

NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT AMENDMENT (LEAVE TO APPEAL) RULES 2007

Subordinate Legislation No. 35 of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 35 of 2007*

SUPREME COURT AMENDMENT (LEAVE TO APPEAL) RULES 2007

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, pursuant to section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 25 October 2007.

B. MARTIN CJ

D. N. ANGEL J

D. MILDREN J

T. J. RILEY J

S. R. SOUTHWOOD J

Judges of the Supreme Court
of the Northern Territory of Australia

* Notified in the *Northern Territory Government Gazette* on 28 November 2007.

1 Citation

These Rules may be cited as the *Supreme Court Amendment (Leave to Appeal) Rules 2007*.

2 Rules amended

These Rules amend the *Supreme Court Rules*.

3 Amendment of rule 77.01 (Authority)

Rule 77.01(1)(b)(iii)

omit, substitute

- (iii) the *Land Title Act*, for the removal of a caveat or for leave to lodge another caveat on the same, or substantially the same, grounds as those contained in a caveat that has lapsed or has been withdrawn, cancelled or removed from a lot;

4 Amendment of rule 77.02 (Limitation on authority)

(1) Rule 77.02(4)

omit

determine –

substitute

determine any of the following:

(2) Rule 77.02(4)(k)

omit (second reference)

or

(3) Rule 77.02(4)(m)

omit

Judge.

substitute

Judge;

-
- (4) Rule 77.02(4), at the end

insert

- (n) an application under the *Vexatious Proceedings Act*.

5 Repeal of rule 77.05

Rule 77.05

repeal

6 Repeal and substitution of rule 84.17

Rule 84.17

repeal, substitute

84.17 List of authorities, summary of submissions etc.

- (1) An appellant must file and serve on the respondent not later than 14 days before the hearing of the appeal the following:
 - (a) the appellant's list of authorities;
 - (b) the appellant's summary of submissions;
 - (c) a statement, in narrative form, of the facts as found by the trial Judge and any additional facts that were not in contention between the parties;
 - (d) for an appeal against a finding of guilt – a statement, in narrative form, of the facts of the Crown case and of the case raised, or put forward, by the appellant at trial.
- (2) A respondent must file and serve on the appellant not later than 7 days before the hearing of the appeal the following:
 - (a) the respondent's list of authorities;
 - (b) the respondent's summary of submissions.
- (3) A summary of submissions:
 - (a) must identify, by reference to transcript pages, evidence to which the appellant or respondent (as the case requires) proposes to refer in the course of argument; and
 - (b) must outline in relation to each such passage of evidence the observations the party proposes to make and the inferences the party seeks to draw from it.

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- (4) The list of authorities and summary of submissions must be signed by counsel who will be appearing at the hearing of the appeal.
 - (5) In subrules (1) and (2), a day includes a day when the Registry is closed.
 - (6) Subrule (5) is subject to section 28 of the *Interpretation Act*.

7 Repeal and substitution of Order 85, Part 2

Order 85, Part 2

repeal, substitute

Part 2 Application for leave to appeal

85.02 Form of application and time for filing

- (1) An application to the Court of Appeal for leave to appeal under section 53 of the Act must be made in accordance with Form 85A.
- (2) The application must be filed not later than 28 days after:
 - (a) the material date; or
 - (b) if the presiding Judge has fixed a later date for the filing of the application – the later date.
- (3) If the application is not filed within the time limited by subrule (2), the application must include a request to the Court of Appeal to dispense with compliance with that subrule.

85.03 Affidavit in support of application

- (1) The application must be supported by an affidavit stating the following:
 - (a) the nature of the case, or the proceeding, related to the application;
 - (b) the questions involved;
 - (c) the proposed grounds of appeal;
 - (d) the reasons why:
 - (i) leave should be granted; and
 - (ii) if rule 85.02(3) applies – compliance with rule 85.02(2) should be dispensed with.

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- (2) The affidavit must be accompanied by the following exhibits:
 - (a) the judgment from which leave to appeal is sought;
 - (b) the order from which leave to appeal is sought;
 - (c) any other documents considered necessary for the Court to consider in deciding whether or not to grant the application.

