accompany application for leave

(1) An application for leave to appeal must be accompanied by—

(a) a copy of the decision to which the appeal relates; and

(b) a copy of any separate reasons for the decision (if available); and

(c) if that decision was given on appeal, a copy of every decision previously given in the proceeding on matters of relevance to the appeal; and

(d) a copy of any separate reasons for every decision referred to in paragraph (c); and

(e) any affidavit relevant to the application.

(1A) *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the filing fee payable or applying for a waiver of the fee).

(2) The documents referred to in subclause (1)(a) to (d) need not be served.

(3) The applicant must serve an affidavit filed under subclause (1)(e).

Compare: SR 2004/199 r 16

Rule 18 heading: amended, on 7 April 2022, by rule 10(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 18(1A): inserted, on 7 April 2022, by rule 10(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

19 Leave required for amendments to application for leave

(1) A party may amend an application for leave only with the leave of the Court.

(2) In seeking leave to amend the application for leave under subclause (1), the party must, unless the Court otherwise directs, submit a draft of the application that sets out all the proposed grounds and incorporates the amendments sought.

(3) At any time before giving leave to appeal, the Court may grant the party leave to amend the application for leave.

Compare: SR 2004/199 r 21

19A Respondent must respond to application for leave

(1) The respondent must, within 10 working days after the date on which the respondent is served with a copy of the application for leave to appeal, file and serve a memorandum stating whether the respondent consents to or contests the application.

(2) If the respondent contests the application, the memorandum that is filed and served must—

(a) state the grounds of opposition; and

(b) be accompanied by any affidavit relevant to the issues.

(3) If the respondent does not comply with this rule within the time specified in subclause (1), or any extended time permitted under these rules, the applicant must promptly—

(a) notify the Registrar; and

(b) file an affidavit proving service of the application in accordance with these rules.

Rule 19A: inserted, on 1 March 2019, by rule 22 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 19A(1): amended, on 7 April 2022, by rule 11(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 19A(2): amended, on 7 April 2022, by rule 11(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

19B Disposal of application for leave

(1) If the respondent consents to the application for leave to appeal or does not comply with rule 19A, a Judge may give leave to appeal and give any consequential directions.

(2) If the respondent contests the application,—

(a) rules 23 to 27 apply; and

(b) the application must be determined on the papers, unless a Judge otherwise directs.

Rule 19B: inserted, on 1 March 2019, by rule 22 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 19B(1): amended, on 7 April 2022, by rule 12(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 19B(2): amended, on 7 April 2022, by rule 12(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Applications for leave opposed by respondent

[Revoked]

Heading: revoked, on 1 March 2019, by rule 23 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

20 Respondent opposes application for leave

[Revoked]

Rule 20: revoked, on 1 March 2019, by rule 23 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

21 Allocation of hearing date

[Revoked]

Rule 21: revoked, on 1 March 2019, by rule 23 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

22 Case for application for leave

[Revoked]

Rule 22: revoked, on 1 March 2019, by rule 23 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

23 Written submissions on contested application for leave

(1) Where an application under this Part is contested, the applicant must, within 20 working days after filing the application for leave to appeal,—

(a) file in the Registry 3 paper copies, or 1 paper copy and 1 electronic copy, of—

(i) the applicant's written submissions in support of the application; and

(ii) any authorities that the applicant considers are essential to the submissions; and

(b) serve a copy of those written submissions and authorities on the other party.

(2) The applicant's written submissions under subclause (1) must set out, clearly and succinctly,—

(a) a narrative of the facts of the case relevant to the appeal; and

(b) the points of law or fact involved; and

(c) the decision to be appealed against; and

(d) the reason why the Court should give leave to appeal.

(3) A party who wishes to make written submissions in response to the applicant's written submissions must, within 15 working days after the date of being served under subclause (1)(b),—

(a) file 3 paper copies, or 1 paper copy and 1 electronic copy, of—

(i) the party's written submissions; and

(ii) any additional authorities that the party considers are essential to the submissions; and

(b) serve a copy of those written submissions and authorities on the applicant.

(4) In each case, the submissions must be contained in a document of not more than 10 pages, using 1.5 line spacing.

(5) The parties to an application for leave to appeal are not required to prepare a case on appeal for that application.

(6) This rule is subject to any directions that the Court may give.

Rule 23: replaced, on 1 March 2019, by rule 24 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 23(1)(a): replaced, on 7 April 2022, by rule 13(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 23(3)(a): replaced, on 7 April 2022, by rule 13(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

24 Bundle of authorities

[Revoked]

Rule 24: revoked, on 1 March 2019, by rule 25 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

25 Oral submissions on application for leave

(1AA) If a Judge directs that the application for leave to appeal is to be determined by an oral hearing, the Registrar must allocate a hearing date for the application and notify the parties of that date.

(1) Oral submissions made at the hearing of an application for leave to appeal may not exceed—

(a) 15 minutes, in the case of the applicant's opening submission:

(b) 15 minutes, in the case of the respondent's submission:

(c) 5 minutes, in the case of the applicant's submission in reply.

(2) *[Revoked]*

(3) Subclause (1) is subject to any contrary direction given in a particular case by a Judge.

Compare: SR 2004/199 r 24

Rule 25(1AA): inserted, on 1 March 2019, by rule 26(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 25(2): revoked, on 1 March 2019, by rule 26(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Applications for leave where respondent consents

[Revoked]

Heading: revoked, on 1 March 2019, by rule 27 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

26 Respondent consents to application for leave

[Revoked]

Rule 26: revoked, on 1 March 2019, by rule 27 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Abandonment of applications for leave

[Revoked]

Heading: revoked, on 1 March 2019, by rule 28 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

26A Abandonment of applications for leave

(1) An applicant for leave to appeal may, at any time, abandon an application by filing in the Registry a notice advising that the applicant—

(a) does not intend to pursue the application further; and

(b) abandons any right to prosecute the application and the proposed appeal.

(2) The notice must be signed by—

(a) the applicant personally; or

(b) the applicant's lawyer.

(3) The abandonment of an application does not affect the power of the Court or a Judge to make any order as to costs in respect of the application.

Rule 26A: inserted, on 1 January 2011, by rule 4 of the Court of Appeal (Civil) Amendment Rules 2010 (SR 2010/392).

Rule 26A(2)(b): amended, on 1 March 2019, by rule 29 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

26B Effect of failing to pay fees of Court

(1) This rule applies when the Registrar or a Judge determines that the fee payable on filing an application for leave to appeal is not to be waived and the applicant for leave to appeal then fails to comply with regulation 7(2)(a) of the Court of Appeal Fees Regulations 2001.

(2) When this rule applies, the application for leave to appeal is to be treated as abandoned on the expiry of 2 months from the later of the date of the determination of—

(a) the Registrar, under regulation 5 of the Court of Appeal Fees Regulations 2001; or

(b) the Judge, under section 160 of the Senior Courts Act 2016, in circumstances where the applicant for leave to appeal exercised the right to review the Registrar's decision.

(3) A Judge, on an interlocutory application made within 20 working days of the date on which the application for leave to appeal was treated as abandoned under subclause (2), may, if the interests of justice so require, reinstate the application for leave to appeal, but only if the fee has been paid before the application under this subclause is made.

(4) This rule is subject to section 160 of the Senior Courts Act 2016 but overrides rules 5(2) and 6.

Rule 26B: inserted, on 1 January 2011, by rule 4 of the Court of Appeal (Civil) Amendment Rules 2010 (SR 2010/392).

Rule 26B(2)(b): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Rule 26B(3): amended, on 1 March 2019, by rule 30 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 26B(4): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

26C Court's power to strike out or stay application for leave

(1) The Court may, on an interlocutory application or on its own initiative, make an order striking out or staying an application for leave to appeal in whole or in part if—

(a) the applicant is in continuing default in complying with any of these rules or with any procedural direction or order made by a Judge; or

(b) the applicant has failed to prosecute the application with due diligence and dispatch; or

(c) the application is frivolous, vexatious, or otherwise an abuse of the process of the Court.

(2) The Court must—

(a) give the applicant 10 working days' prior notice of its intention to consider making an order under this rule; and

(b) give ancillary directions as to the filing and service of any written submissions.

(3) The Court may make an order under this rule on the papers or after an oral hearing, as the Court thinks fit.

(4) The Court may order a stay under this rule on any terms that the Court thinks appropriate.

Rule 26C: inserted, on 7 April 2022, by rule 14 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Determination of applications for leave

[Revoked]

Heading: revoked, on 1 March 2019, by rule 31 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

27 Determination of application for leave

(1) The Court may—

(a) give leave to appeal; or

(b) refuse to give leave to appeal.

(2) If the Court gives leave to appeal,—

(a) the Court may make the leave subject to any conditions that it considers appropriate, including conditions relating to security for costs; and

(b) the Court may, but does not have to, give its reasons for giving leave.

(3) If the Court refuses to give leave to appeal, it must state its reasons for refusing to give leave to appeal, but those reasons may be stated briefly and in general terms only.

(4) The Court may refuse to give the appellant leave to appeal but may give the respondent leave to cross-appeal, in which case the party who, before the giving of that leave, was the respondent must then be treated as the appellant.

