

THE JUDICATURE (APPELLATE
JURISDICTION) ACT

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THE JUDICATURE (APPELLATE
JURISDICTION) ACT

[5th August, 1962.]

Law	36 of 1997
15 of 1962.	S. 29,
Acts	19 of 2000
33 of 1965	S. 23,
S. 17,	5 of 2003,
29 of 1966,	13 of 2008.
17 of 1967,	
42 of 1969	
3rd Sch.,	
12 of 1970,	
24 of 1971,	
42 of 1973	
S. 14,	
9 of 1985	
S. 85,	
17 of 1991,	

PART I. *Preliminary*

1. This Act may be cited as the Judicature (Appellate Jurisdiction) Act. Short title.

2. In this Act—

Interpre-
tation.

“appellant” includes a person who has been convicted and desires to appeal under this Act;

“appointed day” means the 5th day of August, 1962;

“clerk of the court” means the clerk of a Resident Magistrate’s Court appointed under the Judicature (Resident Magistrates) Act;

“Court” means the Court of Appeal;

“enactment” includes any regulation or instrument issued pursuant to a statutory power;

“former Court of Appeal” means the Court of Appeal established by the Judicature (Court of Appeal) Law (now repealed) prior to the appointed day;

Cap. 178
(1953
Edtn.).

“former Supreme Court” means the Supreme Court of Jamaica as constituted immediately prior to the appointed day;

“Judge” means Judge of the Court of Appeal;

“judgment” or “sentence” includes any order of a court made on conviction with reference to the person convicted or his children, and any recommendation of a court as to the making of a deportation order in the case of a person convicted, and the power of the Court of Appeal to pass a sentence includes a power to make any such order of a court or recommendation, and a recommendation so made by the Court of Appeal shall have the same effect for the purposes of section 15 of the Aliens Act, as the certificate and recommendation of the convicting court;

“matrimonial cause” means any suit within the jurisdiction of the court under the Matrimonial Causes Act;

“Privy Council” means the Privy Council established by section 82 of the Constitution of Jamaica;

“Registrar” means the Registrar of the Court of Appeal;

“Supreme Court” means the Supreme Court for Jamaica.

PART II. *Composition, Jurisdiction and Powers of Court of Appeal*

3.—(1) The Judges of the Court shall be—

(a) a President;

(b) the Chief Justice by virtue of his office as head of the Judiciary but who, however, shall not sit in the Court unless there are at least four other Judges sitting and unless he has been invited so to sit by the President of the Court;

(c) not less than three nor more than twelve other Judges.

(2) The Minister may by order published in the *Gazette* amend subsection (1) so as to increase the maximum number of Judges who may be appointed to the Court, which order shall be subject to affirmative resolution.

4.—(1) A person shall not be appointed to be a Judge of the Court unless he is a member of the Bar of Jamaica, England, Scotland or Northern Ireland—

12/1970
S. 2.

Judges of
Court of
Appeal.

13/2008
S. 2 (a).
13/2008
S. 2 (b).

Qualification
and status of
Judges of
the Court
of Appeal.

- (a) of at least ten years standing; or
- (b) who holds or has held office as a Judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court.

(2) Judges of the Court shall have in all respects, save as otherwise provided in this Act, equal power, authority and jurisdiction.

5. The Court may, if the President of the Court so directs, sit in more than one division of three Judges at the same time.

Sittings of
Court.
29/1966
S. 2 (a).
13/2008
S. 3.

6. The President of the Court shall cause a Seal to be provided for the Court.

Seal.

7.—(1) There shall be a Registrar of the Court, and a person shall not be appointed to be Registrar unless he is a member of the Bar of Jamaica, England or Northern Ireland or of the Faculty of Advocates of Scotland, or a Solicitor of the Supreme Court of Jamaica or of the Supreme Court of Judicature of England, Scotland or Northern Ireland or a Writer to the Signet of Scotland.

Registrar
and other
officers.
24/1971
S. 2 (a).

(2) The Registrar shall have such power and authority and perform such duties as shall be necessary for the due conduct and discharge of the business of the Court and as the President of the Court shall direct.

24/1971
S. 2 (b).

(3) Without prejudice to the generality of the provisions of this section, the Registrar shall take all necessary steps for obtaining a hearing under this Act of any appeals or applications, and shall obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things relating to the proceedings in the court before which the case, or the appellant or applicant, was tried which appear necessary for the proper determination of the appeal or application.

(4) There shall be attached to the Court such other officers as may be prescribed by rules of court.

Joint-
it,
lification
duties
Deputy
gistrar.
1966
2 (b).

8.—(1) There shall be attached to the Court such number of Deputy Registrars (each of whom is hereinafter referred to as the Deputy Registrar) as may from time to time be appointed by the Governor-General.

