
CHAPTER 52
COURT OF APPEAL

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CHAPTER 52

COURT OF APPEAL

An Act to provide for the jurisdiction and powers of the Court of Appeal for The Bahamas and for matters incidental thereto or connected therewith.

[Assent 29th December, 1964]

[Commencement 7th January, 1965]

PART I

PRELIMINARY

1. This Act may be cited as the Court of Appeal Act.

2. In this Act, unless the context otherwise requires —

“appellant” includes a person who has been convicted and desires to appeal to the court;

“court” means the Court of Appeal constituted by Article 98 of the Constitution;

“Justice” means Justice of Appeal of the Court of Appeal and includes the President;

“judgment” or “sentence” includes any order of any court made consequent upon the conviction of an appellant with reference to the appellant or his wife or his children;

“law” means any Act having effect within The Bahamas and any rules made thereunder;

“President” means the President of the court;

“Registrar” means the Registrar of the court appointed under section 5 of this Act;

“rules of court” means rules of court made under section 8 of this Act;

“Supreme Court” means the Supreme Court of The Bahamas constituted by Article 93 of the Constitution.

48 of 1964
62 of 1965
3 of 1967
32 of 1971
E.L.A.O., 1974
5 of 1987
4 of 1989
6 of 1990
26 of 1996
31 of 1999
4 of 2000
8 of 2000
17 of 2000
21 of 2004
22 of 2010
41 of 2011
 Short title.

Interpretation.

PART II
COMPOSITION, JURISDICTION AND
POWERS OF COURT

Justices of Court
of Appeal.
E.L.A.O. 1974.
26 of 1996, s. 2.

3. (1) For the purposes of subparagraph (c) of paragraph (2) of Article 98 of the Constitution there shall be not less than three and not more than six Justices of Appeal.

22 of 2010, s. 2.
26 of 1996, s. 2.

(2) The President and at least one such Justice of Appeal shall, on and during the tenure of their appointment, be ordinarily resident in The Bahamas.

(3) The President shall be the senior Justice of the court and subject thereto the Justices shall hold seniority in the order of their appointments or, if two or more Justices are appointed on the same day, then in the order of their seniority of first appointment to high judicial office. In the absence of the President the senior Justice present at any sitting of the court shall preside at that sitting.

(4) Save as otherwise provided in this Act all Justices shall have and enjoy in all respects equal power authority and jurisdiction.

Seal.

4. The President shall cause a seal to be provided for the court.

Appointment of
Registrar and
Deputy Registrar.

5. The Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint persons to be the Registrar of the Court of Appeal and the Deputy Registrar of the Court of Appeal respectively:

21 of 2004.

Provided that no person shall be appointed to be the Registrar of the Court of Appeal or Deputy Registrar of the Court of Appeal unless —

- (a) he is a member of at least five years standing of the English, Irish, Scottish or Bahamas Bar or of the Bar of any country of the Commonwealth to which a member of The Bahamas Bar is admitted without examination; or
- (b) he has been enrolled and has practised for at least five years as a solicitor in England, Ireland or Scotland, or in any country of the Commonwealth where a member of The

Bahamas Bar is permitted to practise as a solicitor without examination.

6. (1) The Registrar shall take all necessary steps for obtaining a hearing under this Act of all appeals and applications made to the court and shall obtain and lay before the court in proper form all documents, exhibits and other things relating to the proceedings in respect of which the appeal or application has been brought and which appear necessary for the determination thereof by the court.

Functions of Registrar and Deputy Registrar.

(2) The Registrar shall have such other powers and authorities and perform such other duties as shall be necessary for the due conduct and discharge of the business of the court and as the President shall direct.

(3) The Deputy Registrar shall assist the Registrar in the discharge of his duties as Registrar and may, subject to the directions and instructions of the Registrar, during the temporary absence of the Registrar, lawfully perform all the duties and exercise all the powers of the Registrar under this or any other Act.

31 of 1999, s.3.

(4) There shall be attached to the court such other officers as may from time to time be required and as may be authorized by any Act of Parliament relating to the public service of The Bahamas.