(5) The Registrar must promptly advise the parties and the Registrar of the court appealed from whether or not leave has been given.

Rule 27(2)(b): amended, on 1 March 2019, by rule 32 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Part 2A
Interlocutory applications

Part 2A: inserted, on 1 March 2019, by rule 33 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

27A Application of this Part

All interlocutory applications to the Court (other than an application for leave to appeal under Part 2) must be made in accordance with the rules in this Part, unless these rules provide otherwise or a Judge directs that a different procedure is to be used.

Rule 27A: inserted, on 1 March 2019, by rule 33 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

27B Mode of bringing interlocutory application

(1) An interlocutory application must be in form 3 of Schedule 1 or in a form to similar effect.

(2) The application is brought by—

(a) filing the application in the Registry, with any supporting affidavits; and

(b) promptly serving copies of the documents filed on each other party.

(3) *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the filing fee payable or applying for a waiver of the fee).

Rule 27B: inserted, on 1 March 2019, by rule 33 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 27B(1): amended, on 7 April 2022, by rule 15(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 27B(2)(b): amended, on 7 April 2022, by rule 15(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 27B(3): inserted, on 7 April 2022, by rule 15(3) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

27C Process for disposing of interlocutory applications

Rules 19A to 26A and 27 apply, with all necessary modifications, to an interlocutory application under this Part as if it were an application for leave to appeal.

Rule 27C: inserted, on 1 March 2019, by rule 33 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Part 3
Appeals

Application of Part

28 Application of this Part

This Part applies to—

(a) appeals to the Court as of right; and

(b) appeals to the Court where leave to appeal has been given, except where these rules provide otherwise.

28A Interpretation in this Part

[Revoked]

Rule 28A: revoked, on 7 April 2022, by rule 16 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Commencement of appeals

29 Time for appeal

(1AA) A party must bring an appeal—

(a) within the time specified in the enactment under which the appeal is brought; or

(b) if the enactment does not specify the time within which the appeal must be brought, within the appropriate time specified in subclause (1).

(1) The appropriate time is,—

(a) in the case of an appeal to the Court as of right, within 20 working days after the date of the decision against which the party wishes to appeal; or

(b) in the case of an appeal where leave to appeal or, as the case may be, cross-appeal has been given by the court appealed from or by the Court,—

(i) within the time specified by that court or by the Court when giving leave; or

(ii) if no time was specified by that court or by the Court, within 20 working days after the date of the decision giving leave.

(2) A party who is entitled to bring a cross-appeal to the Court as of right and who wishes to bring the cross-appeal must bring the cross-appeal within 10 working days after the date on which a copy of the notice of appeal is served on the party.

(3) For the purposes of subclause (1), the date of the decision is the date on which the decision is given,—

(a) whether reasons for the decision are then given or are given later; or

(b) whether or not formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

(4) *[Revoked]*

Rule 29(1AA): inserted, on 1 March 2019, by rule 35(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 29(1): amended, on 1 March 2019, by rule 35(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 29(4): revoked, on 1 July 2008, by rule 6 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

29A Extension of time for appealing

(1) If the appeal period prescribed by an enactment or the period prescribed by rule 29(1) or (2) has expired, a party who wishes to appeal may make an interlocutory application for an extension of time in which to appeal.

(2) *[Revoked]*

(3) If the Court or a Judge grants an extension of time, the party wishing to appeal must bring the appeal—

(a) within the time specified by the Court or the Judge when granting the extension; or

(b) if no time is specified by the Court or the Judge, within 20 working days after the day of the decision granting the extension of time.

(4) *[Revoked]*

(5) *[Revoked]*

Rule 29A: inserted, on 1 July 2008, by rule 7 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 29A(1): amended, on 1 March 2019, by rule 36(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 29A(2): revoked, on 1 March 2019, by rule 36(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 29A(3): amended, on 1 March 2019, by rule 36(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 29A(4): revoked, on 1 March 2019, by rule 36(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 29A(5): revoked, on 1 March 2019, by rule 36(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

30 Form of appeal

(1) A notice of appeal or cross-appeal must be in form 2 of Schedule 1 or in a form to similar effect.

(1A) A notice of appeal or cross-appeal must be signed by the appellant or respondent personally or by that party's lawyer.

(2) If a notice of appeal or cross-appeal is defective, a Judge may require the party who has filed the notice to remedy the defect within a specified period of not less than 10 working days.

(3) If the defect is not remedied within the specified period, the appeal is to be treated as having been abandoned.

Rule 30(1): amended, on 1 July 2008, by rule 11 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 30(1A): inserted, on 1 March 2019, by rule 37 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 30(2): added, on 1 April 2008, by rule 6 of the Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17).

Rule 30(3): added, on 1 April 2008, by rule 6 of the Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17).

31 Mode of bringing appeal

(1) An appeal is brought only when—

(a) the appellant files the notice of appeal in the Registry; and

(b) a copy of the notice of appeal is served on every person who is a party to the proceeding in the court appealed from.

(2) The appellant is responsible for serving the notice of appeal.

(3) The Registrar must promptly—

(a) transmit a copy of the notice of appeal to the Registrar of the court appealed from; and

(b) advise the Registrar of that court of the date on which the notice of appeal was filed in the Registry.

(4) If the appeal relates only to a part of the decision concerned, that part must be identified in the notice of appeal.

(5) A notice of appeal is not required if the proceeding is a case stated under the authority of an enactment or is a proceeding removed from the High Court under section 59 of the Senior Courts Act 2016.

(6) If subclause (5) applies, the proceeding will be dealt with in accordance with the directions of a Judge.

Compare: SR 1997/180 r 7

Rule 31(1)(a): replaced, on 20 May 2021, by rule 7 of the Court of Appeal (Civil) Amendment Rules 2021 (LI 2021/84).

Rule 31(5): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Rule 31(6): inserted, on 1 March 2019, by rule 38 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

31A Documents and fee that must accompany notice of appeal

(1) When the notice of appeal is filed, it must be accompanied by—

(a) a copy of the decision to which the appeal relates; and

(b) a copy of any separate reasons for the decision (if available); and

(c) if leave has been granted to appeal that decision, a copy of the decision granting leave; and

(d) a copy of any separate reasons for the decision granting leave referred to in paragraph (c).

(2) *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the filing fee payable or applying for a waiver of the fee).

(3) The documents referred to in subclause (1)(a) to (d) need not be served.

Rule 31A: inserted, on 7 April 2022, by rule 17 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

32 Mode of bringing cross-appeal

(1) A cross-appeal is brought only when—

(a) the respondent files the notice of cross-appeal in the Registry; and

(b) a copy of the notice of cross-appeal is served on every person who is a party to the proceeding in the court appealed from.

(1A) *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the filing fee payable or applying for a waiver of the fee).

(2) The respondent is responsible for serving the notice of cross-appeal.

(3) The Registrar must promptly—

(a) transmit a copy of the notice of cross-appeal to the Registrar of the court appealed from; and

(b) advise the Registrar of that court of the date on which the notice of cross-appeal was filed in the Registry.

(4) If the cross-appeal relates only to a part of the decision concerned, that part must be identified in the notice of cross-appeal.

Compare: SR 1997/180 r 8

Rule 32(1)(a): replaced, on 20 May 2021, by rule 8 of the Court of Appeal (Civil) Amendment Rules 2021 (LI 2021/84).

Rule 32(1A): inserted, on 7 April 2022, by rule 18 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

33 Respondent who intends to support decision appealed against on other ground

(1) If the respondent intends to support the decision appealed against on a ground other than the one upon which it was based, the respondent must, within the time specified in subclause (2), file and serve a memorandum setting out the ground upon which the respondent intends to support the decision appealed against.

(2) The time is 10 working days after the date on which the appellant's notice of appeal is served on the respondent.

(3) If the respondent brings a cross-appeal, the memorandum referred to in subclause (1) may be included in the notice of cross-appeal.

33A Notice of appearance by respondent

(1) The respondent must, within the time specified in subclause (2), file and serve a notice of appearance in form 4 of Schedule 1.

(2) The time is—

(a) 10 working days after the date on which the appellant's notice of appeal is served on the respondent; or

(b) any extended time permitted under these rules.

(3) If the respondent does not comply with subclause (1), the appellant must promptly—

(a) notify the Registrar; and

(b) file an affidavit proving service of the notice of appeal in accordance with these rules.

(4) A respondent who does not comply with subclause (1) is not entitled to be served with notice of any step in the appeal or with copies of any further documents filed in the appeal.

Rule 33A: replaced, on 7 April 2022, by rule 19 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

34 Amendment of grounds of appeal

(1) An appellant may amend the grounds of appeal by filing and serving a memorandum amending those grounds.

(2) However, the grounds of appeal may be amended only by leave of the Court if—

(a) the Registrar has allocated a hearing date under rule 38; or

(b) the appeal to the Court has been brought by leave.

(3) The leave of the Court to amend the grounds of appeal is not required under subclause (2) if the other party consents to the amendment of those grounds.

Steps to be taken before hearing

35 Security for costs: general

(1) This rule applies to every appeal except—

(a) an appeal to which rule 36 applies; and

(b) an appeal where the Court has fixed security for costs under rule 27(2)(a).

(2) The appellant in an appeal to which this rule applies must, within the time specified in subclause (3), pay to the Registrar security for the respondent's costs in the Court.

