

# THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

## PRACTICE DIRECTION 6

### The Appeal Hearing

#### *General note*

6.1.1 Attention is drawn to the provisions of Practice Direction 5 about papers for the appeal hearing. **Duplication of material must be avoided particularly where two or more appeals are heard together.**

#### *Fixing the hearing date*

6.2.1 Within 14 days after the filing of the statement of facts and issues (see paragraphs 5.1.7, 5.2.5 and 5.2.6 of Practice Direction 5), the parties must notify the Registrar that the appeal is ready to list and specify the number of hours that their respective counsel estimate to be necessary for their oral submissions (see rule 22(1)). Time estimates must be as accurate as possible since, subject to the Judicial Committee's discretion, they are used as the basis for arranging the Judicial Committee's list. The sittings of the Judicial Committee (or the 'law terms') are four in each year, that is to say:

- (a) the Michaelmas sittings which begin on 1 October and end on 21 December;
- (b) the Hilary sittings which begin on 11 January and end on the Wednesday before Easter Sunday;
- (c) the Easter sittings which begin on the second Tuesday after Easter Sunday and end on the Friday before the spring holiday; and
- (d) the Trinity sittings which begin on the second Tuesday after the spring holiday and end on 31 July.

The 'spring holiday' means the bank holiday falling on the last Monday in May or any day appointed instead of that day under section 1(2) of the Banking and Financial Dealings Act 1971.

6.2.2 Subject to any directions by the Judicial Committee before or at the hearing, counsel are expected to confine their submissions to the time indicated in their estimates. The Registrar **must** be informed at once of any alteration to the original estimate. Not more than one day is normally allowed for the hearing of an appeal and appeals are listed for hearing on this basis. Estimates of more than one day must be fully explained in writing to the Registrar.

6.2.3 The Registrar will subsequently inform the parties of the date fixed for the hearing. The appellant and every respondent must then sequentially exchange their respective written cases and file them (see rule 23 and paragraph 6.3.9).

### ***Requests for expedition***

6.2.4 Any request for an expedited hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

### ***Directions hearings***

6.2.5 Where it considers it to be appropriate, the Judicial Committee may decide that a directions hearing should be held. A directions hearing will normally be held before three members of the Board. Any request for a directions hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

### ***Appellants' and Respondents' cases***

6.3.1 The case is the statement of a party's argument in the appeal. The Judicial Committee does not prescribe any maximum length but the Committee favours brevity and a case should be a concise summary of the submissions to be developed.

6.3.2 The case should be confined to the heads of argument that counsel propose to submit at the hearing and omit material contained in the statement of facts and issues (see paragraph 5.1.7 of Practice Direction 5).

6.3.3 If either party is abandoning any point taken in the courts below, this should be made plain in their case. If they intend to apply in the course of the hearing for permission to introduce a new point not taken below, this should also be indicated in their case and the Registrar informed. If such a point involves the introduction of fresh evidence, application for permission must be made either in the case or by filing an application for permission to adduce the fresh evidence (see paragraph 7.1 of Practice Direction 7 for applications).

6.3.4 If a party intends to invite the Judicial Committee to depart from one of its own decisions or from a decision of the House of Lords<sup>1</sup>, this intention must be clearly stated in a separate paragraph of their case, to which special attention must be drawn. A respondent who wishes to contend that a decision of the court below should be affirmed on grounds other than those relied on by that court must set out the grounds for that contention in their case.

6.3.5 Transcripts of unreported judgments should only be cited when they contain an authoritative statement of a relevant principle of law not to be found in a reported case or when they are necessary for the understanding of some other authority.

6.3.6 All cases must conclude with a numbered summary of the reasons upon which the argument is founded, and must bear the signature of at least one counsel for each party to the appeal who has appeared in the court below or who will be briefed for the hearing before the Judicial Committee.

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<sup>1</sup> The jurisdiction of the House of Lords will be transferred to the Supreme Court on 1st October 2009.

6.3.7 The filing of a case carries the right to be heard by two counsel. The fees of two counsel only for any party are allowed on assessment unless Judicial Committee orders otherwise on application at the hearing.

#### Separate cases

6.3.8 Parties whose interests in the appeal are passive (for example, stakeholders, trustees, executors, etc.) are not required to file a separate case but should ensure that their position is explained in one of the cases filed.

#### Filing and exchange of cases

6.3.9 Rule 23 provides the time limits for the parties to file their cases. Cases must be filed on memory sticks as well as in hard copy (see paragraph 5.1.5 of Practice Direction 5). No later than five weeks before the proposed date of the hearing, the appellants must file at the Registry **the original and 12 copies** of their case and serve it on the respondents.

6.3.10 No later than 3 weeks before the proposed date of the hearing, the respondents must serve on the appellants a copy of their case in response and file at the Registry **the original and 12 copies** of their case, as must any other party filing a case (for example, an intervener).

6.3.11 The number of copies of cases exchanged should be enough to meet the requirements of counsel and agents and should not usually exceed **eight**.

6.3.12 Following the exchange of cases, further arguments by either side may not without permission be submitted in advance of the hearing.

#### Form of cases

6.3.13 Cases must be produced on A4 paper, securely bound on the left, using both sides of the paper with:

- (a) numbered paragraphs, and
- (b) signatures of counsel at the end, above their printed names.