85.04 Service of application

Not later than 2 days after being filed, the application and accompanying affidavit and exhibits must be served on each person who was a party to, or given leave to intervene in, the proceeding.

85.05 Response to application

- (1) Not later than 14 days after being served with the application, a respondent may file an affidavit in response to the application.
- (2) The affidavit in response must:
 - (a) state any relevant matters of fact, not referred to in the applicant's affidavit, the respondent wishes the Court to consider; and
 - (b) state the respondent's reasons, if any, why:
 - (i) leave should be refused; and
 - (ii) if rule 85.02(3) applies – compliance with rule 85.02(2) should not be dispensed with; and
 - (c) have, as an exhibit, any other documents the respondent considers to be relevant to the application.
- (3) The affidavit in response must be served on each party to the application not later than 2 days after it has been filed.
- (4) The applicant may file and serve an affidavit in reply not later than 7 days after being served with an affidavit in response under subrule (3).

85.06 Determination of application in first instance

- (1) The application may be determined by the Court of Appeal only if:
 - (a) each respondent has filed an affidavit in response under rule 85.05 and 7 days have elapsed since the last affidavit in response was filed; or

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- (b) 21 days have elapsed since the respondent (or, if there is more than one respondent, the last respondent) was served with the application and accompanying affidavit under rule 85.04.
 - (2) The Court of Appeal, consisting of one Judge, must determine the application on the written arguments and in the absence of the parties.
 - (3) The Court of Appeal is not required to give reasons for a determination under this rule.
 - (4) However, if the application specifies more than one ground of appeal and leave to appeal is granted, the Court of Appeal must specify each ground in respect of which leave is granted.

85.07 Determination of application if leave refused

- (1) This rule applies if:
 - (a) the Court of Appeal, consisting of one Judge, has made an order refusing leave in respect of all or any proposed grounds of appeal; and
 - (b) the applicant wishes to have the application for leave to appeal on the ground, or grounds, for which leave to appeal has been so refused determined by the Court of Appeal, consisting of not less than 3 Judges, under section 53(3) of the Act.
- (2) Not later than 14 days after the order refusing the leave has been made, the applicant must:
 - (a) file a request in accordance with Form 85D for the application to be heard under section 53(3) of the Act; and
 - (b) serve the request on each person who was a party to, or given leave to intervene in, the proceeding.
- (3) If a request is filed under subrule (2)(a), the Registrar must set down the application for hearing.
- (4) Not later than 14 days before the hearing of the application, the applicant must advise each of the respondents of the proposed grounds of the appeal for which leave is sought.
- (5) Rules 84.13 to 84.26, 85.16 and 85.17 apply to the hearing as if:
 - (a) the applicant were an appellant; and

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- (b) the application for leave to appeal were an appeal; and
 - (c) the application in accordance with rule 85.02 were a notice of appeal.
- (6) If the application specifies more than one ground of appeal and leave to appeal is granted, the Court of Appeal must specify each ground in respect of which leave is granted.

85.07A Procedure if leave granted

- (1) This rule applies if leave to appeal has been granted under section 53(2) or (3) of the Act.
- (2) The Registrar must set down the appeal for hearing.
- (3) The application for leave to appeal is taken to be a notice of appeal.
- (4) Rules 84.06 (except rule 84.06(3)(b) and (c)), 84.12 to 84.26 and 85.13 to 85.17 apply with the necessary changes.
- (5) Rules 84.07 to 84.11 do not apply.
- (6) If the Court of Appeal hearing the appeal consists of not less than 3 Judges, the applicant must, not later than 7 days after leave to appeal has been granted, file 3 additional copies of:
 - (a) the application; and
 - (b) the affidavits filed in support of, and in opposition to, the application; and
 - (c) the order granting leave.

8 Amendment of Schedule 1

- (1) Schedule 1, Forms 81A-A, 81A-B and 81A-E
omit, substitute

FORM 81A-A

Rule 81A.11(2)(a)

IN THE SUPREME COURT)
OF THE NORTHERN TERRITORY)
OF AUSTRALIA AT [Darwin/Alice Springs])

No. of 20

BETWEEN
THE QUEEN
and
A.B.

