



Government Gazette

of the State of

New South Wales

**Number 197–Parliament, Ministerial, Courts and Police
Friday, 5 May 2023**

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Practice Note No. SC CA 1

Court of Appeal

1. This Practice Note was issued on 1 May 2023 and commences on 8 May 2023. It replaces the previous Practice Note issued on 13 December 2017.
2. The procedural rules for appeals are contained in Part 51 of the Uniform Civil Procedure Rules 2005 (NSW) (UCPR). All parties to proceedings in the Court of Appeal are required to comply with the requirements of the rules which contain detailed provisions governing appeals. The procedural rules for judicial review are contained in [Part 59](#) of the UCPR. This practice note makes additional provision for the preparation and conduct of proceedings in the Court of Appeal.

LEAVE TO APPEAL

3. Appeals from the Supreme Court, District Court, Dust Diseases Tribunal and Presidential Members of the Personal Injury Commission are subject to monetary limits. Appeals from final money judgments involving amounts of less than the monetary limit (in the case of the Supreme Court and the District Court, \$100,000) only lie with leave. Leave is also required to appeal from final decisions where the value of the matter in issue does not exceed the monetary limit: [s 101\(2\)\(r\)](#) of the *Supreme Court Act 1970* (NSW). Evidence may be led as to the value of the matter at issue in a proposed appeal: see *Gaynor v Attorney General of New South Wales* (2020) 102 NSWLR 123; [2020] NSWCA 48 at [15]–[17].
4. Other matters requiring a grant of leave to appeal to the Court of Appeal are set out in s 101(2) of the *Supreme Court Act*.
5. A party seeking leave to appeal must file three copies of a White Folder in accordance with [r 51.12](#) of the UCPR. An electronic copy of the White Folder must also be provided to the Court by USB or DVD, in the form of a PDF file. Electronic copies of White Folders must be in text searchable format (by way of optical character recognition (OCR) or similar), and must not be password protected.

CONCURRENT HEARING OF LEAVE APPLICATION AND APPEAL

6. The Court will determine on the papers whether to decide the question of leave at a separate hearing, or concurrently with the substantive appeal.
7. An applicant for leave to appeal should indicate in the summary of argument whether (and if so why) the matter is thought appropriate for a concurrent hearing: UCPR, [r 51.12\(4\)\(g\)](#). In particular, it should address the following matters:
 - (1) the extent to which the argument on the application for leave is expected to address the merits of the appeal;
 - (2) the extent to which the application for leave will require reference to materials which would be relevant to the appeal;
 - (3) whether the appeal will involve an issue of public importance;
 - (4) any prejudice which may be suffered as a result of delay flowing from a separate leave application; and
 - (5) any matter relevant to the reason why leave is required in the circumstances of the case.
8. Parties will be advised as to whether a summons for leave to appeal will proceed by way of a leave only hearing or will be heard concurrently with the appeal by the Registrar, usually at the first directions hearing. If a summons for leave to appeal is to proceed by way of a leave only hearing, each party will be given 20 minutes to advance oral argument in support of or in opposition to of a grant of leave, subject to any discretionary extension of time by the Court. If a summons for leave to appeal is to be heard concurrently with the appeal, the Registrar will determine whether appeal books are to be filed or whether the White Folder will be sufficient to constitute the appeal books, and whether further written submissions are to be filed.

MANAGEMENT OF PROCEEDINGS

(a) Interlocutory applications

9. Unless otherwise ordered, an interlocutory application will be listed at 9.00am in the motion list before the Registrar on a Monday. The parties should expect that the application will proceed to a hearing on the return date. Where an application has resolved or will not proceed, the Registrar should be promptly advised by email by no later than 10.00am on the Friday prior to the hearing of the application. If an interlocutory application is to proceed, both parties should file short written submissions of no more than 3 pages by 12 noon on the Friday prior to the hearing of the application.
10. Applications for or in relation to the following may be dealt with by the Registrar: consent orders, extensions of time, competency of appeals, security for costs and non-compliance with directions.

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

- (1) expedition of the hearing of proceedings (where there is no consent);
- (2) contested applications for stay or injunction; and
- (3) other matters as determined by the Registrar.

