

Authorised Version

Supreme Court (Court of Appeal E-Filing and Other Amendments) Rules 2019

S.R. No. 73/2019

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Authorised Version

STATUTORY RULES 2019

S.R. No. 73/2019

Supreme Court Act 1986

**Supreme Court (Court of Appeal E-Filing and
Other Amendments) Rules 2019**

The Judges of the Supreme Court make the following Rules:

Part 1—Preliminary

1 Object

The object of these Rules is to amend Chapters I and VI of the Rules of the Supreme Court—

- (a) to facilitate electronic filing of documents in the Court of Appeal; and
- (b) to make other minor and technical amendments.

2 Authorising provisions

These Rules are made under section 25 of the **Supreme Court Act 1986** and all other enabling powers.

3 Commencement

These Rules come into operation on 30 September 2019.

Part 2—Amendment of Chapter I—E-filing

4 Application of Order 28A

In Rule 28A.01(1) of the Supreme Court (General Civil Procedure) Rules 2015¹—

- (a) in paragraph (b) **omit** "or";
- (b) for paragraph (c) **substitute**—
"(c) the Costs Court; or
(d) the Court of Appeal."

5 Rules 28A.03 and 28A.04 substituted

For Rules 28A.03 and 28A.04 of the Supreme Court (General Civil Procedure) Rules 2015 **substitute**—

"28A.03 How and when a document is filed

- (1) A document to be filed in the Court is to be submitted by an authorised person in RedCrest—
 - (a) in a pdf version; or
 - (b) in any other form—
 - (i) in a proceeding in the Trial Division, approved by the Prothonotary; or
 - (ii) in a proceeding in the Court of Appeal, approved by the Registrar.
- (2) A document is filed in the Court when it is sealed by the Prothonotary or the Registrar, as the case requires.
- (3) In relation to a proceeding in the Trial Division, the Court may order or the Prothonotary may direct, in relation to any or all documents in a proceeding or part of a proceeding, that the documents be filed in

any other manner that the Court or the Prothonotary considers appropriate.

- (4) In relation to a proceeding in the Court of Appeal, the Court of Appeal constituted by one or more Judges of Appeal may order, or the Registrar may direct, in relation to any or all documents in a proceeding or part of a proceeding, that the documents be filed in any other manner that the Court or the Registrar considers appropriate.

28A.04 Powers of Prothonotary or Registrar

- (1) The Prothonotary or the Registrar (in a proceeding in the Court of Appeal) may refuse to seal a document submitted in RedCrest to be filed until satisfied that the document—
- (a) complies with the Rules; or
 - (b) complies with an order of the Court.
- (2) The Prothonotary or the Registrar may reject a document if the Prothonotary or Registrar considers that—
- (a) a document, if it were sealed, would be substantially irregular or constitute an abuse of process; or
 - (b) there has been a failure to comply with the Rules, an order of the Court or a direction of the Prothonotary or the Registrar after a reasonable opportunity to do so.
- (3) If the Prothonotary or the Registrar—
- (a) refuses to seal a document; or

- (b) rejects the document—
the Prothonotary or the Registrar, as the case requires, shall send an electronic communication to the authorised person advising—
 - (c) that the document has not been accepted for filing; and
 - (d) the reason it was not accepted for filing.
- (4) Unless the Prothonotary or the Registrar rejects the document under paragraph (2), on sealing, a document is taken to have been filed at the time and on the date it was first submitted in RedCrest for filing in accordance with Rule 28A.03(1).
- (5) If the Prothonotary or the Registrar—
 - (a) fails to seal a document within a reasonable time; or
 - (b) refuses to seal a document; or
 - (c) rejects a document—
the Court may—
 - (d) direct the Prothonotary or the Registrar to seal the document with a filing date, being the date the document was first submitted in RedCrest for filing;
 - (e) direct the Prothonotary or the Registrar to seal the document with a filing date, being the date the document is so sealed;
 - (f) make any other order or give any direction that it considers appropriate.

- (6) For the purposes of paragraph (5), if a direction or order is made by the Court of Appeal, the Court of Appeal may be constituted by one or more Judges of Appeal.

28A.04.1 Powers of Prothonotary in relation to usernames and passwords

- (1) The Prothonotary may—
- (a) refuse to issue a person with a username and password;
 - (b) cancel a username and password;
 - (c) impose or vary conditions on the use of a username and password.
- (2) The Court may give any direction to the Prothonotary that it considers appropriate in relation to any case in which the Prothonotary exercises a power under paragraph (1)."

