



# Supreme Court of Victoria

## Practice Note SC CA 1

### Criminal 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 dealing with applications for leave to appeal against conviction or sentence.
- 1.3 Further, this Practice Note aims to ensure that matters of fact and law which were in issue at trial (or on the plea) are clearly identified and properly ventilated, and that appeal grounds are drawn and argued by reference to what took place at trial (or on the plea). Experience suggests that this objective is likely to be achieved in most cases by the involvement of trial counsel in the appeal process. There will of course be cases in which appellate review of a conviction or sentence will require the involvement of counsel other than, or in addition to, trial counsel. These may include cases in which it is necessary to consider a matter of law which was not ventilated at trial. What follows should be read accordingly.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was issued on 30 January 2017 and applies to all criminal appeals and applications for leave to appeal commenced on or after that date.
- 2.2 This Practice Note replaces Court of Appeal Practice Direction No. 2 of 2011 (First Revision) which is hereby revoked.

#### 3. DEFINITIONS

- 3.1 In this Practice Note:  
*CPA* means the *Criminal Procedure Act 2009*  
**Rule or Rules** means the *Supreme Court (Criminal Procedure) Rules 2008*

#### 4. LEAVE TO APPEAL

- 4.1 Leave to appeal is required in all cases of appeal against conviction or sentence except appeals against sentence by the Director of Public Prosecutions.<sup>1</sup>
- 4.2 The usual practice in the Court of Appeal will be for applications for leave to appeal to be determined by a single Judge of Appeal, without oral argument, pursuant to s 315 of the *CPA*.<sup>2</sup>

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<sup>1</sup> *CPA* ss 274, 278, 283.

<sup>2</sup> Rules 2.06-2.07.

## **5. ADVICE ON PROSPECTS OF APPEAL; ROLE OF TRIAL COUNSEL**

- 5.1 It is assumed that counsel briefed for criminal trials and/or pleas will be required to give written advice on the prospects of success of an appeal against conviction and/or sentence.
- 5.2 Within seven days of conviction or sentence (as the case may be), trial counsel and/or instructing solicitors should confer with the offender and convey counsel's view on the prospects of a successful appeal.
- 5.3 Counsel's advice should be confirmed in writing as soon as practicable.
- 5.4 Advice on prospects of an appeal against sentence should draw attention to the power of the Court to increase sentence (subject to the Court's obligation to give a warning<sup>3</sup>) as well as reduce it.<sup>4</sup>
- 5.5 It is assumed that, if counsel advises an appeal, he/she will be briefed to prepare and sign the grounds of appeal and accompanying written case, in accordance with this Practice Note.

## **6. ACCESS TO SOUND RECORDING OF CHARGE, PLEA AND SENTENCE**

- 6.1 To facilitate the provision of prompt advice on the prospects of appeal and the timely preparation of grounds of appeal and written case, the Victorian Government Reporting Service ('VGRS') will make available to counsel, on request, a sound recording of the relevant part(s) of the criminal trial (charge, plea and/or sentence), providing written transcript has not been prepared.
- 6.2 Counsel or instructing solicitors should, at the conclusion of the relevant part of the proceeding, submit to VGRS a copy of the order form available at <http://www.courts.vic.gov.au/court-system/transcripts-and-judgments/criminal-transcripts>. The form should be submitted either by email to [coarequests@justice.vic.gov.au](mailto:coarequests@justice.vic.gov.au) or by fax to 9670 4139.
- 6.3 VGRS will notify the practitioner by email when the disk containing the sound recording is available for collection at the VGRS office. Ordinarily, the disk will be available within 48 hours of the request being made.
- 6.4 It should be noted that, under these arrangements, defence counsel will be able to obtain prompt access to the sound recording of the Judge's charge. This will enable consideration to be given to an application for leave to appeal against conviction in the period between conviction and sentence, that is, before time begins to run for the filing of an application for leave.