(3) The time is 20 working days after the notice of appeal has been filed in the Registry.

(4) If there is more than 1 respondent, each of them is entitled to security for their costs in the Court (unless they have the same lawyer, in which case they must be treated, for the purposes of calculating the amount of security, as a single respondent).

(5) The amount of security payable under subclause (2) is—

$$2 \times a$$

where—

a is the daily recovery rate for category 3 proceedings that is specified in Schedule 2 of the High Court Rules 2016.

(6) However, the Registrar may, on application, if satisfied that the circumstances warrant it, make an order—

(a) increasing the amount of security:

(b) reducing the amount of security:

(c) dispensing with security:

(d) deferring the date by which security must be paid.

(7) An application under subclause (6)—

(a) must be made and served within 20 working days after the notice of appeal has been filed in the Registry; and

(b) may be an informal application.

(8) The Registrar must notify the respondent as soon as—

(a) the appellant pays security:

(b) an order is made under subclause (6).

(9) If a respondent has brought a cross-appeal, this rule and rules 36 and 37 must be read as if references to—

(a) an appellant were references to that respondent; and

(b) the appeal were references to the cross-appeal; and

(c) the respondent were references to the respondent on the cross-appeal.

(10) The Registrar may, on an informal application, extend the time for complying with subclause (7)(a).

(11) The Registrar may at any time, on an informal application, revoke any requirement to pay security for costs on proof that the party required to pay security is legally aided.

Compare: SR 1997/180 r 11

Rule 35(4): amended, on 1 March 2019, by rule 40(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 35(5): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 35(7)(b): amended, on 1 March 2019, by rule 40(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 35(10): inserted, on 1 March 2019, by rule 40(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 35(11): inserted, on 1 March 2019, by rule 40(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

36 Security for costs: legal aid

(1) This rule applies to every appeal in which the appellant has applied for, or been granted, legal aid at the time the appeal is brought.

(2) An appellant who has been granted legal aid at the time the appeal is brought does not need to pay security for the respondent's costs in the Court.

(3) An appellant whose application for legal aid has not been determined at the time the appeal is brought does not need to pay security for the respondent's costs in the Court while that application is pending.

(4) As soon as the application is determined, the appellant must promptly give the Registrar and the respondent written advice and proof of the outcome.

(5) If the application is granted, the appellant does not need to pay security for the respondent's costs in the Court.

(6) If the application is declined, or the application is granted but legal aid is later withdrawn, rule 35 applies to the appeal with the following (and any other necessary) modifications:

(a) the time specified in rule 35(3) within which the appellant must pay to the Registrar security for the respondent's costs in the Court is 20 working days after the date on which the appellant's application for legal aid is declined or legal aid is later withdrawn; and

(b) the time specified in rule 35(7)(a) within which an application to the Registrar may be made for the making of an order under rule 35(6) is 20 working days after the date on which the appellant's application for legal aid is declined or legal aid is later withdrawn.

(7) The Registrar may, on an informal application, extend the time for complying with subclause (6)(b).

(8) The Registrar may require an appellant to provide proof that an application for legal aid has been made.

Rule 36(4): amended, on 1 March 2019, by rule 41(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 36(6): amended, on 1 March 2019, by rule 41(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 36(6)(a): amended, on 1 March 2019, by rule 41(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 36(6)(b): amended, on 1 March 2019, by rule 41(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 36(7): inserted, on 1 March 2019, by rule 41(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 36(8): inserted, on 1 March 2019, by rule 41(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

37 Consequences of failure to comply with requirement to pay security for costs or prescribed fees

(1) The Court may, on an interlocutory application or on its own initiative, make an order striking out an appeal if security for costs is not paid by the time payment is due.

(2) The appellant may not apply for the allocation of a hearing date under rule 38(1) if the appellant is in default of any obligation to pay security for costs or prescribed fees.

(3) For the purpose of subclause (2), an appellant is not in default of an obligation to pay security for costs or a prescribed fee if—

(a) a party has applied to the Registrar under rule 35(6) in relation to security for costs, or to the Registrar for a waiver of a fee, and the application has not yet been determined; or

(b) a party has applied for a review of a Registrar's decision on an application referred to in paragraph (a) and the review has not yet been determined; or

(c) a party is seeking leave to appeal or is appealing to the Supreme Court against a decision on a review referred to in paragraph (b), and the application for leave to appeal or the appeal has not yet been determined.

(4) However, if the circumstances in subclause (3)(a), (b), or (c) apply, *see* rule 38(5A).

Rule 37 heading: amended, on 1 March 2019, by rule 42(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 37(1): amended, on 1 March 2019, by rule 42(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 37(2): amended, on 1 March 2019, by rule 42(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 37(3): inserted, on 7 April 2022, by rule 20 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 37(4): inserted, on 7 April 2022, by rule 20 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

38 Allocation of hearing date

(1) A party may, at any time, apply to the Registrar for the allocation of a hearing date.

(2) Subclause (1) is subject to rule 37(2).

(3) The party applying to the Registrar for the allocation of a hearing date (**the applicant**) must, at the same time, supply to the Registrar—

(a) *[Revoked]*

(b) written advice of the estimated time of hearing, which must be expressed as follows:

(i) 1 hour or less; or

(ii) 2 hours or less; or

(iii) a half day (3 hours); or

(iv) 1 day (4.5 hours); or

(v) more than 1 day (specifying the number of days); and

(c) if applicable, a request for the appeal to be heard by a Court of 5 Judges, giving reasons for that request; and

(d) a brief statement of the issues likely to arise on the appeal, including whether any novel point of law or challenge to established authority is involved.

(4) The applicant must promptly serve the other party with a copy of—

(a) the application under subclause (1); and

(b) the written advice under subclause (3)(b); and

(c) any request made under subclause (3)(c); and

(d) the statement of issues under subclause (3)(d).

(5) The Registrar must,—

(a) after consultation with the parties, allocate a hearing date; and

(b) give the parties written notification of that hearing date; and

(c) if a request was made under subclause (3)(c), advise whether the request was granted.

(5A) However, if the circumstances in rule 37(3)(a), (b), or (c) apply and unless directed by a Judge, the Registrar may not allocate a hearing date until—

(a) those circumstances no longer apply; and

(b) the appellant has paid all prescribed fees and security for costs, unless the fees are waived or the requirement for security is dispensed with.

(6) *[Revoked]*

(7) This rule is subject to rule 43.

Compare: SR 1997/180 r 12; SR 2004/199 r 32

Rule 38(3)(a): revoked, on 7 April 2022, by rule 21(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 38(3)(b)(i): replaced, on 1 March 2019, by rule 43(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(3)(b)(ii): replaced, on 1 March 2019, by rule 43(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(3)(b)(iii): replaced, on 1 March 2019, by rule 43(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(3)(b)(iv): replaced, on 1 March 2019, by rule 43(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(3)(b)(v): inserted, on 1 March 2019, by rule 43(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(3)(d): inserted, on 1 March 2019, by rule 43(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(4)(b): replaced, on 1 March 2019, by rule 43(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(4)(c): inserted, on 1 March 2019, by rule 43(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(4)(d): inserted, on 1 March 2019, by rule 43(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(5): amended, on 1 March 2019, by rule 43(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 38(5A): inserted, on 7 April 2022, by rule 21(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 38(6): revoked, on 1 March 2019, by rule 43(5) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

39 Obligations of parties in preparing case on appeal

(1) The appellant must prepare the case on appeal in consultation with the respondent, unless the parties agree otherwise or the Registrar dispenses with this requirement.

(2) The parties may not include in the case on appeal any document that is not relevant to the grounds to be argued on the appeal.

(3) The parties must endeavour to avoid the unnecessary duplication of documents.

(4) If the parties do not agree on whether a document should be excluded, the document must be included but the fact of the disagreement must be noted and may be taken into account for the purpose of fixing costs.

Compare: SR 2004/199 r 34

Rule 39(1): amended, on 1 March 2019, by rule 44 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

39A Case on appeal and other documents must be provided electronically

(1) The case on appeal must be provided electronically unless a Judge directs otherwise.

(2) If the case on appeal must be provided electronically, the written synopsis of argument on appeal, bundle of authorities, and list of issues to be determined in the appeal must also be provided electronically, unless a Judge directs otherwise.

Rule 39A: inserted, on 7 April 2022, by rule 22 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

40 Filing and form of case on appeal

(1) The appellant must—

(a) file the specified number of court copies of the case on appeal in the Registry; and

(b) after complying with paragraph (a), promptly serve the specified number of party copies on the respondent.

(2) The case on appeal must be filed on the earlier of the following:

(a) a date that is within 3 months after the appeal is brought:

(b) a date not later than 30 working days before the date allocated for the hearing of the appeal.

(3) The pages contained in a case on appeal must be A4 in size and every page must be numbered consecutively from volume to volume.

(4) Each volume must—

(a) be bound by cloth binding or by a flexibinding or a spiral binding process; and

(b) be limited to a maximum of 250 pages; and

(c) have a differently coloured title page as the cover showing—

(i) a heading; and

(ii) the names of the lawyers; and

(iii) the address for service of each party; and

(d) have a table of contents that—

(i) appears immediately after the title page; and

(ii) consists of a complete list of all documents contained in the case on appeal; and

(e) have a label that—

(i) is fixed to the spine of the volume in a permanent manner; and

(ii) shows the number of the volume.

