

Appeals to the Supreme Court



James Meighan provides an overview on appeals systems to the highest court in the land

The appellate jurisdiction of the Supreme Court has been amended significantly since the Thirty-third Amendment of the Constitution in 2013 which was approved by the people and provided for the establishment of the Court of Appeal. Article 34.5.1° of the Constitution provides that “[t]he Court of Final Appeal shall be called the Supreme Court” and as Brice Dickson commented, “[w]atever the jurisdiction of the Supreme Court should have been, there was little doubt that by the early years of the 21st century the institution was running very hard just to ensure that it did not fall catastrophically behind with its caseload.” The Working Group on the Court of Appeal published its report in 2009 and among other recommendations, it suggested the creation of a Court of Appeal. The Thirty-Third Amendment of the Constitution (Court of Appeal) Act 2013 provided for the establishment of the Court of Appeal, to sit between the High and Supreme Courts. Article 34.5.3° sets out the new jurisdiction of the Supreme Court as follows “[t]he Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the Court of Appeal if the Supreme Court is satisfied that (i) the decision involves a matter of general public importance or (ii) in the interests of justice it is necessary that there be an appeal to the Supreme Court.”

Appeals from the Court of Appeal to the Supreme Court

The Supreme Court in *Fox v. Mabon* [2015] IESCDET 2 stated that the jurisdiction to bring a further appeal to the Supreme Court from the Court of Appeal is now confined to situations where the decision of the Court of Appeal involves “a matter of general public importance” or “in the interests of justice it is necessary” that there be an appeal. The Supreme Court has not set out prescriptive definitions for either what constitutes general public importance or in the interests of justice.

It is, however, possible to glean some guidance from various determinations and judgments of the court.

1. A dissenting judgment in the Court of Appeal is not in itself sufficient to allow an appeal (*Balmer v. Minister for Justice and Equality* [2015] IESCDET 34),
2. Leave to appeal is likely to be granted where there is an inconsistency in the area of law which arises in the potential appeal. (*Ulster Bank v. Egan* [2015] IESCDET 30),
3. The determination of the issue under consideration by the Supreme Court must have relevance outside the specific circumstances of the case before the court.

“Leapfrog” Appeals from the High Court to the Supreme Court

Article 34.5.4° of the Constitution provides that notwithstanding the appellate jurisdiction of the Supreme Court to decisions of the Court of Appeal,



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the Supreme Court also enjoys an appellate jurisdiction from a decision of the High Court if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors:

- i the decision involves a matter of general public importance;
- ii the interests of justice.

From a review of the determinations and judgments of the Supreme Court, it is possible to conclude that the Supreme Court will consider whether there are exceptional circumstances warranting a direct appeal. However, the public importance and public interest requirements in bringing an ordinary appeal must also be met in an application for a leapfrogged appeal (*Barlow v. Minister for Agriculture, Food and Marine* [2015] IESCDET 8). In *O'Sullivan v. Sea Fisheries Protection Authority* [2016] IESCDET 74 the Supreme Court considering the appropriate test in an application for leapfrog appeals stated “many leapfrog applications are likely to involve balancing the extent to which anything might be perceived to be gained by way of clarification or refinement of the issues by an intermediate appeal to the Court of Appeal, on the one hand, and any question of urgency on the other.” If the matter is likely to end up before the Supreme Court by ordinary appeal from the Court of Appeal,

the Supreme Court will have regard for such cases and the efficient use of court time, in such cases a leapfrog appeal may be admitted to the Supreme Court.

Cases Stated

Under Article 40.4.3° of the Constitution cases can be stated to the Supreme Court when a detained person has made an application for *habeas corpus* to the High Court and the High Court is satisfied that the detained person was being detained under a law which was unconstitutional. Appeals may come directly from the High Court to the Supreme Court on cases which have been stated from the District or Circuit Court. This is a very limited jurisdiction as the High Court must consent to the appeal to the Supreme Court.

Appeals Procedure

The appeals procedure to the Supreme Court is set out in Practice Direction SC16 and Order 58 of the Rules of the Superior Courts.

Notice of Appeal

The notice of appeal is a precedent document, details to be inputted into the notice by the appellant or their lawyers. The information to be inputted into the notice includes whether the appellant is appealing the entire or part of the



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These bars to entry to the Supreme Court ensures that the court can concentrate their resources on the appropriately important and significant appeals only

order and it must contain a concise statement of the facts found by the trial court. The notice of appeal, together with attested copy of the order being appealed, must be lodged no later than 28 days from the perfection of the judgment or order being appealed. Where no written judgment has been handed down, the appellant must lodge a certified and authenticated statement of any oral evidence and a transcript of the oral judgment with the registrar at the appellant's own expense. Where a written judgment has been handed down, the appellant must lodge an attested copy of the judgment with the Registrar, preferably at the time of lodging the notice of appeal. A copy of the notice of appeal must be served within seven days after the notice has been lodged with the Supreme Court on all parties directly affected by the application for leave to appeal. Documents for use in proceedings in the Supreme Court may be served by any of the following methods:

1. personal service.
2. registered post.
3. electronic means where the person to be served has consented to service by such means and
4. otherwise provided for under the Rules of the Superior Courts or any relevant practice direction.