6 Confidentiality and privacy

At the end of Rule 28A.06 of the Supreme Court (General Civil Procedure) Rules 2015 **insert—**

- "(2) For the purposes of paragraph (1), if a direction or order is made by the Court of Appeal, the Court of Appeal may be constituted by one or more Judges of Appeal."

7 Definitions—Order 64

Rule 64.01(2) of the Supreme Court (General Civil Procedure) Rules 2015 is **revoked**.

8 Commencement of appeal by filing notice of appeal

In Rule 64.02(1) of the Supreme Court (General Civil Procedure) Rules 2015 **omit** "with the Registrar".

9 Applications, including for leave to appeal

In Rule 64.03(1) and (3) of the Supreme Court (General Civil Procedure) Rules 2015 **omit** "with the Registrar".

10 Time for filing application for leave to appeal or notice of appeal

(1) For Rule 64.05(1)(a) of the Supreme Court (General Civil Procedure) Rules 2015 **substitute—**

- "(a) subject to paragraph (ab), within 42 days after the decision to which the application or appeal relates was made;
- (ab) for the following decisions, within 28 days after the decision to which the application or appeal relates was made—
 - (i) a decision in an application under section 459G of the Corporations Act;
 - (ii) a decision concerning an extension of time;
 - (iii) a decision concerning discovery, including preliminary discovery;
 - (iv) a decision concerning joinder, removal or substitution of a party;
 - (v) a decision concerning amendment or striking out of pleadings;
 - (vi) a decision concerning summary dismissal;
 - (vii) a decision concerning summary judgment;
 - (viii) a decision concerning dismissal of, or refusal to dismiss, a proceeding for want of prosecution;

- (ix) a decision concerning security for costs;
 - (x) a decision concerning the stay of part of a proceeding;
 - (xi) a decision concerning an injunction, including an interlocutory injunction, a freezing order or a search order;
 - (xii) a decision concerning a stay of execution of a judgment;
 - (xiii) a decision concerning recusal;".
- (2) In Rule 64.05(1)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "period referred to in paragraph (a)" **substitute** "applicable period referred to in paragraph (a) or (ab)".

11 Extension of time to file or serve application, including for leave to appeal, or notice of appeal

In Rule 64.08(2), (3)(a) and (4)(a) of the Supreme Court (General Civil Procedure) Rules 2015, **omit** "with the Registrar".

12 Applications for leave to intervene

In Rule 64.10(2) of the Supreme Court (General Civil Procedure) Rules 2015, **omit** "with the Registrar".

13 Statute law revision

- (1) In Rule 64.41(d) of the Supreme Court (General Civil Procedure) Rules 2015, after "leave" **insert** "to".
- (2) In Rule 64.42(6) of the Supreme Court (General Civil Procedure) Rules 2015—
 - (a) for "of Appeal" **substitute** "of Appeal,";
 - (b) for "if" **substitute** "of".

- (3) In Rule 64.45(4) of the Supreme Court (General Civil Procedure) Rules 2015, for "paragraph (1)" **substitute** "paragraphs (1) and (2)".

14 Further powers of Registrar

In Rule 64.43(4) of the Supreme Court (General Civil Procedure) Rules 2015, after "Rule 27.06" **insert** "or Order 28A".

Part 3—Amendment of Chapter VI—E-filing

15 Authentication

In Rule 1.13(3) of the Supreme Court (Criminal Procedure) Rules 2017², after "the Registrar" **insert** "or sealed by the Prothonotary".

16 Application of Order 1A

In Rule 1A.01 of the Supreme Court (Criminal Procedure) Rules 2017—

- (a) after "relate" **insert** "in the Trial Division or the Court of Appeal";
- (b) paragraph (a) is **revoked**.

17 Rules 1A.03 and 1A.04 substituted and new Rule 1A.04.1 inserted

For Rules 1A.03 and 1A.04 of the Supreme Court (Criminal Procedure) Rules 2017 **substitute**—

"1A.03 How and when a document is filed

- (1) Subject to paragraphs (2), (3) and (4), a document, including an indictment under section 159(1) of the **Criminal Procedure Act 2009**, to be filed in the Court in accordance with this Order is to be submitted by an authorised person in RedCrest in—
 - (a) a pdf version; or
 - (b) in any other form—
 - (i) in a proceeding in the Trial Division, approved by the Judicial Registrar-Criminal Division or the Prothonotary; or
 - (ii) in a proceeding in the Court of Appeal, approved by the Registrar.

