



Court of Appeal Protocol: Dealing with Informer Offenders

| Document Details | | | |
|----------------------|---|---------------------|----------------|
| Subject | Process to be used for matters involving a Letter of Assistance | | |
| Date Created | 28 August 2017 | Last Updated | 28 August 2017 |
| Authorised By | Judges of Appeal | | |

Statement of Purpose

1. This protocol applies to applications in the Victorian Court of Appeal involving a party who is:
 - a. an informer offender who relied on a Letter of Assistance ('LOA') during sentencing in a court below; or
 - b. a co-offender of an informer offender in circumstances where the co-offender is unaware of the fact of the informer offender's co-operation with authorities.('LOA matters')
2. This protocol is a guide to practitioners about the procedures to be followed in LOA matters in the Victorian Court of Appeal to address the risk to the safety of an informer offender that may arise if the fact of the informer offender's assistance to authorities is disclosed in open court.
3. This protocol does not relate to offenders who have given evidence against co-offenders.
4. This protocol is strictly confined to matters in the Victorian Court of Appeal. It is intended to be used as a guide only.

Practitioners to notify the Court of LOA matter as early as possible

5. Where the informer offender is seeking leave to appeal, the legal practitioner representing the informer offender must contact the Court of Appeal Registry **as early as possible** after the filing of a notice of application for leave to appeal to:
 - a. advise that the applicant relied upon an LOA during sentencing in a court below;
 - b. provide the details of any co-offenders involved;

- c. advise of any pseudonym allocated by the lower Court; and
 - d. foreshadow whether an application will be made to close the court during any hearing that is to take place, and/or for the reasons for judgment to be restricted in whole or in part.
6. Where the party seeking leave to appeal is a co-offender of an informer offender and there is a complaint about parity, the Crown must contact the Court of Appeal Registry **as early as possible** after the receipt of a copy of the notice of application for leave to appeal to advise of any informer offender related to the matter, and if so, whether that informer offender relied upon an LOA during sentencing in the court below that was not disclosed to the applicant.
7. In cases of Crown appeals, the Crown must contact the Court of Appeal Registry as early as possible after the filing of an appeal to advise that the matter is an LOA matter.

Directions

8. The Court may convene for the purpose of hearing submissions from the parties about the directions appropriate to be made for the conduct of individual matters. Subject to the submissions of the parties, the Court may make an order excluding all but the parties' legal representatives from attendance at the directions hearing.
9. Examples of procedural measures that the Court has taken in the past to address the issues discussed in this protocol are set out in **Appendix A**.

Listing and conduct of leave to appeal hearing

10. If the applicant is the informer offender and the applicant's legal representatives wish to view the LOA for the purposes of preparing for the hearing of the appeal, they must contact the Crown to arrange a suitable time and place to view the LOA. The applicant's legal representatives must ensure that any viewing takes place at least three weeks prior to the hearing.
11. At the hearing, the legal representatives must consider whether to make a closed court application pursuant to the *Open Courts Act 2013* before dealing with submissions about the informer offender's or informer co-offender's assistance. Parties should expect that any court closure will be for the minimum period necessary to deal with the issue of the assistance and that the rest of the hearing will be conducted in open court.
12. The Crown is to provide the LOA to the Court of Appeal Registry at least two weeks prior to the hearing date of the appeal. The LOA will be kept in a safe while in the custody of the Court. The contents of the LOA will not be read into the transcript unless otherwise ordered by the bench.

The LOA will be returned to the Crown as soon as the bench no longer requires it. The LOA will not be viewed by any person other than the members of the bench and will not be copied.

Judgment

13. The Court's published reasons for judgment will not refer to the co-operation provided by the informer offender. Instead, the Court may provide the parties with a separate confidential memorandum addressing how it has dealt with the issue of assistance.

Contacting the Court of Appeal

14. The Court of Appeal Registry should be contacted either via email sent to coaregistry@supcourt.vic.gov.au or by telephone on (03) 8600 2001.

Appendix A

The following paragraphs describe measures that the Court may, following submissions from the parties, follow in a particular matter. They are provided as examples only as the directions appropriate for a matter will depend on the circumstances of that matter and the parties' submissions.

Directions hearing of LOA matter involving a co-offender of an informer offender

1. If the Court is informed under paragraph 6 of the protocol that the applicant is a co-offender of an informer offender, the Court may list the matter for a directions hearing to be attended only by the legal representatives of the parties.
2. The Court may decide whether the directions hearing will be given a silent listing and/or whether part or the whole of the directions hearing will be held in closed court.
3. At the directions hearing, the Court may inform the applicant's legal representative that the Court is aware of information that it would like, subject to an undertaking from the legal representative, to discuss with the parties. The Court may then request the applicant's legal representative to undertake not to disclose the information, including the fact of the undertaking, the co-offender's assistance, the contents of the LOA, any confidential plea transcript or restricted portions of the reasons for sentence, to the applicant or any other person.
4. In the event of the non-disclosure undertaking being given, the applicant's legal representative may be informed of the fact of the co-offender's assistance and directed to arrange a suitable time and place to view the co-offender's LOA, any confidential plea transcript and restricted portions of the reasons for sentence. The applicant's legal representative may be required to inform the Registry once the viewing has taken place.
5. Following confirmation that the applicant's legal representative has viewed the LOA, any confidential plea transcript and restricted portions of the reasons for sentence, the Registry may write to the parties to provide the applicant with a period of time, e.g. 21 days, within which to revise the grounds of appeal and written case. If the application for leave to appeal is maintained, the Crown will then be provided with directions as to the filing of a written case in response.

Listing and conduct of leave to appeal hearing

6. The Registry will notify the parties of a hearing date for the application for leave to appeal.

7. The Court, following submissions from the parties will decide if the matter will be listed under the applicant's real name or otherwise.
8. If the applicant is the informer offender and is in custody, the applicant's legal representative should consider prior to the hearing date if the matter can proceed in the applicant's absence to avoid the need for court security to be present.
9. If the applicant is the co-offender of the informer offender, the Court may direct that the legal representatives must not make submissions about the informer offender's co-operation in the applicant's presence.