

Supreme Court (Civil Appeals Amendments) Rules 2014

S.R. No. 209/2014

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STATUTORY RULES 2014

S.R. No. 209/2014

Supreme Court Act 1986

**Supreme Court (Civil Appeals Amendments) Rules
2014**

The Judges of the Supreme Court make the following Rules:

1 Object

The object of these Rules is to amend the procedures set out in Order 64 in Chapter I of the Rules of the Supreme Court in relation to civil appeals, to revoke Order 65 of Chapter I and make related consequential amendments to Chapter II of the Rules.

2 Authorising provisions

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

3 Commencement

These Rules come into operation on 10 November 2014.

4 Principal Rules

In these Rules, the Supreme Court (General Civil Procedure) Rules 2005¹ are called the Principal Rules.

5 Dispensing with compliance

In Rule 2.04(2) of the Principal Rules **omit** "or Order 65".

6 Procedure

Rule 58.01(3) of the Principal Rules is **revoked**.

7 Order 64 substituted

For Order 64 of the Principal Rules **substitute**—

"ORDER 64

**APPEALS AND APPLICATIONS TO THE
COURT OF APPEAL**

64.01 Definitions

- (1) In this Order, unless the context or subject matter otherwise requires—

appeal includes—

- (a) an application for a new trial;
- (b) an application to set aside or vary a decision;
- (c) an appeal by way of rehearing or judicial review;
- (d) a cross-appeal—

and, subject to the **County Court Act 1958**, includes an appeal from the County Court;

decision includes judgment, order, determination, verdict, ruling, finding or declaration;

extension application means an application under Rule 64.08;

notes for guidance means the notes prepared from time to time by the Registrar in accordance with Rule 64.24;

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

respondent means a person named as a respondent in an application, including for leave to appeal, or a notice of appeal;

written case means the document containing a party's submissions in relation to an application for leave to appeal, an appeal, a cross-application for leave to appeal, a cross-appeal or a notice of contention that must be filed and served as required by this Order or any applicable practice direction.

- (2) For the purposes of this Order, a document is filed only when it has been lodged with the Registrar and accepted by the Registrar for filing and sealed with the seal of the Court.

64.02 Commencement of appeal by filing notice of appeal

- (1) An appeal to the Court of Appeal is commenced by filing with the Registrar—
- (a) a notice of appeal in accordance with Form 64A;
 - (b) a written case; and
 - (c) any additional document required by any applicable practice direction to be filed at the time of commencing an appeal.

Note

Section 14A of the **Supreme Court Act 1986** provides that any civil appeal to the Court of Appeal requires leave to appeal to be obtained from the Court of Appeal except in the cases specified in section 14A(2) of the Act. See also Rule 64.20.

- (2) Each person who was a party to the proceeding or matter in which the decision in question was made and who is affected by

the appeal shall be named as a respondent to the appeal.

64.03 Applications, including for leave to appeal

- (1) An application for leave to appeal to the Court of Appeal under section 14A or 17A of the Act or under any other Act or otherwise is commenced by filing with the Registrar—
 - (a) an application in accordance with Form 64A;
 - (b) a written case; and
 - (c) any additional document required by any applicable practice direction to be filed at the time of commencing such an application.
 - (2) Each person who was a party to the proceeding or matter in which the decision in question was made and who is affected by the application for leave to appeal shall be named as a respondent to the application.
 - (3) An application other than an application for leave to appeal to the Court of Appeal is made by filing with the Registrar—
 - (a) an application in accordance with Form 64B;
 - (b) an affidavit in support in accordance with any applicable practice direction; and
 - (c) any additional document required by any applicable practice direction to be filed at the time of commencing such an application.
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- (4) Each person who is affected by the application shall be named as a respondent to the application.

64.04 Contents of application for leave to appeal or notice of appeal

An application for leave to appeal or a notice of appeal shall—

- (a) identify the decision to which the application for leave to appeal relates or the decision appealed, as the case may be;
- (b) state whether leave is required and—
 - (i) if not, state why; and
 - (ii) where leave is required, whether an oral hearing is requested;
- (c) in the case of a notice of appeal, set out the grounds of appeal specifically and concisely;
- (d) in the case of an application for leave to appeal, set out specifically and concisely—
 - (i) the reasons why leave should be granted; and
 - (ii) the proposed grounds of appeal if leave were granted;
- (e) state the decision sought in place of that to which the application or appeal relates;
- (f) set out any extension of time requested;
- (g) state whether the whole or part only and which part of the decision is sought to be appealed or is being appealed;
- (h) state whether a stay is requested;

- (i) state whether the application for leave to appeal or the appeal is urgent, and if so, the reasons for the urgency;
- (j) identify each party or person on whom it is proposed to serve the application for leave to appeal or the notice of appeal; and
- (k) provide the applicant's or appellant's address for service in accordance with these Rules, including an active e-mail address if available.

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

- (1) An application for leave to appeal or, where leave to appeal is not required, a notice of appeal and the other required documents shall be filed—
 - (a) within 28 days after the decision to which the application or appeal relates was made; or
 - (b) within such further time as the Court of Appeal or the Registrar may allow.
- (2) If leave to appeal is required, and a notice of appeal is filed before leave has been granted, any respondent may apply to the Court of Appeal for an order dismissing the appeal as incompetent under Rule 64.33.

64.06 Service of applications, notices of appeal and related documents

- (1) In the case of an application for leave to appeal or an appeal, the applicant or appellant shall serve on each respondent—
 - (a) a copy of the application for leave to appeal or notice of appeal;
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- (b) a copy of the written case of the applicant or appellant; and
 - (c) a copy of any additional document filed at the time of commencing the application for leave to appeal or appeal.
 - (2) Notwithstanding paragraph (1), notice need not be given of an application for leave to appeal or a notice of appeal from a decision refusing an application made without notice to any person, unless the Registrar or the Court of Appeal otherwise directs.
 - (3) In the case of an application other than an application for leave to appeal, the applicant shall serve on each respondent to the application—
 - (a) a copy of the application;
 - (b) a copy of the affidavit in support; and
 - (c) a copy of any additional document filed at the time of commencing the application.
 - (4) A copy of an application, including for leave to appeal, notice of appeal, written case or other document which is required by this Rule or by another provision of this Order or by any applicable practice direction to be served may be served—
 - (a) on a person or party personally; or
 - (b) at the person's or party's address for service under these Rules, including Rule 1.19.
 - (5) Within 7 days after service, the applicant or appellant shall file a list, in accordance with Form 64C, signed by the applicant or
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appellant or on behalf of the applicant or appellant, that identifies—

- (a) each party or person upon whom the relevant documents have been served;
 - (b) the address of each person served (including email, if available); and
 - (c) the date of that service.
- (6) The Court of Appeal or the Registrar may direct that a copy of an application, including for leave to appeal, notice of appeal, any written case and any other document required by this Order or any applicable practice direction be served on any person, whether or not a party to the proceeding.