(2) A person shall not be appointed to be Deputy Registrar unless he is a member of the Bar of Jamaica, England or Northern Ireland or a member of the Jamaica Bar or of the Faculty of Advocates of Scotland, or a Solicitor of the Supreme Court or of the Supreme Court of Judicature of England, Scotland or Northern Ireland or a Writer to the Signet of Scotland.

(3) The Deputy Registrar shall subject to the general or special directions of the Registrar assist the Registrar in the performance of the duties of Registrar, and the Deputy Registrar shall in the exercise of his office have all and singular the like authorities, powers, duties, immunities and liabilities of the Registrar.

(4) Everything by this Act or any enactment amending or incorporated with the same appointed or authorized or required to be done or signed by the Registrar may be done or signed by the Deputy Registrar and shall be as valid and effectual as if done or signed by the Registrar.

Jurisdiction
of Court
of Appeal.

9. There shall be vested in the Court of Appeal—

- (a) subject to the provisions of this Act the jurisdiction and powers of the former Court of Appeal immediately prior to the appointed day;
- (b) such other jurisdiction and powers as may be conferred upon them by this or any other enactment.

PART III. *Appellate Civil Jurisdiction*

10. Subject to the provisions of this Act and to rules of court, the Court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court in all civil proceedings, and for all purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court shall subject as aforesaid have all the power, authority and jurisdiction of the former Supreme Court prior to the commencement of the Federal Supreme Court Regulations, 1958.

Appeals
from
Supreme
Court in
civil pro-
ceedings.

11.—(1) No appeal shall lie—

Restrictions
on appeals.

- (a) from an order allowing an extension of time for appealing from a judgment or order;
- (b) from an order of a Judge giving unconditional leave to defend an action;
- (c) from the decision of the Supreme Court or of any Judge thereof where it is provided by any law that the decision is to be final;
- (d) from an order absolute for the dissolution or nullity of a 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 Judge making the order or of the Court of Appeal from an order made with the consent of the parties or as to costs only where such costs by law are left to the discretion of the court;

- (f) without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a Judge except—
- (i) where the liberty of the subject or the custody of infants is concerned;
 - (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;
 - (iv) in the case of an order on 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;
 - (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.

(2) In this section “Judge” means Judge of the Supreme Court.

Appeals
from Resi-
dent Magis-
trate's
Courts
in civil pro-
ceedings.

12.—(1) Subject to the provisions of this Act, to the provisions of the Judicature (Resident Magistrates) Act, regulating appeals from Resident Magistrates' Courts in civil proceedings, and to rules made under that Act, an appeal shall lie to the Court from any judgment, decree or order of a Resident Magistrate's Court in all civil proceedings.

(2) Notwithstanding anything to the contrary the time within which— 12/1970
S. 3.

- (a) notice of appeal may be given, or served;
- (b) security for the costs of the appeal and for the due and faithful performance of the judgment and orders of the Court of Appeal may be given;
- (c) grounds of appeal may be filed or served, in relation to appeals under this section may, upon application made in such manner as may be prescribed by rules of court, be extended by the Court at any time.

PART IV. *Appellate Criminal Jurisdiction* (*Supreme Court*)

13.—(1) A person convicted on indictment in the Supreme Court may appeal under this Act to the Court— Right of
appeal on
conviction
in the
Supreme
Court.
12/1970
S. 4 (a).

- (a) against the conviction on any ground of appeal which involves a question of law alone; and
- (b) with leave of the Court of Appeal or upon the certificate of the Judge of the Supreme Court before whom he was tried that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court or Judge aforesaid 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.

(2) This section shall apply in the case of convictions on criminal informations and coroner's inquisitions and in 12/1970
S. 4 (b).

cases where a person is dealt with by a Circuit Court as an incorrigible rogue under the Vagrancy Act as it applies in the case of convictions on indictment.

Determina-
tion of
appeals in
ordinary
cases.

14.—(1) The Court on any such appeal against conviction 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 court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, 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.

(2) Subject to the provisions of this Act the Court shall, if they allow an 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 they think 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 they think ought to have been passed, and in any other case shall dismiss the appeal.

Wrong con-
clusion on
special ver-
dict.

15. Where on the conviction of the appellant the jury have found a special verdict, and the Court consider that a wrong conclusion has been arrived at by the court before

which the appellant has been convicted on the effect of that verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

16.—(1) Where a person convicted desires to appeal under this Part to the Court or to obtain the leave of the Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within fourteen days of the date of conviction.

Time for
appealing.

(2) Such rules shall enable any convicted person to present his case in writing instead of by oral argument if he so desires and any case so presented shall be considered by the Court.

(3) Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court.

(4) For the purposes of this section, the date of conviction shall, where the court has adjourned the trial of an indictment after conviction, be the date on which the court sentences or otherwise deals with the offender.

17. The Judge of any court before which a person is convicted shall, in the case of an appeal under this Part against the conviction or against the sentence, or in the case of an application for leave to appeal under this Part, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and shall also furnish to

Judge's
notes and
report to
be furnished
on appeal.

the Registrar in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

Forms and instructions to be furnished by Registrar.

