



# **The Court of Appeal for Bermuda**

## **PRACTICE DIRECTION**

**ISSUED BY THE PRESIDENT OF THE COURT**

**Ref. A/50**

**28 AUGUST 2023**

**CIRCULAR No. 19 of 2023**

### **PRACTICE & PROCEDURE FOR CASES BEFORE THE COURT OF APPEAL**

#### **Aim and Purpose**

1. The purpose of this Practice Direction is to address and curtail a number of unsatisfactory practices which the court has witnessed in recent cases. Compliance with the directions will be enforced strictly.

#### **Civil Appeals**

2. Unlike criminal appeals where the Record of Appeal is produced by the Court, civil appeal records are to be prepared by Counsel (or in a case which involves a litigant in person, and the other side is represented by Counsel, that attorney will assume responsibility for the preparation of the Record of Appeal). In a case where both an appellant and respondent are appearing self-represented, the Court will assume the duty of preparing the Record of Appeal containing the documents as settled by the Registrar of the Supreme Court.
3. Counsel and litigants are reminded that the Record of Appeal must include the essential documents, namely:
  - (a) The Notice of Appeal to the Court of Appeal; and in a case where the appeal to the Court of Appeal concerns an appeal from the Magistrates Court to the Supreme Court, a copy of the full Record of Appeal (inclusive of the Notice of Appeal) as prepared by the Magistrates' Court;
  - (b) A copy of the judgment which is the subject of the appeal;

- (c) Any written submissions that were advanced before the trial judge / judge on appeal; and
- (d) Whatever documents the Registrar of the Supreme Court has determined to be a part of the Record of Appeal.

### **Criminal Appeals**

- 4. Counsel and litigants are reminded that in the case of Criminal Appeals, the Records of Appeal are constructed and disseminated by the Court's Registry. The Records of Appeal will contain only those items listed in Order 3 Rule 10 or Rule 11 of the Rules of the Court of Appeal for Bermuda ("the Rules").
- 5. In the matter of **Practice Direction 16 of 2020** ("the Direction") the Procedure set out in paragraph 4 is hereby amended (or clarified as the case may be) to the following effect:
  - (a) Paragraph 4(c) of the Direction is amended by substituting "summation" in the first sentence with "Record of Appeal". Therefore, once the Record of Appeal has been issued to the parties, the parties will have 14 days to:
    - (i) apply for further transcripts which are not covered by Order 3 Rule 10 or Rule 11 of the Rules; and
    - (ii) apply to supplement the record of appeal with further documentation which is not covered by Order 3 Rule 10 or Rule 11 of the Rules.
  - (b) If upon the expiry of 14 days no application has been made either for further transcripts or to supplement the record of appeal, the record of appeal shall be treated as final. Whilst the parties are at liberty to apply for further transcripts or to supplement the record of appeal, the Court must be satisfied that there exist good and sufficient reasons why the parties were non-compliant with the imposed time limit. The parties are warned that, if the Court remains unsatisfied by any explanation proffered, it is likely that an application made beyond the 14-day time period will be refused.
  - (c) Paragraph 4(d) of the Direction is amended by substituting a different time frame for filing the appellant's submissions. The period of 45 days following the receipt of the Record of Appeal is reduced to twenty-one (21) days. The respondent's time to reply remains unchanged (i.e. 14 days following the filing of the appellant's submissions).
- 6. In reference to paragraph 5(a)(ii) above, when an application to supplement the record of appeal has been made and approved by a Single Judge, the applicant who seeks to supplement the record of appeal shall file the documents that will make up the supplementary record with the Administrative Officer of the Court of Appeal. The Registry will produce and disseminate the supplemental record of appeal.
- 7. In reference to paragraph 5(c), where an applicant has applied for further transcripts and / or a supplemented record of appeal within time, or where the court has extended the time and granted an order to (a) obtain further transcripts; and / or (b) supplement the record of

appeal, the twenty-one (21) day time period for an appellant to file submissions will commence from the date that the Registry issued the further transcripts and / or the supplemented record of appeal.

8. Where in either case the appellant's or the respondent's submission date falls on a weekend or public holiday, the appellant's or the respondent's filing obligation will fall on the next business day.
9. The timeframes imposed on the appellant and respondent shall operate as orders of the Court. Failure to comply with these directions may result in the Court making a finding of contempt of court pursuant to the Administration of Justice (Contempt of Court) Act 1979. In the case of non-compliance, the Administrative Officer of the Court of Appeal shall certify such non-compliance to a judge of the Court of Appeal and the matter may be set down for a non-compliance hearing before a Single Judge. Counsel and litigants are reminded that Section 5 of the Administration of Justice (Contempt of Court) Act 1972 provides that:

*“(1) If any person disobeys or fails to comply with an order of a court the court may, on its own volition...order him to be...brought before the court...”*

