

No. 1/2005

BARBADOS

IN THE COURT OF APPEAL

PRACTICE DIRECTION

Re: Procedure in Appeals to the Caribbean Court of Justice

The Chief Justice, after consultation with the Rules Committee, issues the following Practice Direction:

Introduction

Since 30 November, 1966 the procedure for appeals from the Court of Appeal to the Judicial Committee of the Privy Council (the Privy Council) has been governed by the Barbados (Procedure in Appeals to Privy Council) Order 1966, S.I. 1966 No. 1456.

The Caribbean Court of Justice Act, 2003-9, as amended by the Caribbean Court of Justice (Amendment) Act 2005-8 and the Constitution (Amendment) Act, 2003-10, as amended by the Constitution (Amendment) Act 2005-9, have the combined effect of abolishing appeals to the Privy Council from the Court of Appeal as from 14 April, 2005. In future the Caribbean Court of Justice will be the final appellate court for Barbados.

The Caribbean Court of Justice was inaugurated on 16 April, 2005 and has published The Caribbean Court of Justice (Appellate Jurisdiction) Rules 2005. These Rules came into force on 25 June, 2005. Notwithstanding the publication of these Rules, it will still be necessary for Barbados to enact Rules to replace the Barbados (Procedure in Appeals to Privy Council) Order, 1966.

Pending the enactment of Rules to replace the said Order, the Rules Committee has authorised me to issue this Practice Direction which will provide a procedural framework for persons desirous of appealing from the Court of Appeal to the Caribbean Court of Justice.

Commencement

1. This Practice Direction comes into operation on 7 July, 2005.

Interpretation

2. In this Practice Direction, unless the context otherwise requires, the following definitions apply:
- “*appeal*” means appeal from a judgment of the Court of Appeal of Barbados or the Caribbean Court of Justice;
- “*Court*” means the Court of Appeal of Barbados established by Chapter 107:01 of the Constitution of Barbados;
- “*judgment*” means a judgment of the Court given in the exercise of any jurisdiction conferred upon it by any law for the time being in force in Barbados and includes a decree, order, ruling, sentence or decision of the Court;
- “*record*” means the aggregate of papers relating to an appeal (including proceedings, evidence and judgments) proper to be laid before the Court of Justice on the hearing of an appeal;
- “*Registrar*” means the Registrar of the Supreme Court of Barbados or other officer having custody of the records of the Court.

Applications for Leave to Appeal

3. (1) An application to the Court for leave to appeal must be made within 30 days of the judgment from which a person seeks leave to appeal.
- (2) An applicant must serve written notice of an intended application for leave to appeal on all parties concerned.

Conditional Leave

4. The Court shall, in the first instance, grant leave to appeal to the Caribbean Court of Justice upon the following conditions –
- (a) that the appellant, within such period as may be fixed by the Court, not exceeding 90 days, provide sufficient security to the satisfaction of the Court in an amount not exceeding BDS\$2 500
- (i) for the due prosecution of the appeal and the payment of costs as may become payable in the event that an order for leave is not obtained; or

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- (ii) in the event that the appeal is dismissed for non-prosecution; or
 - (iii) in the event that the Caribbean Court of Justice orders the appellant to pay the costs of the appeal; AND
- (b) that the appellant takes the necessary steps to prepare and send the record to Trinidad and Tobago within such time as the Court considers reasonable in all the circumstances of the case.

Powers of a Single Judge of the Court

5. (1) A single judge of the Court may -
- (a) hear and determine an application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;
 - (b) make such order or give such directions as the interests of justice or the circumstances of the case require in respect of any appeal pending before the Caribbean Court of Justice.
- (2) A Court consisting of 3 judges (and which may include the judge who made or gave the order or directions) may vary, reverse or discharge any order or direction made by a single judge.

Stay of Execution

6. (1) Where the judgment appealed from requires the appellant to pay money or do any act, the Court may, when granting leave to appeal -
- (a) direct that the judgment be carried into execution; or
 - (b) suspend execution pending appeal.
- (2) Where the Court directs that the judgment be carried into execution, the person in whose favour the judgment was given, shall, prior to execution, provide sufficient security to the Court's satisfaction, for duly performing such Order as the Caribbean Court of Justice may make.

