



BERMUDA

COURT OF APPEAL ACT 1964

1964 : 221

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SCHEDULE

[preamble and words of enactment omitted]

PART I
CONSTITUTION OF COURT OF APPEAL

Interpretation

- 1 In this Act, unless the context otherwise requires—
 - “appeal” means an appeal from the Supreme Court to the Court of Appeal;
 - “application for habeas corpus” means an application for a writ of habeas corpus *ad subjiciendum*;
 - “Court of Appeal” means the Court of Appeal for Bermuda;
 - “informant” means the person who has laid the information in a prosecution before a court of summary jurisdiction;
 - “judgment”, in relation to a civil appeal, includes any decree, order or decision; and, in relation to a criminal appeal, includes a conviction, sentence, order or decision;

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“person aggrieved by a judgment” shall be deemed to include the Attorney-General or the Director of Public Prosecutions on behalf of the Crown in a civil or criminal matter, and an informant ;

“prescribed” means prescribed by this Act or by any Rules made thereunder;

“the President” means the person appointed to be the President of the Court of Appeal;

“Rules” means Rules made under section 9.

[Section 1 “person aggrieved” amended by 1999:8 s.3 & Sch 2 effective 1 April 1999]

Court of Record

2 The Court of Appeal shall be a superior Court of Record.

Constitution of Court of Appeal

3 (1) For the purposes of section 77 (2) of the Constitution [*title 2 item 1*] the number of Justices of Appeal shall be not more than six.

(2) Subject to section 7, at any sitting the Court of Appeal shall consist of the President and not less than two other Justices of Appeal:

Provided that, in the absence of the President, the senior Justice of Appeal shall preside.

(3) A judge of the Supreme Court may exercise any of the powers of a single Justice of Appeal.

[Section 3 amended by 2000:41 effective 1 June 2001]

Seniority of Judges

4 The seniority of the Justices of Appeal shall be determined in accordance with any instructions given from time to time by the Governor acting in his discretion, or as prescribed by Rules.

Sessions

5 (1) The Court of Appeal shall sit for the hearing of appeals at such times as the President, in consultation with the Chief Justice, may from time to time appoint.

(2) Nothing in this section shall be construed so as to affect the power of the Court of Appeal to adjourn, postpone or cancel any sitting of the Court of Appeal which has been appointed by the President under this section.

Determination of appeals

6 Appeals shall be decided in accordance with the opinion of the majority of the Judges composing the Court of Appeal, or, if there is no such majority in relation to the judgment appealed against or any part thereof, then the judgment appealed against or that part, as the case may be, shall stand.

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Illness or absence of a judge

7 (1) If in the course of any appeal, any Judge hearing the appeal is unable through illness or any other cause to attend the proceedings or otherwise to exercise his functions as a Judge, the hearing of such appeal shall, if the parties thereto consent, continue before the remaining Judges hearing the appeal, not being less than two in number, and such court shall, for the purposes of such appeal, be deemed to be duly constituted notwithstanding the absence or inability of such Judge, and the appeal may be determined without his decision thereon.

(2) If any party to an appeal does not consent as aforesaid, the appeal shall be adjourned to such date as will enable it to be heard *de novo* before a Court of Appeal constituted in accordance with section 3.

Powers of Court of Appeal

8 (1) Subject to this Act and any Rules, in the determination of appeals before it, the Court of Appeal shall have all the powers and duties conferred or imposed on the Supreme Court in the exercise of its original or appellate jurisdiction.

(2) The powers of the Court of Appeal to admit additional evidence shall correspond to the power of the Supreme Court to admit fresh evidence in the exercise of its appellate jurisdiction in a civil or criminal cause, as the case may be.