18. The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part to any person who demands the same, and to officers of the Court and of the Supreme Court, Superintendents of Adult Correctional Centres and such other officers or persons as he thinks fit, and the Superintendent of an Adult Correctional Centre shall cause those forms and instructions to be placed at the disposal of inmates desiring to appeal or to make any application under this Part and shall cause any such notice given by an inmate in his custody to be forwarded on behalf of the inmate to the Registrar.

Custody of documents and exhibits.

19. Any documents, exhibits or other things connected with the proceedings on the trial of any person who, if convicted, is entitled or may be given leave to appeal under this Part shall be kept in the custody of the court of trial in accordance with rules of court made for the purpose, for such time as may be provided by rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits or things from that custody.

20. *[Repealed by Act 36 of 1997, S. 29.]*

21.—(1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, on the hearing of his appeal but, on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, shall not be entitled to be present, except where rules of court provide that he shall have the right to be present, or where the Court give him leave to be present.

Right of appellant to be present at hearing of appeal.

(2) The power of the Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

PART IVA. *Appellate Criminal Jurisdiction in matters concerning writ of habeas corpus and prerogative orders*

17/1991
S. 2.

21A.—(1) An appeal shall lie to the Court—

- (a) in any proceedings upon application for a writ of *habeas corpus* in a criminal cause or matter against the refusal to grant the writ;
- (b) in any proceedings upon an application for an order of certiorari, mandamus or prohibition, in a criminal cause or matter, against the grant of the order as well as against the refusal of such an order.

Appeals in *habeas corpus* proceedings and in relation to prerogative orders.

(2) For the purpose of disposing of an appeal under this section the Court may exercise any powers of the court below or remit the case to that court.

(3) The decision of the Court in any appeal under this Part shall be final.

(4) Nothing in this Part shall affect the provisions of Part III in so far as they confer a right of appeal in civil proceedings upon any application in matters in relation to which a right of appeal is conferred by this Part.

(5) In this section “writ of *habeas corpus*” means a writ of *habeas corpus ad subjiciendum*.”

PART V. *Appellate Criminal Jurisdiction* (*Resident Magistrates' Courts*)

Appeals
from Resi-
dent Magis-
trates in
criminal pro-
ceedings.

22. Subject to the provisions of this Act, to the provisions of the Judicature (Resident Magistrates) Act regulating appeals from Resident Magistrates in criminal proceedings and to rules made under that Act, an appeal shall lie to the Court from any judgment of a Resident Magistrate in any case tried by him on indictment, or on information in virtue of special statutory summary jurisdiction.

Powers and
authorities
of Court of
Appeal.

23. On appeals under this Part the Court shall have and may exercise the powers and authorities conferred on the Court by subsection (3) of section 14.

PART VI. *General Provisions Relating to* *Criminal Appeals*

Powers of
Court in
special
cases.

24.—(1) If it appears to the Court 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 judgment or 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 Resident Magistrate or jury could on the indictment have found him guilty of some other offence, and on the finding of the Resident Magistrate or jury it appears to the Court that the Resident Magistrate 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 found by the Resident Magistrate 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 in the indictment 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 sentence passed at the trial and order the appellant to be kept in custody as a criminal lunatic under subsection (2) of section 25 of the Criminal Justice (Administration) Act, in the same manner as if a special verdict had been found by a Resident Magistrate or jury under that Act.

25. For the purpose of an appeal under Part IV or Part V, notwithstanding anything to the contrary, a special verdict found by a jury or Resident Magistrate under subsection (2) of section 25 of the Criminal Justice (Adminis-

Appeals
from
special
verdict of
guilty but
insane.
12/1970
S. 5.

tration) Act shall be deemed to be a conviction of the person in relation to whom such verdict is found, so, however, that in so far as such verdict relates to the insanity of such person, no appeal shall lie from such verdict if at the trial of such person evidence was given by him or on his behalf that he was insane so as not to be responsible according to law for his actions at the time of the act or omission charged against him as an offence.

Revesting
and restitu-
tion of
property on
conviction.

26.—(1) The operation of any order for the restitution of any property to any person made on a conviction, and the operation in case of any such conviction, of the provisions of subsection (1) of section 24 of the Sale of Goods Act, as to the revesting of the property in stolen goods on conviction, shall (unless the court before which the conviction takes place direct to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended—

- (a) in any case until the expiration of fourteen days after the date of the conviction; and
- (b) in cases where notice of appeal, or of application for leave to appeal, is given within fourteen days after the date of conviction, until the determination of the appeal, or where an application for leave to appeal is finally refused, of the application,

and in cases where the operation of any such order, or the operation 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.

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

(3) The Court of Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

27. In the case of a conviction involving sentence of death or 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 an 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, where an application for leave to appeal is finally refused, of the application.

28. For the purposes of Part IV and Part V, the Court may, if they think it necessary or expedient in the interest of justice—

Supple-
mental
powers of
Court.

