

Attachment 17

Form 5.11 Court of Appeal—notice of appeal

Court Procedures Rules 2006
(see r 5402 (Appeals to Court of Appeal—starting appeal))

In the Supreme Court of the Australian Capital Territory
Court of Appeal

No ACTCA 72 of 2012.

Appeal against interlocutory decision of Chief Justice Higgins
(No SCC 407 of 2011)



THE QUEEN
Applicant

and

CDA
Respondent

1. On 12 December 2012, Chief Justice Higgins made the following order:
The complainant in the matter, CDE was not competent to give either sworn or unsworn evidence at the pre-trial hearing on 12 December 2012.
2. The appellant appeals from the whole of the orders.
3. The appeal is brought by leave of the Court of Appeal given on 14 February 2013.
A copy of the order giving leave to appeal is attached.
4. The appellant will not seek to put further evidence before the Court of Appeal.
5. The grounds of the appeal are:
 - a. His Honour erred in his interpretation and application of section 13(3) of the *Evidence Act 2011*;



Filed for the appellant by:

Director of Public Prosecutors
Reserve Bank Building
20-22 London Circuit
CANBERRA CITY ACT 2601

Telephone: REDACTED
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- b. His Honour erred in his interpretation and application of section 13(5) of the *Evidence Act 2011*;
- c. His Honour erred in taking into account irrelevant considerations, namely the religious belief or understanding of the complainant;
- d. His Honour erred in failing to take into account relevant considerations, namely that the complainant understood that there were negative consequences of not telling the truth.

6. The orders sought are:

- a. The order of 12 December 2012 be set aside;
- b. The matter be remitted to the Supreme Court to be determined according to law;
- c. Any other order the court considers appropriate.

Particulars of appellant's solicitor

The Director of Public Prosecutions

REDACTED

Jon White
Director of Public Prosecutions

Date: 28/7/13

Appellant's address for service of documents

The Director of Public Prosecutions
Reserve Bank Building, 20-22 London Cct
CANBERRA ACT 2601

GPO Box 595 Canberra City, Canberra, ACT 2601
Fax: 6207 5428
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Notice to respondent

To: CDA
 c/- S&T Lawyers
 20 London Cirt
 CANBERRA CITY ACT 2601

Before taking any other step in this proceeding, you must file a notice of intention to respond in the Court and serve a sealed copy of it on the appellant.

You do not need to file and serve a notice of intention to respond if you have already filed a notice of intention to respond to an application for leave to appeal from an interlocutory judgment, or for leave to appeal out of time from a final judgment, in the proceeding, and the information provided in the notice has not changed.

Settling appeal papers

A directions hearing for settling the appeal papers will be held as follows: *2 may 2013*

Time: *2.30pm*

Place: Supreme Court, Knowles Place, Canberra City, ACT.

If you do not attend to settle the appeal papers, either in person or by your legal practitioner, directions may be given, and orders made, in your absence.

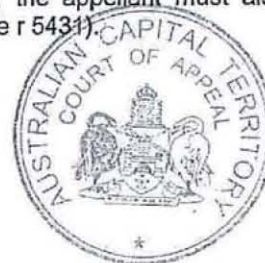
- Note 1* Before the date set for settling the appeal papers, the appellant must—
- (a) get and file the reasons for the order or the summing up of the judicial officer of the court who gave the order appealed from, certified by the judicial officer's associate; and
 - (b) get and file a copy of the transcript of the proceeding in which the order was made and, if corrected, certified by the registrar; and
 - (c) prepare and file a case summary (see r 5430 (1)).

Note 2 Before the date set for settling the appeal papers, the appellant must also prepare and file a draft index of the appeal papers (see r 5431).

- 5 APR 2013

Date: 

(signature of Registrar)
 Registrar



IN THE SUPREME COURT OF THE)
)
 AUSTRALIAN CAPITAL TERRITORY)
)
 COURT OF APPEAL)

No. ACTCA 72 - 2012
 No. SCC 407 of 2011



ON APPEAL FROM A SINGLE JUDGE OF THE SUPREME COURT OF THE
 AUSTRALIAN CAPITAL TERRITORY

BETWEEN: **THE QUEEN**

Applicant

AND:

CDA

Respondent

O R D E R

Judges: Penfold and Dowsett JJ and Nield AJ
 Date: 14 February 2013
 Place: Canberra

THE COURT ORDERS THAT:

1. That the applicant have leave to appeal against the decision of Higgins CJ made on 12 December 2012, that in the trial of the respondent, for the offence of allegedly committing an act of indecency against the complainant, the complainant is not a competent witness to give unsworn evidence.
2. That the appeal be allowed.
3. That the Chief Justice's decision, that the said complainant is incompetent to give unsworn evidence at such trial, be set aside.

4. That the question of the admissibility of the complainant's evidence otherwise be remitted to the Chief Justice for determination in accordance with the reasons of this Court.