(5) The Registrar shall be the accounting officer for the purposes of the Financial Administration and Audit Act.

21 of 2004.

Ch. 359.

6A. (1) Without prejudice to the provisions of any other Act or of rules of court, the persons specified in the Schedule shall have power to administer oaths and take solemn declarations or affirmations in lieu of oaths in all matters transacted in court or in chambers or in the office of the Registrar.

Power to administer oaths and perform other functions. Schedule.

21 of 2004.

(2) A clerk in the office of the Registrar shall have the power to exercise any other functions designated to that clerk in writing by the Registrar or the Deputy Registrar.

7. (1) For the purpose of hearing and determining any appeal the court shall be duly constituted if it consists of three Justices:

Quorum of Court of Appeal.

Provided that if so prescribed by rules of court one Justice may hear and determine any interlocutory matter:

Provided further that if, in the opinion of the President, the appeal or other matter before the court

26 of 1996, s. 5.

involves a substantial point of constitutional law or a point of general public importance, the President may direct that the appeal or matter shall be heard and determined by five Justices of the court.

(2) The determination of any question before the court shall be according to the opinion of the majority of the Justices hearing the appeal.

3 of 1967, s. 2.

(3) Notwithstanding the provisions of subsection (1) of this section, if at any time during the hearing of any matter in the exercise of the appellate civil jurisdiction of the court under Part III of this Act one Justice becomes unable, by reason of death, illness or other sufficient cause, to continue with the hearing of the same, the remaining Justices may, with the consent of all parties to the appeal or other matter present or represented at the hearing, continue with the hearing, and in any such case the court shall be deemed to be duly constituted by the remaining Justices and the question before the court shall be determined by them:

26 of 1996, s. 5.

Provided that in the case of a difference of opinion between the Justices so remaining the appeal or other matter shall stand dismissed, and the judgment or order appealed against shall be affirmed.

Rules of court.

8. (1) The President may, subject to the provisions of this Act, make rules of court —

- (a) prescribing the times and places for sessions of the court;
- (b) prescribing all such matters as are to be or may be prescribed under the provisions of this Act; and
- (c) generally with respect to all matters of practice and procedure relating to the exercise of the jurisdiction of the court.

(2) Rules of court shall be published in the *Gazette* and shall have effect, unless otherwise provided therein, as from the date of such publication.

English rules apply where no provision made.

9. Where in any case no special provision is contained in this or any other Act, or in rules of court, with reference thereto any jurisdiction in relation to appeals in criminal and civil matters shall be exercised by the court as nearly as may be in conformity with the law and practice for the time being observed in England by the Court of Criminal Appeal and the Court of Appeal respectively.

PART III
APPELLATE CIVIL JURISDICTION

10. Subject to the provisions of this Part of this Act and to the rules of court, the court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings, and for all purposes of and incidental to the hearing and determination of any such appeal and the amendment, execution and enforcement of any judgment or order made thereon, the court shall, subject as aforesaid, have all the powers authority and jurisdiction of the Supreme Court.

Appeals from
Supreme Court in
civil proceedings.

11. No appeal shall lie —

- (a) from any order allowing an extension of time for appealing from a judgment or order;
- (b) from an order of a Justice of the Supreme Court giving unconditional leave to defend an action;
- (c) from any decision of the Supreme Court where it is provided by the Constitution that such decision is to be final;
- (d) from any order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except upon some point which would not have been available to such party on such appeal;
- (e) without the leave of the Supreme Court or of the court, from an order made with the consent of the parties or as to costs only where such costs are by law left to the discretion of the Supreme Court;
- (f) without the leave of the Supreme Court or of the court from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court except —
 - (i) where the liberty of the subject or the custody of infants is in question;
 - (ii) where an injunction or the appointment of a receiver is granted or refused;
 - (iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;

Restriction on
civil appeals.

