

PN12 Supreme Court (Applications for Leave to Appeal) Practice Note 2003

(1) *Title*

This is the Supreme Court (Applications for Leave to Appeal) Practice Note 2003.

(2) *Commencement*

This Practice Note comes into force on 1 January 2004.

(3) *Interpretation*

In this Practice Note, unless the context otherwise requires,—

“application for leave” means an application to the Court for leave to appeal to the Court

“Court” means the Supreme Court of New Zealand

“decision” has the same meaning as in the Supreme Court Act 2003

“respondent” means a party that opposes an application for leave

“working day” has the same meaning as in the Supreme Court Act 2003.

(4) *Practice Note applies to civil and criminal proceedings*

This Practice Note applies to every application for leave, whether the application relates to a criminal proceeding or a civil proceeding.

(5) *Time for making application for leave*

(1) An application for leave must be made to the Court within 20 working days after the date of the decision against which the applicant wishes to appeal.

(2) For the purposes of subclause (1), the date of the decision is the date on which the decision is given, whether or not—

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

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

(3) The Court may, by special leave, extend the period prescribed by subclause (1).

(4) A party may apply for an extension before or after the period expires.

(6) *Mode of bringing leave application relating to civil proceeding (other than proceeding under Bail Act 2000)*

(1) In the case of an application for leave to appeal against a decision given in a civil proceeding (other than a proceeding under the Bail Act 2000), the application is made only when—

(a) the applicant has filed the application in the Registry of the Court; and

(b) a copy of the application has been—

(i) filed in the registry of the court in which the decision was given; and

(ii) served on every party that would be directly affected by the leave sought by the application.

- (2) The applicant is responsible for serving the application, and may serve it on a party at the address for service notified by the party in the proceeding.
- (7) *Mode of bringing leave application relating to criminal proceeding (including proceeding under Bail Act 2000)*
- (1) In the case of an application for leave to appeal against a decision given in a criminal proceeding (including a proceeding under the Bail Act 2000), the application is made when the applicant has filed the application in the Registry of the Court.
 - (2) If the applicant is the defendant or the person convicted, the Registrar of the Court must promptly transmit a copy of the application—
 - (a) to the registrar of the court in which the decision was given; and
 - (b) to the Solicitor-General or prosecutor.
 - (3) If the applicant is the Solicitor-General or prosecutor, the applicant must—
 - (a) file a copy of the application in the registry of the court in which the decision was given; and
 - (b) serve the application on the defendant or the person convicted.
- (8) *Documents required for application for leave relating to civil proceeding (other than proceeding under Bail Act 2000)*
- (1) This clause applies to an application for leave to appeal against a decision given in a civil proceeding (other than a proceeding under the Bail Act 2000).
 - (2) When the application is filed in the Registry of the Court, the application must be accompanied by—
 - (a) 3 copies of the decision to which the proposed appeal relates; and
 - (b) 3 copies of any separate reasons for the decision; and
 - (c) if that decision was given on appeal, 3 copies of every decision previously given in the proceeding on matters of relevance to that appeal; and
 - (d) 3 copies of any separate reasons for every decision referred to in paragraph (c).
 - (3) The documents referred to in subclause (2) need not be served.
 - (4) If leave to appeal is granted, the appellant must promptly file in the Registry of the Court an additional 3 copies of every document filed under subclause (2).
- (9) *Documents required for application for leave under section 383A(1) of Crimes Act 1961 (appeal from Court of Appeal)*
- (1) On receiving an application for leave to appeal under section 383A(1) of the Crimes Act 1961, the Registrar must obtain, for the use of the Court, 2 copies of the final case on appeal prepared under rule 13 of the Court of Appeal (Criminal) Rules 2001.
 - (2) If leave to appeal is granted, the Registrar of the Court must provide to the Court as many additional copies of the final case on appeal as the Court requires.

(10) *Documents required for application for leave under section 383(1) of Crimes Act 1961 (direct appeal)*

- (1) On receiving an application for leave to appeal under section 383(1) of the Crimes Act 1961, the Registrar of the Court must obtain for the use of the Court the documents required by section 392(1A) of that Act (which include the trial transcript, the trial Judge's summing up to the jury (if the Registrar considers it relevant to the grounds of the proposed appeal), and any other documents, exhibits, and things connected with the proceeding that the Registrar considers relevant to the grounds of the proposed appeal).
- (2) If leave to appeal is granted, the Registrar of the Court must provide to the Court as many additional copies of the documents obtained under this clause as the Court requires.

