

Version  
as at 18 October 2016



## Court of Appeal (List Election Petitions) Rules 1998 (SR 1998/326)

Michael Hardie Boys, Governor-General

### Order in Council

At Wellington this 19th day of October 1998

Present:

The Right Hon Jenny Shipley presiding in Council

Pursuant to section 51C of the Judicature Act 1908 and section 234 of the Electoral Act 1993, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 of the other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These rules are administered by the Ministry of Justice.**

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## Rules

### 1 Title and commencement

- (1) These rules may be cited as the Court of Appeal (List Election Petitions) Rules 1998.
- (2) These rules come into force on 1 December 1998.

*Preliminary provisions*

**2 Interpretation**

- (1) In these rules, unless the context otherwise requires,—

**Act** means the Electoral Act 1993

**court** means the Court of Appeal

**petition**—

- (a) means an election petition presented under section 229(4) of the Act (that is, an election petition relating to the allocation of seats by the Electoral Commission under sections 191 to 193 of the Act); and
- (b) includes a petition complaining of no return that the court, under section 229(2) of the Act, allows to be heard as provided with respect to an ordinary petition under section 229(4) of the Act

**Registrar** means a Registrar of the court; and includes a Deputy Registrar of the court.

- (2) Terms used and not defined in these rules but defined in the Act have the meanings given to them by the Act.

Rule 2(1) **petition** paragraph (a): amended, on 1 October 2010, by section 32(1)(c) of the Electoral (Administration) Amendment Act 2010 (2010 No 26).

**3 Application of rules**

These rules apply to the determination, under sections 258 to 262 of the Act, of a petition.

**4 Application of High Court Rules 2016 and practice of court**

- (1) The High Court Rules 2016 (except the rules referred to in subclause (2)), and the general practice of the court, apply when these rules apply unless those rules or that practice is modified by or inconsistent with the Act or these rules.
- (2) The following High Court rules do not apply when these rules apply:
  - (a) rule 1.10 (security):
  - (b) rule 5.1 (identification of proper registry):
  - (c) rule 5.22 (notice of proceeding to be filed with statement of claim):
  - (d) rule 5.23 (requirements as to notice of proceeding):
  - (e) rule 5.25 (proceeding commenced by filing statement of claim):
  - (f) rule 5.45 (order for security of costs):
  - (g) rule 5.47 (filing and service of statement of defence):
  - (h) rule 5.48 (requirements of statement of defence):
  - (i) rules 7.6, 7.7, 7.12, 7.13, and 7.16 (allocation of key dates, etc):
  - (j) rule 10.1 (venue and changing it):

- (k) rule 10.3 (method of trial):
- (l) Part 12 (summary judgment):
- (m) Part 15, subpart 4 (discontinuance).

Rule 4: substituted, on 2 December 2010, by rule 4 of the Court of Appeal (List Election Petitions) Amendment Rules 2010 (SR 2010/393).

Rule 4 heading: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 4(1): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Rule 4(2)(i): replaced, on 4 February 2013, by rule 4 of the Court of Appeal (List Election Petitions) Amendment Rules 2012 (SR 2012/405).

### *Petitions*

## **5 Petitions**

- (1) A petition must—
  - (a) be in form 1, and contain the information required by that form; and
  - (b) be signed by the petitioner or, if there are 2 or more petitioners, each petitioner; and
  - (c) be presented to the court by being filed in the registry of the court.
- (2) The Registrar must send a copy of the petition to the Electoral Commission as soon as it is filed.

Rule 5(2): amended, on 1 October 2010, by section 32(1)(c) of the Electoral (Administration) Amendment Act 2010 (2010 No 26).

### *Service of petition*

## **6 Service of petition**

- (1) Unless the court orders otherwise under rule 7, a petitioner must serve a petition on every respondent to the petition as soon as practicable after the filing of the petition.
- (2) **Service** means,—
  - (a) in relation to a respondent political party, delivery to—
    - (i) the Secretary of the political party in person; or
    - (ii) the address for the time being of the Secretary of the political party; and
  - (b) in relation to the Electoral Commission, delivery to—
    - (i) an Electoral Commissioner in person; or
    - (ii) the address of the Electoral Commission.

