



# Supreme Court of Victoria

## Practice Note SC CA 3

### Civil applications and appeals

#### 1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to set out the practice to be followed in the Court of Appeal in civil applications and appeals (including applications for leave to appeal or to cross-appeal, appeals and cross-appeals as of right, and other applications and notices permitted under the Rules).
- 1.3 The objectives of this Practice Note are to ensure that applications and appeals proceed expeditiously and efficiently, that matters of fact and law in issue are clearly identified and properly ventilated, and that appeal grounds are drawn and argued by reference to what took place at trial.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was reissued on 14 April 2025, replaces the earlier version issued on 30 September 2019, and applies to all civil applications and appeals in the Court of Appeal, whenever commenced.
- 2.2 This Practice Note also replaces Practice Direction No. 7 of 2014, which is hereby revoked.

#### 3. CONTENTS

- 3.1 The remaining sections of this Practice Note and annexures are:

Section/ annexure	Title
<a href="#">Section 4</a>	Definitions
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<a href="#">Section 6</a>	Commencing an application for leave to appeal or appeal

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<a href="#">Section 7</a>	Listing considerations and requests for expedition
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<a href="#">Section 23</a>	Ceasing to act
<a href="#">Section 24</a>	Transcript of Court of Appeal hearings
<a href="#">Annexure A</a>	Example summaries for the Court of Appeal: <ul style="list-style-type: none"> <li>• Example summary in a personal injury case</li> <li>• Example summary in a contractual case</li> <li>• Example summary in a judicial review</li> </ul>
<a href="#">Annexure B</a>	Example agreed list of transcript references

## 4. DEFINITIONS

4.1 In this Practice Note, unless the context otherwise requires:

*applicant* includes:

- (a) an applicant for leave to appeal;
- (b) a cross-applicant for leave to appeal;
- (c) an appellant; and
- (d) a cross-appellant.

*application* includes:

- (a) an application, or cross-application, for leave to appeal; and
- (b) an appeal or cross-appeal.

*application book* includes a leave application book and an appeal book.

*authority* and *authorities* includes cases, legislation and extrinsic material pursuant to s 15AB of the *Acts Interpretation Act 1901* (Cth) or s 35 of the *Interpretation of Legislation Act 1984* (Vic).

*Court* includes the Registrar.

*CPA* means the *Civil Procedure Act 2010* (Vic).

*extension application* has the same meaning as defined in Rule 64.01(1).

*Registrar* has the same meaning as defined in Rule 1.13(1).

*Registrar's note* means the Registrar's note for civil applications and appeals published by the Registrar under Rule 64.24.

*respondent* includes cross-respondent.

*Rule* or *Rules* means the *Supreme Court (General Civil Procedure) Rules 2015*.

*written case* has the same meaning as defined in Rule 64.01(1).

## 5. GENERAL REQUIREMENTS

5.1 All parties must familiarise themselves and comply with:

- (a) applicable court rules, particularly Order 64 of the Rules;
- (b) this Practice Note; and
- (c) the Registrar's note.

5.2 Non-compliance may result in:

- (a) a document not being accepted for filing;<sup>1</sup>

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<sup>1</sup> Rule 28A.04(1) and (2); Rule 64.43(1) and (2).

- (b) a hearing being vacated;<sup>2</sup>
  - (c) an application or appeal being taken to be abandoned (such as where an applicant fails to deliver or serve a leave application book by the due date, or otherwise fails to comply with a direction or order within 30 days of a due date);<sup>3</sup>
  - (d) in some cases, dismissal of the application or appeal;<sup>4</sup> and
  - (e) adverse costs orders.
- 5.3 The Court may vary or waive a requirement of this Practice Note and any time limit fixed by the Rules or this Practice Note.<sup>5</sup>
- 5.4 A document prepared by a party that is required to be filed must comply with Rules 27.02 to 27.04, except that a written case, summary or submissions may be in 1.5 line spacing rather than double spacing. The text size must be no less than 12 point type in the body of a document and no less than 10 point type in footnotes.
- 5.5 Unless otherwise directed by the Court, all documents required to be filed must be filed electronically via RedCrest, in searchable PDF format.<sup>6</sup>
- 5.6 Applications and appeals will not be accepted for filing unless they are accompanied by the applicable fee. All other fees payable during a proceeding, such as mediation fees, setting down fees and hearing fees, must also be paid when due and, if not paid, may result in either a hearing not being listed or a hearing being vacated. Where a party seeks a fee waiver, a fee waiver application must be provided at the time of filing the application or appeal.
- 5.7 All correspondence to the Court of Appeal must be sent to the registry by email to [coaregistry@supcourt.vic.gov.au](mailto:coaregistry@supcourt.vic.gov.au) and be copied to all parties.<sup>7</sup> Such correspondence may also be copied to a specific person at the registry, however they should not be the sole addressee. Section 6 of Practice Note SC Gen 4 (Custom and Protocol), which concerns communications with the Court, applies equally to communications with the registry as it does to communications with an associate.

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<sup>2</sup> Rule 64.28.

<sup>3</sup> Rule 64.45.

<sup>4</sup> Rule 64.46.

<sup>5</sup> See Rules 2.04, 64.05, 64.07, 64.11, 64.35 and 64.47.

<sup>6</sup> Rules 27.03(13.1), ord 28A; Practice Note SC Gen 19 (RedCrest Electronic Case Management System).

<sup>7</sup> Notwithstanding Practice Note SC Gen 12 (Consent Orders), correspondence by which a minute of proposed consent order is provided to the Court of Appeal should be sent in the manner set out in this Practice Note.

## **6. COMMENCING AN APPLICATION FOR LEAVE TO APPEAL OR APPEAL**

- 6.1 In most instances, a civil appeal to the Court of Appeal requires leave to appeal.<sup>8</sup> The Court of Appeal may only grant leave to appeal if it is satisfied that the appeal has a real prospect of success.<sup>9</sup>
- 6.2 An application for leave to appeal or an appeal must be filed within the time specified by any applicable legislation. Where the time is as specified in Order 64 of the Rules, the time limit is:<sup>10</sup>
- (a) 42 days; or
  - (b) in relation to decisions specified in Rule 64.05(1)(ab), 28 days.
- 6.3 To commence an application for leave to appeal or an appeal, all of the following documents must be filed:<sup>11</sup>
- (a) an application for leave to appeal / notice of appeal in accordance with Form 64A;
  - (b) a written case of no more than 10 pages;<sup>12</sup>
  - (c) a list of authorities with pinpoint references;<sup>13</sup>
  - (d) a copy of the authenticated order containing the decision sought to be appealed;
  - (e) a copy of any written reasons of the lower court or tribunal in respect of the decision sought to be appealed;
  - (f) a draft leave application book index;<sup>14</sup> and
  - (g) a draft summary for the Court of Appeal.<sup>15</sup>
- 6.4 The Form 64A must comply with Rule 64.04. It must also be prepared in a manner that does not necessitate referring to the summary for the Court of Appeal or any particular version of the summary. The summary can evolve following input from all parties. The summary may also be dispensed with by the Registrar and therefore would not be before the Court.<sup>16</sup>
- 6.5 Regardless of whether any party was allocated a pseudonym in the lower court or tribunal, as the Form 64A is the originating process in the Court of Appeal it must state the real name of all parties. If any party contends that a pseudonym ought to be applied in the Court of Appeal proceeding:

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<sup>8</sup> *Supreme Court Act 1986* (Vic), s 14A.