Rules

9 (1) Subject to subsection (2), the President (or any Justice of Appeal appointed by the President for the purpose) may make Rules for carrying this Act into effect, and, in particular, but without prejudice to the generality of the foregoing, for all or any of the following matters, that is to say—

- (a) for regulating the practice and procedure of the Court of Appeal, including all matters connected with the forms to be used and the fees to be payable;
- (b) for making provision with respect to the practice and procedure of the Court of Appeal in relation to appeals under section 15 of the Constitution [*title 2 item 1*] from the determinations of the Supreme Court or the Court of Appeal and such provision may include provision with respect to the time within which any appeal shall or may be brought;
- (c) for regulating the sittings of the Court of Appeal for the purpose of hearing appeals from the Supreme Court;
- (d) for the form and contents of the notice of appeal and of any reply (if any) which may be made thereto;
- (e) for the time within which any appeal and any document relating to the appeal may be lodged, for the extension of such time and the conditions upon which such extension may be allowed;
- (f) for the consequences which may follow upon the failure of any party to comply with any of the Rules of Court, as to time or otherwise;

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- (g) for the stay of execution pending the determination of an appeal and the conditions, as to security or otherwise, which may be imposed in any order staying
- (h) for the abandonment of an appeal and for the circumstances in which an appeal shall be deemed to have been abandoned;
- (i) for regulating the fees payable to barristers and attorneys engaged in an appeal at the instance of the Court of Appeal, and the fees payable to witnesses;
- (j) for the scales of costs and the taxation of costs.

(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to any rules made under this section.

Remuneration of Justices of Appeal

10 The President and Justices of Appeal shall be entitled to receive out of the funds appropriated by the Legislature for the purpose such sums as the Governor may determine in respect of—

- (a) a retaining fee and fees for sitting as a member of the Court of Appeal;
- (b) fees for work preparatory to the hearing of an appeal;
- (c) fees for the preparation or drafting of a judgment;
- (d) out of pocket expenses for board and accommodation while in Bermuda as a member of the Court of Appeal;
- (e) travelling expenses to and from Bermuda:

Provided that—

- (i) this section shall not apply to any person who is the holder of a pensionable office in and ordinarily resident in Bermuda; and
- (ii) any person who is ordinarily resident in Bermuda shall not be entitled to receive any of the expenses specified in paragraphs (d) or (e) of this section.

Effect of judgment or order

11 Any judgment or other order given or made by the Court of Appeal shall have the full force and effect of a judgment or order given or made by the Supreme Court.

PART II
CIVIL JURISDICTION

Appeals from Supreme Court

12 (1) Subject to subsections (2) and (3) and any Rules, any person aggrieved by a judgment of the Supreme Court in any civil cause or matter, (including matrimonial causes), whether final or interlocutory, or whether in its original or appellate jurisdiction, may appeal to the Court of Appeal; and any such appeal is hereinafter referred to as a "civil appeal".

(2) No appeal shall lie to the Court of appeal—

(a) against the decision in respect of any interlocutory matter; or

(b) against an order for costs,

except with leave of the Supreme Court or of the Court of Appeal.

(3) In respect of matrimonial causes, no appeal shall lie from a decree absolute for the dissolution or nullity of marriage where the person against whom such decree is made has had the time and opportunity to appeal from the decree nisi prior to its being made absolute and has not appealed from the decree nisi.

Determination of civil appeals

13 Upon the hearing of a civil appeal the Court may allow the appeal in whole or in part or may dismiss the appeal in whole or in part or may remit the case to the Supreme Court to be retried in whole or in part and may make such other order as the Court may consider just.

Interlocutory matter; single Justice of Appeal

14 To the extent prescribed by Rules the powers of the Court of Appeal to hear and determine any interlocutory matter may be exercised by any Justice of Appeal in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions:

Provided that every order made by a Justice of Appeal in pursuance of this section may, on application by the aggrieved party and subject to any Rules, be discharged or varied by the Court of Appeal.

Procedure for civil appeal

15 Subject to any Rules, all civil appeals shall be by way of re-hearing and no writ of error or other formal proceeding other than as may be required by this Act or Rules shall be necessary.