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- Ch. 180. (iv) in the case of an order in a special case stated under the Arbitration Act;
- (v) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise; or
- Ch. 308. (vi) in such other cases to be prescribed as are in the opinion of the authority having power to make rules of court, of the nature of final decisions.

PART IV APPELLATE CRIMINAL JURISDICTION

Right of appeal from Supreme Court.

*32 of 1971, s. 2.
26 of 1996, s. 6.*

12. (1) A person convicted on information in the Supreme Court after the coming into operation of this subsection, may appeal under the provisions of this Act to the Court on any of the following grounds —

- (a) that evidence was wrongly rejected or inadmissible evidence was wrongly admitted;
- (b) that the verdict was unreasonable or could not be supported having regard to the evidence;
- (c) that under all the circumstances of the case, the verdict is unsafe or unsatisfactory;
- (d) that the conviction was erroneous in point of law;
- (e) that some specific illegality or irregularity, other than hereinbefore mentioned, substantially affecting the merits of the case was committed in the course of the trial;
- (f) that the sentence passed was based on a wrong principle of law; or
- (g) that the sentence passed was unduly severe.

41 of 2011, s. 2.

(1A) Notwithstanding subsection (1), the Attorney-General on behalf of the Crown, may appeal to the court against a judgment or verdict of acquittal in a trial on information, when the judgment or verdict is the result of a decision by the judge to —

- (a) uphold a no case submission; or
- (b) withdraw the case from the jury,

on the ground that the decision of the trial judge is erroneous in point of law.

(1B) If an appeal is allowed pursuant to subsection (1A), the court shall set aside the judgment or verdict and may remit the case to the Supreme Court for re-trial. *41 of 2012, s.2.*

(2) A person sentenced by the Supreme Court under subsection (2) of section 218 of the Criminal Procedure Code Act may appeal to the court under the provisions of this Act against that sentence. *32 of 1971, s. 2.*

(3) The Attorney-General on behalf of the Crown may, with the leave of the court appeal to the court against any sentence passed after the coming into operation of this section on a person — *4 of 1989, s. 2.*

(a) convicted on information in the Supreme Court; or

(b) sentenced by the Supreme Court under subsection (2) of section 218 of the Criminal Procedure Code Act, unless the sentence is one fixed by law. *Ch. 91.*

(4) The provisions of any Act shall, as they apply to an appeal against sentence made under subsection (1) or (2), *mutatis mutandis* apply to an appeal made under subsection (3). *4 of 1989, s. 2.*

13. (1) After the coming into operation of this section, the court on any such appeal against conviction shall allow the appeal if the court thinks that the verdict should be set aside on the grounds that — *Determination of criminal appeals. 26 of 1996, s. 7.*

(a) under all the circumstances of the case it is unsafe or unsatisfactory;

(b) it is unreasonable or cannot be supported having regard to the evidence;

(c) there was a wrong decision or misdirection on any question of law or fact;

(d) in the course of the trial, there was a material illegality or irregularity substantially affecting the merits of the case; or

(e) the appellant did not receive a fair trial,

and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the court considers that no miscarriage of justice has actually occurred.

(2) Subject to the provisions of this Part of this Act the court shall, if it allows the appeal against conviction,

quash the conviction and direct a judgment and verdict of acquittal to be entered, or, if the interests of justice so require, order a new trial at such time and place as the court may think fit.

(3) On an appeal against sentence the court shall, if it thinks that a different sentence ought to have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as the court thinks ought to have been passed, and in any other case shall dismiss the appeal.

Power to substitute conviction of alternative offence.

41 of 2011, s. 3.

13A. Notwithstanding section 13(2), where on an appeal against conviction, the appellant has been convicted of an offence and the jury could on the indictment have found the appellant guilty of some other offence, and on the finding of the jury it appears to the court that the jury must have been satisfied of facts which proved him guilty of the other offence, the court may, instead of allowing or dismissing the appeal —

- (a) substitute for the verdict found by the jury, a verdict of guilty of the other offence; and
- (b) pass such sentence in substitution for the sentence passed at the trial as may be authorized by law for the other offence, not being a sentence of greater severity.

