



BERMUDA

ADMINISTRATION OF JUSTICE (CONTEMPT OF COURT) ACT 1979

1979 : 17

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[preamble and words of enactment omitted]

Short title

1 This Act may be cited as the Administration of Justice (Contempt of Court) Act 1979.

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Interpretation

- 2 In this Act unless the context otherwise requires—
- “civil proceedings” includes proceedings before a tribunal;
 - “court” includes the Court of Appeal for Bermuda, the Supreme Court and a court of summary jurisdiction;
 - “court of summary jurisdiction” includes a special court;
 - “judicial proceeding” includes any proceedings in which evidence may be taken on oath before a court or tribunal including interlocutory proceedings;
 - “officer of the court” includes a barrister and attorney present during a sitting of a court or tribunal;
 - “tribunal” means a tribunal, other than a court, before which evidence may be taken on oath.

Judicial proceedings; beginning and ending

- 3 (1) For the purposes of this Act judicial proceedings shall be deemed to begin—
- (a) in criminal proceedings when an accused person has been arrested or charged before a court or a summons requiring his attendance at a court has been issued; and
 - (b) in civil proceedings when the date of the trial or hearing of the proceedings has been fixed.
- (2) For the purposes of this Act judicial proceedings shall be deemed to end—
- (a) in criminal proceedings—
 - (i) in the case of a conviction when sentence has been passed or the accused person has been otherwise dealt with;
 - (ii) in the case of an acquittal when the accused person has been released or discharged;
 - (iii) in a trial when no verdict is recorded when the prosecution states that there will be no further prosecution in relation to the same facts; and
 - (iv) in the case of the accused being found unfit to plead at the time of recording such finding;
 - (b) in civil proceedings on the conclusion of the trial or interlocutory hearing at first instance.

Power to punish for contempt in face of court

- 4 (1) Subject to subsection (6) when a court is satisfied that a person has been guilty of contempt in its face it may order that he shall be detained until the next sitting of the court, but for no longer than forty-eight hours, or released on bail on such security as it shall think proper to appear before it at the next sitting.

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(2) At the next sitting after making of an order under subsection (1) the court may—

- (a) if the offender purges his contempt to the satisfaction of the court order his release;
- (b) punish the offender by committing him to prison for a period not exceeding thirty days or by imposing a fine on him not exceeding five hundred dollars or requiring him to give security for his good behaviour; or
- (c) prefer a bill of indictment against him charging him with an offence under this Act or under the Criminal Code [*title 8 item 31*] or may order his summary trial for the offence.

(3) An order for a summary trial under subsection (2) shall be deemed to be an information for the purposes of Part 2 of the Criminal Jurisdiction and Procedure Act 2015.

(4) If any person released on bail under subsection (1) fails to appear at the time ordered the court may order his arrest and so soon as convenient after his arrest he shall be brought before the court and dealt with under subsection (2).

(5) A court may, on the application of any person committed to prison or ordered to pay a fine under subsection (2) suspend or remit such punishment on such terms and conditions as it may specify.

(6) A court of summary jurisdiction shall not take action under this section if it can act under sections 36 and 37 of the Magistrates Act 1948 [*title 8 item 15*].

[Section 4 subsection (3) amended by 2015 : 38 s. 91 effective 6 November 2015]

Failure to obey or comply with order of court

5 (1) If any person disobeys or fails to comply with an order of a court the court may, on its own volition or on the application of the Attorney-General, the Director of Public Prosecutions or of any person affected by the disobedience or failure to comply, order him to be arrested and brought before the court or may issue a summons requiring his attendance before the court at a date and time specified in the summons.

(2) If any person fails to obey a summons issued under subsection (1) the court may order him to be arrested and brought before the court.

(3) When any person is brought before a court pursuant to subsection (1) or (2), the court on being satisfied that such person has disobeyed or failed to comply with an order of the court, shall have the same powers in respect of such person as are provided in section 4(2).