## **7. GROUNDS OF APPEAL AND WRITTEN CASE**

- 7.1 Grounds of appeal must be prepared with sufficient precision to enable the Registrar, and subsequently the Court, to identify readily and clearly the issues and the matters relied upon.<sup>5</sup>
- 7.2 Where a ground of appeal is expressed in general terms – such as 'the conviction is unsafe and unsatisfactory or unreasonable' – the ground must be sufficiently particularised to identify the matters relied on. In an application for leave to appeal against conviction which includes a ground that the conviction is unsafe and unsatisfactory, any written case filed by the applicant must include a schedule of the evidence and transcript references relevant to that ground.

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<sup>3</sup> CPA s 281(3).

<sup>4</sup> CPA s 282(1)(a).

<sup>5</sup> Rule 2.05(4).

- 7.3 At the time of filing a notice of application for leave to appeal, the applicant must also file a written case in support of the application.<sup>6</sup> The notice, written case and any accompanying documents should be filed electronically with the Court of Appeal Registry at [coaregistry@supcourt.vic.gov.au](mailto:coaregistry@supcourt.vic.gov.au). The copy of the written case filed must be in an editable format, e.g. searchable pdf or Word. This material must not be filed by sending it to any individual Registry Officer, although that person may be copied in as appropriate.
- 7.4 The purpose of the written case is to enable the Court to grasp the facts and issues in the case and to decide the application without oral argument, and it should be prepared accordingly.
- 7.5 The written case must, unless the Registrar otherwise directs:
- a. specify the conviction and/or sentence from which leave to appeal is sought;
  - b. in the case of an application for leave to appeal against sentence, identify the applicable statutory maximum penalty and any other relevant statutory provisions in tabular format, an example of which is shown in Annexure 1 to this Practice Note. If a ground alleges disparity as against the sentence of one or more co-offenders, a table in identical format should be included for each co-offender;
  - c. summarise the relevant facts, provided that, if the matter proceeded at first instance on the basis of agreed facts and the agreed summary of facts is available, that summary must be attached instead;
  - d. set out the grounds of appeal, in accordance with the following requirements:
    - i. grounds must be numbered consecutively, and must be specific rather than expressed generally;
    - ii. each ground must be sufficiently particularised to identify the matters relied on;
    - iii. complaints about the weight attributed to particular sentencing factors are to be treated as particulars of a ground of manifest excess, unless it is to be contended that a statement about weight made by the sentencing Judge discloses a specific error in describing the facts or evaluating their significance, in which case the ground of appeal should be expressed accordingly;<sup>7</sup>
  - e. attach a list of authorities (as shown in Annexure 2) separated into “Part A” (which lists those authorities which are to be read from in any hearing) and “Part B” (which includes those additional authorities to which reference is to be made at the hearing). If an authority in “Part A” is reported, the reported version, rather than the unreported authority, must be cited;
  - f. list all materials upon which the applicant intends to rely (as shown in Annexure 2), providing a detailed description of the material, including any exhibit number, to enable it to be identified by the Registrar;
  - g. under the heading of each ground of appeal:
    - i. outline concisely each argument to be advanced in support of the ground and, as part of the argument, include a reference to each authority relied upon or sought to be distinguished;
    - ii. identify (by date and time) each passage of transcript considered necessary to be obtained for the purposes of deciding the application;
    - iii. identify any document mentioned in the ground, by exhibit number or other sufficient means;<sup>8</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> See *DPP (Vic) v Terrick* (2009) 24 VR 457; *Pesa v The Queen* [2012] VSCA 109.

<sup>8</sup> Rule 2.05(4).

- h. be concise and, unless the Registrar otherwise directs, must not exceed 10 A4 pages of 12 point type, 1½ spaced, including footnotes of no less than 10 point type; and
- i. be signed by counsel or, if counsel is not retained, by the applicant's solicitor or, if the applicant is not legally represented, then by the applicant personally. The signature of counsel or solicitor must be accompanied by their name in type below their signature.

7.6 Counsel are reminded of their obligation to exercise their forensic judgment and to give advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients.<sup>9</sup>

7.7 Where the requirements regarding the written case are not complied with, the application for leave to appeal will be deemed unacceptable and rejected by the Registrar.<sup>10</sup> This rejection will not, however, prevent time from continuing to run against the applicant.