Grounds of appeal from magisterial court.

Ch. 91.

14. (1) Any person who is dissatisfied with any judgment, sentence or order of a magisterial court, given or made after the coming into operation of this section in respect of any offence referred to in the Third Schedule to the Criminal Procedure Code Act or of an offence for which he is liable to imprisonment for a period of one year or more, may appeal to the court on any of the following grounds —

- (a) subject to subsection (2), that the magisterial court had no jurisdiction in the matter;
- (b) that the magisterial court exceeded its jurisdiction in the matter;
- (c) that the magistrate took extraneous matters into consideration;
- (d) that evidence was wrongly rejected or inadmissible evidence was wrongly admitted by the magistrate, and that in the latter case there was not sufficient evidence to sustain the decision;

- (e) that the decision was unreasonable or could not be supported having regard to evidence;
- (f) that under all the circumstances of the case, the decision is unsafe or unsatisfactory;
- (g) that the decision was erroneous in point of law, the particular point of law being specified in the grounds of appeal;
- (h) that the decision of the magistrate or sentence passed was based on a wrong principle or was such that a magistrate viewing the circumstances reasonably could not properly have so decided;
- (i) that some material illegality or irregularity, other than hereinbefore mentioned, substantially affecting the merits of the case was committed in the course of the proceedings therein or in the decision;
- (j) that the sentence was unduly severe or unduly lenient;
- (k) that the Magistrate in passing any sentence in respect of any offence referred to in Part I of the Third Schedule or any offence referred to in the Fourth Schedule to the Criminal Procedure Code Act did not comply with any sentencing guidelines issued by the Chief Justice or did not provide sufficient justification for not following such guidelines. *4 of 2000, s. 2.*

Ch. 91.

(2) It shall not be competent for the court to entertain the ground of appeal set out in paragraph (a) of subsection (1) unless objection to the jurisdiction of the magisterial court was formally taken at some time during the proceedings and before the decision was pronounced.

(3) The decision of the court in any criminal proceeding brought before it on appeal under subsection (1) shall be final.

(4) In this section and in section 15, “magisterial court” means a court presided over by a magistrate.

15. (1) The court, upon an appeal under section 14, may adjourn the hearing of the said appeal, and may upon the hearing thereof —

Powers of court on hearing appeals.

26 of 1996, s. 8.

- (a) subject to subsection (2) of this section, allow the appeal on any of the grounds set out in subsection (1) of section 14;

- (b) dismiss the appeal;
- (c) vary or modify the decision of the magisterial court;
- (d) remit the matter with the opinion of the court thereon to the magisterial court; or
- (e) make such other order in the matter as it may think just, and may, by such order, exercise any power which the magisterial court might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the magisterial court.

(2) The court may notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the court considers that no miscarriage of justice has actually occurred.

Right of appeal
from Judge of the
Supreme Court.

26 of 1996, s. 8.

16. (1) After the coming into operation of this section, any person aggrieved by any decision of the Supreme Court to grant or refuse to order a stay of the execution of the sentence of death, whether such stay was applied for under Article 28 of the Constitution or otherwise, may appeal to the Court against any such decision.

(2) The court may upon hearing any appeal under the provisions of this section make such order confirming, reversing or varying the order appealed against as to the court may seem fit.

Time for
appealing

17. (1) Where a person convicted desires to appeal to the court or to obtain the leave of the court to appeal under the provisions of this Part of this Act, he shall give notice of appeal or of his application for leave to appeal in such manner as may be prescribed by rules of court within twenty-one days of the conviction.

(2) The time within which notice of appeal or of application for leave to appeal may be given, may be extended at any time by the court.

(3) For the purposes of this section the date of conviction shall, where the Supreme Court has adjourned the trial of an information after conviction, be deemed to be the date on which such court has sentenced or otherwise dealt with the appellant.

