

Authorised Version

Supreme Court (Appeals to the Trial Division, Judicial Review and Further Powers of Judicial Registrars Amendment) Rules 2018

S.R. No. 32/2018

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Authorised Version

STATUTORY RULES 2018

S.R. No. 32/2018

Supreme Court Act 1986

Supreme Court (Appeals to the Trial Division, Judicial Review and Further Powers of Judicial Registrars Amendment) Rules 2018

The Judges of the Supreme Court make the following Rules:

Part 1—Preliminary

1 Objects

The objects of these Rules are to amend Chapters I, II and VI of the Rules of the Supreme Court—

- (a) to alter procedures for appeals to the Trial Division and in relation to judicial review; and
- (b) to further provide for the powers of judicial registrars.

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 1 May 2018.

Part 2—Amendment of Chapter I

4 Proceedings after appearance

In Rule 45.04(3) of the Supreme Court (General Civil Procedure) Rules 2015¹ **omit** "or Order 56".

5 Application of Order 48

In Rule 48.01(1) of the Supreme Court (General Civil Procedure) Rules 2015, for "or originating motion" **substitute** ", originating motion, notice of appeal or application for leave to appeal".

6 Pre-trial conferences

In Rule 48.07 of the Supreme Court (General Civil Procedure) Rules 2015—

- (a) in paragraph (2), after "Associate Judge" **insert** "or a judicial registrar";
- (b) in paragraph (3), after "Associate Judge" **insert** "or judicial registrar".

7 Judgment or order instead of writ

- (1) In Rule 56.01(2) of the Supreme Court (General Civil Procedure) Rules 2015, after "commenced by" **insert** "filing an".
- (2) Rules 56.01(7), (8), (9) and (10) of the Supreme Court (General Civil Procedure) Rules 2015 are **revoked**.

8 New Rules 56.03 to 56.05 inserted

After Rule 56.02 of the Supreme Court (General Civil Procedure) Rules 2015 **insert**—

"56.03 Service of originating motion and of summons for directions

The plaintiff shall serve the originating motion and a copy of the affidavit referred to in Rule 56.01(5), together with a summons for directions under Rule 56.04(3), on each

defendant as soon as practicable after the filing of the originating motion and the filing of the summons for directions.

56.04 Appearance and summons for directions

- (1) Rules 45.01, 45.02 and 45.03 apply to an originating motion under this Order, but Rules 45.04 and 45.05 do not so apply.
- (2) Where a defendant has filed an appearance pursuant to Order 8, no judgment shall be given for the relief or remedy sought except on application by the plaintiff on further notice to that defendant.
- (3) As soon as practicable after the filing of the originating motion, and in any event no later than seven days after the originating motion has been filed, the plaintiff shall apply on summons for directions.
- (4) The application for directions is taken to be made when the summons is filed.
- (5) Subject to this Rule, Order 46 applies, with any necessary modifications, to an application for directions under this Rule.

56.05 Directions generally

The Court may, on application or on its own motion, conduct a directions hearing in the proceeding at any time."

9 Commencement of appeal

In Rule 58.07 of the Supreme Court (General Civil Procedure) Rules 2015, for "An" **substitute** "Except as otherwise provided by any Act or Rule, an".

10 Notice of appeal

- (1) In Rule 58.08(1)(a) of the Supreme Court (General Civil Procedure) Rules 2015 **omit** "in writing".
- (2) For Rule 58.08(1)(b)(i) of the Supreme Court (General Civil Procedure) Rules 2015 **substitute—**
 - "(i) whether leave to appeal is required;
 - (ia) the order which is the subject of appeal;"

11 Rules 58.10 and 58.11 substituted

For Rules 58.10 and 58.11 of the Supreme Court (General Civil Procedure) Rules 2015 **substitute—**

"58.10 Directions

- (1) Within seven days after filing notice of appeal, the appellant shall apply on summons for directions and, if necessary, for leave to appeal.
- (2) The application under paragraph (1) is taken to be made when the summons is filed.
- (3) Not less than 14 days before the day for hearing named in the summons, the appellant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 58.09 and any exhibit.
- (4) Not less than five days before the day for hearing named in the summons, the respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit.

