



## Supreme Court of Justice Practice Direction No 3 of 2020

### HEARING AND DETERMINATION OF CERTAIN APPEALS AND REVIEWS “ON THE PAPERS”

**This Practice Direction is issued in consultation with and authorised by the Chief Justice**

- A. The Chief Justice recognises that one unavoidable effect of the COVID-19 pandemic has been to reduce the number of appeals and reviews in which it is possible to conduct an oral hearing of counsel or parties in person at Waigani.
- B. The Chief Justice considers that there may be a number of cases on the Supreme Court list which, at the request of the parties or by direction, could, in the present unusual circumstances, be heard “on the papers”; and that this could be done without violation of the general requirement under s 37(12) of the *Constitution* that court proceedings be held in public and in compliance with the principles of natural justice under s 59 of the *Constitution*.
- C. Accordingly, as a qualification of the existing requirements of Order 13 (*listing rules*) of the *Supreme Court Rules* for the listing, hearing and determination of appeals and reviews and other proceedings, the following practice will, until further notice, be adopted.

#### *On the Papers List*

1. A list of appeals or reviews pending in the Supreme Court suitable for hearing and determination on the papers, to be known as the “On the Papers List” is hereby established.
2. A case may only be placed on the On the Papers List by order of the Court or a Judge assigned by the Chief Justice to be a Duty Judge under Order 13, Rule 2 of the *Supreme Court Rules*. Such an order may be made:
  - (a) on the Court’s or Duty Judge’s own motion, but only after affording each of the parties an opportunity to be heard as to whether the case should be placed on the On the Papers List and whether there should be any variation from the standard

length of written submission and being satisfied that it is in the interests of justice that the case be placed on the On the Papers List; or

- (b) on the application of a party, but only after affording each of the other parties an opportunity to be heard as to whether the case should be placed on the On the Papers List and whether there should be any variation from the standard length of written submissions and being satisfied that it is in the interests of justice that the case be placed on the On the Papers List; or
  - (c) on the joint request of the parties, if the Court or a Judge, after considering that request, is satisfied that it is in the interests of justice that the case be placed on the On the Papers List.
3. If a variation from the standard form directions is sought by a party or the parties, that variation and a succinct, related explanation must be specified in the listing request.
  4. No case will be placed on the On the Papers List unless the appeal or application book (or other similar book or collection of materials prepared on direction of the Court or a Judge) has been filed.

#### *Appeal/Application Books*

5. Appeal or application books are to be prepared in accordance with the usual practice of the Court but must, if within the systems data filing limits or unless the Court or a Judge or the Registrar otherwise directs, be filed electronically using the Court's Integrated Electronic Case Management System (IECMS). Large, multi-volume appeal books prepared in accordance with Order 7, Rule 43 of the *Supreme Court Rules* and not feasible for scanning may, with the permission of the Court or a Judge or the Registrar, be filed in hard copy form. Hard copy volumes so filed will then, as occasion requires, be distributed by the Registrar to the Judges by the most efficient available means.

#### *Procedure after being placed on the On the Papers List*

6. Upon being placed on the On the Papers List, the case will be heard and determined on the papers, following an exchange of written submissions by the parties.
7. The On the Papers Listing Directions will specify the dates by which, in terms of the standard form directions, or such variation as the Court or a Judge may approve, written submissions must be filed and served.
8. The standard On the Papers Listing Directions will be:
  - (a) the submissions in chief of the appellant/applicant must be electronically filed and served by ..... [insert date];
  - (b) the submissions in chief of the respondent(s) must be filed and served by ..... [insert date];

- (c) the submissions in reply of the appellant/applicant or a statement that an appellant/applicant will file no reply submissions shall be electronically filed and served by ..... [insert date];
- (d) the submissions in chief of a party shall be not more than 50 pages (including annexures) and shall specify any grounds of appeal or review or any other contentions that are abandoned or otherwise not being pursued;
- (e) a party must annex to a submission in chief the orders sought by that party in respect of the appeal or application;
- (f) the submissions in reply of a party must not exceed five pages;
- (g) the submissions of a party represented by the same firm as another party shall be a joint submission;
- (h) the submissions of a party represented by a different firm or who is not represented must be made by a separate submission;
- (i) if a party seeks an order for costs other than on a party-party basis to be taxed if not agreed, the reasons for such different costs order being made, must be specified in that party's submissions;
- (j) the Court expects that the submissions of a party shall, within the page limits specified, be as brief and succinct as possible and avoid unnecessary or unnecessarily extensive copying of extracts from decided cases or legislation;
- (k) case references in submissions must be to the authorised report of the case or, if not reported, specify its SC or N number.

