

APPENDIX 8

PRACTICE DIRECTION - 4.2

CRIMINAL APPEALS TO THE COURT OF APPEAL

PART I - TITLE OF APPEALS

1. Any application for leave to appeal and any appeal to the Court of Appeal will carry the same title as that which obtained in the Court of First Instance.
2. This means that the prosecutor will be shown first as such in the title, whether he is the appellant or respondent in the appellate court.
3. The Hong Kong Special Administrative Region will appear first, whether it is appellant or respondent.

PART II - PROCEDURE

4. *Initial Grounds*

Where there are "reasonable" grounds of appeal, the solicitor or counsel who was present at the trial, if instructed, should give advice on the prospects of an appeal. He should be in a position to formulate "initial grounds" immediately after the conclusion of the case and without waiting for the transcript of the evidence, of the summing-up or of the reasons for verdict or sentence and to advise the applicant on the filing of the required notice. These grounds are termed "initial grounds" in contrast with "perfected grounds" and should be signed by the drafter and accompany the notice of application for leave to appeal.

If the lay client is not given advice, and is unrepresented during the period limited for the bringing of appeals against either conviction or sentence, officers of Correctional Services will assist him by the provision of the required forms and the forwarding of them to the Registrar, High Court.

5. Where solicitor or counsel settles grounds of appeal, it is his duty to ensure that—

(a) (i) grounds are only put forward where he has satisfied himself that they are arguable; it is not his duty to put forward grounds merely because the appellant wishes him to do so;

(ii) grounds are not put forward unless they are "reasonable", that is, they afford some real chance of success;

(iii) grounds are not put forward unless they are supportable by oral argument and are particularised; and

(iv) the grounds put forward are settled with care and accuracy.

(b) It is not sufficient merely to state that "there was no or no sufficient evidence to ground the conviction". While greater latitude will be given to applicants in person such grounds risk the application being treated as invalid.

(c) If leave out of time is sought in respect of either conviction or sentence, a grounding affidavit from the applicant personally should be filed with the application setting out in detail the reasons for it.

6. *The Appeal Papers*

(a) Once a notice of application for leave to appeal has been lodged with the Registrar, the

Clerk of Appeals will obtain from the judge's clerk the "appeal bundle".

This will consist of—

(i) in Court of First Instance cases—the indictment, a transcript of the summing-up, the shorthand note of the verdict and the criminal record, if any, and where appropriate the transcript of sentencing and copies of any reports called for by the judge;

(ii) in District Court cases—the charge sheet, the summary of facts, the criminal record, and the reasons for verdict or, where appropriate, the reasons for sentence and any reports called for by the judge; and

(iii) in all cases any statement of agreed facts introduced at the trial will also be required.

(b) The Clerk of Court will send copies of the appeal bundle to the applicant or his solicitors or, if legal aid has been applied for, to the Director of Legal Aid and to the Secretary for Justice and will submit one set to a justice of appeal for directions. If the Directions Judge considers any additional papers are necessary, he will so direct and the Clerk of Court will arrange for them to be prepared and sent to the parties.

(c) If an applicant or his legal advisers, or the Secretary for Justice, consider that additional papers are necessary, he or they should apply in writing to the Registrar, High Court, marked for the attention of the Clerk of Court, stating precisely what papers are required and giving detailed reasons for the application. The application will then be referred to the Directions Judge.

(d) It should be clearly borne in mind by those requesting further papers that transcripts are expensive and take a long time to prepare. Only those portions of the transcript necessary for the purpose of arguing the initial grounds should be requested.

If it should become apparent that further papers are required before the perfection of the grounds, a fresh application should be made.

The above also applies to documentary exhibits.

(e) When the portions of the transcript or the additional papers requested have been received by the applicant's solicitors or the Director of Legal Aid, they should, without delay, be sent to counsel who should be instructed to "perfect" the grounds of appeal. When this has been done, the solicitor should send the perfected grounds, settled and signed by counsel, to the Clerk of Court and to the Secretary for Justice, with a copy to the applicant.