64.07 Time for service of application, including for leave to appeal, or notice of appeal

Except where this Order otherwise provides, the time for service in accordance with Rule 64.06 shall be—

- (a) as soon as practicable after the application or notice of appeal is filed, but not later than five days after it is filed; or
- (b) within such shorter or longer time as the Court of Appeal or Registrar may specify.

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

- (1) The Court of Appeal or the Registrar may extend the time to file or serve an application, including for leave to appeal, or a notice of appeal, including after the time for filing or service has expired.
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- (2) An application to extend the time for filing or serving an application, including for leave to appeal, or a notice of appeal is made by filing with the Registrar—
- (a) an application in accordance with Form 64B;
 - (b) an affidavit in support in accordance with any applicable practice direction; and
 - (c) any additional document required by any applicable practice direction to be filed at the time of commencing the application.
- (3) Where the application is to extend the time for filing, or for filing and serving, an application for leave to appeal or a notice of appeal—
- (a) the extension application shall be filed with the Registrar at the same time as the application for leave to appeal or notice of appeal and the written case and other documents required by Rule 64.02 or 64.03, as the case may be, are filed; and
 - (b) a copy of the extension application and of the affidavit in support and of any additional document filed in connection with the extension application shall be served by the applicant or appellant on each respondent at the same time as the documents required by Rule 64.02 or Rule 64.03, as the case may be, are served.
- (4) Where the application is only to extend the time for serving an application for leave to appeal or a notice of appeal—
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- (a) the extension application shall be filed with the Registrar as soon as practicable; and
 - (b) a copy of the extension application and of the affidavit in support and of any additional document filed in connection with the extension application shall, as soon as practicable, be served by the applicant or appellant on each respondent.
 - (5) Any respondent to an extension application who opposes the application shall file and serve—
 - (a) a notice of opposition in accordance with Form 64D;
 - (b) any affidavit on which the respondent intends to rely in opposition to the application; and
 - (c) any additional document required by any applicable practice direction.
 - (6) A respondent to an extension application who does not oppose it shall file and serve a notice of intention not to respond or contest in accordance with Form 64E.
 - (7) A notice under paragraph (5) or (6) shall be filed and served—
 - (a) within 14 days of service of the extension application; or
 - (b) within such shorter or longer time as the Court of Appeal or Registrar may specify.
 - (8) A respondent to an extension application who unreasonably opposes it may be ordered to pay the costs of the extension application.
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- (9) An extension application is ordinarily to be determined without an oral hearing, unless the Court of Appeal otherwise directs.
 - (10) Subject to this Rule, Rules 64.06 and 64.07 apply, with any necessary modification, to the service of an extension application.

64.09 Service on non-party

Where an application for leave to appeal or a notice of appeal is served on a person not a party—

- (a) that person shall not take any step in the application for leave to appeal or appeal without first filing and serving a notice of address for service (including email, if available);
- (b) the Court of Appeal may give any judgment or make any order on the application for leave to appeal or appeal as might have been given or made if the person served with the application for leave to appeal or notice of appeal had originally been a party.

64.10 Application for leave to intervene

- (1) A person who was not a party to the proceeding or matter in which the decision sought to be appealed or under appeal was made or a person who does not have an independent right to appear or intervene, may apply to the Court of Appeal for leave to intervene in an application for leave to appeal or an appeal.
 - (2) An application for leave to intervene is made by filing with the Registrar and serving—
 - (a) an application in accordance with Form 64B;
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- (b) an affidavit in support in accordance with any applicable practice direction; and
 - (c) any additional document required by any applicable practice direction to be filed at the time of commencing the application.
 - (3) The applicant must satisfy the Court of Appeal—
 - (a) that the applicant's contribution as an intervener will be useful and different from the contribution of the parties;
 - (b) that the intervention would not unreasonably interfere with the conduct of the application or appeal; and
 - (c) of any other matter that the Court of Appeal considers relevant.
 - (4) When giving leave to intervene, the Court of Appeal may specify—
 - (a) the form of assistance to be given by the intervener;
 - (b) the manner of participation of the intervener;
 - (c) the matters that the intervener may address;
 - (d) whether the intervener's submissions are to be oral, in writing, or both; and
 - (e) whether any undertaking as to costs should be given, and if so, in what form.
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64.11 Documents to be filed and served in response to application, including for leave to appeal, or appeal

- (1) Within 28 days after service of an application for leave to appeal or notice of appeal, or within such shorter or longer time as the Court of Appeal or the Registrar may specify, each respondent to the application for leave to appeal or appeal shall file, and shall serve a copy of—
 - (a) a written case in response and any additional documents required by any applicable practice direction to be filed at the time of filing the written case in response; or
 - (b) a notice in accordance with Form 64E that the respondent does not intend to respond to or contest the application or the appeal.
- (2) A party who has filed a notice of intention not to respond or contest referred to in paragraph (1) may apply to the Court of Appeal for leave to withdraw the notice.
- (3) An application under paragraph (2) to withdraw the notice shall be accompanied by an affidavit stating—
 - (a) briefly but specifically the acts, facts, matters and circumstances relied upon in support of the application for leave to withdraw the notice; and
 - (b) the party's intentions in relation to the further conduct of the proceeding should leave to withdraw the notice be granted.

- (4) Within 14 days after service of an application (other than an application for leave to appeal or an application to set aside or vary a dismissal of an application for leave to appeal) or such shorter or longer time as the Court of Appeal or the Registrar may specify, each respondent who opposes the application shall file, and shall serve a copy of—
 - (a) a notice of opposition in accordance with Form 64D;
 - (b) any affidavit on which the respondent intends to rely in opposition to the application; and
 - (c) any additional document required by any applicable practice direction.
- (5) Within 14 days after service of an application (other than an application for leave to appeal or an application to set aside or vary a dismissal of an application for leave to appeal) or within such shorter or longer time as the Court of Appeal or the Registrar may specify, each respondent who does not oppose the application shall file, and shall serve a copy of, a notice in accordance with Form 64E that the respondent does not intend to respond to or contest the application.
- (6) A respondent who has filed a notice of intention not to respond or contest under paragraph (5) may, without leave, withdraw the notice, but in that event, paragraph (4) of this Rule will apply to that respondent.

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- (7) Subject to this Rule, Rules 64.06 to 64.08 apply with any necessary modification to the filing and service of a document to which this Rule relates.

64.12 Amendment of application for leave to appeal or notice of appeal or written case

- (1) An application for leave to appeal, a notice of appeal or a written case may be amended by leave or direction of the Court of Appeal or of the Registrar—
- (a) in the case of an appeal, before the appeal is listed for hearing;
 - (b) in the case of an application for leave to appeal, before the Court of Appeal has decided that the application for leave to appeal is to be determined without an oral hearing or, if the application is to be listed for an oral hearing, before it is so listed.
- (2) Except by leave of the Court of Appeal, an application for leave to appeal, a notice of appeal or a written case may not be amended—
- (a) in the case of an appeal, after the appeal has been listed for hearing;
 - (b) in the case of an application for leave to appeal, after the Court of Appeal has decided that the application is to be determined without an oral hearing or, if the application is to be listed for an oral hearing, after it is so listed.

