



# The Court of Appeal for Bermuda

Ref. A/50

Monday, 1 November 2021

**CIRCULAR NO: 17 of 2021**

**TO ALL COUNSEL**

**NOVEMBER COURT OF APPEAL CALENDAR: 1<sup>st</sup> November 2021 to 19<sup>th</sup> November 2021**

I enclose herewith the Session Calendar for the forthcoming session. The President, The Rt. Hon. Sir Christopher Clarke, has directed that Appellants and Respondents should be prepared to proceed with their appeals on very short notice at any time during the appeal period, and not only on the listed date. This also applies to those on the “Reserve List” as other appeals may collapse. Kindly note Item 7 as it refers to reducing needless duplication of authorities.

1. The Session Calendar constitutes a ‘*Notice of Hearing*’ of the upcoming dates to all involved in the appeals, although a formal Notice of Hearing will be issued with the specified date, time and location of the appeal hearing. This Court of Appeal session will take place virtually with all appeals scheduled to commence at 9am. This time is to accommodate the time difference between Bermuda and the UK where two of the members of the Court will be located for the period of the session. The Court will be presided over by the Lord President and Justices of Appeal Bell and Gloster.
2. The session will begin on **Monday, 1 November 2021** and will end on **Friday, 19 November 2021**, or when the Court concludes its business. The President of the Court of Appeal has directed me to say that if there are changes to the list, they will be made for the convenience of the Court and not at the convenience of Counsel. On this point, Counsel and members of the public are reminded that if your matters has been called forward by the Draft Cause List, you are expected to keep your diaries fluid for that period in the event that the Court has to shuffle around appeals. The Court will make a concerted effort to bring as little disruption as possible to case fixtures but must be prepared to address any unforeseen eventualities.
3. Appellants (including anyone acting “In Person”) are reminded that they are to observe the *Rules of the Court of Appeal* as well as what is set out in this Circular, and any further orders of the Court, when submitting further applications or documentation. The Court has observed an unwelcome practice amongst members of the Bar profession in Bermuda in failing to (a) comply with court directions/orders; (b) communicate to the court any difficulty in complying with orders/directions; and/ or (c) make an appropriate application to the Court for an extension of time.
4. The Court had first addressed this issue with members of the criminal bar through its judgment, *Re Tucker et al (Application to Adjourn from Session)* [2019] CA (Bda) 14 Crim, but has come to realise that this appears to be a more general problem. This conduct is profoundly unsatisfactory; in the light of it the Court is likely to take a more heavy-handed approach in future by making the necessary complaints to the appropriate regulatory body governing professional conduct in Bermuda. Further, undesired outcomes of appeals may be the result of failure to comply with rules or orders which may lead to complaints by members of the general public who rely on professional legal services in Bermuda. In due course the Rules of the Court of Appeal will be amended to improve procedure and practice so far as litigation in the appellate court is concerned.
5. **CIVIL APPEALS:** Counsel are reminded that they must provide their Submissions and Authorities in accordance with the dates ordered by the Registrar at the Settling of the Record hearing. As two of the Court of Appeal Judges are overseas, it is necessary to have all Submissions received in a timely manner, so that hard copies can be provided where needed. This allows all appeals to proceed expeditiously. Counsel are reminded of **Circular No. 1 of 2007**, wherein only Core Bundles are to be submitted for “big” Civil/Commercial Appeals.
6. **CRIMINAL APPEALS:** Please ensure that you have filed your Legal Aid Certificates with us.
7. Kindly notify the Clerk of the Court when you are ready to file your submissions. This will ensure acknowledgement of their receipt, appropriate filing and direction thereafter. All submissions shall be filed on the 3<sup>rd</sup> Floor, Dame Lois Browne-Evans Court Building, 58 Court Street, Hamilton HM 12. Counsel should also make use of the electronic filing platform – OneDrive – which is the Court’s cloud base solution to enable members of the Court and parties to proceedings to have quick and easy access to court documents relevant to their appeal.
8. The President has requested that the Authorities provided in the bundles only contain the head note and the relevant pages/passages that are being cited or which need to be included for understanding the facts/nature of the case or the propositions which it is said to support. Authorities should be provided double-sided. In line with *UK Practice Direction 52C* Section 29, counsel are advised to consult with each other and exchange authorities. These authorities (no more than 10 each unless the issues in the appeal really justify more extensive citation) shall be combined in one binder, preferably the Appellant’s, for the Court to have at their disposal during the hearing. This will reduce duplicated authorities. Authority need not be cited for propositions that are not in dispute

9. If there are to be any changes to the filed Submissions, the onus is on the Appellant/ Respondent to update their filed documents at the convenience of the Clerk of the Court. Counsel and litigants in person must also ensure that they update their records/documents on the cloud so that members of the Court who are relying on electronic files have the up-to-date version of documents. So far as cloud usage is concerned, the Court directs that all submissions should be uploaded in word (e.g. .doc or .docx) format. Additionally, this should not be seen as a form of filing. Counsel are still expected to comply with filing hardcopies of all documents/bundles with the Court's Registry.
10. If an adjournment of an appeal must be sought, the applicant shall notify the Clerk of the Court and the other parties to the appeal of this intention prior to filing the documents. In no less than **four days** prior to the start of the session, the applicant must file a Notice of Motion, with affidavit in support, to request the adjournment of the appeal and appear before the Court if and when duly summoned. This does not guarantee that the request will be granted.
11. Once an appeal is listed on the Draft Cause List, please look at your calendars in order to secure that there are no conflicting cases in the Courts below. Counsel should recognize that the Court of Appeal takes precedence over any subordinate court or tribunal in Bermuda. The same principle applies not only to any appearance before the Court, but the preparation of cases and the need to comply with any directions or orders given by the Court. There have been many occasions when counsel has failed to comply with orders of this court, the excuse proffered being the need to comply with the orders of subordinate courts, tribunals or other statutory bodies. . In such an event, appropriate steps should be taken to notify any subordinate court, tribunal or body of the need to comply with orders of this Court and to seek any extension of time needed for the doing of anything so ordered by the relevant subordinate court, tribunal or statutory body. These rules are necessary because the Court only sits (usually) for three 3-week sessions a year.
12. Finally, because of the schedule and the pressure of work that will be on the Court of Appeal Judges, the parties are asked to notify the Clerk of the Court as soon as possible if they intend to abandon/withdraw an appeal. The Notice of Abandonment should be filed shortly after any such notification. Counsel are reminded of their obligation under Order 2 Rule 15 of the Rules of Court to file the appropriate forms. For the avoidance of doubt, Counsel can file a Civil Form 11 to withdraw an appeal before the appeal is called. "Before the appeal is called" means that the appeal has not been placed on a published Draft Cause List. If an appeal has been called by publication on the Draft Cause List, then the Appellant/Applicant must obtain consent of the Respondent(s) to withdraw the appeal, in which case, if obtained, a Civil Form 12 must be filed. In the absence of either occurrence, the parties will have to appear before the Court for the matter to be formally withdrawn, which shall give the effect of the appeal having been dismissed and fully and finally determined.

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| Copy: | Attorney General's Chambers<br>Department of Corrections<br>Director of Public Prosecutions<br>Legal Aid<br>Bermuda Bar Association<br>Senior Magistrate |
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C.S. 95.02-16

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