(5) If there is more than 1 volume, there is to be a separate volume containing only—

(a) the notice of appeal or the order or orders of the court giving leave; and

(b) any notice of cross-appeal; and

(ba) any memorandum under rule 33; and

(c) the pleadings; and

(d) all relevant decisions that have been made in the proceeding; and

(e) any separate reasons for the decisions described in paragraph (d); and

(f) all relevant orders made in the proceeding.

(6) If the period commencing on 25 December in one year and ending on 15 January in the next year includes any days in the 3-month period calculated in accordance with subclause (2)(a), that 3-month period is extended by the number of those days.

(7) If the 3-month period or any extended period calculated under subclause (6) expires on a non-working day, the 3-month period is deemed to be extended until the next working day.

Rule 40: substituted, on 1 April 2008, by rule 7 of the Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17).

Rule 40(1): replaced, on 1 March 2019, by rule 45(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(2): replaced, on 1 March 2019, by rule 45(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(4)(c): amended, on 1 March 2019, by rule 45(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(4)(c)(ii): amended, on 1 March 2019, by rule 45(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(4)(e): inserted, on 1 March 2019, by rule 45(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(5)(a): amended, on 1 March 2019, by rule 45(5) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(5)(b): replaced, on 1 March 2019, by rule 45(6) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(5)(ba): inserted, on 1 March 2019, by rule 45(6) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(5)(c): amended, on 1 March 2019, by rule 45(5) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(5)(d): amended, on 1 March 2019, by rule 45(5) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(5)(e): amended, on 1 March 2019, by rule 45(5) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(6): inserted, on 1 July 2013, by rule 4(2) of the Court of Appeal (Civil) Amendment Rules 2013 (SR 2013/209).

Rule 40(6): amended, on 1 March 2019, by rule 45(7) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 40(7): inserted, on 1 March 2019, by rule 45(8) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

40A Reuse of case on appeal used for leave application

[Revoked]

Rule 40A: revoked, on 1 March 2019, by rule 46 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

40B Evidence included in case on appeal

(1) If the appeal involves a question of fact, the evidence on the question that was taken in the court appealed from must be included in the case on appeal by showing—

(a) in a volume the evidence given by witnesses (in this rule and in rules 40C and 40D called the **evidence volume**); and

(b) in another volume any related exhibits (in this rule and in rules 40C and 40D called the **exhibits volume**).

(2) Only evidence that is relevant to an issue in the appeal may be shown in the evidence volume or the exhibits volume.

(3) The fact that a witness's evidence or an exhibit has been omitted from the evidence volume or the exhibits volume does not prevent a party from referring to that evidence or exhibit at the hearing of the appeal.

Rule 40B: inserted, on 1 April 2008, by rule 7 of the Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17).

40C Evidence volume

(1) The evidence volume must set out the evidence of witnesses in the order in which the evidence was given and must, for each witness, set it out in the following order:

(a) copies of whichever of the following are applicable:

(i) affidavits:

(ii) written statements:

(iii) transcripts of oral evidence in chief:

(b) transcripts of supplementary evidence in chief (if any):

(c) transcripts of cross-examination (if any):

(d) transcripts of re-examination (if any).

(2) A copy of an affidavit that is included under subclause (1)(a)(i) must be stripped of any exhibits.

(3) If, in an affidavit or in a written statement included under subclause (1)(a), a witness has produced or referred to an exhibit, the affidavit or statement must be marked, in the margin next to the relevant passage, with a cross-reference to the page in the exhibits volume where that exhibit is shown.

(4) The index to the evidence volume must refer, by page number, to the commencement of the evidence in chief, cross-examination, and re-examination of each witness.

Rule 40C: inserted, on 1 April 2008, by rule 7 of the Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17).

40D Exhibits volume

(1) The exhibits volume must set out the exhibits in the following order:

(a) if there was a common bundle of documents, the exhibits included in that bundle, in the order in which they were included in that bundle:

(b) other exhibits, in chronological order, or any other order that is logical for the appeal.

(2) The index to the exhibits volume must show the following details for each exhibit:

(a) the date of the exhibit:

(b) a brief description of the exhibit:

(c) the witness who produced the exhibit, unless the exhibit was in the common bundle of documents:

(d) a cross-reference, by page number, to the evidence volume where—

(i) the production of the exhibit is recorded; or

(ii) if the exhibit was included in the bundle of documents, the first reference to the exhibit is recorded:

(e) the number of the page in the exhibits volume where the exhibit commences.

Rule 40D: inserted, on 1 April 2008, by rule 7 of the Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17).

40E Written synopsis of argument on appeal

(1) Each party must file a written synopsis of argument on appeal as follows:

(a) the appellant's synopsis must be filed and served not later than 25 working days before the allocated hearing date:

(b) the respondent's synopsis must be filed and served not later than 15 working days before the allocated hearing date.

(2) In each case,—

(a) the specified number of court copies must be filed; and

(b) the specified number of party copies must be served.

(3) The synopsis—

(a) must not be longer than 25 pages (including appendices), unless a Judge has given the party prior leave to file a longer synopsis; and

(b) must be in 1.5 line spacing and otherwise comply with the requirements in rule 9; and

(c) must comply with any relevant practice note that the Court may issue; and

(d) must be accompanied by a chronology of key dates, if appropriate.

(4) The Registrar must reject a synopsis if it is longer than 25 pages and is presented for filing without the prior leave of a Judge.

(5) If a party has not included a point in its synopsis, the party may not argue the point at the hearing of the appeal without the leave of the Court.

(6) A respondent who cross-appeals must comply with this rule as if the respondent were the appellant and the appellant were the respondent.

Rule 40E: inserted, on 1 March 2019, by rule 47 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

41 Written submissions on appeals

[Revoked]

Rule 41: revoked, on 1 March 2019, by rule 48 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

42 Bundle of authorities

(1) The appellant must—

(a) prepare a bundle of authorities that consists only of the authorities that the appellant considers essential to the appellant's case; and

(b) file the specified number of court copies of the bundle at the time of filing the synopsis under rule 40E(1)(a); and

(c) serve the specified number of party copies of the bundle on the respondent at the time of filing the synopsis under rule 40E(1)(a).

(2) If the respondent considers that the bundle of authorities filed under subclause (1) does not include authorities that the respondent considers essential to the respondent's case, the respondent must—

(a) prepare a bundle of the additional authorities that the respondent considers essential; and

(b) file the specified number of court copies of the bundle at the time of filing the synopsis under rule 40E(1)(b); and

(c) serve the specified number of party copies of the bundle on the appellant at the time of filing the synopsis under rule 40E(1)(b).

(3) If an official report (for example, NZLR, CLR, AC, or SCR) of a case is available, that report is to be used for the bundle of authorities.

Rule 42: replaced, on 1 March 2019, by rule 49 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

42A Issues

(1) The parties to an appeal must attempt to agree on a list of issues to be determined on the appeal.

(2) If the parties reach agreement, the appellant must, not later than 5 working days before the date allocated for the hearing of the appeal, file and serve on the other party the agreed list of the issues.

(3) If the parties cannot reach agreement, each party must, not later than 5 working days before the date allocated for the hearing of the appeal, file and serve on the other party a list of the issues as the filing party perceives them to be.

(3A) In each case under subclause (2) or (3) (whichever applies),—

(a) the specified number of court copies must be filed; and

(b) the specified number of party copies must be served.

(4) This rule is subject to any contrary direction given by the Court in a particular case.

Rule 42A: inserted, on 1 April 2008, by rule 9 of the Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17).

Rule 42A(3A): inserted, on 1 March 2019, by rule 50 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Termination before hearing

43 Appeal abandoned if not pursued

(1) An appeal is to be treated as having been abandoned if the appellant does not apply for the allocation of a hearing date and file the case on appeal within 3 months after the appeal is brought.

(1A) Subclause (1) is subject to any extension of time under subclause (4) or (5) or granted by the Registrar or the Court under these rules.

(1B) The Registrar may, on an informal application made before the end of the 3-month period referred to in subclause (1), extend that period by periods of up to 1 month at a time if—

(a) the applicant has applied for legal aid and the application has not yet been finally determined or was finally determined within the previous month; or

(b) a party has applied to the Registrar under rule 35(6) in relation to security for costs, or to the Registrar for a waiver of a fee, and the application has not yet been determined or was determined within the previous month; or

(c) a party has applied for a review of a Registrar's decision on an application referred to in paragraph (b) and the review has not yet been determined or was determined within the previous month; or

(d) a party is seeking leave to appeal or is appealing to the Supreme Court against a decision on a review referred to in paragraph (c), and the application for leave to appeal or the appeal has not yet been determined or was determined within the previous month.

(2) The Court, on an interlocutory application, may—

(a) grant an extension of the period referred to in subclause (1); and

(b) grant 1 or more further extensions of any extended period.

(3) The Court may extend a period or an extended period under subclause (2) only if the application for the extension is made—

(a) before the period or extended period ends; or

(b) within 3 months after the period or extended period ends.