<sup>9</sup> *Supreme Court Act 1986* (Vic), s 14C.

<sup>10</sup> Rule 64.05(1).

<sup>11</sup> Rules 64.02(1) and 64.03(1).

<sup>12</sup> See also the requirements for a written case in section 13 of this Practice Note.

<sup>13</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.

<sup>14</sup> See also section 17 of this Practice Note.

<sup>15</sup> See also the requirements for a summary for the Court of Appeal in section 15 of this Practice Note.

<sup>16</sup> An example of a circumstance in which the Registrar may dispense with the summary is where the parties have been unable to agree upon it.

- (a) they must inform the Court and each other party at the earliest opportunity and, if required by the Registrar, either:
    - (i) provide, by email to the registry, a minute of proposed consent order signed on behalf of all parties together with a brief explanation as to why it is contended to be appropriate that the proposed pseudonym be applied; or
    - (ii) make a formal application in accordance with Rule 64.03(3) (see section 12 below);
  - (b) pending resolution of the issue, the Registrar will consider that any filed document that reveals the real name of the party for whom a pseudonym is sought ought to remain confidential to the parties and therefore not able to be inspected by a non-party without leave of the Court.<sup>17</sup>
- 6.6 The Form 64A and accompanying documents must be served on each respondent as soon as practicable and not later than 5 days after they are filed.<sup>18</sup> Within 7 days after service, the applicant must confirm that has occurred by filing a list of persons served in accordance with Form 64C.<sup>19</sup>

## **7. LISTING CONSIDERATIONS AND REQUESTS FOR EXPEDITION**

- 7.1 In the Form 64A, the applicant must state whether the application for leave to appeal or appeal is urgent and, if so, the reasons for the urgency.<sup>20</sup>
- 7.2 Following service of an application for leave to appeal or appeal, all parties must confer as to the following listing considerations:
- (a) whether there is any urgency;
  - (b) the complexity of the matter;
  - (c) whether, if the application for leave to appeal and/or the appeal are listed for an oral hearing, it is contended that a hearing of more than 1 day is likely to be required (noting that a hearing duration of more than 1 day will only be accommodated in exceptional circumstances);
  - (d) whether there are any related proceedings that should be considered in the management of the Court of Appeal proceeding; and
  - (e) whether the proceeding, or any part of it, is appropriate for referral to mediation.
- 7.3 Within 14 days after service of the application for leave to appeal or notice of appeal, the applicant must, by email to the registry, notify the Registrar of all parties' positions on the listing considerations referred to in the previous

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<sup>17</sup> Rule 28.05(5).

<sup>18</sup> Rule 64.07. See also Rule 3.01 as to how time is calculated.

<sup>19</sup> Rule 64.06(5).

<sup>20</sup> Rule 64.04(i).

paragraph. All parties must cooperate to enable the applicant to comply with that requirement.

- 7.4 At first instance it is not necessary for any party who seeks expedition to make that request by a formal application or file any affidavit in support of it. Rather, sufficient details of the basis for the request should be provided to the Registrar, by email to the registry, either in accordance with the procedure set out above for advising of the parties' positions on listing considerations, or earlier if necessary in the circumstances. The Registrar will inform the parties if a formal application is required.

## **8. RESPONSE TO APPLICATION FOR LEAVE TO APPEAL OR NOTICE OF APPEAL**

- 8.1 Within 28 days after service of an application for leave to appeal or notice of appeal (subject to section 11.5 below), a respondent must file and serve:<sup>21</sup>
- (a) if the application / appeal is opposed:
    - (i) a written case of no more than 10 pages;<sup>22</sup>
    - (ii) a list of authorities with pinpoint references;<sup>23</sup> and
    - (iii) a draft leave application book index which is marked up to clearly identify any proposed changes to the draft index that was served by the applicant;<sup>24</sup> or
  - (b) if the application / appeal is not opposed, a notice of intention not to respond or contest in accordance with Form 64E.
- 8.2 A respondent who opposes the application for leave to appeal / appeal must also, at the same time as serving the documents referred to in section 8.1(a) above, notify the applicant (not the Court) of any proposed changes to the draft summary for the Court of Appeal.<sup>25</sup>
- 8.3 Within 7 days after serving the responsive documents, the respondent must confirm that has occurred by filing a list of persons served in accordance with Form 64C.<sup>26</sup>

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<sup>21</sup> Rule 64.11(1).

<sup>22</sup> See also the requirements for a written case in section 13 of this Practice Note.

<sup>23</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.

<sup>24</sup> See also section 17 of this Practice Note.

<sup>25</sup> See also the requirements for a summary for the Court of Appeal in section 15 of this Practice Note. The expectation is that the parties will be able to agree on the summary, so it is not necessary for the Court to receive the respondent's proposed changes.

<sup>26</sup> Rules 64.06(5) and 64.11(7).

## **9. CROSS-APPLICATIONS FOR LEAVE TO APPEAL AND CROSS-APPEALS**

- 9.1 Within 28 days after service of an application for leave to appeal or notice of appeal (subject to section 11.5 below), a respondent may bring a cross-application for leave to appeal or cross-appeal.<sup>27</sup> A cross-application for leave to appeal or cross-appeal is initiated as a new case by filing:<sup>28</sup>
- (a) a cross-application for leave to appeal / notice of cross-appeal in accordance with Form 64A (sections 6.4 and 6.5 above apply equally to this document);
  - (b) a written case of no more than 10 pages;<sup>29</sup> and
  - (c) a list of authorities with pinpoint references.<sup>30</sup>
- 9.2 Upon being accepted for filing, a cross-application for leave to appeal / cross-appeal will be allocated its own proceeding number, but will be managed in conjunction with the related application for leave to appeal / appeal.
- 9.3 The Form 64A and accompanying documents must be served on each cross-respondent as soon as practicable and not later than 5 days after they are filed.<sup>31</sup> Within 7 days after service, the cross-applicant / cross-appellant must confirm that has occurred by filing a list of persons served in accordance with Form 64C.<sup>32</sup>
- 9.4 Within 28 days after service of a cross-application for leave to appeal or notice of cross-appeal, a cross-respondent must file and serve:<sup>33</sup>
- (a) if the cross-application / cross-appeal is opposed:
    - (i) a written case of no more than 10 pages;<sup>34</sup> and
    - (ii) a list of authorities with pinpoint references;<sup>35</sup> or
  - (b) if the cross-application / cross-appeal is not opposed, a notice of intention not to respond or contest in accordance with Form 64E.