PART III
CRIMINAL JURISDICTION

Criminal appeals

16 Subject to section 17 and any Rules, any person aggrieved by a judgment of the Supreme Court in any criminal proceeding, whether in its original or appellate jurisdiction, may appeal to the Court of Appeal; and any such appeal is hereinafter referred to as a "criminal appeal",

Right of appeal

17 (1) A person convicted on indictment, or a person convicted by a court of summary jurisdiction and whose appeal to the Supreme Court under the Criminal Appeal Act 1952, has not been allowed, may appeal to the Court of Appeal—

- (a) against his conviction in the Supreme Court, or in any other case, against the decision of the Supreme Court, upon any ground of appeal involving a question of law alone; and
- (b) with the leave of the Court of Appeal or upon the certificate of the Supreme Court that it is a fit case for appeal against conviction, upon any ground of appeal which involves a question of fact alone, or a question of mixed law and fact or on any ground which appears to the Court to be a sufficient ground of appeal; and
- (c) with the leave of the Court of Appeal, against the sentence passed on his conviction, unless the sentence is one fixed by law; and
- (d) against the refusal of the Supreme Court or a Judge thereof to release an appellant from custody under section 20 or against the conditions attached to such release.

(2) Where—

- (a) an accused person tried on indictment is discharged or acquitted or is convicted of an offence other than the one with which he was charged; or
- (b) an accused person tried before a court of summary jurisdiction is acquitted and an appeal to the Supreme Court by the informant has not been allowed; or
- (c) an accused person whose appeal to the Supreme Court against conviction by a court of summary jurisdiction has been allowed,

the Director of Public Prosecutions or the informant, as the case may be, may appeal to the Court of Appeal against the judgment of the Supreme Court on any ground of appeal which involves a question of law alone.

(3) A person aggrieved by an order or decision of the Supreme Court in the exercise of its criminal jurisdiction—

- (a) to punish for contempt of court otherwise than on indictment;

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- (b) to determine an application for habeas corpus; or
- (c) to determine an application for the issue of a prerogative writ (other than a writ of habeas corpus),

may appeal to the Court of Appeal—

- (i) upon any ground of appeal involving a question of law alone; and
- (ii) with the leave of the Court of Appeal or upon the certificate of the Supreme Court that it is a fit case for appeal, upon any ground of appeal which involves a question of fact alone, or a question of mixed law and fact or upon any ground which appears to the Court to be a sufficient ground of appeal; and
- (iii) with the leave of the Court of Appeal, against the sentence or punishment, if any; and
- (iv) against the refusal of the Supreme Court or a Judge thereof to release an appellant from custody under section 20 or against the conditions attached to such release.

(4) For the purposes of this Part, the expression “a person convicted on indictment” includes a person acquitted on account of insanity in accordance with section 546 of the Criminal Code and the word “conviction” shall be construed accordingly.

(5) For the purposes of this Part, a decision of a judge in respect of a trial on indictment—

- (a) directing the jury to acquit an accused person on the grounds that there is no case to answer;
- (b) staying proceedings as an abuse of process; and
- (c) issuing a ruling which would otherwise have the effect of terminating the trial,

shall be deemed to involve a question of law alone.

[Section 17 subsection (2) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (5) inserted by 2010 : 41 s. 2 effective 26 July 2010; subsection (5) amended by 2014 : 14 s. 5 effective 19 September 2014; Section 17 subsection (5) amended by 2015 : 37 s. 20 effective 6 November 2015 Section 17 subsection (2) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsection (5) inserted by 2010 : 41 s. 2 effective 26 July 2010; subsection (5) amended by 2014 : 14 s. 5 effective 19 September 2014; subsection (5) repealed and substituted by 2015 : 37 s. 20 effective 6 November 2015]

Right of appeal against sentence by informant in proceedings before Supreme Court
17A A person who was the informant in respect of a charge of an offence heard and determined by the Supreme Court in its original or appellate jurisdiction may, with leave of the Court of Appeal, appeal against the sentence or order passed thereon—

- (a) in the case of a sentence passed by a judge in exercise of the original jurisdiction of the Supreme Court, upon the ground that it is manifestly inadequate; or

- (b) in a case where that Court has allowed an appeal by the accused person against the sentence passed upon him by a court of summary jurisdiction, upon the ground that the sentence substituted therefor by the Supreme Court is manifestly inadequate.

Appeal by DPP where accused acquitted or discharged of serious offences

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 a serious arrestable offence listed in Schedule 1 to the Police and Criminal Evidence Act 2006 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.

(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) *[deleted]*

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(6) No more than one appeal can be made under subsection (1) in respect of the same trial proceedings.