(4) If the 3-month period calculated under subclause (1) or (3)(b), or any extended period under this rule, includes any days that fall within the period beginning on 25 December in one year and ending on 15 January in the following year, the 3-month period or extended period is extended by the number of those days.

(5) If the 3-month period calculated under subclause (1) or (3)(b), or any extended period under this rule, ends on a non-working day, the 3-month period or extended period is extended until the next working day.

(6) The fact that an appeal is treated as abandoned under subclause (1) does not affect—

(a) the power of the Court to determine an application for costs; or

(b) the right of a person to enforce an order for costs, irrespective of whether the order for costs is made before or after the appeal is treated as having been abandoned.

(7) An extension of time granted under this rule has the effect of reinstating the appeal as at the date that it was treated as abandoned under subclause (1).

(8) The Registrar's power to extend time under subclause (1B) is additional to the Registrar's power under rule 5A(1)(c).

(9) This rule overrides rules 5(2) and 6.

Compare: SR 1997/180 r 10; SR 2004/199 r 38

Rule 43(1): replaced, on 4 February 2013, by rule 4(1) of the Court of Appeal (Civil) Amendment Rules 2012 (SR 2012/404).

Rule 43(1A): replaced, on 7 April 2022, by rule 23(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 43(1B): replaced, on 7 April 2022, by rule 23(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 43(2): amended, on 1 March 2019, by rule 51(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 43(3): replaced, on 1 March 2019, by rule 51(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 43(4): replaced, on 7 April 2022, by rule 23(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 43(5): replaced, on 7 April 2022, by rule 23(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 43(6): inserted, on 1 March 2019, by rule 51(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 43(7): inserted, on 1 March 2019, by rule 51(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 43(8): amended, on 7 April 2022, by rule 23(3) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 43(9): inserted, on 1 March 2019, by rule 51(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

44 Abandonment of appeal by party

(1) A party may, at any time, abandon an appeal brought by the party by filing in the Registry a notice in form 5 of Schedule 1 and serving a copy of the notice on the respondent.

(2) The notice must be signed by—

(a) the party personally; or

(b) the party's lawyer.

(3) The abandonment of an appeal does not affect the power of the Court to make any order as to costs in respect of the appeal.

Compare: SR 2004/199 r 39

Rule 44(1): replaced, on 1 March 2019, by rule 52(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 44(2)(b): amended, on 1 March 2019, by rule 52(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

44A Court's power to strike out or stay appeal

(1) In addition to any express power in these rules to strike out an appeal, the Court may, on an interlocutory application or on its own initiative, make an order striking out or staying an appeal in whole or in part if—

(a) the appellant is in continuing default in complying with any of these rules or with any procedural direction or order made by a Judge; or

(b) the appellant has failed to prosecute the appeal with due diligence and dispatch; or

(c) the appeal is frivolous, vexatious, or otherwise an abuse of the process of the Court.

(2) The Court must—

(a) give the appellant 10 working days' prior notice of its intention to consider making an order under this rule; and

(b) give ancillary directions as to the filing and service of any written submissions.

(3) The Court may make an order under this rule on the papers or after an oral hearing, as the Court thinks fit.

(4) The Court may order a stay under this rule on any terms that the Court thinks appropriate.

(5) This rule also applies to cross-appeals.

Rule 44A: inserted, on 1 March 2019, by rule 53 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Matters of evidence and information

45 Application for leave to adduce further evidence

(1) The Court may, on the interlocutory application of a party, grant leave for the admission of further evidence on questions of fact by—

(a) oral examination in Court; or

(b) affidavit; or

(c) depositions taken before an examiner or examiners in accordance with rules 9.17 to 9.25 of the High Court Rules 2016.

(2) The parties and their lawyers are entitled to be present at, and take part in, the examination of a witness.

(3) If the application for leave to adduce further evidence is contested, it must be referred to a Judge to determine whether the application is to be heard before or at the substantive hearing of the appeal.

Compare: SR 1997/180 r 24; SR 2004/199 r 40

Rule 45(1): amended, on 1 March 2019, by rule 54(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 45(1)(c): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 45(2): amended, on 1 March 2019, by rule 54(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 45(3): inserted, on 1 March 2019, by rule 54(3) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 45(3): amended, on 7 April 2022, by rule 24 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

46 Court may call for exhibits, etc, and request report from court or tribunal of first instance

(1) The Court may require the court or tribunal of first instance or the court appealed from to provide the Court with any document, exhibit, or thing produced in or connected with the proceeding.

(2) The Registrar must, if the Court so directs, request the Judge of the court of first instance or the presiding officer of the tribunal to provide the Court with any report in writing requested by the Court.

(3) The Registrar must disclose the report—

(a) to the parties unless the Court otherwise directs; and

(b) to any other person on the direction of the Court.

(4) To enable the Judge or presiding officer to prepare the report, the Registrar must provide the Judge or presiding officer with any document concerning the proceeding and in the Registrar's possession if—

(a) the Judge or presiding officer requests the document; or

(b) the Court directs the Registrar to provide the document.

Compare: SR 2004/199 r 41

Part 4
Determination of appeals

47 Appeals to be by way of rehearing

All appeals are to be by way of rehearing.

Compare: SR 1997/180 r 18

47A Outline of oral argument on appeal

(1) Any party may, at the hearing of an appeal, provide the Court with an outline of the oral argument to be advanced at the hearing.

(2) The outline must comply with rule 9.

(3) However, the outline must not be longer than 2 pages.

(4) The outline must be cross-referenced, as appropriate, to the synopsis of the argument, the judgment appealed from, and the case on appeal.

(5) A copy of the outline must be served on the other party not later than 5 pm on the last day before the hearing.

Rule 47A: inserted, on 1 March 2019, by rule 55 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 47A(4): amended, on 7 April 2022, by rule 25 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

48 Powers of Court in hearing appeals

(1) The Court may—

(a) direct the service of a notice of appeal or cross-appeal on—

(i) a party to the proceeding appealed from who has not been served; or

(ii) a person who is not a party; and

(b) in the meantime, postpone or adjourn the hearing of the appeal on any terms that may seem just, and give any judgment and make any orders that might have been given or made if the persons served in this manner had originally been parties.

(2) The Court has all the powers and duties of the court of first instance concerning procedure, including the amendment of pleadings.

(3) The Court may draw inferences of fact.

(4) The Court may give any judgment and make any order which ought to have been given or made, and make any further or other orders that the case may require.

(5) The powers of the Court may be exercised—

(a) even though the notice of appeal or cross-appeal may state that only part of a decision is appealed from; and

(b) in favour of all or any respondents or parties although they may not have appealed from the decision or contended that it should be varied; and

(c) despite any interlocutory ruling or order that has not been appealed.

(6) Nothing in this rule limits any other powers of the Court.

Compare: SR 1997/180 r 19

49 Delivery of judgment

(1) The Court may—

(a) deliver its judgment orally; or

(b) reserve its judgment.

(2) A judgment that is delivered orally is given when a Judge or Judges deliver it in open Court.

(3) A judgment that is reserved may be delivered—

(a) in open Court; or

(b) through the Registrar.

(4) If subclause (3)(a) applies,—

(a) a Judge who was a member of the Court that heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (**delivery time**):

(b) as soon as the Registrar is informed of the delivery time, the Registrar must, as soon as practicable, attempt to notify the parties of the fact that the Court intends to deliver the judgment in open Court and of the delivery time:

(c) any 2 Judges of the Court (whether or not members of the Court that heard the appeal) may, at the delivery time, deliver the judgment on behalf of the Court:

(d) the parties do not need to appear or be represented when the judgment is delivered:

(e) the judgment is given when it is delivered in open Court.

(5) If subclause (3)(b) applies,—

(a) a Judge who was a member of the Court that heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (**delivery time**):

(b) as soon as the Registrar is informed of the delivery time, the Registrar must, as soon as practicable, attempt to notify the parties of the fact that the Court intends to deliver the judgment through the Registrar and of the delivery time:

(c) the judgment must for all purposes be treated as having been given at the delivery time.

(6) The Registrar must, if requested to do so by a party,—

(a) send to the party immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed, a copy of the judgment by email or post; or

(b) make a copy of the judgment available for collecting from the Registry immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed.

(7) If a party who has given an address for service does not make a request under subclause (6), the Registrar must immediately after the delivery time, or in the case of a judgment delivered orally as soon as practicable after the judgment is transcribed, post a copy of the judgment to that party.

(8) A failure by the Registrar to comply with subclause (4)(b), (5)(b), (6), or (7) does not affect the validity of the judgment or its delivery time.

(9) A copy of the judgment signed by at least 1 Judge who was a member of the Court that heard the appeal must be retained by the Registry.

(10) This rule applies to judgments on appeals and applications for leave to appeal. The rule does not apply to minutes, interlocutory orders, or directions.

Rule 49: substituted, on 7 August 2006, by rule 7 of the Court of Appeal (Civil) Amendment Rules 2006 (SR 2006/181).

Rule 49(4)(b): amended, on 1 March 2019, by rule 56(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 49(5)(b): amended, on 1 March 2019, by rule 56(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 49(6)(a): amended, on 1 March 2019, by rule 56(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

50 Notification of result of appeal to other courts

The Registrar must, promptly after the result of an appeal is known, notify that result to the Registrar of the court appealed from and to the Registrar of any other court or tribunal that determined a matter in the proceeding.