(b) Case management

12. Parties to an appeal from the Commercial List and Corporations List should be prepared at the first directions hearing to be allocated a hearing date accompanied by a timetable.
13. A hearing date will be allocated for all other appeals by the Registrar having regard to the readiness of the matter but parties should be in a position to accept a hearing date at the first directions hearing.

(c) Expedition

14. Expedition may be sought at a directions hearing, on an application for a stay or when leave to appeal is granted. If an opposing party does not object to an appeal being expedited, it should promptly email the Registrar of the Court of Appeal to notify their non-objection.
15. In matters of extreme urgency, the moving party may, with the consent of the other party or parties, approach the Registrar or President of the Court of Appeal by email seeking an urgent hearing.

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

16. An application for an extension of time to lodge an appeal or a summons will generally be heard concurrently with the hearing of the appeal or summons. UCPR rr [51.9\(2\)](#), [51.10\(3\)](#), [51.11\(3\)](#) and [51.16\(3\)](#) provide for extension applications to be included in the originating process. Any delay should be addressed in a filed affidavit.

MATTERS OF WHICH THE COURT MUST BE INFORMED

(a) Amendments to grounds of appeal

17. If substantial grounds of appeal are abandoned prior to the hearing, the other parties and the Court should be informed immediately. If a party seeks to add to or amend the grounds of appeal without the consent of the other party or parties, a notice of motion seeking leave to rely upon the amended grounds must be filed.

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

18. A party who proposes to seek leave to challenge the correctness of a decision of the Court of Appeal or of another Australian intermediate appellate court should notify the Registrar in writing by letter or email at the earliest opportunity, and no later than **6 weeks** prior to the hearing date. The letter or email should indicate the decision(s) likely to be challenged and their materiality to the proceedings. The President will determine whether to convene an enlarged bench of five judges and will notify the parties. (See also par 21 below.) A decision not to convene an enlarged bench is not a decision to refuse leave to reopen the earlier authority.

(c) Challenges to findings of fact

19. Where a party seeks to raise a challenge to findings of fact, consistent with UCPR [r 51.36\(2\)](#), written submissions must include a separate statement in narrative form setting out the findings of fact challenged and supporting references from the judgment below, together with the findings of fact contended for and supporting evidentiary references. Any additional challenges to findings of fact must be notified to the opposing party and the Court no later than 7 days prior to the hearing of the appeal, including with appropriate references to the judgment and the appeal books.

PREPARING MATERIALS FOR COURT

(a) Appeal books

20. Three hard copies of appeal books are required for hearings. The Court also requires an electronic copy of the appeal books. Acceptable forms of electronic delivery include a DVD or USB or as otherwise directed by the Court or the Registrar. Email is not an acceptable form of electronic delivery.
21. If an enlarged bench has been scheduled to sit, two additional hard copies of the relevant appeal books should be provided.
22. If a DVD or USB is the mode of electronic delivery, the DVD or USB must be placed inside a sealed A4 envelope. The envelope should clearly state the matter name, the matter number, and a list of the books that are contained on the DVD or USB.
23. Each appeal book (red, orange, black and blue) should be saved as a separate PDF file. Where an appeal book is separated into multiple volumes, the party should include a separate PDF file for each volume.
24. Electronic copies of appeal books must be in text searchable format (by way of optical character recognition (OCR) or similar), and must not be password protected.

25. Parties to an appeal are encouraged to liaise in relation to the provision to each other of an electronic version of the appeal books, either in addition to or substitution for hard copies as they may agree.

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

(b) Written submissions and grounds of appeal

26. Grounds of appeal and written submissions should be prepared, filed and served in PDF format. All PDF files filed with the Court must be in text searchable format and must not be password protected. Page limits and font sizes apply to written submissions, as provided by UCPR [r 51.36](#). The filing of a notice of contention or cross-appeal does not permit a party to prepare two separate sets of submissions, nor to exceed the relevant page limit without leave of the Court.
27. All grounds of appeal and written submissions for the substantive hearing will be published on the Supreme Court's website unless there is a direction otherwise. Grounds of appeal and submissions should be suitable for publication prior to filing, and the lawyer responsible for filing the submissions is required to certify that in the document. Submissions will not be published until after the first directions hearing.
28. Grounds of appeal and submissions should use pseudonyms where suppression orders or non-publication laws apply. An unredacted version can be filed separately if the redacted material is necessary for the Court to understand the nature of the appeal. The unredacted version will not be published unless otherwise ordered.
29. The Court will consider making a direction that grounds and submissions are not to be published on, or are to be removed from, the Supreme Court's website where publication may affect a jury trial, or for other good reasons. Requests for such directions should initially be directed to the Registrar.
30. If used, footnotes in the written submissions are only to be used for citing references.
31. In written submissions, references to the judgment below should be to paragraph numbers. Reference may also be made to the page number of the red book. References to the transcript should note the page number of the black book and the line number of the relevant passage.
32. Some appeals are confined to questions of law. These include certain appeals from the Land and Environment Court and from NCAT. In such cases the grounds of appeal and written submissions should clearly identify the question of law which is the subject matter of the appeal.

