

**Reprint
as at 1 September 2017**



**Court of Appeal (Access to Court Documents) Rules 2009
(SR 2009/401)**

Court of Appeal (Access to Court Documents) Rules 2009: revoked, on 1 September 2017, by rule 20 of the Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 14th day of December 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the Ministry of Justice.

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Rules

1 Title

These rules are the Court of Appeal (Access to Court Documents) Rules 2009.

2 Commencement

These rules come into force on 1 February 2010.

3 Interpretation

In these rules, unless the context otherwise requires,—

access means to search, inspect, or copy under the supervision of an officer of the court

appeal includes an application for leave to appeal

court means the Court of Appeal

court file means a collection of documents that relate to an appeal and are in the custody or control of the court

document—

- (a) means a document in any form (including, without limitation, an electronic form) in the custody or control of the court that relates to an appeal, whether or not kept on a court file; and
- (b) includes, without limitation, any of the following:
 - (i) any writing on any material:
 - (ii) information recorded or stored by means of a tape recorder, computer, or other device:

- (iii) material subsequently derived from information recorded or stored in the manner described in subparagraph (ii):
 - (iv) labels, markings, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
 - (v) books, maps, plans, graphs, or drawings:
 - (vi) photographs, films, negatives, tapes, or any other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced; but
- (c) excludes—
- (i) notes made by or for a Judge for his or her personal use; and
 - (ii) any material that relates to the administration of the court

formal court record means any of the following kept in the registry of the court:

- (a) a register or index:
- (b) any published list that gives notice of a hearing:
- (c) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its content to the public
- (d) a judgment, order, or minute of the court, including any record of the reasons given by a Judge

interlocutory application has the same meaning as in the High Court Rules 2016

Judge means a Judge of the Court of Appeal

originating application has the same meaning as in the High Court Rules 2016

prior document, in relation to an appeal, means a document originally received by another court or by a tribunal for the purposes of the proceeding to which the appeal relates

Registrar means the Registrar of the court and includes any Deputy Registrar of that court

working day has the same meaning as in the Court of Appeal (Civil) Rules 2005.

Compare: 1908 No 89 Schedule 2 r 3.5

Rule 3 **defendant**: revoked, on 1 July 2013, by rule 4(1) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 3 **document**: replaced, on 1 July 2013, by rule 4(2) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 3 **interlocutory application**: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 3 **originating application**: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

4 Application

- (1) These rules apply to documents while they are in the custody or control of the court and until they are transferred to another court or to Archives New Zealand.
- (2) These rules do not require any person to prepare a document that is not in existence at the time the document is sought.

Compare: 1908 No 89 Schedule 2 r 3.6

5 General right of access to formal court record

- (1) Subject to rule 11, every person has the right to access the formal court record kept in the registry of the court.
- (2) Despite subclause (1), a Judge may direct that judgments or orders not be accessed without the permission of the court.

Compare: 1908 No 89 Schedule 2 r 3.7

6 Right of parties to access court file or documents

- (1) The parties to an appeal and their lawyers may access the court file or any document relating to the appeal at any time.
- (2) Despite subclause (1), a record of court proceedings in electronic form may be copied only with the permission of the court.
- (3) Despite subclause (1), a Judge may direct that the court file or any document relating to the appeal not be accessed by the parties or their lawyers without the permission of the court.
- (4) The right under this rule of a party that is a corporation to access the court file or any document relating to the appeal may be exercised by a representative of the party who has been appointed in accordance with section 12 of the Criminal Procedure Act 2011.

Compare: 1908 No 89 Schedule 2 r 3.8

Rule 6(1): replaced, on 1 July 2013, by rule 5(1) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 6(3): amended, on 1 July 2013, by rule 5(2) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 6(4): inserted, on 1 July 2013, by rule 5(3) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

7 Access to documents during substantive hearing stage

- (1) This rule applies during the hearing of an appeal (other than an application for leave to appeal) that is heard by the court and until—