64.13 Further evidence in application for leave to appeal or appeal

- (1) Unless the Court of Appeal otherwise orders, in an application for leave to appeal or an appeal, oral evidence shall not be adduced and evidence which was not before the court or tribunal whose decision is sought to be appealed or is being appealed shall not be relied upon.
- (2) A party may apply for the Court of Appeal to receive oral evidence or further evidence, as the case may be.
- (3) The application shall—
 - (a) be in accordance with Form 64B;
 - (b) be filed and served at least 28 days before the hearing of the application or the appeal;
 - (c) be accompanied by an affidavit stating—
 - (i) briefly but specifically, the facts on which the party relies;
 - (ii) the grounds of the application for leave to appeal or the appeal to which the application relates;
 - (iii) the evidence that the party wants the Court of Appeal to receive; and
 - (iv) why the evidence was not adduced in the court or tribunal the decision of which is the subject of the application or appeal; and

- (d) be accompanied by any additional document required by any applicable practice direction to be filed at the time of commencing the application.
- (4) Where an application is made under paragraph (2), any other party who seeks to adduce further evidence—
 - (a) shall make an application in accordance with Form 64B; and
 - (b) shall file and serve the application and an affidavit addressing the requirements of this Rule at least 21 days before the hearing of the application for leave to appeal or appeal.

64.14 Determination of applications

For the purposes of the determination by the Court of Appeal, constituted by one or more Judges of Appeal, of an application for leave to appeal or any other application, the procedures set out in Rule 64.15 may be followed.

Note

See sections 11 and 14D of the Act. See also Rules 64.27, 64.40 and 64.41 below.

64.15 Procedure for determination of application by single Judge of Appeal

- (1) An application, including for leave to appeal, may be referred by the Registrar to a single Judge of Appeal to be considered and dealt with under this Rule.
- (2) If the single Judge of Appeal considers that it is necessary or desirable to have an oral hearing to deal with the application, the Judge may direct that there be an oral hearing.

- (3) The Registrar shall notify each party of a direction under paragraph (2).
 - (4) Subject to any contrary direction by the single Judge of Appeal, the time for oral argument on an application is limited—
 - (a) in the case of the applicant, to 15 minutes; and
 - (b) in the case of any other party (if appearing) to 10 minutes.
 - (5) Upon referral by the Registrar under this Rule, a single Judge of Appeal may, without an oral hearing or, where paragraph (2) applies, at or after an oral hearing, by order—
 - (a) determine an application for leave to appeal, and—
 - (i) grant leave to appeal;
 - (ii) grant leave to appeal on some grounds of appeal and refuse leave to appeal on other grounds of appeal;
 - (iii) refuse leave to appeal;
 - (iv) determine that the application for leave to appeal is totally without merit; or
 - (v) determine any ancillary application or matter, such as for a stay, as the single Judge considers necessary or appropriate;
 - (b) determine an application other than for leave to appeal;
 - (c) refer an application, including for leave to appeal, and any ancillary application or matter for determination by the
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Court of Appeal constituted by two or more Judges of Appeal, of whom the referring Judge of Appeal may be one.

- (6) As soon as practicable after the Court of Appeal makes an order on the application, the Registrar shall provide to each party a copy of the order by sending a copy to the party's address for service in the proceeding.

64.16 Procedure for determination of application when referred to Court of Appeal constituted by two or more Judges of Appeal

- (1) If an application, including for leave to appeal, is referred under Rule 64.15(5)(c) to the Court of Appeal constituted by two or more Judges of Appeal, the Court of Appeal so constituted may, by order, exercise any power set out in Rule 64.15(5) or any other power that a single Judge of Appeal would have in relation to the application.
- (2) As soon as practicable after the Court of Appeal makes an order on the application, the Registrar shall provide a copy of the order to each party by sending the copy to the party's address for service in the proceeding.

64.17 Finality of dismissal of application for leave to appeal after oral hearing

Where an application for leave to appeal is determined and dismissed by the Court of Appeal, however constituted, following an oral hearing there is no right to apply to the Court to have the dismissal set aside or varied.

64.18 Application to set aside or vary dismissal of application for leave to appeal

- (1) Where an application for leave to appeal has been determined and dismissed by an order of the Court of Appeal, however constituted, without an oral hearing, any application to the Court of Appeal under section 14D(2) of the Act to have the order for dismissal set aside or varied shall be made by filing an application in accordance with Form 64F.

Note

Section 14D(3) of the Act provides that if the Court of Appeal dismisses an application for leave to appeal without an oral hearing and has determined that the application is totally without merit, the applicant has no right to apply to have the dismissal set aside or varied.

- (2) The application shall be filed within 10 days of the delivery to the applicant's address for service of a copy of the order.
 - (3) The applicant shall serve a copy of the application on each respondent as soon as practicable after the application has been filed.
 - (4) The application shall be determined on the basis of—
 - (a) the application, written cases and documents filed by the parties prior to the decision to dismiss the application for leave to appeal; and
 - (b) any additional documents ordered by the Court of Appeal or the Registrar.
 - (5) Further material shall not be relied upon except with leave of the Court of Appeal.
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- (6) The Registrar shall fix a hearing date for the application and advise the parties.
 - (7) Subject to any contrary direction by the Court of Appeal, the time for oral argument of the application shall be limited—
 - (a) in the case of the applicant, to 15 minutes; and
 - (b) in the case of the other party or parties (if appearing) to 10 minutes.

64.19 Application for leave to appeal may be treated as appeal

Subject to section 11(1A) of the Act and this Order, the Court of Appeal constituted by two or more Judges of Appeal may treat the hearing of an application for leave to appeal as the hearing of the appeal.

64.20 No notice of appeal or other initiating or responding documents required if leave to appeal granted

If the Court of Appeal gives leave to appeal, then, unless the Court of Appeal otherwise orders—

- (a) the appeal is thereupon taken to have been duly commenced;
- (b) the application for leave to appeal shall stand as the notice of appeal;
- (c) the written case filed under Rule 64.03(1)(b) shall stand as the written case required under Rule 64.02(1)(b);

- (d) any additional documents filed under Rule 64.03(1)(c) shall stand as the additional documents (if any) required under Rule 64.02(1)(c)—

and, for the purposes of Rules 64.06 and 64.11—

- (e) a copy of the notice of appeal shall be taken to have been duly served on each respondent; and
- (f) the written case in response and any additional documents of the kind referred to in Rule 64.11(1)(a) or the notice not to respond or contest (unless the notice is confined to the application for leave to appeal as distinct from the proposed appeal), as the case may be, filed and served by a respondent in response to the application for leave to appeal shall be taken to have been duly filed and served by that respondent in response to the notice of appeal.

64.21 Management of applications and appeals

- (1) The Registrar may require the parties to participate in, and may conduct any conferences and give any directions with respect to, the preparation for hearing or determination of an application or appeal as the Registrar thinks appropriate for the effective, complete and prompt disposition of the proceeding.
 - (2) The Registrar may conduct any conference with the parties separately—
 - (a) if an applicant, appellant or a respondent is not represented; or
 - (b) if the Registrar otherwise considers it expedient to do so.
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- (3) The Registrar may decide to manage applications and appeals without the requirement of a conference.
 - (4) Nothing in this Rule limits any other powers of the Registrar to manage applications and appeals.