- (5) If at any time the Court is satisfied that the hearing of the summons should be expedited, the Court may, on the Court's own motion or on application, bring the summons on for hearing.
- (6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal.
- (7) If leave to appeal is required, the Court may, as appropriate—
 - (a) direct that the application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal; or
 - (b) hear and determine the application for leave to appeal.
- (8) If leave to appeal is refused, the Court shall dismiss the appeal.
- (9) The Court may dismiss the appeal if satisfied that—
 - (a) the notice of appeal does not identify sufficiently or at all a question of law on which the appeal may be brought;
 - (b) the appellant does not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
 - (c) the appeal is frivolous, vexatious or otherwise an abuse of the process of the Court.

58.11 Leave to appeal

An appeal commenced more than 30 days after the day on which the order under appeal was made is to be taken to be an application for leave to appeal."

12 Expedition

Rule 58.13(3) of the Supreme Court (General Civil Procedure) Rules 2015 is **revoked**.

13 Definitions

For Rule 58.33 of the Supreme Court (General Civil Procedure) Rules 2015 **substitute**—

"58.33 Definitions

In this Part—

determination includes a refusal, direction, authorisation, findings, decision or order which is subject to appeal under Part 7 of the **Coroners Act 2008**."

14 Notice of appeal

- (1) In Rule 58.35(1)(a) of the Supreme Court (General Civil Procedure) Rules 2015 **omit** "in writing".
- (2) For Rule 58.35(1)(b)(i) of the Supreme Court (General Civil Procedure) Rules 2015 **substitute**—
 - "(i) whether leave to appeal out of time in accordance with section 86 of the **Coroners Act 2008** is required;
 - (ia) the determination which is the subject of appeal;"

15 Rule 58.39 substituted

For Rule 58.39 of the Supreme Court (General Civil Procedure) Rules 2015 **substitute**—

"58.39 Directions

- (1) In the case of an appeal under Part 7 of the **Coroners Act 2008**, other than an appeal under section 79(1), 79(3), 81(1) or 85, within seven days after filing notice of

appeal, the appellant shall apply on
summons—

- (a) for directions; and
 - (b) if necessary, for leave to appeal out of time in accordance with section 86 of the **Coroners Act 2008**.
- (2) The application under paragraph (1) is taken to be made when the summons is filed.
 - (3) Not less than 14 days before the day for hearing named in the summons, the appellant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 58.37 and any exhibit.
 - (4) Not less than five days before the day for hearing named in the summons, the respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit.
 - (5) If at any time the Court is satisfied that the hearing of the summons should be expedited, the Court may, on the Court's own motion or on application, bring the summons on for hearing.
 - (6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal.
 - (7) If leave to appeal out of time is required, the Court may, as appropriate—
 - (a) direct that the application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal; or
 - (b) hear and determine the application for leave to appeal.
-

- (8) If leave to appeal is refused, the Court shall dismiss the appeal.
- (9) The Court may dismiss the appeal if satisfied that—
 - (a) where applicable, the notice of appeal does not identify sufficiently or at all a question of law on which the appeal may be brought;
 - (b) the appellant does not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
 - (c) the appeal is frivolous, vexatious or otherwise an abuse of the process of the Court."

16 Expedition

Rule 58.40(3) of the Supreme Court (General Civil Procedure) Rules 2015 is **revoked**.

17 Associate Judge to hear application

After Rule 77.03(2) of the Supreme Court (General Civil Procedure) Rules 2015 **insert**—

- "(3) This Rule does not apply to a proceeding to which any of the following applies—
- (a) Order 56;
 - (b) Part 3, 4, 5 or 7 of Order 58;
 - (c) Order 4 of Chapter II of the Rules of the Supreme Court; or
 - (d) Order 3A of Chapter VI of the Rules of the Supreme Court."