Compare: SR 1997/180 r 23; SR 2004/199 r 43

51 Judgments to be sealed and dated

(1) Every judgment must be drawn up in a form approved by the Registrar, who must seal it with the seal of the Court.

(2) Form 6 of Schedule 1 must be used, but may be modified if necessary.

(2A) *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the fee payable or applying for a waiver of the fee).

(2B) Wherever practicable, the party seeking to seal a judgment must first consult the other party or parties about the wording of the judgment and any order for costs or disbursements.

(3) A judgment may be sealed—

(a) in accordance with a direction given by the Court relating to the sealing of the judgment; or

(b) if no direction is given, at any time after the judgment has been given.

(4) Despite subclause (3)(b), a judgment may not be sealed, except with the leave of the Court, if there is an existing application for the recall or reopening of the judgment that has not been determined.

(5) A sealed judgment must state—

(a) the date on which, in accordance with rule 49, the judgment is given; and

(b) the date on which it is sealed.

(6) *[Revoked]*

Rule 51 heading: replaced, on 1 March 2019, by rule 57(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 51(2): replaced, on 7 April 2022, by rule 26 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 51(2A): replaced, on 7 April 2022, by rule 26 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 51(2B): inserted, on 7 April 2022, by rule 26 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 51(6): revoked, on 1 March 2019, by rule 57(4) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

52 When judgment takes effect

(1) A judgment takes effect when it is given.

(2) Unless a Judge otherwise directs, no step may be taken on a judgment before it has been sealed.

(3) A party may apply for leave to appeal to the Supreme Court even though the judgment sought to be appealed against has not been sealed, as long as the party takes steps to ensure that the judgment is sealed promptly after the application for leave is filed.

(4) In this rule,—

(a) subclause (2) overrides subclause (1):

(b) subclause (3) overrides subclause (2).

Rule 52(4): amended, on 1 March 2019, by rule 58 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

52A Repayment of judgment sum and interest

(1) If an appellant has, in accordance with a judgment of a court appealed from, paid a judgment debt and any interest payable on that debt, and the appellant successfully appeals from that judgment, the Court may make the orders described in subclause (2).

(2) The Court may, in its discretion, make any orders that seem just concerning—

(a) the repayment of the amount paid by the appellant; and

(b) the payment of interest to the appellant on the amount paid by the appellant under the judgment during the period commencing on the date of the payment and ending with the date of the repayment.

Compare: SR 1997/180 r 22; SR 2004/199 r 45

Rule 52A (former rule 54): renumbered, on 1 March 2019, by rule 64 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

52B Disposition of amounts held for security for costs

(1) After the Court delivers its judgment on an appeal, the Registrar must ask the parties to the appeal to advise the Registrar on how the amount held as security for costs (if any) should be disposed of.

(2) The Registrar, after considering the parties' advice and if satisfied that there is no reason for the amount to be disposed of in any other way, may direct that the money be disposed of by—

(a) refunding it to the appellant, if the appeal was successful; and

(b) paying it to the respondent, if the appeal was unsuccessful.

(3) If the Registrar is not satisfied as required under subclause (2), the Registrar must direct how the amount is otherwise to be disposed of.

Rule 52B: inserted, on 1 March 2019, by rule 59 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Part 4A
Costs

Part 4A heading: inserted, on 1 March 2019, by rule 60 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

53 Costs at discretion of Court

The Court may, in its discretion, make any orders that seem just concerning the whole or any part of the costs and disbursements of—

(a) an appeal; or

(b) an application for leave to appeal; or

(c) an interlocutory application.

Rule 53: substituted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53(c): inserted, on 7 April 2022, by rule 27 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

53A Principles applying to determination of costs

(1) Subject to the overriding discretion conferred on the Court by rule 53, in making awards of costs the Court should normally be guided by the following general principles:

(a) the party who fails with respect to an appeal should pay costs to the party who succeeds:

(b) an award of costs should reflect the complexity and significance of the appeal:

(c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the appeal:

(d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the appeal:

(e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the actual lawyer involved, or on the time actually spent by the lawyer involved, or on the costs actually incurred by the party claiming costs:

(f) an award of costs should not exceed the costs incurred by the party claiming costs:

(g) so far as possible, the determination of costs should be predictable and expeditious.

(2) The principles applying to costs on applications for leave to appeal in rule 53G and the principles applying to costs on interlocutory applications in rule 53GA override the principles in this rule to the extent that the principles in those provisions are inconsistent with or modify the principles in this rule.

Compare: 1908 No 89 Schedule 2 r 47

Rule 53A: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53A(1)(e): amended, on 1 March 2019, by rule 61(1) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 53A(2): inserted, on 1 March 2019, by rule 61(2) of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

53B Categorisation of appeals

(1) For the purposes of rule 53A(1)(b), appeals may be classified as falling within one of the following 2 categories:

(a) standard appeals, which are appeals of average complexity requiring counsel of skill and experience considered average in the Court of Appeal:

(b) complex appeals, which are appeals that because of their complexity or significance require senior counsel.

(2) The Court or a Judge may at any time determine in advance the applicable category in relation to an appeal.

Compare: 1908 No 89 Schedule 2 r 48

Rule 53B: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53B(1): amended, on 7 April 2022, by rule 28 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

53C Appropriate daily recovery rates

(1) For the purposes of rule 53A(1)(c), the following are the appropriate daily recovery rates for the categories of appeal referred to in rule 53B:

(a) for a standard appeal, the current rate for a category 2 proceeding in the High Court, as set out in Schedule 2 of the High Court Rules 2016:

(b) for a complex appeal, the current rate for a category 3 proceeding in the High Court, as set out in Schedule 2 of the High Court Rules 2016, together with any uplift of up to 50% that the Court considers appropriate.

(2) If the rate for a category 2 or 3 proceeding in the High Court Rules 2016 is altered by amendment to the High Court Rules 2016, the new rate applies under these rules on and from the date the alteration comes into force.

(3) The appropriate daily recovery rates are calculated, in accordance with the principle referred to in rule 53A(1)(d), on the basis of being two-thirds of the actual daily rates referred to in that paragraph.

Compare: 1908 No 89 Schedule 2 r 48A

Rule 53C: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53C(1): amended, on 7 April 2022, by rule 29(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 53C(1)(a): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 53C(1)(b): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 53C(2): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 53C(3): amended, on 7 April 2022, by rule 29(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

53D Determination of reasonable time

(1) For the purposes of rule 53A(1)(c), a reasonable time for a step in an appeal is—

(a) the time specified for it in Schedule 2; or

(b) the time assessed as likely to be required for the particular step, if Schedule 2 does not apply.

(2) A determination of what is a reasonable time for a step under subclause (1)(a) must be made by reference—

(a) to band A, if a normal amount of time for the particular step is considered reasonable; or

(b) to band B, if a comparatively large amount of time for the particular step is considered reasonable.

Compare: 1908 No 89 Schedule 2 r 48B

Rule 53D: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53D(1): amended, on 7 April 2022, by rule 30 of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

53E Increased costs and indemnity costs

(1) Despite rules 53A to 53D, the Court may make an order—

(a) increasing costs otherwise payable under those rules (**increased costs**); or

(b) that the costs payable are the actual costs and disbursements reasonably incurred by a party (**indemnity costs**).

(2) The Court may order a party to pay increased costs if—

(a) the nature of the appeal or the step in it is such that the time required by the party claiming costs would substantially exceed the time allocated under band B; or

(b) the party opposing costs has contributed unnecessarily to the time or expense of the appeal or step in it by—

(i) failing to comply with these rules or a direction of the Court; or

(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to accept a legal argument; or

(iv) failing, without reasonable justification, to accept an offer to settle or dispose of the appeal; or

(c) the appeal concerned a matter of public interest and it was reasonably necessary for the party claiming costs to bring the appeal or participate in the appeal in the interests of the public or a section of the public; or

(d) some other reason exists which justifies the Court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

(3) The Court may order a party to pay indemnity costs if—

(a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending an appeal or a step in an appeal; or

(b) the party has ignored or disobeyed an order or direction of the Court or breached an undertaking given to the Court or another party; or

(c) costs are payable from a fund, the party claiming costs is a necessary party to the appeal affecting the fund, and the party claiming costs has acted reasonably in the appeal; or

(d) the person in whose favour the order of costs is made was not a party to the appeal and has acted reasonably in relation to it; or

(e) the party claiming costs is entitled to indemnity costs under a contract or deed; or

(f) some other reason exists which justifies the Court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

(4) If the Court makes an order that a party pay indemnity costs, it may order that the costs be subject to taxation (a **taxation order**).

(5) If the Court makes a taxation order, the taxation must be carried out by the Registrar.

(6) Rules 14.18 to 14.23 of the High Court Rules 2016 apply to any such taxation, with all necessary modifications.