18. In the case of any appeal or application for leave to appeal to the court under the provisions of this Part of this Act, the Justice of the Supreme Court before whom the appellant was convicted shall furnish to the Registrar, in accordance with rules of court, his notes of the trial (if any) and the Registrar shall procure the transcript of the record of the proceedings at the trial and of the evidence received therein (if any) and shall furnish one copy thereof to the appellant or his counsel and one copy to the Attorney-General at least seven days before the date fixed for the hearing.

Transcript and Justice's notes to be furnished on appeal.

6 of 1990, s. 2.

19. (1) The court may at any time assign counsel to an appellant under this Part of this Act where it appears to the court that he has not sufficient means wherewith to retain counsel and that it is necessary in the interests of justice that he should have legal aid in the preparation and conduct of his appeal.

Legal aid for poor appellants.

(2) The court shall in any case where the appellant has been convicted of an offence for which the punishment is death assign counsel to him if it appears that he has not sufficient means wherewith to retain counsel in connection with his appeal.

20. (1) An appellant, notwithstanding that he is in custody, shall be entitled to be present if he so desires at the hearing of his appeal, but on an application for leave to appeal or on any proceedings preliminary or incidental to an appeal the appellant shall not be entitled to be present, unless he is conducting his case in person in those proceedings:

Right of appellant to be present and to state his case in writing.

Provided that the court may in any proceedings had before the court grant leave for, or order, the appellant to be present at the hearing.

(2) Every appellant under this Part of this Act shall be entitled to present his case in writing instead of by oral argument to the court if he so desires and any case so presented shall be taken into consideration by the court.

PART V
FURTHER APPEALS

Second appeals
from magistrates.

21. (1) Any person aggrieved by any judgment, order or sentence given or made by the Supreme Court in its appellate or revisional jurisdiction, whether such judgment, order or sentence has been given or made upon appeal or revision from a magistrate or any other court, board, committee or authority exercising judicial powers, and whether or not the proceedings are civil or criminal in nature may, subject to the provisions of the Constitution and of this Act, appeal to the court on any ground of appeal which involves a point of law alone but not upon any question of fact, nor of mixed fact and law nor against severity of sentence:

3 of 1967, s. 3.

Provided that no such appeal shall be heard by the court unless a Justice of the Supreme Court or of the court shall certify that the point of law is one of general public importance.

Ch. 54.
Ch. 91.

(2) Any person aggrieved by a judgment, order or sentence given or made by a Circuit Justice in exercise of the appellate jurisdiction vested in him under the provisions of the Magistrates Act and the Criminal Procedure Code Act, and whether or not the proceedings are civil or criminal in nature, may appeal to the court against such judgment order or sentence on any ground of appeal which involves a point of law alone but not upon any question of fact, nor of mixed fact and law.

5 of 1987, Sch.

26 of 1996, s. 9.

(3) Any person aggrieved after the coming into operation of this subsection —

- (a) by any declaratory order, order of mandamus, order of prohibition or order of certiorari made by the Supreme Court in any proceedings, whether or not the proceedings are civil or criminal in nature; or
- (b) by the refusal of the Supreme Court to make any such order,

may appeal to the court against any such order, or, the refusal of any such order, on any ground of appeal which involves a point of law or of mixed fact and law, without prejudice to any other law or provisions of this Act which provide for such an appeal.

(4) The court may upon hearing any appeal under the provisions of this section make such order confirming, reversing or varying the judgment, order or sentence appealed against or, if the interests of justice so require order a new trial at such time and place, as to the court may seem fit: *6 of 1990, s. 2.*

Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the court considers that no substantial miscarriage of justice has actually occurred.

22. Notwithstanding the provisions of section 21 of this Act, any person who has appealed to the Supreme Court from any determination, in any proceedings concerning the compulsory acquisition of any interest in or right over property of any description, by any arbitrator, court or other authority as to — *Appeals in cases concerned with compulsory acquisition of property. 62 of 1965, s. 2.*

- (a) his interest or right in such property;
- (b) the legality of the taking of possession or acquisition thereof;
- (c) the amount of any compensation to which he is entitled in respect thereof; or
- (d) as to his entitlement to prompt payment of any such compensation,

shall have the same rights of appeal to the court as are accorded under this Act to parties to civil proceedings in the Supreme Court sitting as a court of original jurisdiction.