18 Authority of judicial registrars

- (1) In Rule 84.02(3) of the Supreme Court (General Civil Procedure) Rules 2015—
 - (a) **omit** "in any civil proceeding";
 - (b) in paragraph (a), for subparagraph (iii) **substitute**—
 - "(iii) Order 48, except Rule 48.04(1)(b) and (2)(b);
 - (iv) Rule 56.04(3) or Rule 56.05;
 - (v) Part 3 of Order 58, except Rule 58.10(7)(b), (8) and (9);
 - (vi) Part 7 of Order 58, except Rule 58.39(7)(b), (8) and (9); or
 - (vii) Order 4 of Chapter II of the Rules of the Supreme Court, except Rule 4.08(7)(b), (8) and (9) of that Chapter;"
- (2) At the end of the Note to Rule 84.02 of the Supreme Court (General Civil Procedure) Rules 2015 **insert**—

"Additional powers are conferred on judicial registrars under Order 3A of Chapter VI of the Rules of the Supreme Court and under Part 3 of Order 4 of that Chapter."

19 Reference by Judge of the Court to judicial registrar

In Rule 84.03(1) of the Supreme Court (General Civil Procedure) Rules 2015, after "a matter" **insert** "(whether civil or criminal)".

20 Reference by Associate Judge to judicial registrar

In Rule 84.04(1) of the Supreme Court (General Civil Procedure) Rules 2015, after "a matter" **insert** "(whether civil or criminal)".

21 Form 5G substituted

For Form 5G of the Supreme Court (General Civil
Procedure) Rules 2015 **substitute**—

'Form 5G—Originating motion for judicial review

Rules 5.02(2), 56.01(2)

[heading as in Form 5A]

ORIGINATING MOTION FOR JUDICIAL REVIEW

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been commenced by the plaintiff for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the originating motion has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

IF YOU FAIL to file an appearance within the proper time, the plaintiff MAY OBTAIN JUDGMENT AGAINST YOU without further notice.

IF YOU FILE an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after further notice to you. There will first be a directions hearing of which you will receive notice by summons or otherwise.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (a) where you are served with the originating motion in Victoria, within 10 days after service;
- (b) where you are served with the originating motion out of Victoria and in another part of Australia, within 21 days after service;

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- (c) where you are served with the originating motion in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the originating motion.

FILED [*insert date*].

Prothonotary

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THE PLAINTIFF CLAIMS:

[Set out the relief or remedy sought and the Act, if any, under which the claim is made, and where it includes the answer to any question, state the question.]

THE GROUNDS RELIED UPON ARE:

[State the grounds upon which the relief or remedy is sought, and where any mistake or omission in any judgment, order or other proceeding in respect of which relief or remedy is sought is a ground, specify the mistake or omission.]

EXTENSION OF TIME**

[If an extension of time is required under Rule 56.02 of Chapter I of the Rules of the Supreme Court or otherwise, say so and state briefly the circumstances relied upon for the extension of time sought.]

FURTHER PARTICULARS of the claim appear in the affidavit made in support of the claim. A copy of the affidavit and of any exhibit to the affidavit is served with this originating motion.

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1. Place of trial—

(If no place of trial is specified, trial will be held in Melbourne.)

2.** This originating motion was filed—

- (a) by the plaintiff in person;
- (b) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*];

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(c) for the plaintiff by [*name or firm of solicitor*], solicitor, of
[*business address of solicitor*] as agent for [*name or firm of
principal solicitor*], solicitor, of [*business address of principal*].

3. The address of the plaintiff is—

4. The address for service of the plaintiff is—

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 3, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

5. The email address for service of the plaintiff is—

6. The address of the defendant is—

* [*Strike out this paragraph where order made fixing time for appearance and substitute "THE PROPER TIME TO FILE AN APPEARANCE is within days after service on you of this originating motion."*]

** [*Complete or strike out as appropriate.*].

Part 3—Amendment of Chapter II

22 Application

In Rule 4.01(1) of the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008²—

- (a) in paragraph (a), after "a tribunal" **insert** ", including under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998**";
- (b) in paragraph (b), after "a tribunal" **insert** ", including under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998**".