(4) The powers of the court under this section may be exercised from time to time in respect of any person disobeying or failing to obey the order until such time as he obeys or complies with such order.

[Section 5 subsection (1) amended by 1999:8 s.3 & Sch 2 effective by 1 April 1999]

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Confidentiality of jury's deliberations

5A (1) Subject to subsection (2), it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any judicial proceedings.

(2) This section does not apply to any disclosure of any particulars—

- (a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or
- (b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings, or to the publication of any particulars so disclosed.

(3) Proceedings for a contempt of court under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions or on the motion of a court having jurisdiction to deal with it.

[Section 5A inserted by 2010 : 9 s. 4 effective 19 March 2010]

Appeals

6 (1) Subject to subsection (2) an appeal shall lie against an order made under section 4(2)(b), whether the order has been made pursuant to section 4 or section 5 as if it were a criminal conviction and the statutory provisions relating to the release of an offender on bail pending a criminal appeal shall likewise apply.

(2) Notwithstanding subsection (1) no appeal shall lie against an order made by the Court of Appeal whether acting in its original or appellate capacity.

Contempt in face of a tribunal

7 (1) Where any person is guilty of contemptuous conduct in the face of a tribunal the person presiding may order his arrest by a police officer and shall forthwith report the conduct to the Supreme Court.

(2) When a report under subsection (1) is made to the Supreme Court it shall order the offender to be brought before it and, after hearing such evidence as it considers necessary shall, if it is satisfied that there has been contemptuous conduct, deal with the offender under section 4(2).

(3) When a person is arrested under subsection (1) and cannot immediately be brought before the Supreme Court he shall within twenty-four hours be brought before a magistrate, or a police officer entitled to release persons on bail by virtue of section 462 of the Criminal Code [*title 8 item 31*], who may release him on bail or may order his continued detention until he can be brought before the Supreme Court.

Definition of spoken or written contempt

8 Words written or spoken not in the face of a court or a tribunal which do not impugn the character or conduct of any person before whom a judicial proceeding was or is being held shall only be deemed to be contemptuous if they create a risk that in a judicial proceeding the course of justice will be impeded or prejudiced.

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Innocent publication and distribution

9 (1) A person shall not be guilty of contempt of court if at the time he spoke or wrote the words complained of, having taken all reasonable care, he did not know or had no reason to suspect that the proceedings had begun as provided in section 3.

(2) A person shall not be guilty of contempt of court on the ground that he has distributed a publication if at the time of distribution, having taken all reasonable care, he did not know that it contained any contemptuous matter and had no reason to suspect that it was likely to do so.

(3) The burden of proof of any fact tending to establish defence afforded by this section to any person shall lie upon that person.

Proceedings held in camera

10 (1) The publication of information relating to proceedings held in camera shall not of itself be regarded as contempt of court except in the following cases, that is to say—

- (a) where the proceedings relate to the wardship or adoption of a person under sixteen years of age or wholly or mainly to the guardianship, custody, maintenance or upbringing of such a person, or rights of access to such a person;
- (b) where the proceedings are brought under Part V of the Mental Health Act 1968 [*title 11 item 36*] or under any provision of that Act authorizing an application or reference to be made to a mental health review tribunal or to a court;
- (c) where the information relates to proceedings or part of them held in private for reasons of national security;
- (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
- (e) where a court, having power under section 6(10) of the Constitution [*title 2 item 1*] to do so, expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to subsection (1), the publication of the text or a summary of the whole or part of an order made by a court sitting in camera shall not of itself be contempt of court except where the court, having power under section 6(10) of the Constitution [*title 2 item 1*] to do so, expressly prohibits the publication.

Contemporaneous publication of fair and accurate report

11 The publication of a fair and accurate report of judicial proceedings held in open court contemporaneously with those proceedings shall not be contempt of court notwithstanding that other similar proceedings may be outstanding.