## **10. NOTICES OF CONTENTION**

- 10.1 A respondent who proposes to contend that the decision the applicant seeks to appeal should be affirmed on a ground of fact or law that was not decided, was erroneously decided or was not raised for decision in the lower court or

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<sup>27</sup> Rules 64.30(2) and 64.31(2).

<sup>28</sup> Rules 64.30(1) and 64.31(1). Note that the lower court order and reasons, a draft summary and draft leave application book index are not required as they will have been filed in connection with the related application for leave to appeal / appeal.

<sup>29</sup> See also the requirements for a written case in section 13 of this Practice Note.

<sup>30</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.

<sup>31</sup> Rules 64.30(3) and 64.31(3). See also Rule 3.01 as to how time is calculated.

<sup>32</sup> Rules 64.06(5), 64.30(4) and 64.31(4).

<sup>33</sup> Rules 64.11(1), 64.30(4) and 64.31(4).

<sup>34</sup> See also the requirements for a written case in section 13 of this Practice Note.

<sup>35</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.



tribunal, must file and serve a notice of contention in accordance with Rule 64.32.

10.2 To comply with Rule 64.32, a respondent must file and serve the following documents within 28 days after service of the application for leave to appeal or notice of appeal (subject to section 11.5 below):

- (a) a notice of contention in accordance with Form 64G;
- (b) a written case of no more than 5 pages;<sup>36</sup> and
- (c) a list of authorities with pinpoint references.<sup>37</sup>

10.3 Within 28 days after service of a notice of contention, the applicant must file and serve the following documents in response:

- (a) a written case of no more than 5 pages;<sup>38</sup> and
- (b) a list of authorities with pinpoint references.<sup>39</sup>

## **11. APPLICATIONS FOR AN EXTENSION OF TIME TO FILE OR SERVE AN APPLICATION FOR LEAVE TO APPEAL OR NOTICE OF APPEAL**

11.1 Where an application for leave to appeal or notice of appeal has not been filed or served within the required time, the applicant requires an extension of time to do so.

11.2 To make an extension application, the applicant must file and serve:<sup>40</sup>

- (a) an application other than for leave to appeal in accordance with Form 64B;
- (b) an affidavit (or affidavits) in support setting out the reasons for not complying with the time limit, and exhibiting any documents relied upon;
- (c) submissions of no more than 5 pages; and
- (d) all of the documents necessary to commence the application for leave to appeal or appeal as listed in section 6.3 above.<sup>41</sup>

11.3 The extension application and accompanying documents must be served on each respondent as soon as practicable and not later than 5 days after they are filed.<sup>42</sup> Within 7 days after service, the applicant must confirm that has occurred by filing a list of persons served in accordance with Form 64C.<sup>43</sup>

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<sup>36</sup> See also the requirements for a written case in section 13 of this Practice Note.

<sup>37</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.

<sup>38</sup> See also the requirements for a written case in section 13 of this Practice Note.

<sup>39</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.

<sup>40</sup> Rule 64.08(2).

<sup>41</sup> Rule 64.08(3).

<sup>42</sup> Rules 64.07 and 64.08(10). See also Rule 3.01 as to how time is calculated.

<sup>43</sup> Rules 64.06(5) and 64.08(10).

- 11.4 Within 14 days after service of the extension application and other required documents, a respondent must file and serve:<sup>44</sup>
- (a) if the extension application is opposed:
    - (i) a notice of opposition in accordance with Form 64D;
    - (ii) any affidavit relied on; and
    - (iii) submissions of no more than 5 pages; or
  - (b) if the extension application is not opposed, a notice of intention not to respond or contest in accordance with Form 64E.
- 11.5 This section is subject to section 11.6 below. A respondent is not required to respond to an application for leave to appeal or notice of appeal pending determination of an extension application, but may do so if they wish. If an extension application is successful, within 28 days after the date the extension is granted a respondent must:
- (a) file and serve their response to the application for leave to appeal or notice of appeal, and notify the applicant (not the Court) of any proposed changes to the draft summary for the Court of Appeal, in accordance with section 8 above;
  - (b) bring any cross-application for leave to appeal or cross-appeal in accordance with section 9 above; and
  - (c) file and serve any notice of contention in accordance with section 10 above.
- 11.6 Notwithstanding section 11.5 above, the Court may require a respondent to file and serve a response to the application for leave to appeal / notice of appeal and/or other documents even though the extension application is yet to be determined. Circumstances in which that may occur include where the Registrar considers that such documents will assist with determining the extension application, or where there is to be a determination of the extension application concurrently with the application for leave to appeal and/or appeal.

## **12. APPLICATIONS OTHER THAN FOR LEAVE TO APPEAL**

- 12.1 This section applies to any application other than for leave to appeal except for an extension application (see section 11 above), an application under s 14D(2) of the *Supreme Court Act 1986* (Vic) to set aside or vary the dismissal of an application for leave to appeal<sup>45</sup>, and an application by a solicitor under Rule 20.03(4) for leave to file a notice that they have ceased to act for a party (see section 23 below). It therefore applies to:

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<sup>44</sup> Rule 64.08(5)-(7).

<sup>45</sup> See also Rule 64.18.

- (a) an application other than for leave to appeal that is required to be made in accordance with Rule 64.03(3) (for example, an application for a stay of execution or of proceedings);<sup>46</sup>
  - (b) an application under Rule 64.10 for leave to intervene;
  - (c) an application under Rule 64.13(2) or (4) for the Court of Appeal to receive evidence that was not before the court or tribunal whose decision is sought to be appealed; and
  - (d) an application under Rule 64.38(2) for the applicant to give security for the respondent's costs.
- 12.2 An application to which this section applies is made by filing, in accordance with any Rules applicable to the particular application:<sup>47</sup>
- (a) an application other than for leave to appeal in accordance with Form 64B;
  - (b) an affidavit (or affidavits) in support;
  - (c) submissions of no more than 5 pages;
  - (d) a list of authorities with pinpoint references;<sup>48</sup> and
  - (e) a draft application book index (including all documents it is contended are necessary for determination of the application other than for leave to appeal).<sup>49</sup>
- 12.3 The application and accompanying documents must be served on each respondent to the application as soon as practicable and not later than 5 days after they are filed.<sup>50</sup> Within 7 days after service, the party making the application must confirm that has occurred by filing a list of persons served in accordance with Form 64C.<sup>51</sup>
- 12.4 Within 14 days after service of the application, each respondent to the application must file and serve:<sup>52</sup>
- (a) if the application is opposed:
    - (i) a notice of opposition in accordance with Form 64D;
    - (ii) any affidavit relied on;
    - (iii) submissions of no more than 5 pages;

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<sup>46</sup> For some types of interlocutory applications the Rules specify how they are to be made, such as those referred to in section 12.1(b) to (d) of this Practice Note. Rule 64.03(3) applies to all other types of application other than for leave to appeal.

<sup>47</sup> Rules 64.03(3), 64.10(2), 64.13(3), 64.13(4) and 64.38(3).

<sup>48</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.

<sup>49</sup> See also section 17 of this Practice Note.

<sup>50</sup> Rule 64.07, but note the time limits applicable to an application for the Court to receive further evidence under Rule 64.13. See also Rule 3.01 as to how time is calculated.