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case; and
- (b) if they think fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any Judge of the Court or before any officer of the Court or justice or other person appointed by the Court for the purpose, and allow the ad-

mission of any depositions so taken as evidence before the Court; and

- (c) if they think fit receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not 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 an application; and
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, 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 act upon the report of any such commissioner so far as they think fit to adopt it; and
- (e) appoint any person with special expert knowledge to act as 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,

and 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 orders or sentence of the Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

29.—(1) The Governor-General on the consideration of any petition for the exercise of Her Majesty's mercy or of any representation made by any other person having reference to the conviction of a person on indictment or as otherwise referred to in subsection (2) of section 13 or by a Resident Magistrate in virtue of his special statutory summary jurisdiction or to the sentence (other than sentence of death) passed on a person so convicted, may, if he thinks fit at any time, either—

Reference
of case by
Governor-
General.
12/1970
S. 6.

- (a) refer the whole case to the Court and the case shall then be heard and determined by the Court as in the case of an appeal by a person convicted; or
- (b) if he desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, refer that point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Privy Council with their opinion thereon.

(2) In the exercise of the powers conferred on him by this section the Governor-General shall act—

- (a) on the recommendation of the Privy Council; or
- (b) where in his judgment the matter is too urgent to admit of such recommendation being obtained by the time within which it may be necessary for him to act, in his discretion.

30.—(1) On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under Part IV or Part V no costs shall be allowed on either side.

Costs of
appeal.

(2) The fees under section 20 or under the Legal Aid Act, of any solicitor or counsel assigned to an appellant, and the expenses of any witness attending on the order of the Court or examined in any proceedings incidental to the appeal, and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Court for the purpose, or any reference of a question to a special commissioner appointed by the Court, or of any person appointed as assessor to the Court shall be defrayed from the Consolidated Fund, up to an amount allowed by the Court, but subject to any rules of court as to rates and scales of payment and in the manner expressed by such rules of court.

5/2003
S. 2.

(3) Subject to subsections (1) and (2), the provisions of any other enactment and to rules of court, the costs of and incidental to all civil proceedings in the Court shall be in the discretion of the Court.

5/2003
S. 2.

(4) Without prejudice to any general power to make rules of court, the Rules Committee of the Supreme Court may make provision for regulating matters relating to the costs of civil proceedings including, in particular prescribing—

- (a) scales of costs to be paid as between party and party;
- (b) the circumstances in which a person may be ordered to pay the costs of any other person; and
- (c) the manner in which the amount of any costs payable to the person or to any attorney shall be determined.

(5) Subject to the rules made under subsection (4), the Court may determine by whom and to what extent the costs are to be paid.

5/2003
S. 2.

(6) In any proceedings mentioned in subsection (1), the Court may disallow, or (as the case may be) order the attorney-at-law concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

5/2003
S. 2.

(7) In subsection (6) “wasted costs” means any costs incurred by a party—

5/2003
S. 2.

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any attorney-at-law or any employee of the attorney-at-law; or

(b) which, in the light of any such act or omission occurring after they were incurred, the Court considers it is unreasonable to expect that party to pay.

Release of
appellant on
bail, and
custody
when at-
tending
Court of
Appeal.
19/2000
S. 23.

31.—(1) An appellant who is not granted bail shall, pending the determination of his appeal, be treated in such manner as may be directed by rules under the Corrections Act.

(2) The Court of Appeal may, if it seems fit, on the application of an appellant, grant bail to the appellant in accordance with the Bail Act pending the determination of his appeal.

19/2000
S. 23.

(3) The time during which an appellant, pending the determination of his appeal, is released on bail, and subject to any directions which the Court of Appeal may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated as an appellant under his section, shall not count as part of any term of imprisonment under his sentence, and, in the case of an appeal under this Act, any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court of Appeal shall, subject to any directions which may be given by the Court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on

42/1969
3rd Sch.

9/1985
S. 85.

which he is received into a correctional institution under the sentence.

(3A) The Court of Appeal in considering whether to give directions as to the date on which sentence shall be deemed to be resumed or to begin to run pursuant to subsection (3) shall take into account any election made by the appellant under rules under the Corrections Act to forego any special treatment accorded to the appellant pursuant to those rules.

(4) Where a case is stated under the Criminal Justice (Administration) Act, this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant.

(5) Provision shall be made by rules under the Corrections Act for the manner in which an appellant when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Act, or to any place to which the Court or any Judge thereof may order him to be taken for the purpose of any proceedings of that Court, and for the manner in which he is to be kept in custody while absent from a correctional institution for the purpose; and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody.

32.—(1) Subject to subsection (2) the powers of the Court under this Act 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 to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to grant bail to an appellant and to give directions regarding computation of sentence may be exercised by any Judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions; but, if the Judge refuses an application

Powers
which may
be exercised
by a Judge
of the
Court.