Respondent's Notice

A respondent is required, within fourteen days of service of the notice of appeal, to lodge their respondent's notice with the Supreme Court and to serve the notice on the appellant and all other respondents to the appeal. The respondent's notice should contain:

1. a statement of whether or not the particular respondent opposes the application for leave to appeal;
2. if the respondent opposes the application for leave, a concise statement of the grounds on which leave to appeal is opposed;
3. a concise statement on the grounds on which the

appeal will be opposed if leave to appeal is given, and

4. where the respondent intends, on the hearing of any appeal, to contend that the judgment or order appealed from should be affirmed on grounds other than those set out in the judgment or order being appealed, a concise statement of the additional grounds on which it is alleged that judgment or order appealed from should be affirmed.

If a respondent intends to rely upon additional grounds to seek to affirm the order, which may not have been raised in the lower court, that respondent must identify these additional grounds in their respondent's notice.

Cross-Appeal

If the respondent believes that the order being appealed should be different in some respect, they may commence a cross-appeal seeking to vary the order. The respondent must issue a separate notice of appeal setting out their case for the variation of the order.

Application for Leave to Appeal

The Court of Appeal Act, 2014 provides that an application for an appeal to the Supreme Court may be determined otherwise than with an oral hearing. The Supreme Court has commented on the importance of the papers being lodged at leave for appeal stage being correct as the application for leave will normally be decided on the basis of these papers. Where the Supreme Court considers it appropriate, they may direct that the application be made by oral hearing. The court may also require the delivery of written submissions by the parties at the leave stage, if it is deemed that written submissions are appropriate. If leave to appeal is granted, a certificate from the Supreme Court is issued, setting out the grounds on which the appeal may be brought before the Supreme Court.

Notice of Intention to Proceed with Appeal

Where the Supreme Court gives leave to appeal, the appellant must, within 28 days of the grant of leave to appeal, serve on all respondents and lodge with the Supreme Court a notice of intention to proceed with appeal or if the appellant is abandoning the appeal, they must serve and lodge a written notice of intention to withdraw or abandon the appeal.

Directions Hearing

The lodging of the notice of intention to proceed activates the appeal and the appeal will be listed on notice to the parties for a directions hearing. The papers to be lodged with the Supreme Court Office, unless otherwise directed by the court, in advance of the directions hearing are:

1. the judgment and/or order being appealed.
2. the notice of appeal.
3. each respondent's notice delivered.
4. the certificate granting leave to appeal.
5. the notice of intention to proceed, and
6. any other document in the appeal to which any party proposes to refer at the directions hearing.



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Books to be Lodged in Advance of the Hearing of the Appeal

Each party to the appeal is required to deliver or exchange written submissions on the appeal in compliance with Practice Direction SC16. The appellant's written submissions must be lodged with the Supreme Court office and served on each respondent within two weeks of lodging the notice of intention to proceed. The respondents must lodge with the Supreme Court office and serve upon the appellant their written submissions no later than two weeks following receipt of the appellant's submissions. Within one week from the delivery of the respondent's submissions, a core book of appeal must be submitted to the Supreme Court office and served on all parties to the appeal. The requirements for the content of the core book of appeal is set out in the practice direction. To ensure that the appeal does not lie in abeyance, the practice direction provides that the appeal books must be lodged within twelve weeks from the lodgement of the notice of intention to proceed.

Certificate of Readiness

When lodging their written submissions and the appeals books, the appellant must lodge a certificate of readiness in the form provided in the practice direction. If possible, the parties to the appeal should confirm that the appeal is ready for hearing. Alternatively, if the appeal is not ready for hearing, the certificate should state this and set out the

further action required to prepare the appeal for hearing.

Scope of the Jurisdiction of the Supreme Court to Determine Appeals

The rules provide that the Supreme Court has wide powers in the manner in which it hears and determines the appeal. The Supreme Court may exercise and preform all the powers and duties of the court below and in determining the appeal, it may give any judgment and make any order which ought have been made and may make any further or other orders as the case requires.

Conclusion

Since the addition of the Court of Appeal to the legal apparatus of the State and the amendments to the constitutional provisions on the Supreme Court, the court has been empowered with the ability for real, substantial and considered judicial activism. The Supreme Court now enjoys a wide discretion, based upon the two entry requirements set out above on the appeals which they deem appropriate for consideration. These bars to entry to the Supreme Court ensures that the court can concentrate their resources on the appropriately important and significant appeals only. The amendment brings the Irish Supreme Court into line with other common law jurisdictions, for example the United Kingdom and the United States, which both control the appeals before their own Supreme Courts. 