<sup>51</sup> Rule 64.06(5).

<sup>52</sup> Rule 64.11(4) and (5), but note the time limits applicable to an application for the Court to receive further evidence under Rule 64.13.

- (iv) a list of authorities with pinpoint references;<sup>53</sup> and
    - (v) a draft application book index which is marked up to clearly identify any proposed changes to the draft index that was served by the party making the application;<sup>54</sup> or
  - (b) if the application is not opposed, a notice of intention not to respond or contest in accordance with Form 64E.
- 12.5 An affidavit in response (section 12.4(a)(ii) above) must not exhibit a duplicate of a document that is exhibited to an affidavit in support of the application (section 12.2(b) above). Rather, the responding affidavit must identify where the document can be found by reference to the relevant page number(s) of the supporting affidavit.
- 12.6 Before any application other than for leave to appeal is filed, parties are expected to endeavour to resolve the issue between themselves, and provide a minute of proposed consent order signed on behalf of all parties where appropriate.
- 12.7 Ordinarily, a stay application will not be accepted for filing before all documents necessary to commence an application for leave to appeal or appeal have been filed, and will not be considered before all documents have been served. A party intending to apply for a stay should consider making the application to the lower court judge in the first instance, particularly where it is contended that a stay is required urgently.

### **13. WRITTEN CASES AND WRITTEN SUBMISSIONS**

- 13.1 A written case is the document that contains a party's written submissions in relation to an application for leave to appeal, appeal, cross-application for leave to appeal, cross-appeal or notice of contention.
- 13.2 The purpose of the written case is to enable the Court and Registrar to quickly grasp the facts, issues and contentions in a case. It should be prepared in a manner that does not necessitate referring to the summary for the Court of Appeal or any particular version of the summary. The summary can evolve following input from all parties. The summary may also be dispensed with by the Registrar and therefore would not be before the Court.<sup>55</sup>
- 13.3 A written case must comply with the following requirements:
- (a) it must not exceed the applicable page limit (being 10 pages, except in relation to a notice of contention in which case it is 5 pages) without the Registrar's permission. Permission must be sought by email to the registry and include a brief reason. For a written case in support of grounds of appeal or grounds of contention, ordinarily the Registrar will

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<sup>53</sup> See also the requirements for a list of authorities in section 14 of this Practice Note.

<sup>54</sup> See also section 17 of this Practice Note.

<sup>55</sup> An example of a circumstance in which the Registrar may dispense with the summary is where the parties have been unable to agree upon it.

not consider whether to grant that permission until the written case in question and all associated documents (eg. the Form 64A) have been submitted for filing;

- (b) it must comply with the requirements referred to in section 5.4 above, including as to line spacing and text size;
- (c) each paragraph must be numbered consecutively;
- (d) headings must be included so as to identify where each ground of appeal or ground of contention is addressed (where appropriate, multiple grounds can be dealt with together);
- (e) for each ground, it must contain specific and concise submissions relied upon;
- (f) where it is contended that there is an error or error of law in the decision sought to be appealed, each such error must be identified precisely;
- (g) where a party intends to challenge an evidential finding, it must identify the error (including any failure to make a finding of fact), identify the finding that the party contends ought to have been made, state concisely why it is said the finding or failure to make a finding is erroneous, and refer to the evidence to be relied upon in support of the argument (this may be assisted by including a schedule of evidence to the written case);
- (h) all authorities relied upon or sought to be distinguished must be identified, together with pinpoint references, and be cited and referenced in the same manner as applies to a list of authorities (see section 14 below);
- (i) any transcript relied upon must be identified, together with the precise transcript page and line numbers relied upon;
- (j) all documents referred to must be clearly identified, including:
  - (i) if it is a document that was tendered in evidence during a hearing, the exhibit number that was allocated;
  - (ii) if it is a document that was included in an exhibit to an affidavit, sufficient details to identify the affidavit, exhibit mark and, if applicable, page numbers within the exhibit;
- (k) it must be signed by the counsel or lawyer who prepared it, or, if the party is not legally represented, by the party personally; and
- (l) the name of the person who signed it must be typed immediately below their signature.

13.4 Written submissions in respect of applications for an extension of time to file or serve an application for leave to appeal or notice to appeal (section 11 above) or an application other than for leave to appeal (section 12 above) must comply with sections 13.2 and 13.3 above.

## **14. LISTS OF AUTHORITIES**

- 14.1 A list of authorities is a list of all authorities and other material such as textbooks, articles and extrinsic materials that are relied upon by a party for a particular application or appeal. It must contain the following parts, each with a heading:
- (a) Part A (authorities which counsel intends to read from at any oral hearing);
  - (b) Part B (authorities which counsel intends to refer to, but not read from, at any oral hearing); and
  - (c) Part C (textbooks, articles and extrinsic materials which may be of substantial assistance to the Court).
- 14.2 Where a party does not intend to rely on any authorities or material under a particular part, the party should state 'None' under the relevant heading.
- 14.3 Pinpoint references must be provided for all authorities and other material. This requires stating:
- (a) for legislation, the specific sections, regulations, rules or clauses relied upon; and
  - (b) for authorities and all other material, the specific pages or paragraph numbers relied upon.
- 14.4 Where a case is in an authorised report, the citation for the authorised report version must be given. For other cases, the citation for a reported version must be given if available.
- 14.5 Authorities must be referenced in accordance with the current edition of the *Australian Guide to Legal Citation*.
- 14.6 If a party seeks to rely on an authority that is not contained in their list of authorities, or no longer relies on an authority in their list, they must file and serve as soon as practicable:
- (a) an amended list of authorities in which all amendments are marked up so that additions are underlined and deletions are struck through; and
  - (b) a 'clean' version of that document.
- 14.7 Parties are expected to give notice of any additional authorities to be relied upon well in advance of a hearing. That notice must include pinpoint references and a brief explanation of their relevance.

## **15. SUMMARY FOR THE COURT OF APPEAL**

- 15.1 The principal purposes of the summary for the Court of Appeal are:
- (a) to enable the Court to quickly understand the issues and thereby assist in its preparation for, and consideration of, the application for leave to appeal / appeal; and

- (b) to assist the Court to understand what is not in contention and what is in dispute.
- 15.2 To achieve those purposes, the summary must be drafted in a neutral manner that does not favour one party's position over another, and does not repeat submissions contained in a written case. Particular attention should be given to ensuring that it is accurate in all respects, especially in identifying the issues. It is expected that counsel will be briefed to settle the summary.
- 15.3 The summary must comply with the following requirements:
- (a) it must not exceed 10 pages;
  - (b) it must comply with the requirements referred to in section 5.4 above, including as to the line spacing and text size;
  - (c) each paragraph must be numbered consecutively;
  - (d) it must contain two components, each with a heading as follows:
    - A. Summary of facts
    - B. Summary of proceedings and issues
  - (e) the 'Summary of facts' component must:
    - (i) describe, in chronological order, the facts that form the background to the proceeding;
    - (ii) be sufficient to inform the Court of the facts that give rise to the application for leave to appeal / appeal; and
    - (iii) state all of the facts that are material to the issues for determination;
  - (f) the 'Summary of proceedings and issues' component must:
    - (i) briefly describe the nature of the proceeding;
    - (ii) identify each party to the proceeding below, by name and by description below;<sup>56</sup>
    - (iii) set out the chronology relating to the proceeding below;
    - (iv) briefly state the major issues dealt with, and their disposition, in the proceeding below;
    - (v) briefly state the issues to be raised on the application for leave to appeal / appeal; and
    - (vi) note any relevant interlocutory order of which the Court should be aware (other than general timetabling orders or directions);<sup>57</sup>

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<sup>56</sup> For example, as plaintiff, defendant and so on.