Compare: 1908 No 89 Schedule 2 r 48C

Rule 53E: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53E(6): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

53F Refusal of, or reduction in, costs

Despite rules 53A to 53D, the Court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if—

(a) the nature of the appeal or the step in the appeal is such that the time required by the party claiming costs will be substantially less than the time allocated under band A; or

(b) the property or interests at stake in the appeal were of exceptionally low value; or

(c) the issues at stake were of little significance; or

(d) although the party claiming costs has succeeded overall, that party has failed in relation to an issue which significantly increased the costs of the party opposing costs; or

(e) the appeal concerned a matter of public interest and the party opposing costs acted reasonably in the conduct of the appeal; or

(f) the party claiming costs has contributed unnecessarily to the time or expense of the appeal or step in it by—

(i) failing to comply with these rules or a direction of the Court; or

(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to accept a legal argument; or

(iv) failing, without reasonable justification, to accept an offer to settle or dispose of the appeal; or

(g) some other reason exists which justifies the Court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: 1908 No 89 Schedule 2 r 48D

Rule 53F: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

53G Principles applying to costs on application for leave to appeal

(1) If the Court refuses to give leave to appeal, the applicant will normally be liable for costs in accordance with the principle stated in rule 53A(1)(a).

(2) If the need for an application for leave to appeal arises from a default on the applicant's part, the respondent will normally be entitled to costs with respect to the application at the time it is determined, unless the respondent's opposition to it was in the circumstances unreasonable, in which case there will normally be no order as to costs.

(3) If the need for an application for leave to appeal does not arise from a default on the applicant's part and the Court gives leave to appeal, the Court will normally reserve costs pending the outcome of the appeal.

(4) If the Court gives leave to appeal but the appeal is subsequently dismissed, the respondent will normally be entitled to costs with respect to the application for leave to appeal (if reserved).

(5) The following provisions apply where an appeal is allowed following a determination by the Court to give leave and to reserve costs with respect to the application for leave to appeal (the **application**):

(a) if the respondent consented to the application, the respondent will normally be entitled to costs with respect to the application:

(b) if the respondent contested the application, there will normally be no award of costs with respect to the application, unless the respondent's opposition was in the circumstances unreasonable, in which case the respondent will normally be liable for costs with respect to the application.

(5A) The costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the application for leave to appeal.

(5B) For the purposes of subclause (5A), a reasonable time for a step in an interlocutory application is—

(a) the time specified for it in Schedule 2; or

(b) if Schedule 2 does not apply, the time assessed as likely to be required.

(6) In this rule, an **application for leave to appeal** includes an application for an extension of time under rule 29A.

Rule 53G: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53G(1): amended, on 7 April 2022, by rule 31(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 53G(5)(b): amended, on 7 April 2022, by rule 31(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Rule 53G(5A): inserted, on 1 March 2019, by rule 62 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Rule 53G(5B): inserted, on 1 March 2019, by rule 62 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

53GA Principles applying to costs on interlocutory applications

(1) The principles applying to costs on an interlocutory application are the same as the principles applying to costs on an application for leave to appeal, and rule 53G applies, with all necessary modifications, to an interlocutory application under Part 2A as if it were an application for leave to appeal.

(2) The costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the interlocutory application.

(3) For the purposes of subclause (2), a reasonable time for a step in an interlocutory application is—

(a) the time specified for it in Schedule 2; or

(b) if Schedule 2 does not apply, the time assessed as likely to be required.

Rule 53GA: inserted, on 1 March 2019, by rule 63 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

53H Disbursements

(1) The Court may direct the Registrar to exercise the Court's powers to order a party (**party A**) to pay another party (**party B**) disbursements.

(2) If the Court orders party A to pay party B usual disbursements, the order—

(a) encompasses—

(i) party B's disbursements as defined in rule 14.12(1) of the High Court Rules 2016; and

(ii) party B's counsel's reasonable travelling and accommodation expenses; and

(b) is taken to empower the Registrar to fix the types and amounts of disbursements if the parties are unable to agree on them.

Rule 53H: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Rule 53H(2)(a)(i): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

53I Joint and several liability for costs

The liability of each of 2 or more parties ordered to pay costs is joint and several, unless the Court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 50

Rule 53I: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

53J Costs in court appealed from

Nothing in rules 53 to 53I affects the Court's powers with respect to quashing or varying any orders for costs made in the court appealed from.

Rule 53J: inserted, on 1 July 2008, by rule 8 of the Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141).

Part 5
Revocation and transitional provision relating to rules as made

Part 5 heading: amended, on 1 March 2019, by rule 65 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

55 Revocation

The Court of Appeal (Civil) Rules 1997 are revoked.

56 Transitional provision relating to rules as made

(1) These rules apply to—

(a) all existing proceedings; and

(b) all proceedings brought on or after the date of commencement of these rules.

(2) Despite subclause (1)(a), these rules do not apply to an existing proceeding if the Registrar or a Judge, on an application made in accordance with subclause (4), considers that the application of these rules to the proceeding, or to any particular matter or step in the proceeding, would lead to an unjust result.

(3) If these rules do not apply to an existing proceeding, the Court of Appeal (Civil) Rules 1997 (as in force immediately before the commencement of these rules) apply—

(a) despite their revocation by rule 55; and

(b) as if these rules had not been made.

(4) An application under subclause (2) may be made on an informal basis.

(5) In this rule, **existing proceeding** means a proceeding brought before the date of commencement of these rules.

Rule 56 heading: amended, on 1 March 2019, by rule 66 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Schedule 1AA
Transitional, savings, and related provisions

r 3A

Schedule 1AA: inserted, on 1 March 2019, by rule 67 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Part 1
Provisions relating to Court of Appeal (Civil) Amendment Rules 2018

1 Interpretation

In this Part,—

amended rules means the Court of Appeal (Civil) Rules 2005 as in force immediately after the commencement of the amendment rules

amendment rules means the Court of Appeal (Civil) Amendment Rules 2018

specified appeal means—

(a) an appeal that is in progress at the time the amendment rules commence; and

(b) includes an application for leave to appeal made before the amendment rules commence and which is pending or in progress at the time of the commencement.

2 Transitional provision

(1) Specified appeals may be continued and completed under the amended rules, and the amended rules, so far as practicable, apply to those appeals.

(2) However, to the extent that it is not practicable for any provision of the amended rules to be applied to a specified appeal, the rules as in force immediately before the commencement of the amendment rules, apply to the extent necessary.

(3) If, in any specified appeal, a question arises as to the application of any of the amended rules or the rules as in force immediately before the commencement of the amendment rules, the Court or, on the direction of the Court, the Registrar may determine the question and make any order that the Court or the Registrar (as the case may be) thinks fit.

Part 2
Provision relating to Court of Appeal (Civil) Amendment Rules 2022

Schedule 1AA Part 2: inserted, on 7 April 2022, by rule 32(a) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

3 Transitional provision

For the purposes of the amendments made to these rules (the **principal rules**) by the Court of Appeal (Civil) Amendment Rules 2022, clause 2 applies as if—

(a) **amended rules** means the principal rules as in force immediately after the commencement of the Court of Appeal (Civil) Amendment Rules 2022; and

(b) **amendment rules** means the Court of Appeal (Civil) Amendment Rules 2022; and

(c) **specified appeal**—

(i) means an appeal that is in progress at the time the Court of Appeal (Civil) Amendment Rules 2022 commence; and

(ii) includes an application for leave to appeal made before the Court of Appeal (Civil) Amendment Rules 2022 commence and that is pending or in progress at the time of the commencement.

Schedule 1AA clause 3: inserted, on 7 April 2022, by rule 32(a) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Schedule 1
Forms

rr 15, 27B, 30, 33A, 44(1), 51

Schedule 1: replaced, on 1 March 2019, by rule 68 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Form 1
Application for leave to bring civil appeal

r 15

(Insert the standard heading as specified in rule 9)

The appellant gives notice of an application for [*special*] leave to appeal to the Court against [*state particulars of the decision against which the appellant wishes to appeal, including the date on which, and the court where, it was given*].

The appellant seeks to appeal against [*state whether the appellant wishes to appeal against all or part of the decision; if just part, identify that part*].

The appellant makes the application for [*special*] leave under section [*number*] of the [*name*] Act [*year*].

*The appellant applied for leave to appeal to the Court of Appeal in the [*name*] Court, but that application was declined on [*date*].

or

*The specific grounds of the appeal are [*state grounds*].

*Select whichever statement applies.

The Court of Appeal should grant the appellant leave to appeal because [*state reasons*].

The judgment the appellant seeks from the Court of Appeal, if leave is granted, is [*specify the form of judgment the appellant seeks*].

The appellant relies on the following affidavit(s) in support of the application for leave:

> [*State the name of the deponent/s and the date on which each deponent swore their affidavit*.]

*The appellant is legally aided.

*The appellant is not legally aided.

*The appellant has applied for legal aid.

*Select whichever statement applies.

Date:

Signature of appellant or appellant's lawyer:

The appellant's address for service is [*insert address*]:

.....

Notes

1 In the case of an application for leave to cross-appeal, modify this form as appropriate.

2 An application for leave must be accompanied by—

(a) a copy of the decision to which the appeal relates; and

(b) a copy of any separate reasons for the decision (if available); and

(c) if that decision was given on appeal, a copy of every decision previously given in the proceeding on matters of relevance to the appeal; and

(d) a copy of any separate reasons for every decision referred to in paragraph (c); and

(e) any affidavit relevant to the application.

3 *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the filing fee payable or applying for a waiver of the fee).