## **8. TIME LIMITS FOR FILING APPLICATIONS FOR LEAVE**

8.1 An application for leave to appeal and the accompanying written case must be filed within 28 days after the day on which the applicant is sentenced,<sup>11</sup> unless the time for filing is extended under s 313 of the CPA.

8.2 Any application for extension of the 28 day period must be supported by an affidavit stating the reasons for not filing the application within time. Ordinarily, time will not be extended unless there is an adequate explanation for failing to file within time.

8.3 An application for extension of time and the supporting affidavit must be filed together with the application for leave to appeal.<sup>12</sup> Otherwise, the Registrar will not permit the application for leave to appeal to be filed out of time.

8.4 It is the Registrar's obligation to provide the respondent with a copy of the application for leave within seven days after the day on which the notice of application is accepted for filing.<sup>13</sup> The Registrar will also provide a copy of the applicant's written case if it complies with the requirements of this Practice Note. Accordingly, the applicant need not provide a copy of the application and written case to the respondent at the time of filing with the Registry.

8.5 As the 28 day period is set by the CPA, the provisions of the Rules relating to the calculation of time or the exclusion of vacation periods in calculating time do not apply to applications for leave to appeal against sentence or conviction.

## **9. TRANSCRIPT**

9.1 Once an application for leave to appeal has been filed, the Registrar will as a matter of course obtain the following transcripts:

- a. in the case of an application for leave to appeal against conviction, transcripts of the Trial Judge's charge and of the proceedings from the conclusion of the charge down to verdict; and
- b. in the case of an application for leave to appeal against sentence, transcripts of the addresses on the plea and of the Judge's sentencing remarks.

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<sup>9</sup> Rule 4(e) *Legal Profession Uniform Conduct (Barristers) Rule 2015*.

<sup>10</sup> Rules 2.03, 2.13.

<sup>11</sup> CPA ss 275(1), 279(1), 284(1).

<sup>12</sup> Rule 2.22.

<sup>13</sup> CPA ss 275(2), 279(2). See also s 11.1 below.

- 9.2 The transcript will be obtained and supplied electronically to the parties in an unrevised form. The Trial Judge may comment on the unrevised transcript in his or her report.
- 9.3 A written case filed in support of an application for leave to appeal must identify (by date and time) any further transcript considered necessary, with an explanation of the necessity.
- 9.4 Whether any further trial transcript is obtained is a matter for the Registrar.<sup>14</sup>

## **10. REVISION OF WRITTEN CASE**

- 10.1 The written case may be revised in accordance with this section.
- 10.2 The purpose of revision is:
- a. to enable modification of, substitution of, deletion of or addition to the original grounds where this is considered necessary or appropriate; and
  - b. for the assistance of the Court, to identify the part(s) of the transcript relevant to each ground.
- 10.3 Conviction applications: In an application for leave to appeal against conviction, the Registrar will ordinarily invite counsel to revise the written case, in light of the transcript once obtained. The procedure will be as follows:
- a. counsel will be sent a copy of the transcript electronically and invited to revise the written case within 21 days or such time as specified by the Registrar ('the revision period');
  - b. the written case may be revised without leave within the revision period. This includes adding new grounds that were not apparent at the time the written case was filed or deleting grounds that, upon reflection, counsel has determined are not reasonably arguable. The Court's leave is not required to add, substitute or delete grounds within the revision period;
  - c. if revision occurs, the revised written case must be filed within the revision period and the revised written case must otherwise comply with the requirements for a written case set out in Section 7;
  - d. where revision takes place in accordance with the procedure above, a new document headed 'Revised Written Case' (marked up to show clearly the changes made) is to be filed together with a further 'clean' version of the Revised Written Case;
  - e. the Registrar will provide a copy of the Revised Written Case to the respondent, which will have 21 days in which to file a response. Accordingly the applicant need not provide a copy of the revised written case to the respondent at the time of filing with the Registry;
  - f. if counsel determines to make no revision, counsel will inform the Registrar before the expiry of the revision period and the Registry will process the matter without waiting for the revision period to expire;
  - g. failing such notification, the applicant will be taken to have determined to make no revision, and the existing written case will be placed before the Court for determination without further notice;
  - h. new grounds may not be added after the revision period except by leave of the Court;
  - i. if counsel concludes that there are no valid grounds of appeal, counsel should so advise instructing solicitors, in writing, within the revision period;
  - j. in that case, instructing solicitors should send a copy of counsel's advice to the applicant and obtain instructions; and

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<sup>14</sup> Rule 2.33.