Rule 6(2)(b): substituted, on 1 October 2010, by section 32(2)(c) of the Electoral (Administration) Amendment Act 2010 (2010 No 26).

**7 Substituted service**

- (1) The court may order that what a petitioner has done is sufficient service of a petition on a respondent if, on an application by a petitioner, the court is satisfied that the petitioner has made every reasonable effort to serve the petition on the respondent.
- (2) An order by the court may be subject to any conditions the court thinks fit.
- (3) An application must—
  - (a) be accompanied by an affidavit or affidavits showing what has been done to serve the petition on the respondent; and
  - (b) be made within 10 days of the filing of the petition.

Compare: SR 1996/218 r 22

*Advertisement of petition*

**8 Advertisement of petition**

- (1) Within 7 days of the filing of a petition, a petitioner must, at his or her own expense, publish the petition in enough newspapers to ensure the petition is circulated in every electoral district.
- (2) On an application made by a petitioner for the purpose, the court may order that a petition need not be advertised in accordance with subclause (1).

Compare: SR 1996/218 r 18

*Representation of respondent political party*

**9 Secretary of respondent political party must file notice**

Within 7 days of the service of a petition on a political party, the Secretary of the political party must deliver to the Registrar a notice—

- (a) signed by or on behalf of the Secretary; and
- (b) either—
  - (i) appointing a solicitor to act for the party in relation to the petition; or
  - (ii) stating that the Secretary intends to act himself or herself for the political party in relation to the petition; and
- (c) stating, for the purposes of proceedings to determine the petition,—
  - (i) an address for service; and
  - (ii) if a solicitor is appointed to act for the political party, any post office box address, document exchange box number, or facsimile number by which the solicitor will accept service of documents.

Compare: SR 1996/218 r 16

*Security for costs***10 Security by deposit of money**

Security given by deposit of money must be given by the deposit of the money to the credit of the court.

Compare: SR 1996/218 r 23

**11 Registrar may withdraw money deposited as security**

The Registrar may from time to time withdraw from the court all or part of any money deposited as security if the court orders, or all parties to the proceedings agree, that that money be—

- (a) paid to a respondent, for costs, charges, or expenses incurred by or on behalf of that respondent; or
- (b) paid to a witness summoned on a petitioner's behalf, for costs, charges, or expenses incurred by or on behalf of that witness; or
- (c) returned to a petitioner; or
- (d) otherwise disposed of in accordance with the Act.

Compare: SR 1996/218 r 24

**12 Security by bond**

- (1) Security given by bond must be given by a bond in form 2 containing the information required by that form.
- (2) A bond may be executed by no more than 5 sureties.
- (3) If the Registrar believes on reasonable grounds that a surety is insufficient, or that a bond is defective or inadequate, he or she may—
  - (a) require a surety to lodge an affidavit of justification with the bond; or
  - (b) impose any other requirement the Registrar considers necessary.

Compare: SR 1996/218 rr 25–27

*Particulars***13 Court may order particulars**

The court may, on any terms as to costs or otherwise as it thinks fit, order a petitioner to supply particulars—

- (a) that are additional to the facts specified and relied on in the petitioner's petition; and
- (b) that may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual trial.

Compare: SR 1996/218 r 28

*Particulars of objections*

**14 Objections of respondent to petition**

- (1) This rule applies if a respondent to a petition intends to give evidence, under section 236(8) of the Act, that there has been an error or invalidity in relation to—
  - (a) the procedures and methods used to allocate seats to political parties under sections 191 to 193 of the Act; or
  - (b) the return of members of Parliament resulting from the allocation of seats to political parties under sections 191 to 193 of the Act.
- (2) If this rule applies, the respondent must prepare a list of—
  - (a) the specific grounds on which the respondent claims there has been an error or invalidity in relation to a matter specified in subclause (1)(a) or (1)(b); and
  - (b) in relation to each of those grounds, particulars of the facts on which the respondent intends to rely.
- (3) The respondent must, at least 6 days before the day appointed for the trial of the petition, deliver a copy of the list—
  - (a) to the Registrar; and
  - (b) to any other party to the proceeding at that party's address for service.
- (4) The respondent must also deliver to the Registrar enough copies of that list to enable the Registrar to supply the copies required to be supplied under rule 15.