*(2)...*

*(3)...the court on being satisfied that such person has disobeyed or failed to comply with an order of the court, shall have the same powers in respect of such person as are provided in section 4(2)”*

## **Use of a Cloud**

10. In the case of a civil appeal, where the record of appeal has been settled, and in the case of a criminal appeal, where the record of appeal has been issued, the parties will receive by email a link which provides access to the online cloud for a particular appeal. The link will contain four subfolders marked: “**RECORD OF APPEAL**”, “**APPELLANT'S SUBMISSIONS**”, “**RESPONDENT'S SUBMISSIONS**”, and “**JOINT AUTHORITIES BUNDLE**”. The parties must upload their documents in the appropriate sub-folder once the link has been made available.
11. On occasion, particularly in commercial appeals, it may become necessary to compile a core bundle, in which case, the parties will have liberty to create a sub-folder named “**CORE BUNDLE**” which should also be uploaded to the SharePoint cloud.
12. Uploading documents to the cloud DOES NOT constitute effective service. It is a means by which the Court can receive and review documents in an expedited manner. The parties remain obligated to file hardcopies with the Court's Registry. Until further notice, all

documents relating to the Court of Appeal shall be filed at the Dame Lois Browne-Evans Building, 3<sup>rd</sup> Floor, 58 Court Street, Hamilton HM 12.

13. The records of appeal in criminal cases will be uploaded to the SharePoint cloud by the Court prior to issuing the link to the parties. Civil records of appeal, however, must be uploaded to the SharePoint cloud by the parties.
14. There are two methods in which the records of appeal can be uploaded: (a) the Record of Appeal can be uploaded as a composite document, in which case, the index to the Record of Appeal must be hyperlinked so that when the court is manoeuvring through the Record of Appeal the judges can click the document title in the index which will take them to the relevant portion of the record of appeal; or (b) where the documents are uploaded singularly the documents should be uploaded and saved in tabulated format (e.g., “TAB 01 – NOTICE OF APPEAL”, “TAB 02 – JUDGMENT OF THE SUPREME COURT, etc.).
15. The same concept in relation to Records of Appeal is equally applicable to Joint Authorities Bundles.
16. Submissions should not be uploaded to the SharePoint cloud in PDF format; they must be in word format.
17. All documents which are uploaded to the SharePoint cloud must resemble the documents which are available in hardcopy. Counsel should also attend court prepared to face a hybrid working court, i.e., some judges who prefer to operate electronically and others who prefer hardcopy documents. In either case, Counsel and litigants when directing the court’s attention to certain authorities or portions of the Records of Appeal must provide the hardcopy and electronic copy page references, which should, wherever possible, be the same.
18. When documents are uploaded to the SharePoint cloud they should appear vertically and not horizontally.

### **Court Bundles**

19. In all appeals the use of legal sized paper (8.5” x 14”) is prohibited. All documents submitted to the court must be on US letter sized paper (8.5” x 11”).
20. All documents, where appropriate, should be dated and paginated, and in the case of submissions and authorities which exceed ten pages, they should be printed double-sided. Submissions should be formatted so that the spacing is 1.5 lines apart and paragraph numbered.
21. Very large bundles are unwelcome and are, on most occasions, inconveniently oversized. Accordingly, the use of binders beyond 3.5 inches is prohibited. If Counsel or litigants find themselves requiring more than one binder for their court bundles, they should

appropriately label the binder indicating the volume number of the binder. For example, “Joint Authorities Bundle – Volume 1” and “Joint Authorities Bundle – Volume 2”.

22. In the case of authorities, where the parties are relying upon the same authority, it need only go into the joint authorities bundle once. In the case of a voluminous authority, only the cover page showing the authority’s name, and the relevant passages relied upon by each side, should be printed. The joint authorities’ bundle should be indexed with the appellant’s authorities listed first followed by the respondent’s. Authorities are to be in chronological order by year. Sections of the same statute or of the Constitution should all be in the same tab.
23. In relation to records of appeal in civil matters, the court has observed occasions where a large document which has already been exhibited to someone else’s affidavit is then exhibited to another affidavit. This is usually unnecessary and in any event the Record of Appeal should not have two or more versions of the same document.
24. Appeals concerning litigation where reliance is placed on documents which are in any other language than English must have the relevant parts of the documents translated.
25. Before filing documents with the Registry or uploading them to the Cloud, it is the responsibility of the parties to ensure that the documents are legible. Faded documents or illegible documents should not be submitted particularly where reliance is placed on the documents in question. The Court will need clean legible copies.
26. Lastly, all hardcopy bundles must be tabulated and paginated. Pagination should not restart for every tab but must continue its number sequence.

### **Conclusion**

27. This Practice Direction is made in the hope that it will improve the efficiency with which the Court deals with appeals and allay the concerns of the Court as to previous practice.

*C.S.R.S. Clarke*

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**The Rt. Hon. Sir Christopher Clarke PRESIDENT OF  
THE COURT OF APPEAL**