- k. if the applicant decides not to proceed with the application for leave, the Registry should be notified immediately.
- 10.4 Sentence applications: It is unlikely that revision will be required or permitted in a case of an application for leave to appeal against sentence alone, but the Registrar may invite revision if the Registrar considers it necessary for the assistance of the Court. If the applicant is invited or permitted to revise the written case on an application for leave to appeal against sentence, the procedure will be as above under ss 10.3(a) – 10.3(k).
- 10.5 Where the applicant has not been invited to revise the written case but wishes to do so, the applicant must apply to the Registrar for permission to do so within seven days of provision of the transcript by the registry, setting out the reasons.

## **11. CROWN RESPONSE TO APPLICATIONS FOR LEAVE TO APPEAL**

- 11.1 The Registrar must provide the Crown with a copy of a notice of application for leave to appeal within seven days after the day it is accepted for filing.<sup>15</sup> The Registrar will also provide a copy of the applicant's written case, if it complies with the requirements of this Practice Note and so is accepted for filing.
- 11.2 In the case of an application for leave to appeal against conviction, it is assumed that the Crown will file a written case in response to the applicant's grounds and written case.
- 11.3 Where the Crown determines to respond to an application for leave to appeal, the Crown must file and serve a written case within 28 days of being provided with a copy of the notice of application.
- 11.4 The Crown's written case must respond, point by point and in sequence, to each ground of appeal and to each argument advanced in the applicant's written case and must otherwise comply with the requirements of Section 7 (as modified to apply to a Crown response). In an application for leave to appeal against conviction which includes a ground that the conviction is unsafe and unsatisfactory, any written case filed by the Crown must include a schedule of the evidence and transcript references on which the Crown relies to rebut the contention that the conviction is unsafe or unsatisfactory. The Crown need not re-summarise the facts but may, by explicit statement, adopt the summary of facts as set out in the applicant's written case wholly or in part. If the matter proceeded on the basis of agreed facts and the agreed summary of facts was not attached to the applicant's written case, the Crown must attach that summary to its written case or advise in its written case that the summary is not available.
- 11.5 Where an applicant revises the grounds of appeal and/or written case (see Section 10 above), a copy will be provided to the Crown by the Registrar and the procedure as outlined in 11.3 and 11.4 above will apply. The Crown will have 21 days to file any amended written case (see s 10.3(e) above). Any amended written case filed by the Crown should be headed 'Amended Written Case'.

## **12. REFERRAL BY THE REGISTRAR**

- 12.1 When the Registrar has obtained the documents necessary for an application to be determined (which will include the notice of application, grounds of appeal, written case(s), transcripts and the materials relied upon as set out in Annexure 2), the Registrar will refer the application either to:

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<sup>15</sup> CPA ss 275(2), 279(2), 284(2).

- a. the Court constituted by a single Judge;<sup>16</sup> or
  - b. in those cases where it is considered appropriate to do so, to the Court constituted by two or more Judges.<sup>17</sup>
- 12.2 Cases which would be suitable for referral directly to two or more Judges include, but are not limited to, those which involve a novel point of law and those in which the sentence passed is unlawful, such that the applicant must be re-sentenced.
- 12.3 In considering whether to refer the application to a single judge or to two or more Judges, the Registrar will have regard to the efficient and expeditious dispatch of applications.<sup>18</sup>

### **13. BAIL PENDING APPEAL**

- 13.1 An application for bail pending appeal must be served on the Crown at least 24 hours before the application is filed with the Court. This will enable the Crown to make representations (written or oral) about the application and any conditions of bail. In the ordinary course, following confirmation of service on the Crown, the Registrar will invite the Crown to file short submissions on bail.
- 13.2 Most applications for bail pending appeal will be determined by a single Judge.<sup>19</sup>
- 13.3 Ordinarily, an application for bail pending appeal will not be considered before the applicant's grounds of appeal and accompanying written case have been filed.