<sup>57</sup> Examples of the types of orders that should be noted are: a stay order pending the determination of the application; any suppression orders; and any security of costs orders.

- (g) the final version of the summary filed with the Court, whether an agreed document or a version containing disputed parts, must be signed and dated on behalf of all parties.
- 15.4 Where appropriate, the summary should include references to conflicting evidence given below and should state the finding which was made on that evidence. The summary of evidence need not follow the order in which evidence was given at the trial.
- 15.5 All parties must cooperate and endeavour to agree upon the final form of the summary, and comply with their obligations under the *CPA*.<sup>58</sup> Parties must not file separate summaries and should not look to the Court to resolve any dispute as to the contents of the summary.
- 15.6 The Court may dispense with the summary at any time, with the result that no version of it will be before the Court. Consequently, when drafting other documents such as a Form 64A or written case, parties should not assume that the summary or a particular version of it will be before the Court.
- 15.7 Three examples of a summary for the Court of Appeal are set out in Annexure A to this Practice Note.

## **16. AGREED LIST OF TRANSCRIPT REFERENCES**

- 16.1 Ordinarily, the applicant will be directed to provide a copy of the transcript of the hearing in the court or tribunal below to the Court and each respondent.
- 16.2 An agreed list of transcript references is a document that sets out, for each ground of appeal, the transcript references from the hearing in the court or tribunal below that each party relies on. An example is set out in Annexure B to this Practice Note.
- 16.3 Each party is responsible for identifying the references they rely on, and all parties must cooperate in preparing a complete and accurate list, bearing in mind their obligations under the *CPA*.<sup>59</sup>
- 16.4 The agreed list of transcript references filed with the Court must be signed and dated on behalf of all parties.

## **17. APPLICATION BOOKS**

- 17.1 An application book is a set of documents compiled to assist the Court to determine an application or appeal. Only documents necessary for determination of the application or appeal are to be included and the book should be prepared as economically as possible. Parties must comply with the Registrar's note, including as to the form of the index, the contents of the book,

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<sup>58</sup> *Civil Procedure Act 2010*, Chapter 2; see also *Spotlight Pty Ltd v NCON Australia Ltd* [2012] VSCA 232 [3].

<sup>59</sup> *Civil Procedure Act 2010*, Chapter 2; see also *Spotlight Pty Ltd v NCON Australia Ltd* [2012] VSCA 232 [3].



the preparation of the book and the manner in which materials are to be filed, delivered or served.

- 17.2 The contents of an application book are settled by the Registrar, who may give such directions as the Registrar considers appropriate, including by requiring a party to provide further documents.<sup>60</sup> The Registrar may also make orders or give directions regarding the preparation, delivery and service of an application book.<sup>61</sup>
- 17.3 An application for leave to appeal / appeal will be taken to be abandoned if the applicant does not deliver to the Registrar, or serve, an application book as required.<sup>62</sup>

## **18. COMBINED FOLDER OF AUTHORITIES**

- 18.1 A combined folder of authorities is a set of authorities relied upon by all parties to an application or appeal. Parties must comply with the Registrar's note, including as to the form of the index for the folder, the contents of the folder, the preparation of the folder and the manner in which materials are to be filed, delivered or served. The Registrar may make orders or give directions in relation to those matters as they consider appropriate.<sup>63</sup>
- 18.2 The Court will assume that standard authorities on statutory interpretation and the construction of commercial contracts are relied upon by all parties. Such authorities need not be reproduced in the combined folder. Standard authorities are listed in the Court of Appeal section of the Supreme Court of Victoria website at [www.supremecourt.vic.gov.au/areas/court-of-appeal/civil-appeals](http://www.supremecourt.vic.gov.au/areas/court-of-appeal/civil-appeals).
- 18.3 If so directed by the Registrar, copies of any authorities and other material relied on by a party must be served on the party responsible for preparing the combined folder of authorities.

## **19. AMENDMENT OF APPLICATION FOR LEAVE TO APPEAL, NOTICE OF APPEAL OR WRITTEN CASE**

- 19.1 An application for leave to appeal, notice of appeal, written case or written submissions may only be amended in accordance with Rule 64.12 and this section 19. It is expected that the application and written case will be prepared carefully so that amendment of the grounds of appeal or written case will rarely need to be sought.

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<sup>60</sup> Rule 64.22.

<sup>61</sup> Rule 64.25.

<sup>62</sup> Rule 64.45(2).

<sup>63</sup> Rule 64.42.

- 19.2 Where a party seeks to amend an application for leave to appeal, notice of appeal, written case or written submissions, the following steps must be followed:
- (a) before approaching the Court:
    - (i) the party who seeks to amend must provide the proposed amended document(s), marked up so that additions are underlined and deletions are struck through, to the other parties for their consideration;
    - (ii) all parties must confer and seek to agree upon whether leave to amend ought to be granted;
  - (b) after the parties have conferred, the party seeking to amend must, by email to the registry and other parties:
    - (i) provide the marked-up proposed amended document(s);
    - (ii) advise of each party's position as to leave to amend; and
    - (iii) if the parties consent to leave to amend being granted, provide a minute of proposed consent order signed on behalf of all parties.
- 19.3 Following those steps, the Court will consider how the question of leave to amend should be dealt with. The Court may determine the matter on the papers without requiring a formal application. If a formal application or other steps are required, the parties will be informed.
- 19.4 If an amendment is permitted, the amended document must be filed and served in accordance with the leave granted. The amended document must contain 'amended' in the title and two versions must be filed and served, namely:
- (a) a version in which all amendments are marked up so that additions are underlined and deletions are struck through; and
  - (b) a 'clean' version.
- 19.5 Where it is the applicant who is granted leave to file and serve an amended application for leave to appeal, notice of appeal, written case or written submissions, the respondent will ordinarily be afforded an opportunity to amend their written case or written submissions in response, limited to matters arising from the applicant's amendments.

## **20. ABANDONMENT OF GROUNDS AND DISCONTINUANCE**

- 20.1 Counsel briefed to appear on the hearing of an application for leave to appeal or appeal should review the grounds well in advance of any listed date and advise the Registrar promptly if any ground is abandoned.
- 20.2 An application or appeal may be discontinued in whole or part by filing a notice of discontinuance.<sup>64</sup> The notice must be served on all parties to the

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<sup>64</sup> Rule 64.29(1).

application or appeal on the same day as it is filed.<sup>65</sup> Costs consequences for filing such a notice are determined in accordance with Rule 64.29.