7. Perfected Grounds

(a) Perfected grounds of appeal should contain in respect of each ground:

(i) the references by page number and letter, if applicable, to all relevant passages in the transcript;

(ii) the reference to any authority on which counsel intends to rely; and

(iii) clear identification of any document referred to by exhibit number or otherwise.

(b) Perfected grounds should consolidate all the grounds of appeal in one document. If it is found necessary to amend or vary perfected grounds, then a further document to be entitled "amended perfected grounds" should be filed in substitution for the original and with the amendments or variations underlined in red. This document will then constitute the grounds of appeal to be argued at the hearing.

(c) Before perfected grounds are filed, instructed solicitors or the Director of Legal Aid should ensure that counsel, both for the applicant and the respondent, are consulted as to the estimate of the length of time likely to be required for the hearing. At the time of the filing of the perfected grounds an agreed time estimate if at all possible should be provided to the Clerk of Court. If there is a difference between the parties on the estimate, this should be stated.

(d) Should there be any application for the reception of fresh evidence by the Court of Appeal such application should be made by way of a separate notice.

8. Lists of Authorities

Separate lists of the authorities intended to be relied upon at the hearing should be supplied to the Clerk of Court, and not by fax, by both the applicant and the respondent two clear days before the date of hearing. At the same time each should exchange his list with the other.

9. General

(a) Applicants and their legal representatives are required to take all the steps necessary to bring on an application with due diligence. Delay should be avoided and undue delay may be considered a dereliction of duty by the counsel or solicitor concerned.

(b) All applications will be monitored by the Directions Judge to ensure that they proceed with expedition and he may from time to time give directions to effect this. Upon the filing of perfected grounds or where perfected grounds have not been filed in the time stipulated, the Directions Judge will where necessary give directions as to the time allowed for oral argument and as to the filing of written argument. Directions as to written argument in applications for leave to appeal against sentence will be given only in applications of particular complexity.

(c) All communications by or on behalf of the applicant, or the respondent to any application, which are sent to the Clerk of Court's office should be copied to the other side.

10. Callovers

The Directions Judge will, as required, list criminal appeals for callover at 10 a.m. each Monday. Solicitors requiring directions may upon application to the Clerk of Court to list cases for callover. Parties who consider adequate time has not been allowed for oral argument must list the application for callover.

11. The powers to be exercised by the Directions Judge as mentioned above may also be exercised by the Registrar of High Court.

12. This Practice Direction consolidates and supersedes the Practice Directions now appearing at pages 10.7, 10.8, 10.9 and 10.11.

13. This Practice Direction shall take effect on 1 February 1999.

Dated this 31st day of December 1998.

(Andrew Li)
Chief Justice

PRACTICE DIRECTION - 2.2

CRIMINAL APPEALS TO THE COURT OF FINAL APPEAL

1. Section 33(1) of the Hong Kong Court of Final Appeal Ordinance provides that an application for leave to appeal to the Court of Final Appeal ("the CFA") should be made within 28 days from the date of the decision of the Court of Appeal or the Court of First Instance as the case may be.
2. Section 32 of the Ordinance as interpreted by the CFA [see [1997] HKLRD 1204] provides that leave to appeal shall not be granted by the CFA unless:
 - (a) it is certified by the Court of Appeal or the Court of First Instance that a point of law of great and general importance is involved in the decision. Where they decline to certify, the CFA may so certify and grant leave; or
 - (b) it is shown to the CFA that substantial and grave injustice has been done. This is a matter for the CFA alone.
3. Applications for a certificate to the Court of Appeal or the Court of First Instance that the decision involves a point of law of great and general importance should be made *immediately after* the judgment is given from which the appeal is to be brought.
4. The applicant should provide the court with a written statement of the point of law involved. Submissions on the application will then be heard and determined.
5. If either party requests for time to prepare the written statement or submissions and obtains an adjournment, an early date will be fixed for the resumed hearing.
6. A failure to make the application in accordance with these directions may make it difficult or impossible for parties to comply with the time limit for applications for leave to appeal to the CFA.
7. This Practice Direction shall take effect on 1 January 1998.