### **14. CONSIDERATION OF APPLICATIONS FOR LEAVE TO APPEAL BY A SINGLE JUDGE**

- 14.1 It is assumed that ordinarily an applicant for leave to appeal will be content to rely upon the grounds of appeal and accompanying written case and, therefore, will not require an oral hearing of the application.<sup>20</sup>
- 14.2 In those circumstances, a single Judge will, without hearing oral argument, consider the application for leave to appeal.<sup>21</sup>
- 14.3 Where appropriate, the single Judge considering the leave application may also consider any ancillary application (for example, an application for extension of time).
- 14.4 An applicant may request an oral hearing of the application by so indicating in the application for leave to appeal.<sup>22</sup> That request must be confirmed in writing if so required by the Registrar. Failure to confirm in writing that an oral hearing is requested, when required to do so by the Registrar, will be taken as a decision by the applicant that he/she does not request an oral hearing.
- 14.5 If an applicant requests an oral hearing, the Registrar will fix a hearing date.
- 14.6 Unless the Registrar gives notice to the Crown that it is required to appear, the Crown is not expected to appear at an oral hearing of an application for leave to appeal.
- 14.7 Subject to any contrary direction by the Judge, the time for oral argument will ordinarily be limited:
- a. in the case of the applicant, to 15 minutes; and
  - b. in the case of the Crown (if appearing), to 10 minutes.

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<sup>16</sup> CPA s 315.

<sup>17</sup> Rule 2.06.

<sup>18</sup> *Supreme Court Act 1986* s 113P.

<sup>19</sup> Rule 2.38.

<sup>20</sup> Rule 2.07.

<sup>21</sup> CPA s 315.

<sup>22</sup> Rules 2.07(4), 2.36.

## **15. POWERS OF A SINGLE JUDGE**

- 15.1 A single Judge considering an application for leave to appeal may:
- a. grant leave to appeal on all grounds of appeal;
  - b. grant leave to appeal on one or more grounds of appeal and refuse leave to appeal on other grounds of appeal ('limited leave'); or
  - c. refuse leave to appeal.
- 15.2 The Judge may also grant or refuse any ancillary application.
- 15.3 The Judge considering an application for leave to appeal may, instead of determining the application, refer the application (and any ancillary application) to two or more Judges, of whom the single Judge may but need not be one.<sup>23</sup>
- 15.4 At the time of granting leave to appeal or referring an application to two or more Judges, the single Judge may give such directions for the filing of outlines of argument and other matters as the Court thinks fit for the hearing of the appeal or may remit the matter to the Registrar for directions and further case management.

## **16. RENEWED APPLICATIONS WHERE SINGLE JUDGE REFUSES LEAVE**

- 16.1 If a single Judge refuses an application for leave to appeal or grants limited leave, and the applicant elects pursuant to s 315(2) of the *CPA* to renew the application, the renewed application will be determined by two or more Judges of the Court.<sup>24</sup>
- 16.2 In most such cases, the Court will expect to determine the renewed application without oral argument, on the basis of the grounds of appeal and written case(s). A new ground or grounds may not be added upon a renewed application, except with the leave of the Court.
- 16.3 An applicant may request an oral hearing of a renewed application, by notice in writing to that effect filed with the election.<sup>25</sup> That request must be confirmed in writing if so required by the Registrar.
- 16.4 If an applicant requests an oral hearing of a renewed application, the Registrar will fix a hearing date.
- 16.5 Unless the Registrar gives notice to the Crown requiring it to appear, the Crown will not be expected to appear at a hearing of a renewed application.
- 16.6 Subject to any contrary direction by the Court, the time for oral argument will ordinarily be limited:
- a. in the case of the applicant, to 15 minutes; and
  - b. in the case of the Crown (if appearing), to 10 minutes.