64.22 Settling contents of application book and appeal book

- (1) The Registrar may give such directions as the Registrar thinks appropriate regarding—
 - (a) the proposed contents of a leave application book or an appeal book;
 - (b) the settling of the contents of a leave application book or an appeal book; or
 - (c) the addition to or variation of the contents of those books.
 - (2) For the purpose of settling the contents of a leave application book or an appeal book, the Registrar may—
 - (a) consult the parties;
 - (b) consult the judge or other judicial officer or tribunal member whose decision is the subject of the application for leave to appeal or the appeal;
 - (c) give directions and, if the Registrar considers it appropriate, require the attendance of the parties;
 - (d) on an appeal by leave, direct that the contents of the leave application book comprise the whole or part of the appeal book; and
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- (e) direct that a party file such copies of documents for the use of the Court of Appeal as the Registrar considers appropriate.
- (3) Nothing in this Rule limits any powers of the Registrar under Rule 64.21.

64.23 Costs of compliance with directions

Unless the Court of Appeal or the Registrar otherwise orders, the costs of complying with directions given in accordance with Rule 64.21 or Rule 64.22 shall be costs in the application or the appeal, as the case may be.

64.24 Notes for guidance

Subject to the approval of the President, the Registrar, from time to time, may prepare and publish notes for the guidance of parties on the management of applications and appeals.

64.25 Delivery of leave application book and appeal book

- (1) Once the contents of a leave application book or an appeal book are settled by the Registrar an applicant for leave to appeal or an appellant shall prepare, and deliver to the Registrar, the leave application book or appeal book in accordance with—
 - (a) the directions of the Registrar; and
 - (b) the notes for guidance (if any).
 - (2) The applicant or appellant shall serve each respondent with a copy of the leave application book or appeal book within the time fixed or allowed for that purpose by the Registrar.
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- (3) If a leave application book or an appeal book does not comply with the requirements of this Order, the Registrar may require the applicant or appellant to amend it to make it compliant.
- (4) Where the Registrar requires an applicant or appellant to amend a leave application book or an appeal book, the applicant or appellant, within the time fixed or allowed by the Registrar, shall deliver the specified number of copies of the amended book (or of the amendments, if the Registrar so directs) to—
 - (a) each respondent; and
 - (b) the Registrar.
- (5) An applicable practice direction may require, or the Registrar may direct, an applicant or appellant to deliver to a respondent or to the Registrar further copies of a leave application book or an appeal book, including in electronic form, without charge.
- (6) The Registrar may direct a party other than the applicant or the appellant to prepare and serve the leave application book or appeal book and this Rule applies to that party with any necessary modification.

64.26 Costs of leave application book and appeal book

- (1) Subject to paragraph (2) and to Rule 64.23, the costs of preparation of a leave application book or an appeal book in the first instance shall be borne by the applicant or appellant unless the Registrar otherwise directs, including where the Registrar directs that a party other than the applicant or appellant prepare the leave application book or appeal book.

- (2) Unless the Court of Appeal otherwise orders, the costs of a leave application book or an appeal book—
 - (a) shall be costs in the appeal; or
 - (b) where the application is refused, shall be costs in the application.

64.27 Referral of applications to Court of Appeal

- (1) Where an application for leave to appeal or other application is to be considered and dealt with by a single Judge of Appeal in accordance with Rule 64.15, the Registrar shall deliver the leave application book, if required, to the Judge of Appeal as soon as reasonably practicable after it has been delivered to the Registrar under Rule 64.25.
 - (2) If the single Judge of Appeal directs that there be an oral hearing of the application, the Registrar shall—
 - (a) list the application for hearing as soon as reasonably practicable; and
 - (b) give notice of the hearing to each party.
 - (3) If the single Judge of Appeal determines to proceed without an oral hearing, the Registrar shall notify the parties of the decision to proceed without an oral hearing.
 - (4) Subject to paragraph (5), if a single Judge of Appeal refers an application for determination by the Court of Appeal constituted by two or more Judges of Appeal in accordance with Rule 64.15(5)(c), the Registrar shall—
 - (a) list the application for hearing by the Court of Appeal as soon as reasonably practicable; and
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- (b) give notice of the hearing to each party.
- (5) If the Court of Appeal constituted by two or more Judges of Appeal in accordance with Rule 64.16 determines to proceed without an oral hearing, the Registrar shall notify the parties of the decision to proceed without an oral hearing.

64.28 Registrar may vacate hearing date or refer for dismissal

- (1) If the Registrar is satisfied that an applicant or appellant has not complied with the requirements of this Order, these Rules, any applicable practice direction or a Registrar's direction, or otherwise determines that it is appropriate to do so, the Registrar may—
 - (a) vacate any hearing date set for an application, including for leave to appeal, or an appeal; or
 - (b) refer an application, including for leave to appeal, or an appeal to a Judge of Appeal or the Court of Appeal constituted by two or more Judges of Appeal for the applicant or appellant to show cause why the application or appeal should not be dismissed pursuant to Rule 64.46.
- (2) Paragraph (1) does not limit any other powers of the Registrar.

64.29 Discontinuance of application or appeal

- (1) By filing a notice of discontinuance in appropriate terms, an applicant or appellant may, at any time, discontinue an application (including for leave to appeal, or an appeal)—
 - (a) wholly; or

- (b) with respect to—
- (i) any part of the decision which is the subject of the application or appeal;
 - (ii) any respondent, where there are two or more respondents.
- (2) An applicant or appellant who files a notice of discontinuance shall serve a copy of the notice on each other party to the application or appeal on the same day.
 - (3) A notice of discontinuance filed by one applicant or appellant does not affect any other applicant or appellant in the matter.
 - (4) Unless the Court of Appeal constituted by one or more Judges of Appeal otherwise orders or the parties otherwise agree, an applicant or appellant who, under paragraph (1)(a), has filed a notice of discontinuance of the whole of an application or appeal shall pay the costs of each party to the application or appeal.
 - (5) Where, under paragraph (1)(b), an applicant or appellant discontinues an appeal with respect to part only of the decision which is the subject of the application or appeal, the Court of Appeal constituted by one or more Judges of Appeal may make such order as to costs in relation to the partial discontinuance as it sees fit.
 - (6) Unless the Court of Appeal constituted by one or more Judges of Appeal otherwise orders or the relevant parties otherwise agree, where an applicant or appellant has, under paragraph (1)(b)(ii), filed a notice of discontinuance of an application or appeal with respect to a particular respondent
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whereby that respondent wholly ceases to be a party to the application or appeal, the applicant or appellant shall pay the costs of that respondent to the time of the discontinuance.

- (7) Notwithstanding the filing of a notice of discontinuance of an application or appeal, the Court of Appeal—
 - (a) may order that the application or appeal not be discontinued (in accordance with the terms of the notice or at all); and
 - (b) may make any order as to costs or otherwise that it thinks fit.

