

THE OFFICIAL GAZETTE 11TH JULY, 2008

LEGAL SUPPLEMENT – C

BILL No. 12 of 2008

Friday 11th July, 2008

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

11th July, 2008.

The following Bill which will be introduced in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 12 OF 2008

COURT OF APPEAL (AMENDMENT) BILL 2008

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Insertion of new Part IIIA in the Principal Act.

A BILL**Intituled**

AN ACT to amend the Court of Appeal Act to provide for appeals by the Director of Public Prosecutions to the Court of Appeal and the Caribbean Court of Justice and for connected matters.

A.D.2008 Enacted by the Parliament of Guyana:-

Short title. 1. This Act, which amends the Court of Appeal Act, may be cited as the
Cap. 3:01 Court of Appeal (Amendment) Act 2008.

Insertion of 2. The Principal Act is amended by inserting immediately after section 34
new Part III A the following Part –

in the Principal
Act.

“ PART III A

APPEALS BY THE DIRECTOR OF PUBLIC PROSECUTIONS

Definition. 34A. In this Part “respondent” means the person
whose acquittal or whose sentence is the subject of an
appeal by the Director of Public Prosecutions.

Right of 34B. (1) Notwithstanding section 33, the Director of
Director of Public Prosecutions may appeal under this Part to the
Public Court of Appeal –
Prosecutions
to appeal.

(a) against a judgment or verdict of acquittal
of an accused person in proceedings by
indictment in the High Court when the

judgment or verdict is the result of –

- (i) a decision by the trial judge to uphold a submission that there is no case to answer or withdraw the case from the jury, on any ground of appeal which involves a question law or evidence;
 - (ii) a decision by the trial judge to uphold a submission that there is a defect in the depositions or the committal of the accused person for trial or the indictment;
 - (iii) a decision by the trial judge to exclude material evidence sought to be adduced by the prosecution;
 - (iv) the trial judge's substantial misdirection of the jury in the course of the judge's summation on the law or facts or on a mixed question of law or fact; or
 - (v) a material irregularity in the trial.
- (b) against the sentence passed on a person convicted by the High Court in proceedings by indictment, on the ground that –

- (i) the sentence is one which the Court had no power to pass;
- (ii) the sentence is manifestly inadequate; or
- (iii) the sentence is wrong in principle.

(2) For the purposes of this section a judgment or verdict of acquittal includes an acquittal in respect of an offence specifically charged notwithstanding that the accused has on the trial been convicted of another offence.

Procedure
and time for
appealing.

34C. (1) Where the Director of Public Prosecutions elects to appeal to the Court of Appeal against a verdict of acquittal or sentence the Director of Public Prosecutions shall, before the trial judge discharges the accused person or orders otherwise, serve on the Court a notice of intention to appeal and inform the Court orally of the intention to appeal against the verdict of the Court.

(2) The Director of Public Prosecutions, after notifying the Court in accordance with subsection (1), shall file with the Court a notice of appeal and the grounds of appeal within fourteen days of the date of the ~~verdict of~~ acquittal or sentence ~~passed~~.

(3) The Court of Appeal or a judge of the court may at any time extend the time within which notice of appeal may be given.

(4) An appeal made under this section shall have the effect of suspending the execution of the decision, judgment or other order appealed from until the final determination by the appeal proceedings, except that the court may, having regard to the gravity of the offence, release the accused on bail on conditions that shall ensure that the accused attend the appeal proceedings and abide by the results of the proceedings.

(5) The right of appeal conferred on the Director of Public Prosecutions by section 34B shall be limited to the following offences –

- (a) murder;
- (b) treason;
- (c) manslaughter;
- (d) rape, defilement and other sexual offences;
- (e) piracy, hijacking;
- (f) money laundering;
- (g) robbery;
- (h) drug offences;
- (i) burglary;

- (j) housebreaking;
- (k) theft;
- (l) offences involving dishonesty;
- (m) firearms offences;
- (n) conspiracies and attempts to commit the offences referred to in paragraphs (a) to (k);
- (o) aiding and abetting a person who commits the offences referred to in paragraphs (a) to (o).