[Section 17B inserted by 2010 : 41 s. 3 effective 26 July 2010; headnote and subsection (1)(a) amended by 2014 : 14 s. 5 effective 19 September 2014; headnote and subsection (1)(a) amended and subsection (5) deleted by 2015 : 37 s. 20 effective 6 November 2015]

Procedure for criminal appeal

18 (1) Where a person entitled to appeal wishes to appeal to the Court of Appeal under section 17, he shall give notice of appeal or of application for leave to appeal, as the case may be, in such manner and within such time as may be prescribed by Rules.

(2) All criminal appeals shall be conducted in accordance with Rules.

Powers which may be exercised by a Justice of Appeal

19 The powers of the Court of Appeal under this Part to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to assign legal aid and to admit an appellant to bail may be exercised by any Justice of Appeal in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions; but if the Justice of Appeal refuses an application made under this section, the person aggrieved by such refusal shall be entitled to have the application determined by the Court of Appeal as duly constituted for the hearing and determining of appeals under this Act.

Effect of giving notice of appeal

20 (1) Where notice of appeal or of application for leave to appeal has been given in accordance with section 18(1), then—

- (a) in the case of a conviction involving sentence of death, the appellant shall be detained in prison pending the abandonment or determination of the appeal;
- (b) in the case of a conviction or order involving detention or a sentence of imprisonment or corrective training, the Supreme Court or a Judge thereof may, upon the application of the appellant, release him from custody on such terms and conditions as the Court or Judge thinks fit pending the abandonment or determination of the appeal;
- (c) in the case of a conviction of an offence under the Road Traffic Act 1947 [*title 21 item 3*], or under the Motor Car Insurance (Third Party Risks) Act 1943 [*title 21 item 5*], where an order has been made suspending a driver's licence, or cancelling a driver's licence, or declaring the person convicted to be disqualified for obtaining another licence, or for driving an auxiliary bicycle, then any such order shall have effect pending the abandonment or determination of the appeal;
- (d) in the case of a conviction involving any other sentence or order, the sentence or order shall not be put into effect pending the abandonment or determination of the appeal.

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(2) Where an appellant is released from custody under subsection (1)(b), any period of time spent by the appellant at large shall not count as part of the sentence of imprisonment or corrective training imposed upon him.

[Section 20 subsections (1)(b) and (2) amended by 2001:29 s.11(1) & Sch effective 29 October 2001]

Determination of appeals by convicted persons

21 (1) Upon the hearing of an appeal under section 17(1)(a) or (b), the Court of Appeal shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Supreme Court should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a mis-carriage of justice, and in any other case shall dismiss the appeal:

Provided that the court may—

- (a) notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred; or
- (b) in an appropriate case and if the interests of justice so require, set aside the conviction and sentence of the appellant and remit the case to the Supreme Court to be re-tried; and in any such case, the Court may make such order as it thinks fit for the detention of the appellant in custody pending the re-trial or for his release on bail or otherwise.

(2) Subject to paragraph (b) of the proviso to subsection (1) and section 22, the Court of Appeal shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) Upon the hearing of an appeal under this Part, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence imposed on the appellant, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed:

Provided that the Court of Appeal shall not pass a more severe sentence than the one originally imposed unless the appellant has appealed under section 17(1)(c).

Powers of Court of Appeal in special cases

22 (1) If it appears to the Court of Appeal that an appellant though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the Court consider that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved

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him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) If on any appeal, it appears to the Court of Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Court may quash the conviction and sentence passed at the trial and substitute therefor a verdict of acquittal on account of such insanity and order the appellant to be kept in strict custody, in such place and in such manner as the Court thinks fit, until the pleasure of the Governor is known.

(4) Where the appellant was convicted before a court of summary jurisdiction, all references in this section to the indictment shall be deemed to be references to the information and all references to the verdict of the jury shall be deemed to be references to the decision of the magistrate.

Determination of appeals under section 17(2)

23 (1) Upon the hearing of an appeal brought by the Director of Public Prosecutions or an informant, as the case may be, under section 17(2), the Court of Appeal shall allow the appeal if it appears that the discharge or acquittal of the accused or the dismissal of the information should be set aside on the ground of a wrong decision of law; and in any other case shall dismiss the appeal.