- (2) An indictment may be brought before a Judge of the Court or the Judicial Registrar-Criminal Division to be filed.

Note

See section 161 of the **Criminal Procedure Act 2009** in relation to direct indictments.

- (3) In relation to a proceeding in the Trial Division, the Court may order or the Judicial Registrar-Criminal Division or the Prothonotary may direct that a document be filed in any manner that the Court, the Judicial Registrar-Criminal Division or the Prothonotary considers appropriate.
- (4) In relation to a proceeding in the Court of Appeal, the Court of Appeal constituted by one or more Judges of Appeal may order or the Registrar may direct, in relation to any or all documents in a proceeding or part of a proceeding, that the documents be filed in any other manner that the Court or the Registrar considers appropriate.
- (5) A document is taken to be filed—
- (a) in relation to a proceeding in the Trial Division, if it is submitted in RedCrest and sealed by the Judicial Registrar-Criminal Division or the Prothonotary, when it was first submitted in RedCrest for filing in accordance with paragraph (1);
 - (b) in relation to a proceeding in the Court of Appeal, if it is submitted in RedCrest and sealed by the Registrar or the Prothonotary, when it was first submitted in RedCrest for filing in accordance with paragraph (1);

- (c) if, in accordance with paragraph (2), an indictment is accepted for filing by a Judge of the Court or the Judicial Registrar-Criminal Division, when it is sealed by an Associate of the Judge or by an Associate of the Judicial Registrar-Criminal Division;
 - (d) if, in accordance with paragraph (3), it is filed in accordance with a direction of a Judge of the Court, the Judicial Registrar-Criminal Division or the Prothonotary, when it is sealed; or
 - (e) if, in accordance with paragraph (4), it is filed in accordance with a direction of a Judge of Appeal, the Registrar or the Prothonotary, when it is sealed.
- (6) A document filed in a proceeding in the Trial Division to which this Order applies is not open for inspection unless the Court, the Judicial Registrar-Criminal Division, the Prothonotary, or a Deputy Prothonotary so directs.
 - (7) A document filed in a proceeding in the Court of Appeal to which this Order applies is not open for inspection unless the Court of Appeal or the Registrar so directs.
 - (8) For the purposes of this Rule, if a direction or order is made by the Court of Appeal, the Court of Appeal may be constituted by one or more Judges of Appeal.

1A.04 Powers of Registrar, Judicial Registrar-Criminal Division and Prothonotary

- (1) The Registrar, the Judicial Registrar-Criminal Division or the Prothonotary may refuse to seal a document submitted in

RedCrest to be filed until satisfied that the document—

- (a) complies with the Rules; or
 - (b) complies with an order of the Court.
- (2) The Registrar, the Judicial Registrar-Criminal Division or the Prothonotary may reject a document if the Registrar, the Judicial Registrar-Criminal Division or the Prothonotary (as the case requires) considers that—
- (a) a document, if it were sealed, would be substantially irregular or constitute an abuse of process; or
 - (b) there has been a failure to comply with the Rules, an order of the Court or a direction of the Registrar, the Judicial Registrar-Criminal Division or the Prothonotary after a reasonable opportunity to do so.
- (3) If the Registrar, the Judicial Registrar-Criminal Division or the Prothonotary—
- (a) refuses to seal a document; or
 - (b) rejects the document—
- the Registrar, the Judicial Registrar-Criminal Division or the Prothonotary, as the case requires, shall send an electronic communication to the authorised person advising—
- (c) that the document has not been accepted for filing; and
 - (d) the reason it was not accepted for filing.

- (4) If the Registrar, the Judicial Registrar-Criminal Division or the Prothonotary—
- (a) fails to seal a document within a reasonable time; or
 - (b) refuses to seal a document; or
 - (c) rejects a document—
- the Court may—
- (d) direct the Registrar, the Judicial Registrar-Criminal Division or the Prothonotary to seal the document with a filing date, being the date the document was first submitted in RedCrest for filing;
 - (e) direct the Registrar, the Judicial Registrar-Criminal Division or the Prothonotary to seal the document with a filing date, being the date the document is so sealed;
 - (f) make any other order or give any direction that it considers appropriate.
- (5) For the purposes of paragraph (4), if a direction or order is made by the Court of Appeal, the Court of Appeal may be constituted by one or more Judges of Appeal.