Compare: SR 1996/218 r 31

**15 Inspection and supply of lists**

On a request for the purpose by any person at the office of the court, the Registrar must allow the person to inspect, or supply the person with, a copy of a list delivered to the Registrar under rule 14.

Compare: SR 1996/218 r 32

*Trial of petition*

**16 Notice of time and place appointed for trial of petition under section 236 of the Act**

- (1) The court must appoint a time at or after which the petition is to be tried.
- (2) The time appointed must be at least 21 days after the day on which the court appoints that time.
- (3) The Registrar of the court must, at least 14 days before the day of the time appointed for the trial,—
  - (a) give a notice of the time and place appointed for the trial to each party to the proceeding at that party's address for service; and

- (b) publish a notice of the time and place appointed for the trial in enough newspapers to ensure the notice is circulated in every electoral district.
- (4) A notice of the time and place appointed for the trial must be in form 3.  
Compare: SR 1996/218 rr 35–37

### *Withdrawal of petition*

#### **17 Application for leave to withdraw petition**

- (1) An application to the court for leave to withdraw a petition must be made in form 4.
- (2) A petitioner who applies for leave to withdraw a petition must, at least 7 days before the application is to be heard by the court, serve a copy of the application on every respondent to the petition.  
Compare: SR 1996/218 r 43

#### **18 Time and place of hearing of application for leave to withdraw petition**

- (1) The court must appoint a time at or after which an application for leave to withdraw a petition is to be heard.
- (2) The time appointed must be at least 8 days after the day on which the court appoints the time.
- (3) The Registrar must, in such manner as the court may direct, give notice of the time and place of the hearing to each respondent.  
Compare: SR 1996/218 r 41



## **Schedule Forms**

### **Form 1 List election petition**

r 5(1)(a)

*Part 8, Electoral Act 1993*

In the Court of Appeal of New Zealand

No:

In the matter of an election petition relating to the allocation of seats under sections 191 to 193 of the Electoral Act 1993 for the [year] general election

#### **Between**

AB [*and others*], Petitioner(s),  
**and** CD [*and others*], Respondent(s)

#### **Election**

Polling day of general election:

Parties listed in part of ballot paper related to party vote:

Candidates submitted by each party under section 127 of the Electoral Act 1993 are listed under the name of that party in Schedule 1.

Candidates of each party declared elected by the Electoral Commission are listed under the name of that party in Schedule 2.

Date of declaration made under section 193(5) of the Electoral Act 1993 by the Electoral Commission:

#### **Petitioner(s)**

***Note:** Under section 258(1) of the Electoral Act 1993, a list election petition may be presented by a Secretary of a political party whose party was listed in the part of the ballot paper that relates to the party vote.*

Name(s):

#### **Respondent(s)**

Name(s): [*insert the name(s) of the other political parties named in the part of the ballot paper that relates to the party vote, and insert “the Electoral Commission” if the petition complains of the conduct of the Electoral Commission.*]

#### **Grounds**

The petition is based on the following grounds:

#### **Facts**

The petition relies on the following facts to support the grounds:

**Determination(s) sought**

The petition seeks the following determination(s): *[for example, that the declaration of election made under section 193(5) of the Electoral Act 1993, so far as it relates to, [insert name(s) of the candidates whose election is challenged] is invalid and the election of that (those) candidate(s) void, or that [insert name of candidate(s) whose election is sought], not named in the declaration of election made under section 193(5) of the Electoral Act 1993, is (are) elected as a member (as members) of Parliament, or as the case may be.]*

Signature(s) of petitioner(s): *[insert names(s)]*

Date:

**Note:** Once completed this petition must be presented by being filed—

- (a) at the Registry of the Court of Appeal (*see* section 258(5) of the Electoral Act 1993); and
- (b) within 28 days of the date of the declaration made under section 193(5) of the Electoral Act 1993 by the Electoral Commission (*see* section 259 of the Electoral Act 1993).

This petition is filed by the petitioner(s) in person. The address for service of the petitioner(s) is

**or**

This petition is filed by AB, solicitor for the petitioner(s), of the firm of XYZ.

The address for service of the petitioner(s) is:

Documents for service on the petitioner(s) may be left at that address for service or may be—

- (a) posted to the solicitor at *[insert post office box address]*; or
- (b) left for the solicitor at a document exchange for direction to *[insert document exchange box number]*; or
- (c) transmitted to the solicitor by facsimile to *[insert facsimile number]*.