23 Rules 4.04 to 4.13 substituted

For Rules 4.04 to 4.13 of the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 **substitute—**

"4.04 Commencement of appeal or application for leave to appeal

Except as otherwise provided by any Act or Rule—

- (a) an appeal or an application for leave to appeal under this Part is commenced by filing a notice of appeal in the Court;
- (b) subject to Rule 4.08(9), the appeal or the application for leave to appeal shall be commenced within 28 days after the day of the order of the tribunal; and
- (c) the appeal or the application for leave to appeal shall not operate as a stay of proceedings unless the Court otherwise orders.

4.05 Extension of time

Except as otherwise provided by any Act or Rule, and unless the Court otherwise orders, if an extension of time is needed within which to appeal or apply for leave to appeal—

- (a) an application for that extension may be made to, and determined by, the Court in conjunction with the appeal or the application for leave to appeal, as the case may be; and
- (b) if granted, the extension may be granted retrospectively.

4.06 Notice of appeal

- (1) A notice of appeal under this Part shall—
 - (a) be signed by the appellant or the appellant's solicitor;
 - (b) set out or state—
 - (i) whether an extension of time is needed;
 - (ii) whether leave to appeal is required;
 - (iii) the order which is the subject of the appeal or proposed appeal;
 - (iv) whether the appeal or proposed appeal is from the whole or part only of the order, and, if so, what part;
 - (v) the question of law upon which the appeal or proposed appeal is brought;
 - (vi) concisely the grounds or proposed grounds of appeal;

- (vii) the order sought in place of that from which the appeal or proposed appeal is brought; and
 - (c) at its end, name all the persons on whom it is proposed to serve the notice of appeal.
- (2) As soon as practicable after filing the notice of appeal, the appellant or applicant shall—
- (a) deliver a copy to the registrar or other proper officer of the tribunal; and
 - (b) unless the Court otherwise orders, serve a copy of the notice on all persons directly affected by the appeal or application.
- (3) The Court may give leave to amend the grounds or proposed grounds of appeal or make any other order to ensure the proper determination of the appeal or application for leave to appeal.

4.07 Appellant to file affidavit

- (1) Within seven days after filing the notice of appeal, the appellant or applicant shall file an affidavit setting out the acts, facts, matters and circumstances relating to—
- (a) the order of the tribunal;
 - (b) if an extension of time is needed, why an extension should be granted;
 - (c) if leave to appeal is required, why leave to appeal should be given; and
 - (d) the grounds or proposed grounds set out in the notice of appeal.

Part 3—Amendment of Chapter II

- (2) There shall be included as exhibits to the affidavit—
- (a) a copy of the order from which the appeal is or is proposed to be brought; and
 - (b) a copy of any reasons given for the order—

or their absence as exhibits shall be accounted for in the affidavit.

4.08 Directions

- (1) Within seven days after filing the notice of appeal, the appellant or applicant shall apply on summons—
- (a) for directions;
 - (b) if necessary, for an extension of time; and
 - (c) if necessary, for leave to appeal.
- (2) The application under paragraph (1) is taken to be made when the summons is filed.
- (3) Not less than 14 days before the day for hearing named in the summons, the appellant or applicant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 4.07 and any exhibit.
- (4) The respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit not less than five days before the day for hearing named in the summons.
- (5) If at any time the Court is satisfied that the hearing of the summons should be expedited, the Court may, on its own motion or on

Part 3—Amendment of Chapter II

- application, bring the summons on for hearing.
- (6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal or proposed appeal.
- (7) If an extension of time is needed or leave to appeal is required, the Court may, as appropriate—
- (a) direct that the application for an extension of time or for leave to appeal be heard and determined by the Court which, if an extension of time or leave to appeal is granted, is to hear and determine the proposed appeal; or
 - (b) hear and determine the application for an extension of time or for leave to appeal.
- (8) The Court may dismiss the appeal or the application for an extension of time or for leave to appeal (as the case may be) if satisfied that—
- (a) the notice of appeal does not identify sufficiently or at all a question of law on which the appeal or proposed appeal may be brought;
 - (b) the appellant or applicant does not or would not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
 - (c) the appeal or application is frivolous, vexatious or otherwise an abuse of the process of the Court.