64.30 Cross-appeal

- (1) Subject to Rules 64.31 and 64.32, a respondent who wishes to appeal from a decision from which an appellant has appealed shall do so by filing—
 - (a) a notice of cross-appeal in accordance with Form 64A with any necessary modification;
 - (b) a written case; and
 - (c) any additional document required by any applicable practice direction to be filed at the time of commencing a cross-appeal.
- (2) The time for filing a notice of cross-appeal, written case and any additional required document is—
 - (a) within 28 days after the service or deemed service on the respondent of the notice of appeal; or

- (b) within such shorter or longer time as the Court of Appeal or Registrar may specify.
- (3) A notice of cross-appeal, written case and any additional required document shall be served on the appellant and any other party to the cross-appeal as soon as practicable after the notice of cross-appeal, written case and any additional required document are filed, but no later than five days after they are filed.
- (4) Subject to paragraphs (1), (2) and (3), insofar as any provision of this Order applies to appeals, it applies with any necessary modification to cross-appeals.

64.31 Cross-application for leave to appeal

- (1) Where an applicant has applied for leave to appeal from a decision, a respondent may seek leave to appeal from that decision by filing—
 - (a) a cross-application for leave to appeal in accordance with Form 64A with any necessary modification;
 - (b) a written case; and
 - (c) any additional document required by any applicable practice direction to be filed at the time of commencing a cross-application for leave.
 - (2) The time for filing a cross-application for leave to appeal, a written case and any additional required document is—
 - (a) within 28 days after the service on the respondent of the application for leave to appeal; or
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- (b) within such shorter or longer time as the Court of Appeal or Registrar may specify.
 - (3) A cross-application for leave to appeal, a written case and any additional required document shall be served on the applicant for leave to appeal and any other party to the cross-application as soon as practicable after the cross-application for leave to appeal, written case and any additional required document are filed but no later than five days after they are filed.
 - (4) Subject to paragraphs (1), (2) and (3), insofar as any provision of this Order applies to applications for leave to appeal, it applies with any necessary modification to cross-applications for leave to appeal.

64.32 Notice of contention

- (1) Notwithstanding Rules 64.30 and 64.31, if a respondent to an application for leave to appeal or an appeal does not seek to have the subject decision set aside or varied but proposes to contend that it should be affirmed on a ground of fact or law which was not decided or was erroneously decided or was not raised for decision below—
 - (a) it is not necessary for the respondent to file a cross-application for leave to appeal or cross-appeal; and
 - (b) the respondent shall file and serve a notice of contention—
 - (i) in accordance with Form 64G;
 - (ii) a written case; and

- (iii) any additional document required by any applicable practice direction to be filed at the time of filing a notice of contention.
- (2) A notice of contention and written case shall be filed and served on—
 - (a) the applicant for leave to appeal or appellant; and
 - (b) any other party directly affected by the notice of contention.
- (3) The time for filing and service of a notice of contention, written case and any additional required document is—
 - (a) within 28 days after the service on the respondent of the application for leave to appeal or notice of appeal; or
 - (b) within such shorter or longer time as the Court of Appeal or Registrar may specify.
- (4) A notice of contention may be amended with leave of the Court of Appeal.

64.33 Notice of objection to competency of appeal or application

- (1) Within 14 days after being served with an application, including for leave to appeal, or being served or being deemed to be served with a notice of appeal, a respondent who objects to the competency of the application or appeal shall file and serve a notice of objection to competency in accordance with Form 64H that, briefly but specifically, states the grounds of the objection.
 - (2) The applicant or appellant must establish the competency of the application or appeal.
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- (3) A respondent may apply to the Court of Appeal for the question of competency to be heard and determined before the hearing of the application or appeal.
 - (4) If a respondent has not filed a notice of objection under paragraph (1), and the application or appeal is dismissed by the Court of Appeal as incompetent, the respondent is not entitled to any costs of the application or appeal, unless the Court of Appeal otherwise orders.

64.34 Effect of cross-application for leave to appeal, cross-appeal and notice of contention

- (1) In settling the contents of a leave application book or an appeal book under Rule 64.22, the Registrar shall have regard to any cross-application for leave to appeal, cross-appeal or notice of contention.
 - (2) Where there is a cross-application for leave to appeal or a cross-appeal and the leave application books or appeal books have not been delivered in accordance with Rule 64.25, the respondent may apply to the Registrar for directions.
 - (3) Where an application for leave to appeal or an appeal is discontinued or is taken to be abandoned—
 - (a) a respondent who has filed a cross-application for leave to appeal or a notice of cross-appeal may proceed with the cross-application for leave to appeal or cross-appeal; and
 - (b) the Registrar may give directions for its conduct.
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64.35 Time

- (1) The Court of Appeal may extend or abridge any time fixed by or under this Order.
- (2) The Registrar may extend or abridge any time fixed by the Registrar under this Order.

64.36 Powers of the Court of Appeal

- (1) Without limiting Rule 64.12, on an application for leave to appeal or an appeal, the Court of Appeal has the same powers and duties as to amendment or otherwise as the court or tribunal that made the decision the subject of the application for leave or the appeal.
 - (2) The Court of Appeal has power—
 - (a) to draw inferences of fact;
 - (b) to give any judgment and make any order which ought to have been given or made; and
 - (c) to make any further or other order as the case may require.
 - (3) Subject to Rule 64.13, the Court of Appeal has power to receive further evidence upon questions of fact—
 - (a) by oral examination in court;
 - (b) by affidavit; or
 - (c) by deposition taken before an examiner.
 - (4) Where any question arises as to any matter occurring in the proceeding in the court or tribunal that made the decision the subject of the application for leave to appeal or appeal, the Court of Appeal may have regard to—
 - (a) transcript of that proceeding; and
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- (b) any other evidence and any other materials as it thinks fit.
- (5) Without limiting paragraph (4), the Court of Appeal—
- (a) may call for a report from the judge of the court or from the tribunal that made the decision the subject of the application for leave to appeal or appeal; and
- (b) if the contents of that report have first been made available to the parties, may, so far as it thinks fit, act upon the report.
- (6) On an appeal, the powers of the Court of Appeal are not limited by reason of any order made on an interlocutory application from which there has been no appeal.
- (7) Without limiting Rule 64.12, the powers of the Court of Appeal under this Rule may be exercised notwithstanding that—
- (a) no application for leave to appeal, appeal, cross-application for leave to appeal or cross-appeal has been commenced in respect of any particular part of the decision the subject of the application for leave to appeal or the appeal or by any particular party to the proceeding in the court or tribunal that made the decision; or
- (b) any ground for allowing the application for leave to appeal or the appeal or for affirming or varying the decision the subject of the application or appeal is not specified in an application for leave to appeal, a notice of appeal, a
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cross-application for leave to appeal or a notice of cross-appeal.

