



Court of Appeal of New Zealand

Te Kōti Pira o Aotearoa

ELECTRONIC DOCUMENT PRACTICE NOTE 2019

The President and Judges of the Court of Appeal make the following Practice Note:

1. Title

This Practice Note is the Electronic Document Practice Note 2019.

2. Commencement date and application

This Practice Note:

- (1) comes into effect on 1 October 2019;
- (2) applies to civil appeals filed after the commencement date;
- (3) does not apply to applications for leave to appeal or interlocutory applications (unless the Court directs otherwise in a particular case);
- (4) revokes and replaces the Electronic Document Practice Note 2017; and
- (5) is to be read and interpreted consistently with the Senior Courts Civil Electronic Document Protocol 2019 (the Protocol), which is found on the Courts website www.courtsofnz.govt.nz. The Protocol came into effect on 1 March 2019.

3. Overview

- (1) This Practice Note is a guide for counsel and the Court. It is intended to encourage and facilitate the use of electronic documents for civil cases in the Court of Appeal.
- (2) The Protocol is intended to assist the parties by specifying an acceptable method for preparing electronic documents to be filed in the Courts. It may

change as technology evolves and experience is gained in the use of electronic document management.

- (3) A party must advise the Registrar if directions are sought to modify, or add to, the default directions set out in the Protocol.
- (4) The Court of Appeal (Civil) Rules 2005 (the Rules) require that the parties co-ordinate when preparing the case on appeal: see r 39. This obligation is especially important for electronic records, the collation and indexing of which demand active co-operation.

4. Application of Court of Appeal (Civil) Rules 2005

This Practice Note is not intended to effect any change to the requirements of the Rules, with the following exceptions: (1) if a document is filed in compliant electronic format, then only one hard copy is required to be filed with the Registry, instead of four copies (see rr 40(1)(a), 40E(2)(a), 42(1)(b), 42(2)(b) and 42A(3A)(a)); and (2) an electronic document must satisfy filing deadlines (paragraph 8 below).

5. Electronic documents should be used

- (1) An electronic case on appeal, bundle of authorities, synopsis of argument on appeal, and list of issues will be required in all civil appeals (except interlocutory applications and applications for leave to appeal) unless a judge directs otherwise. A judge may direct that an electronic case on appeal be used in an application for leave to appeal.
- (2) A judge may convene a teleconference to decide whether an electronic case on appeal will be used, and may make such directions as are considered appropriate.
- (3) If an electronic casebook or common bundle was used at trial, then this can be modified for use in the Court of Appeal, subject to the Court's directions.

6. Default directions

- (1) For an electronic case on appeal or electronic documents the following directions will apply unless an order varies them:

Cooperation

- (2) The parties are to collaborate in the preparation of an electronic case on appeal including:
 - (a) an obligation, if requested, to provide electronic copies (multi-page images in searchable PDF format) of any documents to be included in the case on appeal relevant to that party's grounds to be argued on appeal (see r 39(1)); and

- (b) an obligation, where it is fair and cost efficient to do so, to agree a format for an electronic case on appeal and indexes that will be compatible with any litigation support or other software intended to be used by any party.

Obligations on party who files and serves the common bundle or casebook

- (3) The appellant who is to file and serve the electronic case on appeal will:
 - (a) prepare the case on appeal in consultation with the respondent;
 - (b) prepare it in accordance with the Protocol (format, folders, names, indices and hyperlinking);
 - (c) file and serve it in accordance with paragraph 9 of the Protocol; and
 - (d) comply with the requirements of the Rules for the filing of hard copies.

7. Filing and Service

- (1) One set of the electronic documents must be filed on a USB drive in accordance with paragraph 9 of the Protocol.
- (2) One set of the electronic documents must be served on each party on a suitable portable media device, or in such other manner as may be agreed in advance between the parties or, failing agreement, directed by the Court.

8. Date of filing

- (1) The date of filing of a case on appeal or other document is the day on which the paper or electronic copy is filed in the Registry, whichever is the earlier (see rr 10(3), (5) and (6)). Counsel are reminded of the strict time limits in rr 40(2) and (6) of the Rules to file their case on appeal.
- (2) A hard copy of the electronic case on appeal must be filed at the same time as the electronic case on appeal unless the Court has provided otherwise by practice note, or by direction in a particular case.

9. Refusal of electronic documents for filing

- (1) All electronic documents filed in the Registry must be prepared in substantial compliance with this Practice Notice and the Protocol. If they are not in substantial compliance, they will not be accepted for filing.
- (2) If a Registrar considers that an electronic document is an abuse of the process of the Court or is frivolous or scandalous or vexatious on its face or by reference to other documents already filed or submitted, that electronic document may be refused.

10. Access to Court documents

Access to Court documents, whether electronic or paper, is managed according to the Senior Courts (Access to Court Documents) Rules 2017.

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30 September 2019