- (9) If an extension of time is not required or is granted, and the Court gives leave to appeal, then, except as otherwise provided by any Act and unless the Court otherwise orders—
- (a) the appeal is thereupon taken to have been duly commenced by the filing of the notice of appeal;
 - (b) no further notice of appeal shall be required; and
 - (c) notwithstanding Rule 4.06, no further copy of the notice of appeal need be served.
- (10) The Court may, in a proper case, grant a stay of proceedings under the order of the tribunal."

24 Expedition

Rule 4.14(3) of the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 is **revoked**.

Part 4—Amendment of Chapter VI

25 Part 1 heading to Order 3A inserted

After the heading to Order 3A of the Supreme Court (Criminal Procedure) Rules 2017³ **insert—**

"Part 1—General".

26 Commencement of appeal on a question of law

For the Note at the foot of Rule 3A.02 of the Supreme Court (Criminal Procedure) Rules 2017 **substitute—**

"Notes

Section 272(3) of the Act and section 430P of the **Children, Youth and Families Act 2005** require the notice of appeal to be filed within 28 days after the day on which the order complained of was made.

Section 272(7) of the Act and section 430P(7) of the **Children, Youth and Families Act 2005** set out the circumstances in which an appeal is deemed to be an application for leave to appeal."

27 Notice of appeal

- (1) In Rule 3A.03(1)(a) of the Supreme Court (Criminal Procedure) Rules 2017 **omit** "in writing".
- (2) For Rule 3A.03(1)(b)(i) of the Supreme Court (Criminal Procedure) Rules 2017 **substitute—**
 - "(i) whether leave to appeal is required;
 - (ia) the order which is the subject of appeal;".

28 Rule 3A.05 substituted

For Rule 3A.05 of the Supreme Court
(Criminal Procedure) Rules 2017 **substitute—**

"3A.05 Directions

- (1) Within seven days after filing notice of appeal the appellant shall apply on summons for directions and, if necessary, for leave to appeal.
- (2) The application under paragraph (1) is taken to be made when the summons is filed.
- (3) Not less than 14 days before the day for hearing named in the summons, the appellant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 3A.04 and any exhibit.
- (4) Not less than five days before the day for hearing named in the summons, the respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit.
- (5) If at any time the Court is satisfied that the hearing of the summons should be expedited, the Court may, of its own motion or on application, bring the summons on for hearing.
- (6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal.

- (7) If leave to appeal is required, the Court may, as appropriate—
- (a) direct that the application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal; or
 - (b) hear and determine the application for leave to appeal.
- (8) If leave to appeal is refused, the Court shall dismiss the appeal.
- (9) The Court may dismiss the appeal if satisfied that—
- (a) the notice of appeal does not identify sufficiently or at all a question of law on which the appeal may be brought;
 - (b) the appellant does not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
 - (c) the appeal is frivolous, vexatious or otherwise an abuse of the process of the Court."

29 Rule 3A.06 revoked

Rule 3A.06 of the Supreme Court (Criminal Procedure) Rules 2017 is **revoked**.

30 Delay and expedition

Rule 3A.08(3) of the Supreme Court (Criminal Procedure) Rules 2017 is **revoked**.

31 Rule 3A.10 revoked

Rule 3A.10 of the Supreme Court (Criminal Procedure) Rules 2017 is **revoked**.

32 Part 2 heading to Order 3A and new Rule 3A.10 inserted

Before Rule 3A.11 of the Supreme Court (Criminal Procedure) Rules 2017 **insert—**

"Part 2—Authority of Associate Judge under this Order

3A.10 Authority of Associate Judge to hear applications or matters

Notwithstanding Rule 1.16, an Associate Judge may hear and determine any application or matter under Rule 3A.03(2)(b) or (4), 3A.05, 3A.07, 3A.08 or 3A.09."

33 Rule 3A.12 heading amended

In the heading to Rule 3A.12 of the Supreme Court (Criminal Procedure) Rules 2017, after "Court" **insert "from Associate Judge"**.

34 Rule 3A.13 heading amended

In the heading to Rule 3A.13 of the Supreme Court (Criminal Procedure) Rules 2017, after "Appeal" **insert "from Associate Judge"**.