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Responsibility for written or broadcast publication

12 (1) In addition to the author, the editor and publisher, if any, of any written publication shall be deemed to be responsible for any matter contained therein.

(2) Where proceedings for contempt of court have been commenced against any broadcasting organization such organization shall, on the application of a court or of any party to the proceedings, specify who in the organization at the time of the publication had editorial responsibility. Such person shall be deemed to have the same responsibility as the editor of a written publication.

Company directors and partners

13 Where a company or partnership is guilty of contempt no director or officer of the company or partner in the partnership shall likewise be guilty if he can show that he had no knowledge of the contempt and that in the ordinary course of business he could not have been expected to have such knowledge or if he can show that the contempt was committed contrary to his expressed wishes.

Punishment

14 Subject to the other provisions of this Act any person who—

- (a) wilfully insults any person before whom a judicial proceedings is being held or any officer of a court or tribunal during the sitting of a court or tribunal or during such time as the person or officer is present on the premises where the court or tribunal is sitting or is going to or returning from such premises;
- (b) wilfully interrupts the proceedings of a court or tribunal or otherwise misbehaves in the premises where the court or tribunal is sitting;
- (c) while a judicial proceeding is being held makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person concerned with such proceeding in favour of or against any party to such proceeding or calculated to lower the authority of any person before whom such proceeding is being held; or
- (d) publishes without permission of the court a report of evidence taken in any judicial proceedings held in camera,

is guilty of a misdemeanour:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$2,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 3 years or a fine of \$5,000 or both such imprisonment and fine.

Witness; failure to attend

15 (1) If any witness who has been summoned to give evidence before any court fails to attend at the time and place appointed, it may issue a warrant to arrest him and bring him before the court.

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(2) If any witness who has been summoned to give evidence before a tribunal fails to attend at the time and place appointed and the tribunal is not empowered to compel the attendance of witnesses, the tribunal may report the circumstances to the Supreme Court and a judge on receiving such report, and hearing in chambers a member of the tribunal if he considers it necessary, may issue a warrant to arrest the witness and bring him before the tribunal.

(3) A court may punish a witness failing to attend the court at the time and place appointed in a summons in the manner provided in section 4(2) and the Supreme Court may so punish a witness failing to attend a tribunal,

(4) An appeal shall lie against an order made under this section and section 6 shall apply to any such appeal.

Witness; refusal to give evidence

16 (1) If any witness, during any judicial proceedings, without offering a lawful excuse, refuses to give evidence when required or refuses to be sworn or affirmed, or having been sworn or affirmed refuses to answer questions properly put to him the court may order, unless he consents to give evidence, or to be sworn or affirmed, or to answer questions put to him, as the case may be, that he be detained in custody for any period not exceeding seven days, and may issue a warrant for his arrest and detention in accordance with the order.

(2) If the person so detained, on being brought up again during the proceedings, again refuses to give evidence or to be sworn or affirmed, or having been sworn or affirmed to answer any questions put to him the court, if it thinks fit may again direct that the witness be detained in custody for a like period, and so again from time to time until he consents to give evidence, or to be sworn or affirmed or to answer as aforesaid.

(3) If any witness during proceedings before a tribunal without offering a lawful excuse refuses to give evidence when required, or refuses to be sworn or affirmed or refuses to answer questions and if the tribunal is not empowered to make the witness give evidence, be sworn or affirmed or answer questions, the tribunal may report the circumstances to the Supreme Court which may after hearing the witness, make an order as if the refusal had been in proceedings in a court.

(4) Nothing in this section shall limit the power and authority of a court under sections 4 and 5.

(5) An appeal shall lie against an order made under this section and section 6 shall apply to any such appeal.

Repeals

17 *[omitted]*

Amendment of Criminal Code

18 *[omitted]*

[Assent Date: 25 June 1979]

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[Amended by:

1999 : 8

2010 : 9

2015 : 38]