64.37 New trial

- (1) On the hearing of an appeal, if it appears to the Court of Appeal that there ought to be a new trial, the Court of Appeal may order that the judgment, or the verdict and judgment, be set aside and that there be a new trial.
 - (2) Unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been occasioned thereby in the trial, a new trial shall not be granted—
 - (a) on the ground of misdirection;
 - (b) on the ground of the improper admission or rejection of evidence; or
 - (c) because the verdict of the jury was not taken on a question which the trial judge was not asked to leave to it.
 - (3) If it appears that any substantial wrong or miscarriage referred to in paragraph (2) affects part only of the matter in controversy or some or one only of the parties, the Court of Appeal may—
 - (a) give final judgment as to part of the matter or as to some or one only of the parties; and
 - (b) direct a new trial as to the other part only or as to the other party or parties.
 - (4) Paragraphs (2) and (3) apply whether or not the proceeding was tried with a jury.
 - (5) A new trial may be ordered on any question, whatever the grounds for the new trial, without interfering with the decision on any other question.
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- (6) A new trial shall not be granted by reason of any ruling—
- (a) that the stamp on any document is sufficient; or
 - (b) that the document does not require a stamp.
- (7) The Court of Appeal, in the order granting a new trial, may give all necessary directions for the further conduct of the proceeding.

64.38 Costs

- (1) The Court of Appeal may make any order for the whole or any part of the costs of an application or appeal as it thinks fit.
 - (2) A party may apply to the Court of Appeal for an order—
 - (a) that the applicant or appellant give security for the costs of the application or appeal, and for the manner, time and terms for giving the security;
 - (b) that the application or appeal be stayed until security is given; and
 - (c) that, if the applicant or appellant fails to comply with the order to provide security within the time specified in the order, the application or appeal be dismissed.
 - (3) An application under paragraph (2) shall be made by filing and serving—
 - (a) an application in Form 64B;
 - (b) an affidavit setting out the facts in support of the application; and
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- (c) any other document required by any applicable practice direction to be filed at the time of commencing an application.
- (4) An order that security be given for the costs of an application or appeal may be made on such terms as the Court of Appeal thinks fit.
- (5) Without limiting the powers of the Court of Appeal, an order under paragraph (4) may make provision for any matter set out in paragraph (2), including that security be given by payment into court to the Senior Master or in any other form satisfactory to the Senior Master or Registrar, without further specification.
- (6) An application or appeal is stayed if the applicant or appellant fails to comply with an order for security for costs, unless the Court of Appeal orders otherwise.

64.39 Stay of execution

Except so far as the Court of Appeal otherwise orders—

- (a) an application for leave to appeal or appeal shall not operate as a stay of execution or of proceedings under the decision appealed from; and
- (b) no intermediate act or step shall be invalidated.

64.40 Jurisdiction and powers exercisable by a single Judge of Appeal

In addition to any other power conferred on a single Judge of Appeal, but subject to this Order (including in particular Rule 64.15), a single Judge of Appeal may constitute, and

may exercise all the jurisdiction and powers of, the Court of Appeal in or in relation to—

- (a) any application to the Court of Appeal, including any application for leave to appeal; and
- (b) the making of any order by consent in or in relation to any proceeding in the Court of Appeal, including an order by consent dealing with or disposing of the whole or any part of an application, including for leave to appeal or an appeal.

64.41 Jurisdiction and powers exercisable by two Judges of Appeal

In addition to the case of an appeal in respect of which the President has made a determination under section 11(1A) of the Act and in addition to any other power conferred on the Court of Appeal constituted by two Judges of Appeal, the Court of Appeal constituted by two Judges of Appeal may exercise all the jurisdiction and powers of the Court of Appeal in or in relation to—

- (a) appeals where all the parties consent to the hearing and determination of the appeal by two Judges of Appeal;
- (b) appeals from judgments or orders in interlocutory applications;
- (c) any application to the Court of Appeal, including any application for leave to appeal; and
- (d) the making of any order by consent in or in relation to any proceeding in the Court of Appeal, including an order by consent dealing with or disposing of the

whole or any part of an application,
including for leave appeal, or an appeal.

**64.42 Powers of and directions given by
Associate Judges and Registrar**

- (1) Without limiting any other power of an Associate Judge or the Registrar, an Associate Judge or the Registrar, at any time, may make procedural orders or give directions in relation to—
 - (a) any application in the Court of Appeal, including for leave to appeal;
 - (b) an appeal to the Court of Appeal;
 - (c) a cross-application for leave to appeal to the Court of Appeal;
 - (d) a cross-appeal to the Court of Appeal;
or
 - (e) any other proceeding in the Court of Appeal.
 - (2) An order or direction under paragraph (1) may be made—
 - (a) of the Associate Judge's or Registrar's own motion; or
 - (b) on the application of a party.
 - (3) An Associate Judge or the Registrar may make any order for costs as he or she thinks fit in relation to the exercise of any power conferred upon him or her by this Order.
 - (4) The Court of Appeal, an Associate Judge or the Registrar, with or without the consent of any party, may order that an application for leave to appeal, an appeal, a cross-application for leave to appeal, a cross-appeal or other proceeding in the Court of Appeal be referred to a mediator.
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- (5) Rules 50.07, 50.07.1, 50.07.3 and 50.07.4 apply with any necessary modification to a proceeding in the Court of Appeal which is referred to a mediator in accordance with paragraph (4).
 - (6) An Associate Judge or the Registrar may, in or in relation to any proceeding in the Court of Appeal make any order by consent of all the parties, including any order by consent if all the parties dealing with or disposing of the whole or any part of an application, including for leave to appeal, or an appeal.
 - (7) Notwithstanding any direction given or order made by an Associate Judge or the Registrar, the Court of Appeal constituted by one or more Judges of Appeal may at any time, of its own motion or on application, give directions or make orders in relation to any application (including for leave to appeal) or appeal before it.
 - (8) Without limiting the generality of paragraph (7), the Court of Appeal constituted by one or more Judges of Appeal may set aside or vary any direction given or order made by an Associate Judge or the Registrar.
 - (9) Subject to paragraph (10), an application for an order under paragraph (8) shall be dealt with on the basis of the application, written cases (if applicable) and documents filed by the parties prior to the decision of the Associate Judge or the Registrar.
 - (10) Further material shall not be relied upon except with leave of the Court of Appeal.
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- (11) If an application under paragraph (8) is refused, the party making the application shall pay each opposing party's costs of the application on an indemnity basis, unless the Court of Appeal otherwise orders.

64.43 Further powers of Registrar

- (1) The Registrar may refuse to accept for filing any application, including for leave to appeal, notice of appeal or other notice, written case, written case in response, affidavit or other document if the Registrar considers that—
- (a) the document is irregular;
 - (b) the document is frivolous or vexatious on its face or by reference to any materials already filed or submitted for filing; or
 - (c) the filing of the document would give rise to an abuse of the process of the Court.
- (2) The Registrar may refuse to accept for filing any application, including for leave to appeal, notice of appeal or other notice, written case, written case in response, affidavit or other document if—
- (a) it is not complete;
 - (b) it does not comply with these Rules or the requirements of any applicable practice direction;
 - (c) it is not properly signed, if required to be signed;
 - (d) it is not accompanied by all the documents required by this Order or any applicable practice direction; or
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- (e) any applicable fee has not been paid.
- (3) In addition to any other power conferred on the Registrar by the Act or these Rules, the Registrar may—
 - (a) within the period specified by Rule 64.12(1), determine an application for leave to amend—
 - (i) a notice of appeal;
 - (ii) an application;
 - (iii) an application for leave to appeal;
or
 - (iv) a written case; and
 - (b) determine an application by a solicitor for leave to file a notice of ceasing to act.
- (4) The Registrar's powers under paragraphs (1) and (2) are in addition to, and do not affect Rule 27.06.
- (5) The Court of Appeal constituted by one or more Judges of Appeal may direct the Registrar to accept for filing any document which the Registrar has refused to accept under this Rule.