**or**

This petition is filed by AB, solicitor for the petitioner(s), of the firm of XYZ, whose postal address is:

The solicitor's agent in the proceeding is:

The address for service of the petitioner(s) is:

Documents for service on the petitioner(s) may be left at that address for service or may be—

- (a) posted to the solicitor at *[insert post office box address]*; or
- (b) left for the solicitor at a document exchange for direction to *[insert document exchange box number]*; or
- (c) transmitted to the solicitor by facsimile to *[insert facsimile number]*.

***Schedule 1***

***Candidates submitted by each party under section 127 of Electoral Act 1993***

***Schedule 2***

***Candidates of each party declared elected by Electoral Commission***

Schedule form 1: amended, on 1 October 2010, by section 32(1)(c) of the Electoral (Administration) Amendment Act 2010 (2010 No 26).

Schedule form 1: amended, on 1 October 2010, by section 32(2)(c) of the Electoral (Administration) Amendment Act 2010 (2010 No 26).

Form 2  
Bond for security

r 12(1)

In the Court of Appeal of New Zealand

No:

In the matter of an election petition relating to the allocation of seats under sections 191 to 193 of the Electoral Act 1993 for the [year] general election

**Between**

AB [*and others*], Petitioner(s),

**and** CD [*and others*], Respondent(s)

I (or We): [*insert the full name, residence, and occupation of the, or each, surety*] am (or are jointly and severally) bound to pay to the Sovereign in respect of the Government of New Zealand any amount not exceeding \$[*insert sum*], unless the petitioner(s) pays (or pay) all costs that in proceedings to determine the petition may become payable by the petitioner(s)—

(a) to any witness summoned on the petitioner's (or s') behalf; and

(b) to the respondent(s).

The Common Seal etc, or

This bond was signed by

[*insert name of the, or each, surety*], at

[*place, day, month, year*]

[*insert signature(s) or seal(s)*]

before me

Signature:

A Solicitor of the High Court of New Zealand (or A Registrar, or Deputy Registrar, of the Court of Appeal of New Zealand) (or A Notary Public).

Schedule form 2: editorial change made by the PCO, on 31 October 2024, under sections 86(1) and 87(a) of the Legislation Act 2019 (2019 No 58).

Form 3

Notice of time and place appointed for the trial of a list election petition

r 16(4)

In the Court of Appeal of New Zealand

No:

In the matter of an election petition relating to the allocation of seats under sections 191 to 193 of the Electoral Act 1993 for the [year] general election

**Between**

AB [*and others*], Petitioner(s),

**and** CD [*and others*], Respondent(s)

The petition will be tried at [*place, day, month, year*], at ..... am (*or* pm), or as soon after that time as the parties may be heard.

Dated: [*day, month, year*].

.....  
(Deputy) Registrar of the Court of Appeal

Form 4  
Application for leave to withdraw a list election petition

r 17(1)

In the Court of Appeal of New Zealand

No:

In the matter of an election petition relating to the allocation of seats under sections 191 to 193 of the Electoral Act 1993 for the [*year*] general election

**Between**AB [*and others*], Petitioner(s),**and** CD [*and others*], Respondent(s)

The petitioner(s) will, on [*day, month, year*], at..... am (*or* pm) (being the time and place appointed for the purpose by the court), or as soon after that time as the petitioner(s) may be heard, apply to the court for leave to withdraw the petition on the grounds that:

Dated: [*day, month, year*]

Signature(s) of Petitioner(s):

Marie Shroff,  
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 22 October 1998.

## **Reprints notes**

### **1     *General***

This is a reprint of the Court of Appeal (List Election Petitions) Rules 1998 that incorporates all the amendments to those rules as at the date of the last amendment to them.

### **2     *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3     *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4     *Amendments incorporated in this reprint***

Senior Courts Act 2016 (2016 No 48): section 183(c)

Court of Appeal (List Election Petitions) Amendment Rules 2012 (SR 2012/405)

Court of Appeal (List Election Petitions) Amendment Rules 2010 (SR 2010/393)

Electoral (Administration) Amendment Act 2010 (2010 No 26): section 32(1)(c), (2)(c)