

GAZETTE NOTICE

(New Zealand Gazette No. 48, 9 April 2009 p.1172)

JUDICATURE ACT 1908

Court of Appeal Procedures Adopted

Pursuant to sections 58C(1) and 58E(1) of the Judicature Act 1908 (“the Act”), those Judges of the Court of Appeal holding office under section 57(2) of the Act (“permanent Judges”), have adopted the following procedures.

Assignment of Judges to the Divisions of the Court of Appeal

- The assignment of High Court Judges to divisions of the Court will be:
 - (a) consistent with their eligibility through nomination by the Chief Justice in terms of sections 58A and 58B of the Act; and
 - (b) with the concurrence of the Chief Justice and the Chief High Court Judge pursuant to section 58C(3) of the Act.
- The Court will prepare periodically a forward planning programme covering the anticipated sittings of the divisions.
- The programme will provide, in the main, for:
 - (a) divisions of three permanent Judges (a division so comprised being referred to in this Notice as a “permanent division”) and
 - (b) divisions of one permanent Judge and two High Court Judges (a division so comprised being referred to in this Notice referred as a “CAD”).

Exceptions will be necessary to allow for Full Courts, inability of a particular Judge to sit on a particular case, illness, leave or otherwise as the exigencies of the situation require.

- In the main, criminal appeals will be set down before a CAD unless the President otherwise directs. This recognises the insights which Judges with current trial experience bring to criminal appeals. The Judge making the decision under section 392A of the Crimes Act 1961 may recommend that the case be heard either by a permanent division or a Full Court. As well, counsel for the appellant or respondent may request a direction that a particular appeal be heard by a permanent division or a Full Court.
- In the main, civil appeals will be set down before a permanent division unless the President otherwise directs. Counsel for the appellant or respondent may request a direction that a particular appeal be heard by a CAD or a Full Court.
- Assignment of permanent Judges and/or eligible High Court Judges to panels for the hearing of particular appeals will be by the President who, where appropriate, will consult with other permanent Judges.
- In assigning panels for the hearing of particular appeals and in deciding whether particular appeals should be heard by a permanent division or a CAD, the President may take into account the following considerations:
 - (a) The forward planning programme and the availability of Judges;

- (b) The equitable sharing of work among the Judges
- (c) The efficient dispatch of the Court's business;
- (d) The desirability of a prompt hearing in any case of urgency (eg an appeal by an appellant serving a short sentence or an appeal against a pretrial ruling in a criminal case);
- (e) Considerations of expense and convenience for counsel and parties, where a decision is required to be made whether an appeal be heard in Auckland, Wellington, or Christchurch;
- (f) The role of all the permanent Judges in the clarification and development of all areas of the law and recognition of specific areas of judicial expertise;
- (g) That it may be desirable for related litigation (appeals arising out of the same facts between the same or some of the same parties) to be heard by the same or some of the same Judges.

Appeals of Sufficient Significance for a Full Court

The President will determine whether a case is of sufficient significance to warrant the consideration of a Full Court. The President will, where appropriate, consult with other permanent Judges. In the main, a case will only be set down before a Full Court where:

- (a) The establishment or revision of sentencing tariffs is proposed; or
- (b) The appeal involves issues of evidence, procedure or practice of general application or some other issue which will be of major significance to other cases.

That one or more of the parties seeks the reconsideration of an earlier judgment of the Court is not, in itself, a reason for setting the appeal down before a Full Court.

A decision that an appeal be heard before a Full Court may be reviewed by the President from time to time (for instance for reasons associated with the availability of Judges) and the President may direct that an appeal which is scheduled to be heard before a Full Court be heard before a division of the Court.

The permanent Judges will consult regularly to review the criteria, their implementation and the general effect of the allocation to a Full Court on the overall workload of the Court.

References in this notice to "the President" include a Judge acting as President or a Judge nominated by the President to undertake any of the functions of the President referred to in this notice.

Dated at Wellington this 1st day of April 2009.

WILLIAM YOUNG, President of the Court of Appeal.

Note: A Full Court will also consider references from a division of the Court made pursuant to section 58(6) of the Act and appeals under section 10 of the Courts Martial Appeals Act 1953.

Also Note: These procedures replace those adopted on the 30th day of April 2004 and notified in the *New Zealand Gazette*, 13 May 2004, No.52, page1287; and those adopted on the 4th day of October 2006 and notified in the *New Zealand Gazette*, 12 October 2006, No.116, page 3461.