- 20.3 Notwithstanding the filing of a notice of discontinuance, the Court may order that the application for leave to appeal or appeal not be discontinued and may make any order as to costs or otherwise that it thinks fit.<sup>66</sup>

## **21. TIMETABLE FOR ORAL SUBMISSIONS**

- 21.1 The time for oral submissions at a hearing may be set or limited by direction of the Court, despite any agreement that may have been reached between the parties.
- 21.2 Where an application for leave to appeal and/or appeal is listed for an oral hearing, the applicant must, no later than 10 days before the hearing and after consulting with the respondent, notify the Registrar of the parties' agreed timetable for oral submissions. The timetable should be based on a total sitting time of 4½ hours for each day and be in the following format, subject to any adjustments as may be appropriate in the circumstances:

<b>Party</b>	<b>Time</b>
Applicant's oral submissions (including questions from the bench)	[insert] minutes
Respondent's oral submissions in response (including questions from the bench)	[insert] minutes
Applicant's oral submissions in reply (including questions from the bench)	[insert] minutes

- 21.3 When formulating a timetable for oral submissions, parties should not simply equally divide the hearing time available and they should assume that the bench will have read and absorbed all parties' written submissions before the hearing. The aim of the Court is to dispose of applications in a timely and efficient manner, subject always to allowing sufficient time for complex cases. Accordingly, oral argument should elucidate rather than repeat the submissions in the written case.

## **22. PARTIES' POSITIONS ON COSTS**

- 22.1 All parties should be in a position to make oral submissions on the question of costs and make any related application (including for an indemnity certificate under the *Appeal Costs Act 1998* (Vic)) immediately upon the delivery of

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<sup>65</sup> Rule 64.29(2).

<sup>66</sup> Rule 64.29(7).

judgment. Parties should not expect the matter will be adjourned to allow for the preparation of written submissions on costs.

## **23. CEASING TO ACT**

- 23.1 After an application for leave to appeal or notice of appeal has been filed, a solicitor may not file a notice that they have ceased to act except by leave of the Court.<sup>67</sup>
- 23.2 To apply for leave to file a notice that they have ceased to act, the solicitor must file:
- (a) an application other than for leave to appeal in accordance with Form 64B; and
  - (b) an affidavit in support.

## **24. TRANSCRIPT OF COURT OF APPEAL HEARINGS**

- 24.1 Practice Note SC Gen 7 is applicable to the requirements for transcript of Court of Appeal hearings.
- 24.2 Unless in a particular case parties are advised otherwise, transcript is required, on an urgent basis with a maximum 3 day turnaround, for all hearings of applications and appeals, directions hearings and mentions in the Court of Appeal, except for directions hearings and mentions before the Registrar.

## **AMENDMENT HISTORY**

14 April 2025: This Practice Note was reissued on 14 April 2025 and replaced the version issued on 30 September 2019.

30 September 2019: This Practice Note was reissued on 30 September 2019 and replaced the version issued on 30 January 2017.

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Direction No 7 of 2014.

Vivienne Mahy  
Executive Associate to the Chief Justice  
14 April 2025

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<sup>67</sup> Rule 20.03(4).

## ANNEXURE A

### Example summary in a personal injury case

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COURT OF APPEAL  
CIVIL DIVISION

S EAPCI

[APPLICANT'S / APPELLANT'S NAME]

Applicant/ Appellant

and

[RESPONDENT'S NAME]

Respondent

### AGREED SUMMARY FOR THE COURT OF APPEAL

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Date of document:  
Filed on behalf of:  
Prepared by:  
[name and address]

Solicitor code:  
Telephone:  
Ref:  
Attention:  
Email:

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#### A. Summary of facts

1. On 13 April 2007, the appellant, Ms X was struck by a motor vehicle whilst crossing the road at a pedestrian crossing. She landed on the bonnet of the car and then fell to the pavement.
2. She was taken by ambulance to the Monash Medical Centre where she was admitted for one night and underwent a series of tests. The Ambulance notes recorded: "thoracic region pain dull, denies radiation." The Monash Medical Centre notes recorded: "struck on right side by motor vehicle. Fell onto bonnet of car then onto road, striking left side. Pain middle and upper back. No neurological symptoms."

3. Ms X was given intravenous morphine but no other analgesics. She was discharged the following day to the care of her General Practitioner and on his referral she also consulted a general physician, Mr Z, who ordered an MRI of her thoracic and cervical spine.

4. The MRI scan dated 16 May 2007 noted:

There is mild compression fracture through the superior aspects of the vertebral body of T2 and T3 with less than ten per cent loss of vertebral height. No traumatic disc protrusion is present. The other vertebral bodies are normal. Facet joints are congruent. Ligaments are intact. There is no epidural haematoma and the cervical cord is normal. Flow void in both vertebral arteries are present.

5. Mr Z concluded that Ms X's pain and restriction resulted from an aggravation of pre-existing degenerative changes in the cervical region and upper thoracic crush fractures.
6. The respondent, the Transport Accident Commission ("TAC") arranged for Ms X to be assessed by an orthopaedic surgeon, Ms B, who commented:

[T]he patient presents describing constant neck and upper back pain accompanied by minor signs of mild restriction of cervical movement. The extensive distribution of pain and tenderness would be in keeping with residual soft tissue injury, which has now apparently progressed to an extensive area of chronic pain. There is some suggestion the problem is influenced by psychosocial factors.

## **B. Summary of proceedings and issues**

7. By an originating motion filed in the County Court on 12 April 2010, Ms X sought leave pursuant to s 93(4)(d) of the Transport Accident Act 1986 to bring proceedings at common law against the TAC for a serious injury sustained in the motor vehicle accident on 13 April 2007.

8. The application was heard by Judge Y on 15 and 16 March 2011. The principal issue before his Honour was whether Ms X had suffered a serious injury within the meaning s 93(17) of the Act. Ms X relied upon paragraph (a) of the definition which states a 'serious injury' is "a serious long-term impairment or loss of a body function."
9. His Honour found that Ms X continues to suffer pain and restrictions which are marked and significant but he could not accept that these restrictions were "very considerable" according to the test set out in *Humphries v Poljak*.<sup>1</sup> Further, he noted "the fact that after a fairly brief time Ms X has been fit and available to continue her pre-accident work also points away from her injuries being serious" [see paras [...] - [...] of his Honour's reasons for judgment].
10. His Honour concluded that the aggravation of pre-existing degenerative changes in her spine, which occurred due to the accident, did not constitute a serious injury within the meaning of the Act. His Honour also found that the appellant suffered compression fractures to her spine in the accident, as noted by Mr Z, but that the evidence showed that five years after the accident and despite the injury, Ms X continued to lead a moderately active lifestyle and her employment was unaffected.
11. His Honour dismissed Ms X's application for leave to bring proceedings on 6 June 2012
12. Ms X filed a Notice of Appeal on 11 October 2012 against the whole of the judgment and orders of Judge Y.<sup>2</sup> She contends that because Mr Z described her pain and restrictions as the result of an aggravation of pre-existing degenerative change in the cervical region and upper thoracic crush fractures, his Honour erred in failing to find that hers was not a serious long term impairment or loss of spinal function within the meaning of s 93(17) of the Act.