1A.04.1 Powers of Prothonotary in relation to usernames and passwords

- (1) The Prothonotary may—
- (a) refuse to issue a person with a username and password;
 - (b) cancel a username and password;
 - (c) impose or vary conditions on the use of a username and password.

(2) The Court may give any direction to the Prothonotary that it considers appropriate in relation to any case in which the Prothonotary exercises a power under paragraph (1)."

18 Confidentiality and privacy

At the end of Rule 1A.05 of the Supreme Court (Criminal Procedure) Rules 2017 **insert**—

"(2) For the purposes of paragraph (1), if a direction or order is made by the Court of Appeal, the Court of Appeal may be constituted by one or more Judges of Appeal."

19 Application for leave to appeal against conviction or sentence

In Rule 2.05(1), (2) and (3) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

20 Crown appeals

In Rule 2.15(1)(a) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

21 Refusal to reserve question of law—application to show cause

In Rule 2.16 of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

22 Commencement of appeal against finding that accused is unfit to stand trial

In Rule 2.18(1) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

23 Commencement of appeal against verdict of not guilty because of mental impairment

In Rule 2.19(1) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

24 Notice of abandonment

In Rule 2.40(1) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

25 Witness before Court of Appeal—section 318

In Rule 2.44(2) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

**26 Commencement of interlocutory appeal—
section 295**

In Rule 3.03(1) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

**27 Commencement of application for review of refusal
to certify—section 296**

In Rule 3.04(1) of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

28 Forms 6–2F and 6–2G amended

In Forms 6–2F and 6–2G of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar" (wherever occurring).

29 Form 6–3A amended

In Form 6–3A of the Supreme Court (Criminal Procedure) Rules 2017, **omit** "with the Registrar".

Part 4—Miscellaneous amendments

Division 1—Chapter I

30 Definitions

In Rule 1.13(1) of the Supreme Court (General Civil Procedure) Rules 2015, **insert** the following definition—

"practice note means any practice note issued from time to time by or on behalf of the Chief Justice;"

31 Solicitor ceasing to act

For Rule 20.03(4) of the Supreme Court (General Civil Procedure) Rules 2015 **substitute**—

"(4) Except by leave of the Court of Appeal, a solicitor shall not file a notice under paragraph (1) after a notice of appeal or an application for leave to appeal to the Court of Appeal has been filed."

32 Definitions—Order 64

In Rule 64.01(1) of the Supreme Court (General Civil Procedure) Rules 2015—

- (a) the definition of *practice direction* is **revoked**;
- (b) in the definition of *written case*, for "direction" **substitute** "note".

33 Commencement of appeal by filing notice of appeal

In Rule 64.02(1)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of commencing an appeal" **substitute** "note".

34 Applications, including for leave to appeal

In Rule 64.03 of the Supreme Court
(General Civil Procedure) Rules 2015—

- (a) in paragraphs (1)(c) and (3)(c), for "direction to be filed at the time of commencing such an application" **substitute** "note";
- (b) in paragraph (3)(b), for "direction" **substitute** "note".

35 Service of applications, notices of appeal and related documents

In Rule 64.06(4) and (6) of the Supreme Court
(General Civil Procedure) Rules 2015, for
"direction" **substitute** "note".

36 Extension of time to file or serve application, including for leave to appeal, or notice of appeal

- (1) In Rule 64.08(2)(b) and (5)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".
- (2) In Rule 64.08(2)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of commencing the application" **substitute** "note".

37 Applications for leave to intervene

- (1) In Rule 64.10(2)(b) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".
- (2) In Rule 64.10(2)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of commencing the application" **substitute** "note".

38 Documents to be filed and served in response to application, including for leave to appeal, or appeal

- (1) In Rule 64.11(1)(a) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of filing the written case in response" **substitute** "note".
- (2) In Rule 64.11(4)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".

39 Further evidence in application for leave to appeal or appeal

In Rule 64.13(3)(d) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of commencing the application" **substitute** "note".

40 Delivery of leave application book and appeal book

In Rule 64.25(5) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".

41 Registrar may vacate hearing date or refer for dismissal

In Rule 64.28(1) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" (where first occurring) **substitute** "note".

42 Cross-appeal

In Rule 64.30(1)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of commencing a cross-appeal" **substitute** "note".

43 Cross-application for leave to appeal

In Rule 64.31(1)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of commencing a cross-application for leave" **substitute** "note".