9/1985
S. 85.
19/2000
S. 23.

on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court.

(2) An application for leave to appeal from a conviction involving sentence of death shall be heard and determined by the Court of Appeal.

Procedure in
Court of
Appeal.

33. All jurisdiction and authority under sections 54 to 60 inclusive of the Criminal Justice (Administration) Act, shall be vested in the Court under this Act, and in any case where a person convicted appeals under this Act, against his conviction on any ground of appeal which involves a question of law alone, the Court may, if they think fit, decide that the procedure under those sections as to the statement of a case should be followed, and require a case to be stated accordingly under those sections in the same manner as if a question of law had been reserved.

PART VII. *Appeals in Contempt Proceedings*

Appeals
from orders
in contempt
proceedings.

34.—(1) An appeal shall lie to the Court from any order made by the Supreme Court or by a Judge of the Supreme Court or of the Court of Appeal or by a Resident Magistrate imposing imprisonment or a fine for contempt of Court.

(2) Any person ordered by any such Court, Judge or Resident Magistrate to be imprisoned or to pay a fine for contempt of Court, may at the time of such order or within two days thereafter give notice to the Court, Judge or Resident Magistrate making the order of his intention to appeal to the Court of Appeal and may within two days after giving such notice enter into a recognizance with a surety to the satisfaction of the Registrar of the Supreme Court or of the Court of Appeal or clerk of the court, as the case may be, in a sum not exceeding forty dollars to prosecute such appeal, and the giving of such notice and

entering into such recognizance shall operate as a stay of such order.

(3) On such person entering into recognizance the Judge or Resident Magistrate making the order shall within twenty-one days thereafter transmit to the Registrar a statement of the cause of such committal or fine and upon such statement being received the Registrar shall within four days thereafter issue a summons, free of cost, calling on the appellant to appear before the Court within a reasonable time thereafter and on a day to be named therein and the Court shall hear and determine such appeal and either confirm the order or vary or quash such order and the Court may from time to time return the proceedings to the Judge or Resident Magistrate who made the order for further information.

(4) When the Court confirms or varies the order the Judge or Resident Magistrate who made the order shall proceed to carry out and enforce his order as confirmed or varied in the same manner as if there had been no appeal against the same.

PART VIII. *Appeals to Her Majesty in Council (Criminal Jurisdiction)*

35. The Director of Public Prosecutions, the prosecutor or the defendant may, with the leave of the Court appeal to Her Majesty in Council from any decision of the Court given by virtue of the provisions of Part IV, V or VI where in the opinion of the Court, the decision involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought.

Appeals
to Her
Majesty
in Council
in criminal
cases.
12/1970
S. 7.

JAMAICA

No. 28 – 2015

I assent,



P. C. Allen

Governor-General.

27th day of November 2015

AN ACT to Amend the Judicature (Appellate Jurisdiction) Act to make provision, in limited circumstances, for the appeal against a sentence that is fixed by law.

[30th day of November 2015]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Judicature (Appellate Jurisdiction) (Amendment) Act, 2015, and shall be read and construed as one with the Judicature (Appellate Jurisdiction) Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title
and
construction.

Amendment
of section 13
of principal
Act.

2. Section 13 of the principal Act is amended by inserting next after subsection (1), the following new subsections as subsections (1A) and (1B), respectively—

“ (1A) Notwithstanding subsection (1) (c), a person who is convicted on indictment in the Supreme Court may appeal under this Act to the Court with leave of the Court of Appeal against the sentence passed on his conviction where the sentence was fixed by law, in the event that the person has been sentenced to a prescribed minimum penalty in the circumstances provided in—

(a) section 42K of the *Criminal Justice (Administration) Act*, and has, pursuant to that section, been issued with a certificate by the Supreme Court to seek leave to appeal to the Court of Appeal against his sentence; or

(b) section 42L of the *Criminal Justice Administration Act*.

(1B) For the purposes of subsection (1A), the reference to “Supreme Court” shall include the High Court Division and the Circuit Court Division of the Gun Court established under the *Gun Court Act*.”.

Passed in the Senate this 5th day of June, 2015.

FLOYD E. MORRIS,
President.

Passed in the House of Representatives this 3rd day of November, 2015
with one (1) amendment.

MICHAEL A. PEART
Speaker

On the 5th day of November, 2015 the Senate agreed to the amendment made by the House of Representatives.