APPLICATION TO THE COURT

[Applicant's name in full]

of [address]

Application under [cite rule under which application is made]

Briefly specify the matter to which the application relates:

Relief sought:

The applicant's address for service is

Date:

Signature of the applicant
or applicant's solicitor

NOTICE OF HEARING

TO: * The accused person/Crown Prosecutor

NOTE: That the above matter has been listed for hearing at [Name of court]
on the day of 20.... at am/pm*
when all parties to the matter must attend.

COURT OFFICER

Date:

* Delete whichever is inapplicable

FORM 81A-B

Rule 81A.11(3)

IN THE SUPREME COURT)
OF THE NORTHERN TERRITORY) No. of 20
OF AUSTRALIA AT [Darwin/Alice Springs])

BETWEEN

THE QUEEN

and

A.B.

APPLICATION TO THE COURT IF SERVICE OF
APPLICATION IS NOT REQUIRED

[Applicant's name in full]

of [address]

Application under [cite rule under which application is made]

Briefly specify the matter to which the application relates:

Order/declaration sought:

Date:

Signature of the applicant
or applicant's solicitor

NOTICE OF HEARING

TO: * The accused person/Crown Prosecutor

NOTE: That the above matter has been listed for hearing at [Name of court]
on the day of 20.... at am/pm*
when all parties to the matter must attend.

COURT OFFICER

Date:

* Delete whichever is inapplicable

FORM 81A-E

Rules 81A.38
and 86.09

IN THE SUPREME COURT)
OF THE NORTHERN TERRITORY) No. of 20
OF AUSTRALIA AT [Darwin/Alice Springs])

BETWEEN

THE QUEEN

and

A.B.

APPLICATION TO THE COURT IN RELATION
TO CONSEQUENTIAL ORDER

[Applicant's name in full]

of [address]

On [date] the [name of court] Court found [name of applicant] guilty of the following offence(s): [specify offences]

An appeal was instituted on [date of lodgment of appeal] and the Court made the following consequential order(s): [specify orders made]

I now seek the following order(s)/direction(s) in relation to the consequential order(s): [specify the order(s)/direction(s) sought]

Date:

Signature of the applicant
or applicant's solicitor

NOTICE OF HEARING

TO: * The accused person/Crown Prosecutor

NOTE: That the above matter has been listed for hearing at [Name of court]
on the day of 20.... at am/pm*
when all parties to the matter must attend.

COURT OFFICER

Date:

* Delete whichever is inapplicable

-
- (2) Schedule 1, Form 85A
omit
85.04(1)
substitute
85.02(1)
- (3) Schedule 1, Form 85A
omit (all references)
19
substitute
20
- (4) Schedule 1, Form 85A, paragraph 4
omit, substitute
4. *(If rule 85.02(3) applies)* The applicant asks the Court to dispense with compliance with rule 85.02(2).
- (5) Schedule 1, Form 85B
omit (all references)
19
substitute
20
- (6) Schedule 1, Form 85C
omit
Rules 85.03(3) and 85.12(4)
substitute
Rule 85.12(4)
- (7) Schedule 1, Form 85C
omit
19

substitute

20

- (8) Schedule 1, Form 85C, paragraph 2

omit

85.03(1) or

- (9) Schedule 1, after Form 85C

insert

FORM 85D

Rule 85.07(2)(a)

(heading as in Form 85A)

REQUEST FOR APPLICATION FOR LEAVE TO APPEAL
TO BE DETERMINED UNDER SECTION 53(3) OF
THE *SUPREME COURT ACT*

1. The applicant applies for leave to appeal from the judgment of *(name of Judge appealed from)* given on at .
2. Leave to appeal from the judgment was refused by *(name of Judge who refused initial application)* on at .
3. The applicant requests, under section 53(3) of the *Supreme Court Act*, that the attached application in accordance with rule 85.02 be determined by the Court of Appeal, consisting of not less than 3 Judges.
4. The proposed grounds of the appeal for which leave is sought are as follows:

To the Respondent *(address)*.

NOTE: Before taking a step in these proceedings you must enter an appearance in the Registry.

The applicant's address for service is

.....

Date:

Signature of applicant
or applicant's solicitor