44 Notice of contention

(1) For Rule 64.32(1)(b) of the Supreme Court (General Civil Procedure) Rules 2015 **substitute**—

"(b) the respondent shall file and serve—

- (i) a notice of contention in accordance with Form 64G;
- (ii) a written case; and
- (iii) any additional document required by any applicable practice note."

(2) In Rule 64.32(2) of the Supreme Court (General Civil Procedure) Rules 2015, for "and written case" **substitute** ", written case and any additional required document".

45 Costs

In Rule 64.38(3)(c) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction to be filed at the time of commencing an application" **substitute** "note".

46 Further powers of Registrar

In Rule 64.43(2)(b) and (d) of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".

47 Forms 64A to 64G amended

(1) In Form 64A of the Supreme Court (General Civil Procedure) Rules 2015, for "*direction*" (wherever occurring) **substitute** "*note*".

- (2) In Form 64B of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".
- (3) In Form 64C of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".
- (4) In Form 64D of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".
- (5) In Form 64G of the Supreme Court (General Civil Procedure) Rules 2015, for "direction" **substitute** "note".

Division 2—Chapter VI

48 Definitions

In Rule 1.05(1) of the Supreme Court (Criminal Procedure) Rules 2017, **insert** the following definition—

"practice note means any practice note issued from time to time by or on behalf of the Chief Justice;"

49 Application for leave to appeal against conviction or sentence

In Rule 2.05(4)(b) of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".

50 Procedure for determination of application by single Judge of Appeal

In Rule 2.07(4)(b) of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".

51 Procedure for renewal of application

In Rule 2.08(5)(b) of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".

52 Powers of determination

In Rule 2.09(2) of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".

53 Crown appeals

In Rule 2.15(1)(c) and (4) of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".

54 Duties of prison officers

In Rule 2.53(1)(d) of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".

55 Forms 6–2A to 6–2Q amended

- (1) In Form 6–2A of the Supreme Court (Criminal Procedure) Rules 2017—
 - (a) for "direction" (wherever occurring) **substitute** "note";
 - (b) for "Practice directions" **substitute** "Practice notes".
- (2) In Form 6–2B of the Supreme Court (Criminal Procedure) Rules 2017—
 - (a) for "direction" (wherever occurring) **substitute** "note";
 - (b) for "Practice directions" **substitute** "Practice notes".

Supreme Court (Court of Appeal E-Filing and Other Amendments)
Rules 2019
S.R. No. 73/2019

Part 4—Miscellaneous amendments

- (3) In Form 6–2C of the Supreme Court (Criminal Procedure) Rules 2017—
 - (a) for "direction" (wherever occurring) **substitute** "note";
 - (b) for "Practice directions" **substitute** "Practice notes".
- (4) In Form 6–2DA of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".
- (5) In Form 6–2DB of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".
- (6) In Form 6–2Q of the Supreme Court (Criminal Procedure) Rules 2017, for "direction" **substitute** "note".

Dated: 29 August 2019

ANNE FERGUSON, C.J.
PAMELA TATE, J.A.
SIMON P. WHELAN, J.A.
STEPHEN KAYE, J.A.
S. G. E. McLEISH, J.A.
R. NIALL, J.A.
ELIZABETH HOLLINGWORTH, J.
ANTHONY CAVANOUGH, J.
CLYDE CROFT, J.
JOHN R. DIXON, J.
C. MACAULAY, J.
KATE McMILLAN, J.
G. J. DIGBY, J.
T. J. GINNANE, J.

MELANIE SLOSS, J.
M. J. CROUCHER, J.
JOANNE CAMERON, J.
CHRISTOPHER W. BEALE, J.
MICHAEL McDONALD, J.
P. J. RIORDAN, J.
JANE A. DIXON, J.
A. J. KEOGH, J.
MICHELLE QUIGLEY, J.
M. N. CONNOCK, J
MELINDA RICHARDS, J
KEVIN J. A. LYONS, J.
LESLEY TAYLOR, J.
S. J. MOORE, J.
ANDREW J. TINNEY, J.
JACINTA FORBES, J.

Endnotes

- ¹ Rule 4: S.R. No. 103/2015. Reprint No. 2 as at 2 January 2018. Reprinted to S.R. No. 127/2017. Subsequently amended by S.R. Nos 32/2018, 33/2018, 58/2018, 131/2018, 132/2018, 168/2018, 19/2019, 21/2019 and 38/2019.
- ² Rule 15: S.R. No. 126/2017 as amended by S.R. Nos 32/2018, 33/2018, 133/2018, 168/2018 and 21/2019.