- (a) the close of the 20th working day after the court has given the final judgment on the appeal; or
 - (b) the abandonment of the appeal before the final judgment is given.
- (2) During the period to which this rule applies, any person may access any of the following documents relating to the appeal:
 - (a) the case on appeal;
 - (b) affidavits, documents, or depositions admitted into evidence for the purposes of the appeal;
 - (c) if any evidence given orally at the appeal has been transcribed, a transcript of that evidence.
- (3) Despite subclause (2), a Judge may, on his or her initiative or on request, direct that any document, or part of a document, relating to the appeal not be accessed without the permission of a Judge.
- (4) A request for access to a document under this rule is made informally to the Registrar in writing that—
 - (a) identifies the requested document; and
 - (b) gives the reasons for the request.
- (5) The following provisions apply when a request for access to a document is made under subclause (4):
 - (a) the Registrar must promptly give the parties or their lawyers a copy of the request;
 - (b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 8), give written notice of the objection to the Registrar, to the person who made the request, and to the other parties or their lawyers;
 - (c) on receipt of an objection, the Registrar must promptly refer the objection and the request to a Judge for determination;
 - (d) unless the document is subject to a direction given under subclause (3) or to a restriction stated in rule 11, the Registrar must give the person who made the request access to the document—
 - (i) if the Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 8); or
 - (ii) if the parties or their lawyers earlier agree that the person be given access to the document;
 - (e) every request that relates to a document that is subject to a direction given under subclause (3) or to a restriction stated in rule 11 is taken to be a request for the permission of a Judge, and must be promptly referred to a Judge by the Registrar.

- (6) A Judge may determine an objection referred to the Judge under subclause (5)(c) or a request for permission under subclause (3) or (5)(e) in any manner the Judge considers just.
- (7) For the purposes of subclause (2)(b) and (c), **admitted into evidence** does not include evidence admitted provisionally.

Compare: 1908 No 89 Schedule 2 r 3.9

Rule 7(4): amended, on 1 July 2013, by rule 6(1) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 7(5)(a): amended, on 1 July 2013, by rule 6(2) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 7(5)(b): amended, on 1 July 2013, by rule 6(2) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 7(5)(d)(ii): amended, on 1 July 2013, by rule 6(2) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

8 Meaning of relevant deadline in rule 7

- (1) For the purposes of rule 7, where a party or lawyer receives a copy of a request given to the party or lawyer under that rule, **relevant deadline** means whichever of the following times is applicable:
 - (a) if the copy of the request is received on a day on which the appeal is proceeding, 3 pm on the first working day after the day on which the copy is received;
 - (b) if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.
- (2) For the purposes of subclause (1), a person is deemed to receive a request—
 - (a) on the day on which it is sent electronically or handed to the person;
 - (b) on the day after the day on which it is posted to the person.

Compare: 1908 No 89 Schedule 2 r 3.10

Rule 8(1): amended, on 1 July 2013, by rule 7(1) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

Rule 8(2)(a): amended, on 1 July 2013, by rule 7(2) of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

9 Access to documents, court files, and formal court record in other cases

If a person is not eligible to access a document, court file, or any part of the formal court record relating to an appeal under any of rules 5, 6, or 7, the person may access the document, court file, or any part of the formal court record with the permission of the court, given on an application made under rule 12.

Compare: 1908 No 89 Schedule 2 r 3.11

10 Transfer of requests for prior documents

- (1) This rule applies if—

- (a) a Judge is to determine, but has not yet determined, a request or an objection under rule 7, or an application under rule 12, that relates to a prior document; and
 - (b) the Judge considers that it is more appropriate for the court or tribunal that originally received the prior document to determine whether the person who made the request or application be given access to the prior document.
- (2) The Judge may direct that the request, objection, or application, so far as it relates to the prior document, be transferred to that court or tribunal.
- (3) When a direction under subclause (2) is given, the Registrar must—
 - (a) advise that court or tribunal of the transfer; and
 - (b) send that court or tribunal copies of the request, application, objection, or other responses that relate to the prior document.
- (4) When that court or tribunal receives advice of the transfer, the request or application for access to the prior document must be treated as a request made in accordance with the rules governing access to documents held by that court or tribunal.

11 Restrictions on access

- (1) Any right or permission conferred or given by these rules to access a document, court file, or any part of the formal court record relating to an appeal is subject to—
 - (a) any enactment, court order, or direction limiting or prohibiting access or publication; and
 - (b) the payment of any prescribed fees for access.
- (2) If the Court of Appeal receives a document in respect of which another court has made an order or direction of the kind described in subclause (1)(a), then that order or direction applies to the document, or to any copy of the document, while it is in the custody or control of the Court of Appeal as if the order or direction had been made by the Court of Appeal.
- (3) Without limiting the generality of subclause (1), a person may access a document of the kind described in subclause (4) only if a Judge permits the person to do so.
- (4) The documents are,—
 - (a) in the case of an appeal arising out of a criminal proceeding to which section 375A of the Crimes Act 1961 or section 199 of the Criminal Procedure Act 2011 applies,—
 - (i) a written statement by, or a transcript of the evidence of, a person who is a complainant or who gives, or is intended to give, propensity evidence:

- (ii) videotaped records or records in any electronic form of interviews with any person who is a complainant or who gives, or is intended to give, propensity evidence:
 - (iii) photographs or images in any electronic form of any person who is a complainant, or who gives, or is intended to give, propensity evidence:
- (b) videotaped records or records in any electronic form of interviews with a defendant:
- (c) a document that identifies, or enables the identification of, a person if the publication of any matter relating to the person's identity (such as the person's name) is forbidden by an enactment or by an order of a court:
- (d) any written statement or document received, or any record of anything said, in a proceeding while members of the public are excluded from the proceeding by an enactment or by an order of a court.
- (5) A person may not access a document, court file, or any judgment or order, that relates to an appeal arising out of a civil proceeding brought under an enactment specified in subclause (6) unless—
 - (a) the person is a party to that proceeding; or
 - (b) the court permits the person to do so.
- (6) The enactments are as follows:
 - (a) Adoption Act 1955:
 - (b) Alcoholism and Drug Addiction Act 1966:
 - (c) Arbitration Act 1996:
 - (d) Care of Children Act 2004:
 - (e) Civil Union Act 2004:
 - (f) Family Proceedings Act 1980:
 - (g) Family Protection Act 1955:
 - (h) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
 - (i) Marriage Act 1955:
 - (j) Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (k) Property (Relationships) Act 1976:
 - (l) Protection of Personal and Property Rights Act 1988:
 - (m) Status of Children Act 1969:
 - (n) any former provisions corresponding to provisions of any of the Acts mentioned in paragraphs (a) to (m).

Compare: 1908 No 89 Schedule 2 r 3.12; SR 2009/134 r 12(3)

Rule 11(4)(a): amended, on 1 July 2013, by rule 8 of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

12 Applications for permission to access documents, court file, or formal court record other than at hearing stage

- (1) This rule applies whenever the permission of the court is necessary under these rules and is sought to access a document, court file, or any part of the formal court record relating to an appeal, except where access may be sought under rule 7.
- (2) An application under this rule is made informally to the Registrar in writing that—
 - (a) identifies the document, court file, or part of the formal court record that the applicant seeks to access; and
 - (b) gives the reasons for the application.
- (3) On receipt of an application made in accordance with subclause (2), the Judge or Registrar may direct that the person file an interlocutory application or originating application.

Compare: 1908 No 89 Schedule 2 r 3.13(1), (2), (4)

Rule 12(2): amended, on 1 July 2013, by rule 9 of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

13 Giving of notice

- (1) The applicant must give notice of the application to any person who, in the opinion of the Judge or Registrar, may be adversely affected by the application.
- (2) The Judge or Registrar may dispense with the giving of notice under subclause (1) if it would be impracticable to require notice to be given.

Compare: 1908 No 89 Schedule 2 r 3.13(5), (6)

Rule 13(1): amended, on 1 July 2013, by rule 10 of the Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174).

14 Hearing of application

- (1) The application is heard and determined by a Judge acting alone or, if a Judge directs the Registrar to do so, by the Registrar.
- (2) The Judge or Registrar may deal with an application on the papers, at an oral hearing, or in any other manner the Judge or Registrar considers just.

Compare: 1908 No 89 Schedule 2 r 3.13(3), (7)

15 Decisions on applications under rule 12

The Judge or Registrar may refuse an application made under rule 12 or grant it in whole or in part without conditions or subject to any conditions that the Judge or Registrar thinks appropriate.

Compare: 1908 No 89 Schedule 2 r 3.14

16 Review of decisions by Registrar

Any decision by a Registrar under rule 15 is subject to review by a Judge acting alone on the application of the applicant or any person affected.

Compare: 1908 No 89 Schedule 2 r 3.15

17 Matters to be taken into account

In determining an application under rule 12, or a request for permission under rule 7, or the determination of an objection under that rule, the Judge or Registrar must consider the nature of, and the reasons for, the application or request and take into account each of the following matters that is relevant to the application, request, or objection:

- (a) if the appeal relates to a defendant whose trial is yet to take place or who may be retried, the right of the defendant to a fair hearing:
- (b) the orderly and fair administration of justice:
- (c) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:
- (d) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, trials and decisions:
- (e) the freedom to seek, receive, and impart information:
- (f) whether a document to which the application or request relates is subject to any restriction under rule 11:
- (g) any other matter that the Judge or Registrar thinks just.

Compare: 1908 No 89 Schedule 2 r 3.16; SR 2009/134 r 16(a)

Rebecca Kitteridge,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Court of Appeal (Access to Court Documents) Rules 2009 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193): rule 20

Senior Courts Act 2016 (2016 No 48): section 183(c)

Court of Appeal (Access to Court Documents) Amendment Rules 2013 (SR 2013/174)