35 New Part 3 of Order 3A inserted

After Rule 3A.13 of the Supreme Court (Criminal Procedure) Rules 2017 **insert—**

"Part 3—Authority of judicial registrar under this Order

3A.14 Authority of judicial registrar to hear applications or matters

- (1) Notwithstanding Rule 1.16, a judicial registrar may hear and determine any application or matter under Rule 3A.03(2)(b) or (4), 3A.05 (except paragraphs (7)(b), (8) and (9)), 3A.07, 3A.08 or 3A.09.

- (2) In hearing and determining an application or matter referred to in paragraph (1)—
 - (a) the judicial registrar constitutes the Trial Division of the Court; and
 - (b) all the powers of the Trial Division of the Court to hear and determine such an application or matter are delegated to the judicial registrar.

3A.15 Reference of application or matter to judicial registrar

- (1) Notwithstanding Rule 1.16, if an application or matter under this Order is before a Judge of the Court or an Associate Judge, and the application or matter would not otherwise be within the authority of a judicial registrar, and the application or matter appears to the Judge or the Associate Judge to be proper for the determination of a judicial registrar, the Judge or the Associate Judge, by order, may refer the application or matter to a judicial registrar.
- (2) If a Judge of the Court or an Associate Judge refers an application or matter to a judicial registrar under paragraph (1), the judicial registrar may—
 - (a) hear and determine the application or matter, subject to any directions in the order referring the application or matter; or
 - (b) refer the application or matter back to the Judge or Associate Judge for determination.
- (3) In hearing and determining an application or matter referred by a Judge of the Court or Associate Judge to a judicial registrar—

- (a) the judicial registrar constitutes the Trial Division of the Court for that purpose; and
- (b) subject to any directions in the order referring the application or matter, all the powers of the Trial Division of the Court in relation to the hearing and determination of such an application or matter are delegated to the judicial registrar.

3A.16 Reference of appeal to judicial registrar

- (1) Notwithstanding Rule 1.16, if an appeal to which this Order applies appears to a Judge of the Court to be proper for the determination of a judicial registrar, the Judge of the Court, by order, may refer the appeal to a judicial registrar.
- (2) If a Judge of the Court refers an appeal to a judicial registrar, the judicial registrar may—
 - (a) hear and determine the appeal, subject to any directions in the order referring the appeal; or
 - (b) refer the appeal back to the Judge of the Court.
- (3) In hearing and determining an appeal referred by a Judge of the Court to a judicial registrar—
 - (a) the judicial registrar constitutes the Trial Division of the Court for that purpose; and
 - (b) subject to any directions in the order referring the appeal, all the powers of the Trial Division of the Court in relation to the hearing and

determination of such an appeal are delegated to the judicial registrar.

3A.17 Appeal from determination by judicial registrar

- (1) In this Rule, a reference to a determination includes a reference to a judgment, order or direction.
- (2) This Rule applies to any determination given or made by the Trial Division of the Court constituted by a judicial registrar (including a determination in or in relation to an application, matter or appeal referred to a judicial registrar under Rule 3A.15 or Rule 3A.16).
- (3) For the purposes of section 113M of the **Supreme Court Act 1986**, an appeal from a determination to which this Rule applies lies to the Trial Division constituted by a Judge of the Court.
- (4) An appeal under this Rule shall be conducted by way of hearing de novo.
- (5) Rules 84.05(5) to 84.12 of Chapter I apply, with any necessary modification, to an appeal under this Rule.

3A.18 Judicial registrar may act for another

If circumstances so require, a judicial registrar may hear and determine an application or a matter instead of the judicial registrar by whom it would otherwise be heard and determined."

Dated: 22 March 2018

ANNE FERGUSON, *C.J.*
CHRISTOPHER MAXWELL, *P.*
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Endnotes

- ¹ Rule 4: S.R. No. 103/2015. Reprint No. 2 as at 2 January 2018. Reprinted to S.R. No. 127/2017.
- ² Rule 21: S.R. No. 94/2008. Reprint No. 2 as at 26 March 2015. Reprinted to S.R. No. 209/2014 and subsequently amended by S.R. Nos 142/2015, 14/2016, 15/2017 and 97/2017.
- ³ Rule 24: S.R. No. 126/2017.