## **17. ELECTIONS AGAINST REFUSALS OF APPLICATIONS FOR EXTENSION OF TIME**

- 17.1 If the Registrar refuses an application for extension of time for filing a notice of appeal or notice of application for leave to appeal, and the applicant elects<sup>26</sup> to renew the application, the renewed application will be determined by the Court, usually constituted by a single Judge of Appeal.
- 17.2 In most such cases, the Court will expect to determine the renewed application without oral argument, on the basis of the application and any supporting materials.
- 17.3 An applicant may request an oral hearing of a renewed application, by returning the required election notice<sup>27</sup> indicating that an oral hearing is requested.

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<sup>23</sup> Rule 2.07(2).

<sup>24</sup> Rule 2.08.

<sup>25</sup> *Ibid.*

<sup>26</sup> Pursuant to s 313(2) of the *CPA*

<sup>27</sup> Rules, Form 6-2J.

- 17.4 If an applicant requests an oral hearing of a renewed application, the Registrar will fix a hearing date.
- 17.5 Ordinarily the Court will also consider the application for leave at the hearing if it grants the extension of time application. The Crown may file a written submission (copied to the applicant) addressing the leave application at least ten days prior to the hearing date of the renewed application, bearing in mind that at this stage the Crown will not have filed a written case in response.
- 17.6 Unless the Registrar gives notice to the Crown requiring it to appear, the Crown will not be expected to appear at the hearing of a renewed application for an extension of time.
- 17.7 Subject to any contrary direction by the Court, the time for oral argument on the renewed application will ordinarily be limited:
- a. in the case of the applicant, to 15 minutes; and
  - b. in the case of the Crown (if appearing), to 10 minutes.

## **18. POWERS OF COURT COMPRISING TWO OR MORE JUDGES**

- 18.1 Where the Court comprising two or more Judges considers an application for leave to appeal (including a renewed application), the Court may:
- a. grant leave to appeal on all grounds;
  - b. grant limited leave to appeal;
  - c. refuse leave to appeal;
  - d. refer the application for leave to appeal to the Court constituted by not fewer than three Judges, of which any member of the referring court may be but need not be a member; or
  - e. treat the hearing of the application as the hearing of the appeal.<sup>28</sup>
- 18.2 Upon a grant of leave or a referral, the Court may give such directions for the filing of outlines of argument and other matters as the Court thinks fit for the hearing of the appeal, or may remit the matter to the Registrar for directions and further case management.

## **19. REPRESENTATION BY COUNSEL AT FURTHER HEARINGS**

- 19.1 Where the Court grants leave or limited leave to appeal, or where an application for leave is referred to two or more Judges, the Court expects that the applicant will be represented by counsel at the subsequent hearing of the application or appeal.

## **20. CROWN APPEALS**

- 20.1 At the time of filing an appeal,<sup>29</sup> the Crown must state each ground of appeal specifically and concisely and file a written case which complies with this Practice Note.<sup>30</sup>
- 20.2 Any written case on a Crown appeal filed by the Crown must otherwise comply with the requirements of a written case set out in Section 7.
- 20.3 To the extent necessary, the procedures described above regarding sound recordings and transcript will apply to Crown appeals.
- 20.4 The respondent may, but need not, file and serve a written case within one month of being given notice of the Crown appeal.

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<sup>28</sup> Rules 2.08(3), 2.09.

<sup>29</sup> CPA ss 287, 291.

<sup>30</sup> Rule 2.15.

20.5 The respondent's written case, if filed, must respond, point by point and in sequence, to each ground of appeal and to each argument advanced in the Crown's written case, and must otherwise comply with the requirements of Section 7.

## **21. REGISTRAR'S PREPARATION OF APPEALS FOR HEARING**

21.1 If leave to appeal is granted, the Registrar will prepare a summary.

21.2 As a general rule, a short summary in sentence appeals will be prepared. In conviction appeals, a longer summary of the proceeding, with appropriate references to the materials and transcript, will be prepared.