Schedule 1 form 1: replaced, on 1 March 2019, by rule 68 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Schedule 1 form 1 heading: amended, on 7 April 2022, by rule 33(1) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Schedule 1 form 1: amended, on 7 April 2022, by rule 33(2) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Form 2
Notice of appeal

r 30

(Insert the standard heading as specified in rule 9)

The appellant in the proceeding identified above, [*full name*], gives notice that the appellant is appealing to the Court against [*state particulars of the decision against which the appellant wishes to appeal, including the date on which, and the court where, it was given; if that decision was given on appeal, also state particulars of every decision previously given in the proceeding on matters relevant to that appeal, and the date on which, and the court where, the decision (or each decision) was given*].

1 The specific grounds of the appeal are:

[*If the appeal is brought by leave and the court giving leave has set out the grounds of, or questions on, appeal, those grounds or questions must be specified.*]

2 The appellant seeks the following judgment from the Court of Appeal:

*The appellant is bringing this appeal pursuant to leave to appeal given by the [*name of court*] on [*date*].

*The appellant is legally aided.

*The appellant is not legally aided.

*The appellant has applied for legal aid.

*Select whichever statement applies.

Date:

Signature of appellant or appellant's lawyer:

The appellant's address for service is [*insert address*]:

Notes

1 In the case of a cross-appeal, modify this form as appropriate.

2 If the appeal or cross-appeal relates only to a part of the decision appealed against, that part must be identified in this notice: see rules 31(4) and 32(4).

3 If the appellant has applied for legal aid for this appeal, the appellant must promptly give the Registrar written notice of the outcome of the application for legal aid.

4 A notice of appeal must be accompanied by—

(a) a copy of the decision to which the appeal relates; and

(b) a copy of any separate reasons for the decision (if available); and

(c) if leave has been granted to appeal that decision, a copy of the decision granting leave; and

(d) a copy of any separate reasons for the decision granting leave referred to in paragraph (c).

5 *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the filing fee payable or applying for a waiver of the fee).

Schedule 1 form 2: replaced, on 1 March 2019, by rule 68 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Schedule 1 form 2: amended, on 7 April 2022, by rule 33(3) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Form 3
Interlocutory application[1]

r 27B

(Insert the standard heading as specified in rule 9)

The appellant, [*full name*], gives notice of an application for—

1 [*State the order(s) sought, with precision*.]

2 The grounds for the application are [*state grounds with precision*].

3 The appellant relies on the following affidavit(s) (if any) in support of the application:

[*State the name of the deponent/s and the date on which each deponent swore their affidavit*.]

4 The application is made in reliance on [*specify the rule or enactment under which the application is made and any relevant judicial authorities*].

Date:

Signature of appellant or appellant's lawyer:

[1]Use this form for all applications except an application for leave to appeal under Part 2.

Notes

1 An interlocutory application must be accompanied by any supporting affidavits.

2 *See also* the Court of Appeal Fees Regulations 2001 (for provisions about the filing fee payable or applying for a waiver of the fee).

Schedule 1 form 3: replaced, on 1 March 2019, by rule 68 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Schedule 1 form 3: amended, on 7 April 2022, by rule 33(4) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Form 4
Appearance by respondent

r 33A

(Insert the standard heading as specified in rule 9)

1 The respondent [*name*] gives notice of appearance in respect of this appeal.

2 The respondent's address for service of any documents or notices in connection with the appeal is—

- [*specify address*]
- [*specify any email address*]
- [*specify any telephone or mobile number*]

Date:

Signature of respondent or respondent's lawyer:

Note

If the respondent does not file and serve this notice of appearance within 10 working days after the date on which the notice of appeal was served on them or any extended time permitted under these rules, they will not be entitled to be served with notice of any step in the appeal or with copies of any further documents filed in the appeal.

Schedule 1 form 4: inserted, on 1 March 2019, by rule 68 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Schedule 1 form 4: amended, on 7 April 2022, by rule 33(5) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Form 5
Abandonment of appeal

r 44(1)

(Insert the standard heading as specified in rule 9)

1 The appellant gives notice abandoning this appeal.

2 Costs in respect of the abandonment are agreed/not agreed*.

*Select one.

Date:

Signature of appellant or appellant's lawyer:

Schedule 1 form 5: inserted, on 1 March 2019, by rule 68 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Form 6
Judgment for sealing

r 51

(Insert the standard heading as specified in rule 9)

At [*time*] on [*date*], the Court of Appeal of New Zealand, comprising the Honourable Justice [*name*], the Honourable Justice [*name*], and the Honourable Justice [*name*], delivered a judgment on an appeal from a decision of [*court appealed from*] given on [*date of decision appealed against*].

The Court of Appeal determined [*state the terms of the judgment*]:

(Deputy) Registrar

Sealed on: [*date*]

Notes

1 *See* the Court of Appeal Fees Regulations 2001 (for provisions about the fee payable or applying for a waiver of the fee).

2 Wherever practicable, the party seeking to seal a judgment must first consult the other party or parties about the wording of the judgment and any order for costs or disbursements.

3 If the judgment contains an order for costs or disbursements,—

(a) include a further paragraph in the judgment for sealing, beneath the terms of the judgment, stating that the costs and disbursements referred to in the judgment are as set out in the attached schedule; and

(b) itemise the costs or disbursements in a schedule attached to the judgment for sealing; and

(c) provide receipts or other evidence of any disbursements to the Registrar for verification.

Schedule 1 form 6: inserted, on 1 March 2019, by rule 68 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

Schedule 1 form 6: amended, on 7 April 2022, by rule 33(6) of the Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60).

Schedule 2
Time allocations

rr 53D(1), 53G(5B), 53GA(3)

Schedule 2: replaced, on 1 March 2019, by rule 69 of the Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253).

	Step in relation to application for leave to appeal, interlocutory application, or appeal	**Time allocated for step**	
		Band A	**Band B**
Applications for leave to appeal			
1	Commencement of application for leave to appeal	1.0	1.5
2	Commencement of application for leave to cross-appeal	0.4	0.6
3	Preparation of memorandum of opposition to appeal in item 1 or 2	0.4	0.6
4	Preparation for hearing of defended application	1.0	2.0
5	Preparation of consent memorandum	0.2	0.2
6	Appearance at hearing of defended application	Appearance in Court measured in half days	
7	Second and subsequent counsel if allowed by Court	50% of allowance for appearance for principal counsel	
All other interlocutory applications			
8	Commencement of application	0.5	1.0
9	Preparation of memorandum of opposition	0.2	0.4
10	Preparation of consent memorandum	0.2	0.2
11	Preparation for hearing of application	0.5	1.5
12	Appearance at hearing of defended application	Appearance in Court measured in half days	
13	Second and subsequent counsel if allowed by Court	50% of allowance for appearance for principal counsel	
Appeals			
14	Commencement of appeal—		
	(a) as of right	1.5	2.0
	(b) following giving of leave	0.5	0.5
15	Preparation of case on appeal	1.0	2.0
16	Preparation for and attendance at pre-hearing or case management conference	0.3	0.3
17	Preparation for hearing of appeal	3.0	6.0
18	Appearance at hearing of appeal	Appearance in Court measured in days	
19	Second and subsequent counsel if allowed by Court	50% of allowance for appearance for principal counsel	

Rebecca Kitteridge,
Acting for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 24 March 2005.

Court of Appeal (Civil) Amendment Rules (No 2) 2008

(SR 2008/141)

Anand Satyanand, Governor-General

At Wellington this 26th day of May 2008

Present:
His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

Rules

1 Title

These rules are the Court of Appeal (Civil) Amendment Rules (No 2) 2008.

2 Commencement

These rules come into force on 1 July 2008.

9 Transitional provision

(1) Rules 53 to 53J of the principal rules as substituted by rule 8 of these rules apply to any costs determination made after the commencement of these rules, regardless of whether the step in respect of which costs are determined occurred before that commencement.

(2) Despite subclause (1), if after the commencement of these rules the Court makes an order as to costs in respect of an appeal wholly heard before that commencement, the order must be made as if rule 8 had not been made.

Martin Bell,
for Clerk of the Executive Council.

Date of notification in *Gazette*: 29 May 2008.

Reprints notes

1 General

This is a reprint of the Court of Appeal (Civil) Rules 2005 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Court Rules (Te Kāhui o Matariki Public Holiday) Amendment Rules 2022 (SL 2022/154): rule 4

Court of Appeal (Civil) Amendment Rules 2022 (SL 2022/60)

Court of Appeal (Civil) Amendment Rules 2021 (LI 2021/84)

Court of Appeal (Civil) Amendment Rules 2018 (LI 2018/253)

Senior Courts Act 2016 (2016 No 48): section 183(b), (c)

Court of Appeal (Civil) Amendment Rules 2013 (SR 2013/209)

Court of Appeal (Civil) Amendment Rules 2012 (SR 2012/404)

Court of Appeal (Civil) Amendment Rules 2010 (SR 2010/392)

Court of Appeal (Civil) Amendment Rules (No 2) 2008 (SR 2008/141)

Court of Appeal (Civil) Amendment Rules 2008 (SR 2008/17)

Court of Appeal (Civil) Amendment Rules 2006 (SR 2006/181)

Wellington, New Zealand:
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