23. (1) An appeal shall lie to Her Majesty in Council from any judgment or order of the court upon appeal from the Supreme Court in a civil action in which the amount sought to be recovered by any party or the value of the property in dispute is of the amount of four thousand dollars or upwards, and with the leave of the court but subject nevertheless to such restrictions, limitations and conditions as may be prescribed in relation thereto by Her Majesty in Council, in any other proceedings on the Common Law, Equity, Admiralty or Divorce and Matrimonial sides of the jurisdiction of the Supreme Court. *Appeals to the Privy Council.*

(2) Save as is provided in this section the decision of the court in any civil proceedings brought before it on appeal shall be final.

(3) Nothing in this section contained shall be deemed to restrict or derogate from the right of Her Majesty in Council in any case to grant special leave to appeal from the decision of the court in any cause or matter.

PART VI SUPPLEMENTAL PROVISIONS

Powers of court
in special cases.

24. (1) If it appears to the court that an appellant though not properly convicted on some count of an information or charge has been properly convicted on some other count thereof the court may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefore as the court thinks proper and as may be warranted in law by the judgment or verdict on the count or part of the information or charge on which the court considers that the appellant has been properly convicted.

(2) Where the appellant has been convicted of an offence and the court of trial or the jury could have found him guilty of some other offence, and on the finding or verdict of such court or jury it appears to the court that the court of trial or jury must have been satisfied of facts which proved him guilty of that other offence, the court may instead of allowing or dismissing the appeal, substitute for the judgment passed or verdict given by the court of trial or jury a judgment or 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 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 the omission made so as not to be responsible according to law for his actions, the court may quash the sentence passed at the trial and order the appellant to be kept in custody as provided for in section 191 of the Criminal Procedure Code Act in all respects as if the appellant had had a special verdict found against him in accordance with section 190 of that Act.

Ch. 91.

Revesting and
restitution of
property on
conviction
suspended.

25. (1) The operation of any order for the restitution or disposal of any property to any person made under the provisions of the Criminal Procedure Code Act on a conviction and the operation in the case of a conviction of the provisions of section 25 of the Sale of Goods Act as to

the re-vesting of the property in stolen goods on conviction shall (unless the court before which the conviction takes place directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended —

Ch. 91.
Ch. 337.

- (a) in any case until the expiration of twenty-one days after the date of conviction; and
- (b) in cases where notice of appeal or of application for leave to appeal is given within twenty-one days after the date of conviction, until the determination of the appeal or refusal of the application as the case may be.

(2) In cases where the operation of any such order or of the said provisions is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal.

(3) Provision may be made by rules of court for securing the safe custody of any property pending the suspension of any such order or of the said provisions.

(4) The court may by order annul or vary any order made on conviction for the restitution or disposal of any property to any person, although such conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.

26. In the case of a conviction involving a sentence of death or of corporal punishment —

Suspension of sentence of death or corporal punishment.

- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of application for leave to appeal may be given under this Act; and
- (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable and the sentence shall not be executed until after the determination of the appeal, or if leave of appeal is finally refused, of the application.

27. For the purposes of its appellate criminal jurisdiction under Parts IV and V of this Act, the court may, if the court thinks it necessary or expedient in the interests of justice —

Supplemental powers of court.
4 of 1989, s. 4.

- (a) order the production of any document, exhibit or thing connected with the proceedings, the

- production of which appears to the court to be necessary for the determination of the case;
- (b) if the court thinks fit, order any witness who would have been a compellable witness at the trial to attend and be examined before the court, whether or not they were called at the trial, or order the examination of any such witness to be conducted in any manner provided by rules of court before any Justice or officer of the court or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court;
 - (c) if the court thinks fit, receive the evidence if tendered of any witness, including the appellant, who is a competent but not a compellable witness, and if the appellant makes an application for the purpose, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except on such application;
 - (d) where any question arising on an appeal involves prolonged examination of documents or accounts or any scientific or local examination, which cannot, in the opinion of the court, conveniently be conducted before the court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the court, and to act upon the report of any such commissioner as far as the court thinks fit to adopt it;
 - (e) appoint any person with special expert knowledge to act as an assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case;
 - (f) exercise in relation to the proceedings of the court any other powers which may for the time being be exercised by the court on appeals in civil matters and issue any warrants necessary for enforcing the sentence or orders of the court.