(6) The Minister responsible for Legal Affairs may by order, subject to affirmative resolution of the National Assembly, amend subsection (5) by adding to or deleting from it an offence.

Power of
Court on
appeal from
acquittal.

34D. On an appeal from an acquittal the Court of Appeal may –

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the verdict, and order a new trial.

Power of
Court on
appeal
against
sentence by
the Director

34E. Where an appeal brought by the Director of Public Prosecutions is against the sentence, the Court of Appeal shall consider the adequacy of the sentence appealed against, and may, on evidence as it thinks fit to require or receive –

of Public
Prosecutions.

(a) vary the sentence, within the limits prescribed by law, for the offence of which the accused was convicted; or

(b) dismiss the appeal.

Judge's
notes and
report.

34F. (1) Where, under this Part, an appeal is lodged, the judge who presided at the trial shall furnish to the Registrar of the Supreme Court, in accordance with Rules of Court, the judge's notes of the trial, a report giving the judge's opinion on the case or on any point arising in the case.

(2) The Registrar shall furnish to the Court of Appeal, together with the judges notes and report, a copy or transcript of -

(a) the evidence taken at the trial;

(b) the charge to the jury, if any, and the reasons for judgment, if any, except in so far as it is dispensed with by order of a judge of that court.

(3) A copy of the judge's charge to the jury, if any, and any objections that were made to it shall, before the copy or transcript is transmitted to the Court of Appeal pursuant to subsection (2), be submitted to the judge who presided at the trial, and if the judge refuses to certify that the charge and objections are accurately set out, the judge shall immediately certify to the Court of Appeal -

- (a) the reasons for the judge's refusal; and
- (b) the charge that was given to the jury, if any, and any objections that were made to it.

(4) A party to the appeal is entitled to receive upon payment of the charges as may be fixed by Rules of Court a copy or transcript of any material that is prepared under subsections (1), (2) and (3).

Right of
respondent
to be present.

34G. (1) Notwithstanding that a respondent is in custody, the respondent shall, on the hearing of an appeal under this Part, be entitled to be present in court if the respondent so desires, except where the appeal is on a ground involving a question of law alone.

(2) On any proceedings preliminary or incidental to an appeal, a respondent shall not be entitled to be present, except where Rules of Court otherwise provide, or where the court gives the respondent leave to be present.

(3) The power of the Court of Appeal to make an order under this Part may be exercised notwithstanding that the respondent is for any reason not present.

Legal
assistance to
respondent.

34H. The Court of Appeal may at any time assign to a respondent an Attorney-at-law, in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the court, it appears desirable in the interest of justice that the respondent should have legal

aid, and that the respondent has not sufficient means to obtain that aid.

Costs of
appeal.

34I. On the hearing and determination of an appeal or any proceedings preliminary or incidental to an appeal under this Part, the court shall not make any order as to costs on either side.

Duties of
Registrar.

34J. (1) The Registrar shall take all necessary steps for obtaining a hearing under this Part of any appeals, notice of which is given to the Registrar under this Act, 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 respondent was tried which appear necessary for the proper determination of the appeal.

(2) If it appears to the Registrar that a notice of appeal against an acquittal, which purports to be on a ground of appeal that involves a question of law alone, does not show a substantial ground of appeal, the Registrar may refer the appeal to the Court of Appeal for summary determination, and, where the case is so referred, the Court of Appeal may, if it considers that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing.

(3) Any documents, exhibits, or other things required in connection with an appeal under this Part shall

be kept in custody of the Court of trial in accordance with Rules of Court made for the purpose, for such time as may be provided by the 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.

(4) Where a person named as a respondent in a notice of appeal made under this Part is in prison, all documents relating to the notice shall be served on that person in the prison.

(5) The Registrar shall report to the Court of Appeal or a judge of that court any case in which it appears to the Registrar that, although no application has been made for the purpose, an Attorney-at-law ought to be assigned to a respondent under the powers given to that court by this Part.