64.44 Exercise of powers and functions of the Court of Appeal by Associate Judge or Registrar

- (1) For the purpose of exercising any power or performing any function conferred on an Associate Judge or the Registrar by or under this Order or Rule 2.04(2), the Associate Judge or the Registrar—
 - (a) may constitute the Court of Appeal; and

- (b) may exercise the jurisdiction and powers of the Court of Appeal to the extent necessary to exercise those powers or functions.
- (2) For the purposes of paragraph (1), the powers of the Court of Appeal to hear and determine all matters or proceedings arising under this Order or Rule 2.04(2) are delegated to the Registrar.

64.45 Application or appeal taken to be abandoned

- (1) Without limiting or affecting any power of the Court of Appeal or any order that the Court of Appeal may make in relation to compliance with the requirements of these Rules (including this Order) or compliance with any direction given or order made in or in relation to a proceeding in the Court of Appeal, an application, including for leave to appeal, or an appeal is taken to be abandoned if an applicant or appellant does not—
 - (a) take any step required to be taken by or under this Order within 30 days after the expiry of the time fixed or allowed by or under this Order;
 - (b) comply with any direction given or order made by the Court of Appeal (constituted by one or more Judges of Appeal) or by an Associate Judge or by the Registrar within 30 days after the expiry of the time fixed or allowed by the direction or order.
 - (2) If an applicant or appellant does not deliver to the Registrar a leave application book or an appeal book as required or directed by or under Rule 64.25 or does not serve copies of
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- the leave application book or appeal book within the time fixed or allowed by the Registrar, the application or appeal—
- (a) is taken to be abandoned; and
 - (b) may be referred for dismissal under Rule 64.46.
- (3) If an application for leave to appeal or an appeal is taken to be abandoned in accordance with paragraph (1) or (2), the applicant or appellant shall pay each respondent's costs of the application for leave to appeal or appeal on an indemnity basis, unless the Court of Appeal otherwise orders.
- (4) Notwithstanding paragraph (1)—
- (a) the Court of Appeal may at any time order that an application, including for leave to appeal, or an appeal is not taken to be abandoned;
 - (b) within 28 days after the day on which an application, including for leave to appeal, or appeal is taken to be abandoned, the Registrar may order by consent of all the parties that the application or appeal is not taken to be abandoned.

64.46 Dismissal for want of prosecution or non-compliance

- (1) The Court of Appeal constituted by one or more Judges of Appeal may make an order dismissing an application, including for leave to appeal, or appeal for—
- (a) failure to comply with an order or direction of the Court of Appeal or of the Registrar;

- (b) failure to comply with any provision of these Rules;
 - (c) failure to attend a hearing relating to the application or appeal; or
 - (d) want of prosecution.
- (2) An order under paragraph (1) may be made—
- (a) of the Court of Appeal's own motion; or
 - (b) on the application of a party.
- (3) If an application or appeal is dismissed pursuant to this Rule, the applicant or appellant shall pay each other party's costs of the application or appeal on an indemnity basis, unless otherwise ordered by the Court of Appeal.

64.47 Expedition

- (1) In relation to an application to the Court of Appeal (other than an application for leave to appeal or an application to set aside or vary a dismissal of an application for leave to appeal), where the Court of Appeal constituted by one or more Judges of Appeal is satisfied that injustice would or might be entailed—
- (a) in requiring that documents relating to the application be filed in accordance with Rule 64.03(3);
 - (b) in requiring that copies of documents relating to the application be served in accordance with Rule 64.06; or

- (c) in requiring that any notice of the application be given to any party or person—

the Court so constituted may hear and determine the application notwithstanding—

- (d) that relevant documents have not been filed in accordance with Rule 64.03(3);
- (e) that relevant documents have not been served in accordance with Rule 64.06; or
- (f) that no notice of the application has been given to any party or person—

as the case may be, and the Court so constituted may make an order on the application upon such terms as to costs or otherwise and subject to such undertaking, if any, as it thinks fit.

- (2) The Court of Appeal constituted by one or more Judges of Appeal may set aside any order made under paragraph (1) on the application of any party or person affected.

_____".

8 Order 65 revoked

Order 65 of the Principal Rules is **revoked**.

9 Forms

For Form 64A of the Principal Rules **substitute**—

"Rules 64.02, 64.03, 64.30, 64.31

FORM 64A

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

***APPLICATION FOR LEAVE TO APPEAL/*NOTICE OF
APPEAL/*CROSS-APPLICATION FOR LEAVE TO
APPEAL/*NOTICE OF CROSS-APPEAL**

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

1. Decision from which the *application for leave/*appeal is made:

Judicial Officer:

*Court/*Tribunal:

Date of decision made:

*Court/*Tribunal file number:

Is the whole of the decision sought to be appealed or being appealed?

*YES/*NO

[If no, state which part of the decision is sought to be appealed or appealed against.]

2. Is leave to appeal required?

*YES/*NO

3. If leave to appeal is not required, state why:

4. Is an oral hearing of *leave application/*cross-application for leave requested?

*YES/*NO

5. Reasons for granting leave to appeal:

[If leave is required, set out specifically and concisely the reasons why leave should be granted.]

1.

2.

6. Grounds or proposed grounds of appeal:

[Set out specifically and concisely the grounds or proposed grounds of appeal.]

1.

2.

7. Orders sought:

8. Other applications:

[Identify any other applications you are filing with this application for leave or appeal: see Rule 64.03(3) for the requirements.]

9. Extension of time requested:

*YES/*NO

[If yes, an extension application, supporting affidavit and any additional documents required to be filed by any applicable practice direction or by Rule 64.08 should be filed with this form.]

10. Stay applied for:

*YES/*NO

[If yes, an application for stay, supporting affidavit and any additional documents required to be filed by any applicable practice direction should be filed with this form: see Rule 64.03(3). Note also that an application for stay may be made to the lower court judge in the first instance.]

11. Is the application for leave or appeal urgent?

*YES/*NO

[If yes, state why.]

12. Persons to be served with notice:

[Identify all parties on whom it is proposed to serve this form and related documents. Note that a list of all parties served must be filed within 7 days after service: see Rule 64.06(6).]

Please note that all of the following are to be filed with this form and that all must comply with the requirements of any applicable practice direction. An application for leave to appeal or appeal will not be able to be filed if any of the following are not included or do not comply:

- A written case.
- A list of authorities.
- A copy of the order sought to be appealed or appealed.
- A copy of the written reasons of the court or tribunal in respect of which the application for leave or appeal is made.
- A draft leave application book index or appeal book index.
- A draft summary for the Court of Appeal.