(2) Where the court of Appeal allows an appeal under subsection (1), then—

- (a) in a case which was tried before a court of summary jurisdiction, the Court of Appeal may set aside the dismissal of the information and remit the matter to the court of summary jurisdiction with a direction to that court to convict the respondent or otherwise to proceed according to law, and the court of summary jurisdiction shall govern itself accordingly, or make such other order as it may consider just; or
- (b) in a case which was tried on indictment, the Court of Appeal may, in an appropriate case and if the interests of justice so require, set aside the discharge or acquittal of the accused person and remit the case to the Supreme Court to be re-tried, or make such other order as it may consider just.

[Section 23 subsection (1) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Determination of appeal under section 17A in respect of sentence

23A On an appeal under section 17A, the Court of Appeal shall, if it thinks that the sentence is manifestly inadequate or excessive—

- (a) in the case of a sentence passed by a judge in exercise of the original jurisdiction of the Supreme Court, quash the sentence passed by the judge and pass such other sentence as may be warranted in law in substitution therefor;

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- (b) in the case of a sentence substituted by the Supreme Court in exercise of its appellate jurisdiction, quash the sentence substituted by the Court and pass such other sentence as may be warranted in law in substitution therefor,

and in any other case shall dismiss the appeal.

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.

[Section 23B inserted by 2010 : 41 s. 4 effective 26 July 2010]

Determination of appeals under section 17(3)

24 Upon the hearing of an appeal brought under section 17(3), the Court of Appeal may reverse or vary the order or decision of the Supreme Court or Judge thereof or make such other order as may appear to the Court to be just.

Right of appellant to be present

25 (1) An appellant, notwithstanding that he is in custody, shall be entitled to be present at the hearing of his appeal.

(2) The power of the Court of Appeal to give judgment or make any order or pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present,

Legal assistance to appellant

26 (1) The Court of Appeal may at any time assign to an appellant or respondent in a criminal appeal a barrister and attorney to represent him in the appeal or in any proceedings preliminary or incidental to the appeal where, in the opinion of the Court of Appeal, it appears desirable in the interests of justice that the appellant or respondent should have legal aid.

(2) A barrister and attorney assigned to an appellant pursuant to subsection (1) shall receive out of public funds provided therefor by the Legislature such fees as the Court of Appeal may determine pursuant to Rules.

Governor may refer case to Court of Appeal

27 The Governor, acting after consultation with the Advisory Committee on the Prerogative of Mercy established under section 23 of the Constitution [*title 2 item 1*], on an application made to him by a person affected by a judgment of the Supreme Court in a criminal cause or matter or without any such application, may, if he thinks fit, at any time either—

- (a) refer the whole case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to the Court of Appeal by the person convicted; or

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- (b) if he desires the assistance of the Court of Appeal on any point arising in a case, refer that point to the Court of Appeal for their opinion thereon, and the Court of Appeal shall consider the point so referred and furnish the Governor with their opinion thereon accordingly.

PART IV
SUPPLEMENTAL

Registrar of Court of Appeal

28 The Registrar of the Supreme Court shall be the Registrar of the Court of Appeal.

Sentence of death or corporal punishment; waiting period

29 *[Repealed]*

[Section 29 repealed by 1999:51 s.4 & Sch effective 23 December 1999]

Saving for Royal Prerogative of mercy

30 Nothing in Part III shall be construed so as to affect Her Majesty's prerogative of mercy or any power vested in the Governor acting as the representative of Her Majesty, to exercise such Royal Prerogative on behalf of Her Majesty, or to grant a pardon either free or subject to conditions or any remission of sentence or any respite of the execution of the sentence.

Amendments

31 *[omitted].*

Repeals

32 *[omitted].*

Commencement and application

33 *[omitted].*

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[*omitted*]

[Assent Date: 30 November 1964]

[This Act was brought into operation on 1 May 1965]

[Amended by:

1966 : 57
1966 : 213
1968 : 309
1969 : 182
1971 : 77
1977 : 35
1980 : 39
1982 : 1
1989 : 27
1999 : 8
1999 : 51
2000 : 41
2001 : 29
2010 : 41
2014 : 14
2015 : 37]