Manner and Form of Security

7. A person may provide security in such manner or form, in deposit of money, as the Court approves.

Preparation of the Record

8. (1) Preparation of the record shall be subject to the supervision of the Court.
- (2) As soon as is practicable after final leave to appeal is granted, the Registrar shall proceed to settle the record in consultation with the parties or their attorneys-at-law.
- (3) The Registrar, the parties and their attorneys-at-law shall endeavour to exclude from the record all documents that are not relevant to the subject matter of the appeal, with a view to reducing the bulk of the record.
- (4) The Registrar shall certify the documents to be included in the record of appeal.
- (5) The following documents shall be included in the record of appeal –
 - (a) the notice of appeal and any notice of cross-appeal that has been served on the appellant;
 - (b) the order of the Court granting leave or special leave to appeal;
 - (c) the documents which comprised the record in the trial;
 - (d) the judgment of the Court; and
 - (e) an index to the record.
- (6) Where any dispute arises in connection with the preparation of the record, the parties may refer the dispute to the Court for its decision.

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- (7) The Court shall give such directions as the justice of the case requires.
 - (8) Where a party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and another party nevertheless insists upon its inclusion, the document shall be included and the index shall include an indication of the objection to inclusion and the party who made it.

Printing of the Record

9. (1) The record may be printed in Barbados or wherever the parties agree.
- (2) In the absence of such agreement, the record shall be duplicated in Trinidad and Tobago by such process as the Registrar of the Caribbean Court of Justice approves.
- (3) Where the record is printed in Barbados, the following rules apply:
 - (a) the record shall be printed on "letter size" paper approximately 11 inches (28 cm) long by 8.5 inches (21.5 cm) wide. Margins of 1 inch (2.5 cm) must be left at the top and bottom and of 1.5 inches (3.5 cm) at the left hand side and 1 inch (2.5 cm) at the right hand side.
 - (b) every tenth line on a page shall be numbered in the margin.
- (4) Where the record is printed in Barbados the Registrar shall, at the expense of the appellant, send 6 copies to the Registrar of the Caribbean Court of Justice.
- (5) The Registrar shall certify one copy as a true and correct copy by signing that copy and affixing the Seal of the Supreme Court to it.
- (6) Where the record is to be printed or duplicated elsewhere than in Barbados, the Registrar shall, at the expense of the appellant, send to the Registrar of the Caribbean Court of Justice one certified true copy of the record together with an index of all the papers and exhibits in the case.

Consolidation of Appeals

10. Where –

- (a) there are two or more applications for leave to appeal out of the same matter, and
- (b) the Court is of opinion that it would be convenient for the Caribbean Court of Justice and all parties concerned that the appeals be consolidated,

the Court may direct that the appeals be consolidated and granted as a single appeal in a single order.

Failure to Prosecute Appeal

11. Where an appellant has been granted conditional leave to appeal and has complied with the conditions but, thereafter, fails to apply to the Court for final leave to appeal, the Court may, on application by the respondent –

- (a) rescind the order granting conditional leave and give directions as to the costs of the appeal and the security to be provided by the appellant as it thinks fit; or
- (b) make such further or other order as the justice of the case requires.

Notice to other Parties and the Caribbean Court of Justice

12. (1) On an application for final leave to appeal, the Court may direct whether the appellant has given notice or sufficient notice to the parties concerned.

(2) Where the Court is not satisfied as to the notice given, the Court may –

- (a) defer granting final leave; or
- (b) give such other directions as the justice of the case requires.

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- (3) The Registrar shall forthwith send a certificate to the Registrar of the Caribbean Court of Justice that the respondent has received notice or is aware of the order of the Court granting final leave to appeal and of the transmission of the record to the Caribbean Court of Justice.

Prosecution of Appeal after Final Leave

13. Where an appellant has been granted final leave to appeal, he must prosecute his appeal in accordance with the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2005.