*When judgment shall stand reserved*

9. Upon the date of filing of the last submissions in reply or, as the case may be, upon the date of filing of a statement that there will be no submissions in reply, or on any other date ordered to be appropriate by the Court or a Judge, which shall be deemed the "Expiry Date", judgment shall, subject to paragraph 10, without further order, stand reserved.
10. There may be circumstances in which the Court or a Judge will wish to pose questions to counsel arising from submissions, in which case such questions shall be posed through the Registrar, to be conveyed electronically to counsel and counsel shall respond within the time set, through the Registrar; and in all such cases, all parties shall be copied in to the communication that takes place, and the Expiry Date will be amended accordingly.
11. The Registrar must forthwith after the Expiry Date:
  - (a) certify that judgment stands reserved; and
  - (b) forward to the Chief Justice and the members of the bench hearing the matter a copy of his certificate; and

- (c) place on the file and email to the parties a copy of his certificate.

*Default of compliance with standard form or specific directions*

12. If a party is in default of compliance with the On the Papers Listing Directions or any variation thereof made by the Court or a Judge, the Court may make on the papers such order to which the party not in default appears justly entitled.
13. Default in compliance with the usual practice in relation to the preparation of appeal or application books will be the subject of a requirement to show cause to the Court or a Judge by filed written response why the case should not be dismissed for want of prosecution.

*Variation of directions*

14. The Court or a Judge may, on application and either before or after the Expiry Date and prior to the delivery of judgment on the appeal or application, make such variation to the times specified in accordance with the On the Papers Listing Directions and when judgment shall stand reserved as seems just on the evidence and after hearing from the parties.
15. Unless the Court or a Judge otherwise directs, such applications are to be heard and determined on the papers.
16. Save as aforesaid, once an appeal or application is placed on the On the Papers List, no other interlocutory application may be made in the case without the leave of the Court or a Judge.

*Pronouncement of orders and publication of reasons for judgment*

17. The Registrar will notify the parties of the date and mode of pronouncement of orders and publication of reasons for judgment.

*Access by non-parties to documents*

18. So as to achieve the closest assimilation of a case heard on the papers with one heard in open court, a non-party may, at such place at the Court as the Registrar may specify, view any notice of appeal or other originating document (or amendment of either) and any submission, order and reasons for judgment, in the same way as in any case not on the On the Papers List.

*Filing and service of documents*

19. Unless the Court or a Judge or the Registrar otherwise directs, all documents to be filed in the Court must be filed electronically.
20. The following information must be provided on any filed document:

- (a) if a lawyer prepares the document—the name, postal address, telephone number and email address of the firm, and the name of an individual in the firm and that person’s mobile phone number, who can be contacted in respect of the matter;
  - (b) if the party or person on whose behalf the document is to be filed is not represented by a lawyer—the name, postal address, telephone number and email address of the party or person, and that person’s mobile phone number, who can be contacted in respect of the matter.
21. The person who files a document electronically must:
- (a) keep a paper or electronic copy of the document; and
  - (b) if directed to do so by the Court, a Judge or the Registrar, produce a hard copy of the document.
22. The normal requirements of service are dispensed with, and all parties may, subject to an order of the Court or a Judge to the contrary, serve any Court documents on other parties by email or other electronic means, and shall ensure that if and when required to do so, sufficient records are available to verify and prove service.

*Format of documents*

23. A document to be filed in a case on the On the Papers List must:
- (a) be in clear, sharp, legible and permanent type of at least 12 point size; and
  - (b) have not less than 1.5 line spacing between lines and paragraphs; and
  - (c) be in A4 size; and
  - (d) have margins of at least 2.5 cm at the top, bottom, left and right sides; and
  - (e) have each page numbered; and
  - (f) be without erasure or alteration that causes material disfigurement.

Dated the 17<sup>th</sup> August 2020



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Ian V Augerea  
**Registrar**