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<sup>1</sup> [1992] 2 VR 129.

<sup>2</sup> The Court of Appeal granted leave to appeal to Ms X on .../.../...

13. Ms X also asserts that the judge erred by finding that her emotional and psychological issues were not, at least in part, secondary to physical pain and restriction from the injuries.
14. She further contends that the judge failed to have regard to uncontradicted medical evidence of her psychological response to the injuries in determining the seriousness and longevity of her spinal injury.

Date:

Signed

*[Name of lawyer / self-represented party]*

Date:

Signed

*[Name of lawyer / self-represented party]*



## Example summary in a contractual case

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COURT OF APPEAL  
CIVIL DIVISION

S EAPCI

[APPLICANT'S / APPELLANT'S NAME]

Applicant/ Appellant

and

[RESPONDENT'S NAME]

Respondent

### AGREED SUMMARY FOR THE COURT OF APPEAL

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Date of document:

Solicitor code:

Filed on behalf of:

Telephone:

Prepared by:

Ref:

[name and address]

Attention:

Email:

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#### A. Summary of facts

1. By contract dated 10 September 2009 between Company A (as builder) and Company B (as principal/developer), Company B agreed to construct a multi-level apartment complex which consisted of 60 residential apartments, with basement car parks in Elwood Victoria ("the development").
2. The price was \$ 2 million and the Contract required that the project be completed by .../.../..... with stages 1-4 completed by ..../...../..... whilst the remaining stages be completed by .../.../....
3. The terms of the Contract provided that Company A would proceed with due expedition and would comply with all relevant statutory requirements. It was also required to provide high standards of workmanship.
4. By .../.../.... relations between the parties were under pressure as there was some concern about the rate of the progress, but more particularly the

quality of workmanship provided by Company A. These issues had been raised with Company A on numerous occasions but it was unresponsive.

5. On .../.../.... Company A issued a draft progress payment for works for practical completion of.....
6. Company B refused to make the draft progress payment due to a number of alleged defects with ... and ..... Accordingly, Company B deemed that Company A had breached a number of the contractual terms under clauses ...., ..... and .....
7. Company B engaged the 'show cause' processes set out in clauses .... and ..... of the Contract to seek Company A's rectification. Company A did not complete any rectification works within the time prescribed under clauses ..... and .....
8. Company B then terminated the contract after Company A's repudiation of the building contract. Company B engaged the services of Construction and Co at a cost of \$..... to complete the restoration works required on the building so as to ensure that individual occupancy permits for each of the affected apartments were issued.

**B. Summary of proceedings and issues**

9. Company A commenced the proceedings below by way of Writ, filed in the County Court on 20 January 2012 against Company B for monies it allegedly owed as a progress payment under the Contract.
10. Company A claimed that Company B had failed to pay it a progress payment for work it completed on the development. Company A also claimed that Company B had wrongfully terminated the building contract between the parties. It sought damages in the sum of \$..... for these claims.
11. By way of its counterclaim, Company B alleged that Company A was not entitled to receive any payment under the progress claim because it had

committed numerous substantial breaches of the contract, including defective workmanship. In support of its claims Company B alleged that Company A had contravened its statutory duties in the *Building Act 1993*, the *Building Regulations 1994* and the *Building Code of Australia* together with other relevant regulatory requirements. Company B claimed that it validly terminated and repudiated the contract after Company A had failed to remediate its defective building works. Company B also sought monies for the restoration work it undertook to rectify the building works.

12. The trial of the County Court proceedings lasted 7 days before Judge T who delivered her judgement on 30 November 2012. Her Honour dismissed Company A's claims but upheld Company B's counterclaim in the sum of \$....,..... Authenticated orders were made on 2 December 2012.
13. The major matters dealt with at the County Court were as follows:
  - (a) Whether the builder's (Company A) works were defective, and if so whether these breaches constituted a substantial breach entitling the principal/developer (Company B) to serve defect notices under the building contract.
  - (b) Whether Company B acted reasonably in terminating the contract.
14. Her Honour examined the terms of the Contract and determined that it required the building works to be fully complete by .... / .... / ....., with stages 1-4 completed by ... / ... / ... whilst the remaining stages were to be completed by .... / .... / .... (see paragraphs [...] - [...] of the her Honour's reasons for judgment).
15. Pursuant to clause .... of the Contract, Company A was required to ensure that its work was compliant with all of the contract specifications and met all relevant statutory requirements under the Act, Regulations and Code (see paragraphs [...] - [...] of the her Honour's reasons for judgment).

16. Provisions ..... and .... of the Contract dealt with the procedures that Company B was obliged to undertake if it was not satisfied with the building quality or disputed the items claimed in a progress payment. These provisions required it to issue a defects lists together with a 'show cause' notice which required Company A to rectify the specified substantial defects in ..... days and to show cause in writing why the Contract should not be terminated by Company B under clause .... (see paragraphs [.....]- [...] of the her Honour's reasons for judgment).
17. Her Honour held that Company A had followed the correct procedures when seeking progress payments for stages ..... and .... (see paras [...] - [...] of her Honour's reasons for judgment). She further found that if the building works met all of the contract and statutory specifications, then Company A would be entitled to the progress payment.
18. In relation to the issue of defective workmanship, which was alleged to constitute a substantial contractual breach, Company B pleaded that the structural framework and plumbing works were unsatisfactory and the fire ratings for each of the apartments were not in accordance with ss... of the Act, rr .., ... and of the Regulations and industry codes and standards. It further contended this threatened the issuance of occupancy permits for a number of apartments in the building. Company A denied these claims and contended the works were reasonable and in accordance with the Contract specifications.
19. Each company relied extensively on expert evidence. Company B relied on the expert evidence provided by Mr Expert (a building consultant and structural engineer) who opined that the structural frameworks were defective because ..... (see AB .....). Company B also relied upon the evidence provided by Mr Expert II (a fire services engineer) who stated that Company A had used inadequate fire rated plasterboards in the stairwells and

apartments ....., ....., and ..... and this was contrary to the specifications in the Code (see AB.....).