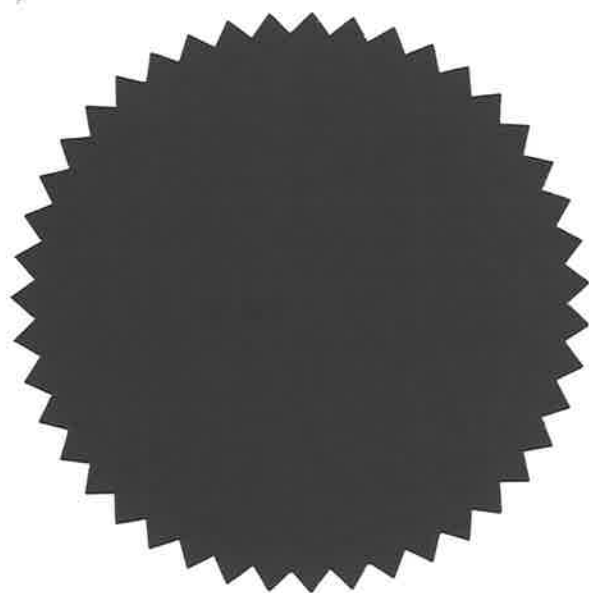
FLOYD E. MORRIS
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Sgd. Heather E. Cooke
Clerk to the Houses of Parliament.

JAMAICA

No. 20 – 2021



I assent,

P. L. Allen

Governor-General.

2nd day of November 2021

AN ACT to Amend the Judicature (Appellate Jurisdiction) Act.

[2nd day of November 2021]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Judicature (Appellate Jurisdiction) (Amendment) Act, 2021, and shall be read and construed as one with the Judicature (Appellate Jurisdiction) Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

Insertion of
new section
18A in
principal Act.

2. The principal Act is amended by inserting next after section 18 the following section—

“Appeal by
prosecutor.

18A.—(1) In this section—

“administration of justice offence” means any offence of—

- (a) perverting the course of justice;
- (b) bribery or intimidation of, or interference with—

- (i) a witness, juror or judicial officer; or

- (ii) a family member of a witness juror or judicial officer (and “family member” in this subparagraph includes a relative by marriage, a relative through adoption, and a spouse as defined in the Maintenance Act);

- (c) perjury,

and for the avoidance of doubt, includes aiding, abetting, or conspiring, in any offence specified in paragraph (a), (b) or (c);

“judicial officer” means—

- (a) a Judge of the Supreme Court or Court of Appeal;
- (b) a Master of the Supreme Court;
- (c) the Registrar of the Court of Appeal, Supreme Court or Revenue Court;
- (d) a Deputy Registrar of the Court of Appeal, Supreme Court or Revenue Court;

- (e) a Judge of a Parish Court; or
- (f) a prosecutor;

“prosecutor”, in relation to a case, means—

- (a) the Director of Public Prosecutions, an attorney-at-law employed in the office of the Director of Public Prosecutions, or an attorney-at-law to whom the Director of Public Prosecutions has granted a fiat to prosecute the case;
- (b) a Clerk of the Courts;
- (c) the Director of Corruption Prosecutions, appointed under the Integrity Commission Act, or an attorney-at-law pursuant to an instrument of delegation under section 34(6) of that Act;
- (d) the Director-General of the Major Organized Crime and Anti-Corruption Agency, appointed under the Major Organized Crime and Anti-Corruption Agency Act, or a prosecuting officer appointed under section 19 of that Act; or
- (e) a person who has initiated a private prosecution of the case;

“Supreme Court” includes the High Court Division and the Circuit Court Division of the Gun Court established under the Gun Court Act.

(2) Subject to subsections (4) and (5), in any case tried on indictment in the Supreme Court, the prosecutor may appeal to the Court of Appeal against—

- (a) a decision of a Judge of the Supreme Court—
 - (i) on any point of law; or

- (ii) on the ground that there has been an administration of justice offence,

where the decision results in an acquittal, the quashing or staying of an indictment, the withdrawal of a case from a jury, the upholding of a no-case submission, or any other termination of the case without a verdict of conviction; or

- (b) sentence imposed by the Supreme Court on conviction, if the appeal is on the grounds that—

- (i) the Supreme Court did not have the power to impose the sentence; or
- (ii) the sentence imposed is manifestly inadequate or unduly lenient (unless the sentence imposed is the maximum sentence permitted under the applicable laws).

(3) Where a prosecutor intends to appeal under subsection (2), or to obtain the leave of the Court to do so, the prosecutor shall give notice thereof, in such manner as may be directed by rules of court, within fourteen days after the date of the decision or sentence (as the case may be) or such longer period as the Court may allow.

(4) Leave of the Court—

- (a) is not required for an appeal under subsection (2)(a)(i) or (2)(b)(i);
- (b) is required for an appeal under subsection 2(a)(ii) or (2)(b)(ii).

(5) An appeal under subsection (2) in any case where the Director of Public Prosecutions is not the prosecutor may only be made with the consent of the Director of Public Prosecutions, and the Director of Public Prosecutions may give consent to the making of the appeal if the Director of Public Prosecutions is satisfied—

- (a) in the case of a decision referred to in subsection (2)(a)(i), that the appeal is warranted;
- (b) in the case of a decision referred to in sub-paragraph (ii) of subsection (2)(a), as to the ground specified in that sub-paragraph; or
- (c) in the case of a decision referred to in paragraph (b) of subsection (2), as to the ground specified in sub-paragraph (i) or (ii) of that paragraph.