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

34K. The powers of the Court of Appeal under this Part –

- (a) to extend the time within which notice of appeal may be given;
- (b) to assign legal aid to a respondent; or
- (c) to allow the respondent to be present at any proceedings in cases where the respondent is not entitled to be present without leave,

may be exercised by any judge of the Court of Appeal in the same manner as they may be exercised by the Court of Appeal, and subject to the same provisions; but, if the judge refuses an application of the respondent to exercise any of the power in the respondent's favour, the respondent shall be entitled to have the application determined by the court as duly constituted for the hearing and determining of appeals under this Act.

Appeals
to the
Caribbean
Court of
Justice.

34L. An appeal from a decision of the Court of Appeal under this Part shall lie to the Caribbean Court of Justice as of right.

Sections 11
to 34 to
apply.

34M. Where this Part does not make provision for any of the matters provided for in sections 11 to 34, those sections, in relation to those matters in so far as they are applicable to this Part, as suitably modified, shall apply. "

This Bill amends the Court of Appeal Act to provide for appeals by the Director of Public Prosecutions (DPP) to the Court of Appeal and the Caribbean Court of Justice.

Clause 2 of the Bill inserts in the Act a new Part III A containing thirteen sections (34A to 34M) which set out in full how the DPP is to proceed in appealing in criminal matters.

The inserted section 34A defines respondent to mean the person whose acquittal or sentence is the subject of an appeal by the DPP.

Section 34B spells out the right of the DPP to appeal against a judgment or verdict of acquittal when that judgment is the result of a decision by the trial judge to uphold a submission, a decision by the trial judge to exclude material evidence sought to be adduced by the prosecution, the trial judge's substantial misdirection of the jury in his summation on the law or facts or on mixed question of law or fact or a material irregularity in the trial. The DPP may also appeal against the sentence passed on a person by the High Court in certain circumstances.

Section 34C sets out the procedure and time for appealing against a verdict of acquittal or sentence. The DPP shall inform the Court orally that he intends to appeal against the verdict of the Court. A filing of notice of appeal by the DPP has the effect of suspending the execution of the decision, judgment or other order appealed from until the appeal is determined. Subsection (5) tabulates the offences in respect of which the DPP may apply.

Section 34D empowers the Court of Appeal on an appeal to dismiss or allow the appeal or set aside the verdict and order a new trial.

Section 34E sets out the power of the Court of Appeal in an appeal against sentence by the DPP. The Court of Appeal may vary the sentence or dismiss the appeal.

Section 34F deals with the judge's notes and report. The Registrar shall furnish to the Court of Appeal together with the judge's notes and report a copy of evidence taken at the trial and the charge to the jury and the reasons for judgment, if any. A party to the appeal is entitled on payment of charges to receive a copy or transcript of any material that is submitted under subsections (1), (2) and (3).

Section 34G gives the respondent the right to be present on the hearing of an appeal except where the appeal is on a question of law alone.

Section 34H provides the instances in which legal assistance may be given to the respondent.

Section 34I provides that the Court of Appeal shall not make any order as to cost on either side on the hearing of an appeal.

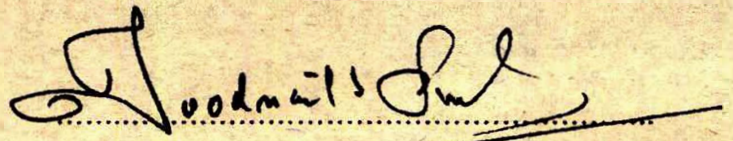
Section 34J details all necessary steps to be taken by the Registrar for obtaining a hearing.

Section 34K sets out the powers which may be exercised by a judge of the Court of Appeal.

These include power to extend time, assign legal aid to a respondent or allow the respondent to be present at any proceedings.

Section 34L provides that an appeal from the Court of Appeal shall lie to the Caribbean Court of Justice as of right.

Section 34M provides that where sections 34A to 34L do not make provision for any matters provided for in sections 11 to 34 of the Court of Appeal Act, those sections in relation to those matters in so far as they are applicable to this Part, shall apply as suitably modified.

A handwritten signature in black ink, appearing to read 'Goodman & ...', is written over a horizontal dotted line. A solid horizontal line is drawn below the dotted line.

Attorney General and Minister of Legal Affairs