Supreme Court (Civil Appeals Amendments) Rules 2014

S.R. No. 209/2014

r. 9

In addition, the applicable filing fee must be paid at the time of filing.

Date:

Signed

[Name of lawyer/self-represented party]

*delete if inapplicable

Rules 64.03, 64.08, 64.10, 64.13, 64.38

FORM 64B

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

**APPLICATION OTHER THAN FOR LEAVE TO APPEAL OR TO
CROSS-APPEAL**

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

Supreme Court (Civil Appeals Amendments) Rules 2014

S.R. No. 209/2014

r. 9

TO: the Registrar

AND TO the respondent [*name and address*]

I wish to apply for the following order:

This application is made on the following grounds:

[*insert as applicable*]

Date:

Signed

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

*delete if inapplicable.

Note:

An application other than for leave to appeal or cross-appeal must be filed with an affidavit and any additional documents required to be filed, at the time of commencing the application, by any applicable practice direction.

An application must be accompanied by the applicable filing fee.

Rule 64.06

FORM 64C

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

LIST OF PERSONS SERVED

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Pursuant to Rule 64.06(6) of Chapter I of the Rules of the Supreme Court, the undersigned states that a copy of the *Application for Leave to Appeal/*Notice of Appeal and all other documents required by the rules or any applicable practice direction were served on the following parties:

[list the parties (e.g. first respondent, second respondent etc and the firm names of their solicitors if represented or their details if self-represented), their addresses (including email addresses) and the date served].

Example

Person served	Party	Solicitor	Date served
A Smith	First respondent	A Brown & Co Solicitors 100 Beach St Mentone VIC 3194 Email: reception@brownsolicitors.com.au	1 February 2014

Date:

Signed

[Name of lawyer/self-represented party]

*delete if inapplicable.

Rules 64.08, 64.11

FORM 64D

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

**NOTICE OF OPPOSITION TO APPLICATION OTHER THAN FOR
LEAVE TO APPEAL**

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant/*respondent

TAKE NOTICE that the *applicant/*appellant/*respondent opposes the application *to/*for [*insert brief description of application*] filed on [*date*] for the following reasons:

[*state briefly but specifically the reasons for the opposition*]

- 1.
- 2.

Note:

This notice must be accompanied by any affidavit on which the *applicant/*appellant/*respondent intends to rely in opposition to the application and any additional document required by any applicable practice direction.

Date:

Signed

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

*delete if inapplicable.

Rule 64.08, 64.11

FORM 64E

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

NOTICE OF INTENTION NOT TO RESPOND OR CONTEST

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant/*respondent

TAKE NOTICE that the *applicant/*appellant/*respondent *does not intend to respond to/*does not contest the [*appeal/*application] filed on [date].

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Date:

Signed

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

*delete if inapplicable.

Rule 64.18

FORM 64F

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

**APPLICATION TO HAVE DISMISSAL OF APPLICATION FOR
LEAVE SET ASIDE OR VARIED**

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

Supreme Court (Civil Appeals Amendments) Rules 2014

S.R. No. 209/2014

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TO: the Registrar

I, *[full name]*, having received the Registrar's notification that my application for leave to appeal has been determined and dismissed by the Court of Appeal without an oral hearing and without that Court making a determination that the application was completely without merit, apply to have the dismissal set aside or varied at a hearing of my application.

Date:

Signed

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

*delete if inapplicable.

Note:

The Court will determine an application to have the dismissal set aside or varied on the basis of the application, written cases and documents filed by the parties prior to the decision to dismiss the application and any additional documents ordered by the Court or the Registrar. Further material will not be considered except with the Court's leave.

Rule 64.32

FORM 64G

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

NOTICE OF CONTENTION

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant

The respondent contends that the judgment of the [*court or tribunal appealed from*] should be affirmed on a ground of fact or law which *was not decided/*was erroneously decided/*was not raised for decision in the court or tribunal.

The respondent does not seek to cross-appeal from any part of the judgment.

Grounds:

[Specifically and concisely identify the legal reasons to support the judgment of the court or tribunal]

- 1.
- 2.

Date:

Signed

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

*delete if inapplicable.

Note:

This notice must be accompanied by a written case and other documents specified by any applicable practice direction.

Rule 64.33

FORM 64H

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

NOTICE OF OBJECTION TO COMPETENCY

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant

The [*e.g. first respondent*] objects to the competency of [**application/*appeal*].

Grounds:

[*Briefly but specifically state the grounds of objection*]

- 1.
- 2.

*Further, the respondent applies for the question of competency to be heard and determined before the hearing of the *application/*appeal.

Date:

Signed

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

*delete if inapplicable.

_____".

10 Consequential amendments to Chapter II

For Part 3 of Order 4 of the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008² substitute—

"PART 3—APPLICATION FOR LEAVE TO APPEAL AND APPEAL TO THE COURT OF APPEAL

4.15 Commencement of application for leave to appeal or appeal

Except as otherwise provided by any Act or Rule, an application for leave to appeal or an appeal to the Court of Appeal from a tribunal shall be commenced in accordance with Order 64 of Chapter I.

4.16 Application of Order 64 of Chapter I

- (1) Except as otherwise provided by any Act and by this or any other Rule, Order 64 of Chapter I applies to an application for leave to appeal or an appeal under this Part.
- (2) Where the context permits, Order 64 of Chapter I applies as if in that Order a reference to an application or an appeal in respect of a decision of a court were a reference to an application or appeal in respect of a decision of a tribunal."

Dated: 30 October 2014

M. L. WARREN, *C.J.*
CHRISTOPHER MAXWELL, P.
ROBERT REDLICH, J.A.
MARK WEINBERG, J.A.
SIMON P. WHELAN, J.A.
J. G. SANTAMARIA, J.A.
DAVID F. R. BEACH, J.A.
K. WILLIAMS, J.
STEPHEN KAYE, J.
ELIZABETH HOLLINGWORTH, J.
KEVIN H. BELL, J.
BETTY JUNE KING, J.
ANTHONY CAVANOUGH, J.
JACK FORREST, J.
JAMES JUDD, J.
TERRY FORREST, J.
KARIN EMERTON, J.

M. L. SIFRIS, J.
JOHN DIXON, J.
KATE McMILLAN, J.
GREG GARDE, J.
JAMES D. ELLIOTT, J.
T. J. GINNANE, J.
MELANIE SLOSS, J.
M. J. CROUCHER, J.
CHRISTOPHER W. BEALE, J.
MICHAEL McDONALD, J.

ENDNOTES

- ¹ Rule 4: S.R. No. 148/2005. Reprint No. 5 as at 11 October 2013. Reprinted to S.R. No. 119/2013. Subsequently amended by S.R. Nos 146/2013, 147/2013, 148/2013 and 48/2014.
- ² Rule 10: S.R. No. 94/2008. Reprint No. 1 as at 1 April 2012. Reprinted to S.R. No. 109/2009. Subsequently amended by S.R. No. 47/2014.