(11) *Documents required for other leave applications for appeals relating to criminal proceeding (including proceeding under Bail Act 2000)*

In the case of an application for leave to appeal, under an enactment other than section 383(1) or section 383A(1) of the Crimes Act 1961, against a decision given in a criminal proceeding (including a proceeding under the Bail Act 2000), the Registrar must promptly obtain for the use of the Court the material relevant to the decision.

(12) *Written submissions on leave application*

- (1) An applicant for leave must promptly file in the Registry of the Court written submissions of not more than 10 pages in support of the application.
- (2) The applicant's written submissions must include the points that the applicant wishes to advance in support of the proposed appeal.
- (3) On receiving the applicant's submissions, the respondent must promptly file in the Registry of the Court written submissions of not more than 5 pages in opposition.
- (4) The respondent's written submissions must include notice of any proposed cross-appeal and the points that the respondent wishes to advance in support of such a cross-appeal.
- (5) A party may include in the party's written submissions additional written material and responses to submissions made by any other party.
- (6) If the Court authorises an oral hearing for the application and a hearing date is fixed for the application—
 - (a) the applicant's submissions must be filed at least 15 working days before that date; and
 - (b) the respondent's submissions must be filed at least 10 working days before that date.
- (7) This clause is subject to any contrary direction by a Judge of the Court.

(13) *Oral submissions on leave application*

- (1) Oral submissions made at the hearing (if any) of an application for leave 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) This clause is subject to any contrary direction by the Judges of the Court who hear the application for leave.

(14) *Forms*

An application for leave must be in the appropriate form set out in the Schedule or in a form to the same effect.

Schedule

Forms

Form 1

Notice of application for leave to appeal against decision in criminal proceeding
(including proceeding under Bail Act 2000)

In the Supreme Court of New Zealand

[Identify proceeding to which application relates]

To the Registrar of the Supreme Court

I, *[full name]*, the *[state your role in the proceeding, eg. defendant or prosecutor]* in the proceeding identified above, give you notice that I apply for the leave of the Supreme Court to appeal to the Supreme Court against *[state the particulars of the decision against which you wish to appeal, including the date on which and the court where it was given, if that decision was given on appeal, also state the particulars of every decision (eg. conviction or sentence) 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 What are the grounds of your proposed appeal?

2 Why should the Supreme Court give leave to hear your proposed appeal?

3 If the decision you wish to appeal against was not made by the Court of Appeal, what exceptional circumstances justify taking the proposed appeal directly to the Supreme Court?

4 You have 20 working days from the date of the decision against which you wish to appeal in which to file your application. The Court may extend this time. If your application is out of time, what are your reasons for saying that the Court should nevertheless extend the time and consider your application?

[Answer questions 5 to 7 if you are the defendant or person convicted.]

5 (a) Is any lawyer now acting for you?

(b) If so, give his or her name and address and fax number.

(c) Have you applied, or do you intend to apply, to the Legal Services Agency for a grant of legal aid?

6 If you are currently in a penal institution, which one?

7 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?

Dated this *[date]* day of *[month]* *[year]*.

.....
Signature of applicant

[If applicable, insert address for service]

Form 2

Notice of application for leave to appeal against decision in civil proceeding
(other than proceeding under Bail Act 2000)

[Identify proceeding to which application relates]

To the Registrar of the Supreme Court

I, *[full name]*, the *[state your role in the proceeding, eg, appellant]* in the proceeding identified above, give you notice that I apply for the leave of the Supreme Court to appeal to the Supreme Court against *[state the particulars of the decision against which you wish to appeal, including the date on which and the court where it was given; if that decision was given on appeal, also state the 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 What are the grounds of your proposed appeal?
- 2 Why should the Supreme Court give leave to hear your proposed appeal?
- 3 If the decision you wish to appeal against was not made by the Court of Appeal, what exceptional circumstances justify taking the proposed appeal directly to the Supreme Court?
- 4 You have 20 working days from the date of the decision against which you wish to appeal in which to file your application. The Supreme Court may extend this time. If your application is out of time, what are your reasons for saying that the Supreme Court should nevertheless extend the time and consider your application?

Dated this *[date]* day of *[month]* *[year]*.

.....
Signature of applicant

The address for service is *[insert address]*:
The Rt Hon Chief Justice of New Zealand