Withdrawal of Appeal

14. (1) Where an appellant has been granted *conditional leave* to appeal he may, at any time prior to the making of an order for final leave to appeal, withdraw his appeal on such terms as to costs as the Court may direct.
- (2) Where an appellant has been granted *final leave* to appeal, but desires, prior to the dispatch of the record to the Caribbean Court of Justice, to withdraw the appeal, the Court may, upon application by the appellant, grant him a certificate to the effect that the appeal has been withdrawn.
- (3) With effect from the date of such certificate –
- (a) the appeal shall be deemed to be dismissed;
 - (b) no express order of the Caribbean Court of Justice is necessary;
 - (c) the Court shall deal with the costs of the appeal and any security given by the appellant in such manner as the Court thinks fit.

Dismissal of Appeal for Non-Prosecution

15. (1) Where an appellant has been granted final leave to appeal, but fails to proceed diligently to dispatch the record to the Caribbean Court of Justice, a respondent may, upon giving due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant.

- (2) Upon such application, the Court may –
- (a) grant a certificate that the appeal be deemed to be dismissed from the date of the certificate;
 - (b) order that the appeal stand dismissed without express order of the Caribbean Court of Justice; and
 - (c) deal with the costs of the appeal and the security provided by the appellant in such manner as the Court think expedient.

Substituting Parties

16. (1) Where at any time between the grant of final leave to appeal and the dispatch of the record to the Caribbean Court of Justice, a party to the appeal dies or changes status, the Court may, notwithstanding the order for final leave to appeal, entertain an application by any interested person –

grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered in the record in lieu of or in addition to the party whose status has changed.

- (2) Upon the grant of such certificate, the name of the party so substituted shall be deemed to be so substituted or entered on the record by express order of the Caribbean Court of Justice.
- (3) Where, subsequent to the dispatch of the record to the Caribbean Court of Justice, a party to the appeal dies or changes status, the Court may, notwithstanding the order for final leave to appeal, entertain an application by any interested person –

instruct the Registrar of the Caribbean Court of Justice to substitute in the record the name of the party who, in the opinion of the Court, is the proper person to be substituted or entered in the record in lieu of or in addition to the party who has died or whose status has changed.

Printing of Cases

17. (1) The case of each party to the appeal shall be printed in Barbados and shall be printed in accordance with paragraph 9(3) of this Practice Direction and Rule 14.4. of the Caribbean Court of Justice (Appellant Jurisdiction) Rules 2005.
- (2) The case of each party must be signed by an attorney-at-law or by the party himself, if he conducts his appeal in person.

Form and Contents of Case

18. (1) A case shall –
 - (a) consist of paragraphs numbered consecutively;
 - (b) state as concisely as possible –
 - (i) the circumstances out of which the appeal arises;
 - (ii) the issues raised by the appeal;
 - (iii) the contentions on which the party intends to rely; and
 - (iv) the reasons why the Caribbean Court of Justice should make the order sought;
 - (c) as far as practicable, contain in the margin, references by page and line to the relevant parts of the record; and
 - (d) avoid, as far as practicable, the recital of long extracts from the record.
- (2) Upon taxation of costs, the Registrar of the Caribbean Court of Justice may inquire into any unnecessary prolixity in a case and may disallow any unnecessary costs incurred.

Costs in Barbados

19. Where the Caribbean Court of Justice directs a party to bear the costs of an appeal incurred in Barbados, the Registrar shall tax the costs in accordance with the applicable Rules of the Supreme Court of Barbados.

Enforcing Judgment

20. An Order of the Caribbean Court of Justice on an appeal from a judgment of the Court may be enforced in the same manner as a judgment of the Court.

Special Leave to Appeal

21. An application for special leave to appeal shall be made in accordance with the provisions of Part 10 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2005.

**Appeals from Judgments already Delivered –
Transitional Provision**

22. In the case of appeals from judgments of the Court delivered on or after 14 April, 2005 and before the coming into force of this Direction, the time for doing any act required by this Practice Direction shall not begin to run until 8 July, 2005.

Dated this 1st day of July, 2005.

DAVID A. C. SIMMONS
Chief Justice.