(6) The Court may grant an application for leave to appeal under subsection (2)(a)(ii) if the Court is satisfied that—

- (a) but for the commission of the administration of justice offence, it is more likely than not that the accused person would have been convicted of the offence charged in the proceedings in which the decision sought to be appealed was made;
- (b) there has not been a lapse of time greater than twelve months after the date of the decision that is the subject of the appeal, or any other factor that would make it contrary to the interests of justice to permit the appeal to be made by the prosecutor; and

- (c) the respondent has been given a reasonable opportunity to make written representation to the Court of Appeal in connection with the application for leave to appeal,

and the Court may, in any case where such leave is granted, proceed to hear the matter accordingly.

(7) The Court may grant an application for leave to appeal under subsection (2)(b)(ii) if the Court is satisfied that the sentence concerned is materially less than the generally expected and accepted level of sentence for the offence committed, having regard to the sentencing guidelines (if any) applicable to the offence, and the circumstances surrounding the offence.

(8) Upon hearing an appeal under this section, the Court may—

- (a) in the case of an appeal against sentence—
 - (i) quash the sentence imposed by the trial court and substitute such sentence as the Court considers appropriate; or
 - (ii) affirm the sentence of the trial court and dismiss the appeal;
- (b) in the case of any decision referred to in subsection (2)(a)—
 - (i) quash the decision and substitute such other decision as the Court considers appropriate; or

- (ii) affirm the decision and dismiss the appeal,

but where a decision to acquit is quashed, the Court shall not substitute a guilty verdict but shall order a re-trial of the case.

(9) Where, under this section—

- (a) an application for leave to appeal is granted, the Court shall hear the appeal within twelve months after the date on which the application was made;
- (b) an appeal is brought in any case where leave to appeal is not required, the Court shall hear the appeal within twelve months after the date on which the appeal is brought; or
- (c) on an appeal, the Court orders a re-trial of the case, the re-trial shall commence within six months after the date on which the order for re-trial is made.”.

3. Section 19 of the principal Act is amended by deleting the words “the trial of any person who, if convicted, is entitled or may be given leave to, appeal” and substitute therefor the words “a trial in respect of which a right of appeal is given to a person, if convicted, or to the prosecutor”.

Amendment
of section 19
of principal
Act.

4. Section 21 of the principal Act is amended in subsection (1) by deleting the words “his appeal” and substituting therefor the words “any appeal in respect of the person’s conviction or against any decision referred to in section 18A”.

Amendment
of section 21
of principal
Act.

Insertion of
new Part VA^a
in principal
Act.

5. The principal Act is amended by inserting next after Part V the following Part—

“

PART VA.—*References on Points of Law or
of Mixed Law and Fact*

Reference by
prosecutor.

23A.—(1) Where an accused person tried on—

- (a) indictment; or
- (b) information before a Judge of a Parish Court by virtue of a special statutory summary jurisdiction,

has been acquitted, whether in respect of the whole or part of the indictment or information, and the prosecutor desires the opinion of the Court on—

- (i) any point of law; or
- (ii) any point of mixed law and fact;

that has arisen in the case, the prosecutor may refer that point to the Court and the Court shall, in accordance with this section, consider the point and give its opinion thereon.

(2) Where in any criminal proceeding—

- (a) an accused person has been discharged on the grounds that—
 - (i) there is no case to answer;
 - (ii) the proceedings have been stayed as an abuse of process; or
 - (iii) a ruling has been issued that would otherwise have the effect of terminating the trial; and

- (b) the prosecutor desires the opinion of the Court on a point of law, or any point of mixed law and fact,

the prosecutor may refer that point to the Court and the Court shall, in accordance with this section, consider the point and give its opinion thereon.

(3) For the purpose of considering any point referred to it under this section, the Court shall hear argument by—

- (a) the prosecutor; and
- (b) in any case where the accused person desires to present argument to the Court in respect of the point, counsel for the accused person or, with the leave of the Court, the accused person himself.

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

(5) In this section “prosecutor” has the meaning assigned to it in section 18A.”.

6.—(1) Section 15 of the Legal Aid Act is amended—

Amendments
to other
enactments.

(a) in subsection (1) by—

- (i) deleting the word “or” at the end of paragraph (a);
- (ii) deleting the comma at the end of paragraph (b) and substituting therefor a semi-colon and the word “or”; and
- (iii) inserting the following as paragraph (c)—
 - “(c) a respondent on any criminal appeal, under the Judicature (Appellate Jurisdiction) Act or the Judicature (Parish Court) Act, by a prosecutor.”;

- (b) in subsection (4)(a), (b) and (c), by deleting in each case the words “from conviction”.

