

BILL AS TABLED

A BILL

entitled

COURT OF APPEAL AMENDMENT ACT 2010

WHEREAS it is expedient to amend the Court of Appeal Act 1964;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Court of Appeal Act 1964 ("the principal Act"), may be cited as the Court of Appeal Amendment Act 2010.

Amends section 17

2 Section 17 of the principal Act is amended by, immediately after subsection (4), inserting the following—

"(5) For the purposes of this Part, a decision of a trial judge directing the jury to acquit an accused person tried on indictment for murder or premeditated murder on the grounds that there is no case to answer shall be deemed to involve a question of law alone."

Inserts section 17B

3 The principal Act is amended by, immediately after section 17A, inserting the following—

"Appeal by DPP where accused acquitted or discharged of murder or premeditated murder

17B (1) The Director of Public Prosecutions may, with leave of the Court of Appeal, appeal to that Court against the judgment of the Supreme Court where—

- (a) an accused person tried on indictment for murder or premeditated murder has been acquitted or discharged or convicted of a lesser offence than the offence for which he was tried; and
- (b) new and compelling evidence, arising out of the circumstances of the offence for which he was tried, subsequently comes to light.

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- (2) An appeal under subsection (1) can be made on any ground which—
- (a) involves a question of law alone or of fact alone; or
  - (b) involves a question of mixed law and fact.
- (3) Notice of application for leave to appeal under subsection (1) shall be given in accordance with the Rules, except that the notice shall be filed in the Registry of the Supreme Court by—
- (a) not later than twenty-one days after the date on which the new and compelling evidence comes to light; or
  - (b) such longer period as the Court of Appeal may, in exceptional circumstances, allow.
- (4) For the purposes of this section, evidence is—
- (a) “new” if—
    - (i) it was not adduced in the proceedings in which the person was acquitted or discharged or convicted of the lesser offence; and
    - (ii) it could not have been adduced in those proceedings with the exercise of reasonable diligence; and
  - (b) “compelling” if—
    - (i) it is reliable;
    - (ii) it is substantial; and
    - (iii) in the context of the issues in dispute in the proceedings in which a person was acquitted or discharged or convicted of the lesser offence, it is highly probative of the case against the person.
- (5) An appeal under subsection (1) can only be made if the offence for which the accused person was tried occurred after the coming into operation of this section.
- (6) No more than one appeal can be made under subsection (1) in respect of the same trial proceedings.”.

Inserts section 23B

4 The principal Act is amended by inserting, immediately after section 23A, the following—

“Determination of appeal under section 17B

23B The Court of Appeal may, if it allows an appeal under section 17B, in an appropriate case and if the interests of justice so require, remit the case to the Supreme court to be retried and make such other order as it may consider just.”.

## COURT OF APPEAL AMENDMENT BILL 2010

### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Court of Appeal Act 1964 (“the principal Act”) in respect of cases where a person has been tried on indictment for murder or premeditated murder and the Supreme Court has discharged or acquitted the person, or convicted the person of a lesser offence. If new and compelling evidence comes to light after such acquittal, discharge or conviction, the Director of Public Prosecutions, with leave of the Court of Appeal, would be allowed to appeal the Supreme Court’s decision.

Clause 1 gives the short title of the Bill.

Clause 2 amends section 17 of the principal Act by inserting subsection (5). The subsection provides that a decision of a trial judge, directing the jury to acquit an accused person tried on indictment for murder or premeditated murder on the grounds that there is no case to answer, is deemed to involve a question of law alone.

The reasons for this deeming provision are as follows: Between 1964 and 2000, the prosecution had been able to appeal acquittals in circumstances where a judge directs a jury to acquit an accused person at the end of the prosecution case. Those directions are based on the opinion of the trial judge that there is insufficient evidence to ground a prima facie case, and therefore there is insufficient evidence upon which a jury properly directed could convict the accused.

In 2000, the Privy Council in the *Smith v. The Queen* (Privy Council Appeal No. 44 of 1999) case, ruled that such a decision by a judge involved a question of mixed law and fact, and therefore the Director of Public Prosecutions had no ability to appeal such a decision. Since that ruling, trial judges have been unfairly burdened with the final word when upholding no case submissions, and the Director of Public Prosecutions has been deprived of a long-standing and important right of appeal. This ruling has long been the subject of local and international negative public comment.

The deeming provision will restore this right of appeal in the limited areas of the prosecutions of murder and premeditated murder.

Clause 3 inserts section 17B in the principal Act. Section 17B allows an appeal by the Director of Public Prosecutions (with the leave of the Court of Appeal) where an accused person tried on indictment for murder or premeditated murder has been acquitted or discharged, or convicted of a lesser offence than murder or premeditated murder and new and compelling evidence subsequently comes to light. The meaning of “new” and “compelling” evidence, for the purposes of the section, is clarified. The notice of appeal must be filed in the Supreme Court by no later than 21 days after the date on which new and compelling evidence comes to light, or after such longer period as the Court of Appeal may, in exceptional circumstances, allow. Only one appeal is permitted to be made under the section in respect of the same trial proceedings.

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Clause 4 inserts section 23B in the principal Act. The section provides that the Court of Appeal may remit the case to the Supreme Court to be retried and make such order as it may consider just.