20. Conversely, Ms Expert (a building consultant) engaged by Company A opined that framework and plumbing works were in accordance with the contract specifications and the works were of a reasonable standard as they .....(see AB.....). Ms Expert also stated that a number of the defects provided by Company B in its defects lists and 'show cause' notice were inadequately identified which made rectification by Company A impossible.
21. Her Honour preferred the evidence provided by Mr Expert and Mr Expert II on behalf of Company B because ..... (see paras [...] - [...] of the reasons for judgment). Her Honour determined that there were defective workmanship issues in relation to the plasterboards, structural and plumbing works and these works failed to meet the standards required by Act, Regulations and Code as they ..... (see paras [...] - [...] of her Honour's reasons for judgment).
22. Her Honour determined that these failings constituted a substantial breach of the Contract by Company A and so it was not entitled to a progress payment under cl... (see paras [...] - [...] of her Honour's reasons for judgment). Her Honour also found this substantial breach warranted Company B's issuance of a 'show cause' notice on Company A.
23. Her Honour relied on the decision of *ABC v XYZ* [2000] VSC ... which held that defects in a defects list only need to be identified with some level of particularity rather than absolute precision. Accordingly, her Honour dismissed Company A's claim that the 'show cause' notice (that listed defects) was confusing, inadequate and caused it prejudice.
24. Her Honour observed that Company A had not rectified a number of defects within the prescribed time allowed by cl ... of the Contract. Her

Honour also determined that Company B had acted reasonably in assessing Company A's show cause responses and acted properly when it terminated the contract. Her Honour lastly found that Company B's costs for the restoration works it undertook to rectify the building works were reasonable and necessary in the circumstances to enable occupancy permits to be issued for the apartments (see paras [...] - [...] of her Honour's reasons for judgment). Company B's counterclaim was upheld.

25. Company A filed a Notice of Appeal on 21 March 2012 against orders 1 and 2 made on ..... which are as follows:

1. Company A's claims against Company B were dismissed; and
2. Judgment on the counterclaim is made in favour of Company B in the sum of \$.....

26. Company A claims that her Honour erred in dismissing its claims against Company B as this was against the evidence which disclosed that the building works were reasonable and not in breach of the Contract because .....

27. Company A further claimed that her Honour erred by not considering the expert evidence provided by Ms Expert who testified that the works were not defective because .....

Date:

Signed

*[Name of lawyer / self-represented party]*

Date:

Signed

*[Name of lawyer / self-represented party]*

## Example summary in a judicial review

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COURT OF APPEAL  
CIVIL DIVISION

S EAPCI

[APPLICANT'S / APPELLANT'S NAME]

Applicant/ Appellant

and

[RESPONDENT'S NAME]

Respondent

### AGREED SUMMARY FOR THE COURT OF APPEAL

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Date of document:

Solicitor code:

Filed on behalf of:

Telephone:

Prepared by:

Ref:

[name and address]

Attention:

Email:

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#### A. Summary of facts

1. Mr L was compelled to attend and give evidence in a compulsory examination under s 56A of the *Magistrates' Court Act 1989* (Vic) ('the Act') in the committal proceeding against Mr A who was accused of unlawfully assaulting Mr C on .... / .... / .....
2. Mr L was compelled to give evidence because he witnessed all or part of the assault on Mr C. Mr L was also a close friend of Mr A and there had been some communications between them regarding the assault on Mr C.
3. On .. / ... / ... Mr L was sworn to give evidence. Mr L repeatedly refused to give evidence in relation to the assault or communications on the basis that he feared for his safety and was concerned that that Mr A would retaliate against him.

4. Magistrate Y made a ruling that there was no sound basis for Mr L's fears of retaliation because.....
5. Magistrate Y then summarily determined that Mr L was guilty of contempt on the basis that he failed to answer a number of questions about the assault on Mr C and a penalty of 5 days' imprisonment was imposed.<sup>1</sup>

**B. Summary of proceedings and issues**

6. Mr L made an application by way of Originating Motion to the Trial Division for an order in the nature of certiorari and judicial review under Order 56 of the *Supreme Court (General Civil Procedure) Rules 2005* against the decision made by Magistrate Y finding him in contempt of court and imposing a sentence of imprisonment for 5 days.
7. The basis of the application for judicial review was that Magistrate Y had committed an error of law on the face of the record,<sup>2</sup> that there was a jurisdictional error and that Mr L had been denied procedural fairness. The Magistrates' Court (as 1<sup>st</sup> defendant did not make any submissions or take an active part in the proceedings).
8. In relation to the first ground of challenge, Mr L claimed that Magistrate Y's decision was flawed because he failed to adopt the steps that were detailed in the matter of *XYZ v Magistrates' Court of Victoria* which dealt with a statutory contempt finding under the Act. In that case Mr L noted that a direction to arrest must first be made, followed by a formal charge being laid. The accused then had to be given an opportunity to plead once details of the charge had been provided.
9. His Honour Justice M determined that whilst the Magistrate had mentioned the charge he had not clearly articulated it as a separate step in the proceedings to be able to allow Mr L to have a considered opportunity to address and

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<sup>1</sup> Section 134 of the *Magistrates' Court Act*.

<sup>2</sup> For these purposes the records constitutes the transcript of oral statements made by Magistrate Y.



provide submissions to the charge (see paras [.....] – [.....] in the reasons for judgment). His Honour held a process incorporating these steps needed to take place given the seriousness of the contempt charge (see paras [.....] – [.....] in the reasons for judgment).

10. In relation to the issue of whether the Magistrate had committed a jurisdictional error when dealing with the process of the contempt charge, his Honour referred to the decision of *Craig v South Australia*<sup>3</sup> and noted that whilst the Magistrate had the power to deal with a contempt charge he nevertheless misapprehended the limits and functions of the power by not properly articulating a separate charge and then adjourning the matter as was required by XYZ case when dealing with contempt charges under the Act. His Honour was satisfied that the process involved in the contempt charge constituted a jurisdictional error on the face of the record (see paras [.....] – [.....] in the reasons for judgment).
11. His Honour was also satisfied that the failure to articulate a separate charge and then adjourn the matter for Mr L to properly plead and make submissions constituted a breach of procedural fairness.
12. Accordingly, Justice M on .... / .... / .... upheld Mr L's application for Judicial Review by quashing the contempt penalty and remitting the matter back to the Magistrates' Court for a re-determination.
13. The Director filed a Notice of Appeal on ... / .... / .... from the orders made by Justice M to allow Mr L's application for judicial review and the quashing of the contempt finding and penalty.
14. The Director claims that his Honour was in error in determining that that there was an error on the face of the record because.....

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<sup>3</sup> (1995) 184 CLR 163.

15. The Director also claims that his Honour was wrong in finding a jurisdictional error and that there was a breach of procedural fairness on the basis of the conduct of Magistrate Y because .....

Date:

Signed

*[Name of lawyer / self-represented party]*

Date:

Signed

*[Name of lawyer / self-represented party]*

## ANNEXURE B

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COURT OF APPEAL  
CIVIL DIVISION

S EAPCI

[APPLICANT'S / APPELLANT'S NAME]

Applicant/ Appellant

and

[RESPONDENT'S NAME]

Respondent

### AGREED LIST OF TRANSCRIPT REFERENCES

Date of document:

Solicitor code:

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Ground	Applicant/Appellant	Respondent	All parties
[e.g. Ground 1]	[e.g. 20 April 2024, T 4.1 – T 5.4]	[e.g. 21 April 2024, T 8.15 – T 8.20]	[e.g. 22 April 2024, T 10.1 – T 12.20]

Date:

Signed

[Name of lawyer/self-represented party]

Date:

Signed

[Name of lawyer/self-represented party]