Costs of criminal appeal.

28. No costs shall be allowed by the court on either side in connection with the hearing and determination of an

appeal in any criminal cause or matter under Parts IV or V of this Act.

29. (1) Subject to the provisions of the Bail Act, the court may, if it sees fit upon the application of an appellant, admit him to bail pending the determination of his appeal.

Admission of appellant to bail. Ch. 103.

17 of 2000.

(2) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in such manner as may be provided by rules made under the Prisons Act*.

22 of 1943.

(3) The time during which an appellant is admitted to bail and, subject to any directions which the court may give to the contrary, the time during which an appellant is specially treated whilst in custody under the provisions of this section, shall not count as part of any term of imprisonment, to which he may have been sentenced, and any such term of imprisonment whether passed by the court of trial or by the court under the provisions of this Act shall, subject to any directions given by the court as aforesaid, be deemed to begin to run or to be resumed as from the date on which the appeal is determined or application for leave to appeal is refused, or if the appellant is not in custody as from the day on which he is received into prison under that sentence.

30. (1) The powers of the court in its appellate criminal jurisdiction under Part IV of this Act —

Powers which may be exercised by single Justice of court.

- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given;
- (b) to assign counsel to an appellant;
- (c) to grant leave for an appellant to be present at any proceedings of the court; and
- (d) to admit an appellant to bail,

3 of 1967, s. 5.

may be exercised by a single Justice in the same manner as they may be exercised by the court and subject to the same provisions:

Provided that if a single Justice refuses an application under paragraph (a) of this subsection the appellant shall be entitled to have the application determined by the court.

(2) It shall be lawful for any single Justice to deliver in open court the judgment or judgments of the court in any

* This Act (formerly Ch. 208) has been repealed and replaced by the Correctional Services Act (No. 8 of 2014) – now Ch. 208.

appeal or other matter heard and determined by the court, notwithstanding that some or all the Justices who heard and determined such appeal or other matter may be absent when judgments are read.

Reference to
Court of Appeal
of point of law
following acquit-
tal on informa-
tion.

4 of 1989, s. 5.
26 of 1996, s. 10.

31. (1) Where, after the coming into operation of this subsection, a person charged before the Supreme Court upon an information or a bill of indictment whether voluntary or otherwise —

- (a) is discharged from that information or bill of indictment; or
- (b) is acquitted (whether in respect of the whole or part of that information or bill of indictment),

the Attorney-General may, if he desires the opinion of the court on a point of law which has risen in the case, refer that point to the court in the prescribed manner and the court shall, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of the consideration of a point referred to the court under this section, the court shall hear argument by, or by counsel on behalf of, the Attorney-General and if the acquitted person was represented by counsel at the trial, the court may invite that counsel to present any argument to the court.

(3) Where the court has given an opinion on a point referred to it under this section, the court may, in pursuance of an application by the Attorney-General in that behalf refer the point to Her Majesty in Council and for that purpose the provisions of section 23 shall, as they apply to an appeal against conviction, *mutatis mutandis* apply to such reference to Her Majesty in Council.

(4) Where on a point being referred to the court under this section, counsel appears at the invitation of the court for the purpose of presenting any arguments on such reference he may be awarded such costs as the court sees fit which shall be paid out of the Treasury.

(5) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

SCHEDULE

21 of 2004.

PERSONS EMPOWERED TO ADMINISTER OATHS

Registrar

Deputy Registrar

Any clerk in the office of the Registrar designated in writing for the purpose by the Registrar or a Deputy Registrar.