#### *Authorities*

6.4.1 **A joint set of authorities, jointly produced, should be compiled for the appeal. Ten copies of the joint set of authorities** must be filed at least 14 days before the hearing in accordance with rule 24. The appellants have the initial responsibility for producing the authorities volumes and for filing them at the Registry but, to enable the appellants to file the volumes, the respondents must provide the appellants with 10 copies of any authorities which the respondents require but which the appellants do not, or arrange with the appellants for their photocopying. Respondents should arrange with the appellants for the delivery to them of such authorities volumes as the respondents' counsel and agents require. Volumes of authorities which do not comply with paragraph 5.1.2 of Practice Direction 5 will not be accepted. **Supplemental or additional volumes of authorities should be avoided.** Authorities' volumes must be filed on memory sticks as well as in hard copy (see paragraph 5.1.5 of Practice Direction 5).

6.4.2 The authorities should be collected together into one or more volumes or folders. The volumes of authorities should have a separate index and authorities should appear in alphabetical order. The volumes of authorities should

- (a) be A4 size reproduced as one page per view (with any authorities smaller than A4 being enlarged);
- (b) separate each authority by numbered dividers;
- (c) contain an index to that volume; the first volume must also contain an index to all the volumes;
- (d) be numbered consecutively on the cover and spine with numerals at least point 72 in size for swift identification of different volumes during the hearing;
- (e) have printed clearly on the front cover the title of the appeal and the names of the agents for all parties;
- (f) have affixed to the spine a sticker indicating clearly the volume number and short title of the appeal.

6.4.3 In an appeal where there is a large number of volumes of authorities, it is helpful to produce an index of indexes, separate from the index contained in the first authorities volume.

6.4.4 The cost of preparing the volumes of authorities falls to the appellants, but is ultimately subject to the decision of the Judicial Committee as to the costs of the appeal.

### ***The hearing***

6.5.1 The Registrar lists appeals taking into account the convenience of all the parties. Provisional dates are agreed with the parties well in advance of the hearing and every effort is made to keep to these dates. Agents receive formal notification shortly before the hearing.

6.5.2 Parties should inform the Registry as early as possible of the names of counsel they have briefed.

6.5.3 The Judicial Committee usually hears appeals on Mondays from 11am-1pm and from 2-4pm, and on Tuesdays to Thursdays from 10.30am-1pm and 2-4pm.

6.5.4 Only in wholly exceptional circumstances will the Judicial Committee consider sitting in private. Any request for the Judicial Committee to sit in private should be addressed to the Registrar and should be copied to the other parties. The request should set out fully the reasons why it is made and the request together with any objections filed by the respondents will normally be referred to the Judicial Committee.

6.5.5 No more than two counsel will be heard on behalf of a party (or a single counsel on behalf of an intervener permitted to make oral submissions).

6.5.6 If a party wishes to have a stenographer present at the hearing or to obtain a full transcript of the hearing, he must notify the Registrar not less than 7 days before the hearing. Any costs of the stenographer or of transcription must be borne by the party making such a request.

6.5.7 The Registrar will on request inform the parties of the intended constitution of the Judicial Committee for the hearing of a forthcoming appeal; this will be subject to possible alteration. Counsel should assume that the Judicial Committee will have read the printed cases and the judgment under appeal but not all the papers which have been filed.

### ***Costs***

6.6.1 Rule 43 deals with orders for costs. If counsel seek an order other than that costs should be awarded to the successful party, they may make written submissions in accordance with rule 44 if the Judicial Committee so directs. If a party wishes to defer making submissions as to costs until after judgment, the Committee must be informed of this not later than at the close of the oral argument. If the Committee accedes to the request it will give such directions as appear appropriate and it may, in particular, give directions —

- (a) for the hearing of oral submissions as to costs immediately after judgment;
- (b) for the simultaneous or sequential filing of written submissions as to costs within a specified period after judgment;
- (c) for the hearing of oral submissions after the filing of written submissions.

**The original and 7 copies** of any written submissions must be filed at the Registry. Copies should also be sent to the other parties to the appeal. Costs submissions are considered on paper.

### ***Judgment***

#### *Place and time of judgment*

6.7.1 Judgments are given on a day notified in advance. One week's notice is normally given.

#### *Attendance of counsel*

6.7.2 One junior counsel or an agent for each party or group of parties who have filed a case should attend when judgment is delivered.

### ***Intervention***

6.8.1 A person who is not a party to an appeal may apply in accordance with rule 27 for permission to intervene.

6.8.2 An application should be made in the general form of application, Form 2, (see paragraph 7.1 of Practice Direction 7) and should state whether permission is sought for both oral and written interventions or for written intervention only. The application should be filed with the prescribed fee and confirmation of the consent of the appellants and respondents in the appeal. If their consent is refused, the application must be endorsed with a certificate of service on them, with a brief explanation of the reasons for the refusal.

6.8.3 Applications for permission to intervene should be filed at least 6 weeks before the date of hearing of the appeal. If permission is given, written submissions must be filed and also given to the appellants and respondents.

6.8.4 Subject to the discretion of the Judicial Committee, interveners bear their own costs and any additional costs to the appellants and respondents resulting from an intervention are costs in the appeal.