(c) Chronology

33. The chronology should be an objectively correct statement of “the principal events leading up to the litigation” and should not be a chronology merely of those matters of assistance to one party or the other: *Woods v Harwin* [1993] NSWCA 291. The chronology should also include key events in the litigation, such as the commencement of the proceedings in the court below. Reference should be made to the Red, Blue and Black books. The following is the suggested form for chronologies:

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

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

34. No later than **10.00am** two business days before the hearing, each party must supply a list of authorities. A template list of authorities is available [here](#).
35. The list should be supplied via email to the President’s Researcher: coa.researcher@courts.nsw.gov.au, and should be in Word document or text searchable format with cases in hyperlink where available. Where email facilities are not available, three copies must be lodged in the authorities box provided on level 12 of the Supreme Court building.
36. If a folder of legislation and authorities is to be provided, 3 copies should be lodged in the authorities box on level 12 of the Supreme Court building by **10.00am** two business days before the hearing (see par 39 below).
37. The list of authorities must identify:
- (1) any legislation which will be referred to in the course of oral submissions, identifying the relevant sections and, for each piece of legislation listed, the relevant date at which or version of which the legislation is to be applied (e.g, “as at 15 December 2019”, or “as commenced on 1 January

2020”). When including legislative provisions in the list of authorities, consideration should be given to whether the whole of the relevant Part or Division should be included by way of context for the provisions in question;

- (2) cases from which passages will be read in the course of oral submissions, being:
 - (a) cases reported in the CLRs and NSWLRs (maximum 10 without leave);
 - (b) up to five cases from other reports;
 - (c) other cases, whether reported or unreported;
 - (3) cases to be cited but not read in oral submissions; and
 - (4) other secondary sources which will be referred to (e.g. sections of textbooks, explanatory notes or second reading speeches).
38. The party providing the list of authorities must place their name and contact details (including email and telephone number) at the foot of the list.
39. Where a party intends to rely on:
- (1) legislation from other jurisdictions;
 - (2) cases not reported in the CLRs or NSWLRs; or
 - (3) other secondary sources,

the party must lodge three copies of each authority in the authorities box on level 12 of the Supreme Court Building, by **10.00am** on two business days before the hearing. Where it is impractical to provide the entire authority, the relevant section or chapter should be provided. Where one party will provide a hard copy of an authority (usually the appellant or applicant), the remaining parties should not provide an additional copy of that authority. The parties should confer to minimise the duplication of printed authorities and may produce a joint folder of material, rather than separate bundles.

40. If a party decides to read from a case not included in its list of authorities, copies are to be provided to the Court at the hearing. For cases reported in the CLRs or NSWLRs, only the headnote and relevant passage are to be copied.

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

JUDICIAL REVIEW

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

The Hon. A S Bell

Chief Justice of New South Wales

1 May 2023

Related information

Practice Note SC Gen1 Supreme Court – Application of Practice Notes

Amendment history:

1 May 2023: This Practice Note replaces the previous version of SC CA 1 issued on 13 December 2017.

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

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

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

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



STATE OWNED CORPORATIONS ACT 1989

REVOCATION OF ORDER

I, **CHRISTOPHER MINNS MP**, Premier, under section 20I of the *State Owned Corporations Act 1989* and section 43(2) of the *Interpretation Act 1987*, revoke the order made on 21 January 2022 under section 20I of the *State Owned Corporations Act 1989*.

CHRISTOPHER MINNS MP
Premier

Date:

2/5/23.