21.3 The summary will be sent to the legal representatives of the parties for their information. The summary is the Registrar's document and is designed to assist the bench in the prompt disposition of the appeal. However, if a summary contains a factual error, a party should so advise the Registry promptly.

21.4 Summaries prepared in accordance with this section will provide the basis for statements of facts and arguments in the Court's judgments. To enable the Court to deal with appeals by judgment delivered after oral argument, it will be the responsibility of counsel, in conjunction with the Registrar, to ensure that summaries are accurate.

21.5 The Registrar may give such other directions as the case requires.

## **22. HEARING OF APPLICATIONS AND APPEALS**

22.1 The Court aims to dispose of applications and appeals in a timely and efficient manner, subject always to allowing sufficient time for complex cases. Accordingly, any oral argument should supplement the submissions in the applicant's written case and the Crown response.

22.2 The time for argument on an appeal may be limited by direction of the Registrar or by order.

22.3 The aim of the Court is wherever possible to deliver judgment shortly after oral argument concludes.

## **23. ABANDONMENT OF APPEALS AND APPEAL GROUNDS**

23.1 An appeal (including any application for leave or renewal) may be abandoned by filing a notice of abandonment at any time before the hearing is commenced and the application or appeal, as may be, shall be taken to be dismissed on the date such notice is filed.<sup>31</sup>

23.2 An abandonment may not be set aside except upon application with leave of the Court.<sup>32</sup>

23.3 The Court recognises that, upon reflection, counsel may wish to abandon a ground or grounds of appeal. The proper time for such action to be taken is during the revision period as set out above in Section 10 of this Practice Note. In all cases, counsel briefed to appear in criminal applications and appeals are expected to review the grounds well in advance of the listed date and to advise the Registrar as soon as possible if any ground in the written case will not be maintained.

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<sup>31</sup> CPA s 314; Rules 2.40–2.41.

<sup>32</sup> Rule 1.18; *Keshtiar v The Queen* [2011] VSCA 122.

## **AMENDMENT HISTORY**

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Direction No 2 of 2011 and Practice Direction No 2 of 2011 (First Revision).

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
30 January 2017

**Annexure 1 - An example of a Tabular Summary of Offences, Sentences and Orders**

<b>Charge on Indictment</b>	<b>Offence</b>	<b>Maximum</b>	<b>Sentence</b>	<b>Cumulation</b>
1.	Intentionally causing serious injury	20y	5y	Base
2.	Fail to answer bail	2y	3m	-
3.	Fail to answer bail	2y	3m	3m
<b>Total Effective Sentence:</b>		5y 3m		
<b>Non-Parole Period:</b>		2y 6m		
<b>Pre-sentence detention declared:</b>		75 days		
<b>6AAA Statement:</b> 8y with a non-parole period of 5y.				
<b>Other relevant orders:</b> eg, forfeiture.				

## ***Annexure 2 -Example of an Applicant's List of Authorities and Material Relied Upon***

**IN THE SUPREME COURT OF VICTORIA  
COURT OF APPEAL  
(CRIMINAL DIVISION)**

[APPLICANT'S NAME]

v

THE QUEEN

### **APPLICANT'S LIST OF AUTHORITIES AND MATERIAL RELIED UPON**

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#### **Part A<sup>1</sup>**

1. *DPP (Vic) v Terrick* (2009) 24 VR 457.

#### **Part B<sup>2</sup>**

1. *R v Verdins* (2007) 16 VR 269.
2. *Scerri v The Queen* (2010) 206 A Crim R 1.

#### **- Material Relied Upon -**

1. Photobook (Exhibit A).
2. Sketch of room by complainant (Exhibit B).
3. 10 page Report of Dr A Citizen dated 5 March 2012 (Exhibit C).
4. Sentencing Advisory Council, *Snapshot 98 Sentencing Trends for Aggravated Burglary in the Higher Courts of Victoria* June 2010.

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<sup>1</sup> This Part should include only those authorities which are to be read from at the hearing.

<sup>2</sup> This Part should include those additional authorities to which reference will be made at the hearing.