(2) The Criminal Justice (Administration) Act is amended—

- (a) in section 7 by deleting the words “In any plea” and substituting therefor the words “Subject to section 7A, in any plea”;
- (b) by inserting next after section 7 the following section—

~~“Re-trial on acquittal in certain circumstances.~~ 7A.—(1) This section applies in any case where a person (“the defendant”) has been acquitted of an offence in proceedings—

- (a) on indictment;
- (b) on information by virtue of the special statutory summary jurisdiction of a Judge of a Parish Court; or
- (c) on appeal against a conviction, or on appeal from a decision on such appeal.

(2) An application may be made to the Court of Appeal for the re-trial of the case, on the grounds that—

- (a) there is new and compelling evidence in the case; and
- (b) it is in the interest of justice for the case to be re-tried.

(3) An application under subsection (2) may be made by—

- (a) the Director of Public Prosecutions, in any case where the Director of Public Prosecutions is the prosecutor; or

(b) in any other case, by the prosecutor only with the consent of the Director of Public Prosecutions.

(4) The Director of Public Prosecutions may give consent to the prosecutor to proceed under subsection (3)(b) if the Director of Public Prosecutions is satisfied as to the grounds specified in subsection (2)(a) and (b).

(5) No more than one application may be made under subsection (2) in relation to an acquittal.

(6) On an application under subsection (2), the Court of Appeal shall make the order for re-trial if the Court is satisfied that the grounds specified in subsection (2)(a) and (b) are met.

(7) For the purposes of this section—

(a) evidence is new and compelling if—

(i) it was not adduced in the proceedings in which the defendant was acquitted nor, if those were appeal proceedings, in earlier proceedings to which the appeal related;

(ii) it is reliable;

(iii) it is substantial; and

- (iv) in the context of the issues in dispute in the proceedings, it appears highly probative of the case against the defendant,

and for the purposes of this section it is irrelevant whether the evidence would have been admissible in earlier proceedings against the defendant;

- (b) the question whether it is in the interest of justice for a case to be re-tried shall be determined having regard in particular to—

- (i) whether existing circumstances make a fair trial unlikely;
- (ii) the length of time since the offence was committed;
- (iii) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the defendant but for a failure by the prosecutor, or any person having duties in relation to the investigation of the alleged offence, to act with due diligence or expedition in relation to the matter; and

(iv) whether, since those proceedings or, if later, since the coming into operation of this section, any prosecutor or any person having duties in relation to the investigation of the alleged offence has failed to act with due diligence or expedition in relation to the matter;

(c) “prosecutor”, in relation to a case, means—

- (i) the Director of Public Prosecutions, an attorney-at-law employed in the office of the Director of Public Prosecutions or an attorney-at-law to whom the Director of Public Prosecutions has granted a fiat to prosecute the case;
- (ii) a Clerk of the Courts;
- (iii) the Director of Corruption Prosecutions, appointed under the

Integrity Commission Act, or an attorney-at-law pursuant to an instrument of delegation under section 34(6) of that Act;

- (iv) the Director-General of the Major Organized Crime and Anti-Corruption Agency, appointed under the Major Organized Crime and Anti-Corruption Agency Act, or a prosecuting officer appointed under section 19 of that Act; or
- (v) a person who has initiated a private prosecution of the case.

(8) A prosecutor who wishes to make an application under this section shall give notice of the application to—

- (a) the Court of Appeal; and
- (b) the defendant, not more than two days after service of the notice under paragraph (a), or such longer time as the Court of Appeal may allow on application by the prosecutor.

(9) The Court of Appeal shall hear an application under this section and—

- (a) the defendant is entitled to be present at the hearing and, whether present or not, is entitled to be represented at the hearing;
- (b) the Court of Appeal may for the purpose of hearing the application—
 - (i) order the production of any document, exhibit or any other thing, the production of which the Court considers necessary for determining the application; and
 - (ii) order any witness, who would be a compellable witness in proceedings pursuant to an order or declaration made on the application, to attend for examination and be examined before the Court; and
- (c) the Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

(10) The following provisions apply where a person is to be re-tried pursuant to an order made under this section—

- (a) the trial shall be on an indictment preferred by the prosecutor on the direction of the Court of Appeal;
- (b) the trial court shall fix a date for the re-trial, being a date falling not more than two months after the date of the order; and
- (c) evidence given at the re-trial shall be given orally if it was given orally at the original trial, unless—
 - (i) all the parties to the re-trial agree otherwise; or
 - (ii) the evidence is admissible other than orally, under another provision of any law.”.

Passed in the Honourable House of Representatives this 21st day of July, 2021 with twelve (12) amendments.

M. DALRYMPLE PHILIBERT, CD, MP
Speaker.

*The Judicature (Appellate Jurisdiction)
(Amendment) Act, 2021*

[No.] 17

Passed in the Senate this 8th day of October, 2021.

THOMAS TAVARES-FINSON, OJ, CD, QC, JP
President.

*This printed impression has been carefully
compared by me with the Bill which has passed
the House of Representatives and Senate, and has
been found by me to be a true and correct printed
copy of the said Bill.*



Clerk to the Houses of Parliament.

