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## **CHAPTER 6**

### **COURT OF APPEAL**

AN ACT FOR THE ESTABLISHMENT OF A COURT OF APPEAL AND TO MAKE PROVISIONS FOR  
APPEALS THERETO

10 of 1978  
9 of 1987

[1st December 1982]

**PART I**  
**PRELIMINARY**

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

Short title

**2.** In this Act, unless the context otherwise requires-

Interpretation

"appeal" for the purpose of Part III of this Act, includes a motion for a new trial or to set aside any decision;

"appellant" includes a person who has been convicted and desires to appeal under this Act; and where the Director of Public Prosecutions is, or is deemed to be, a party to any proceedings and desires to appeal under this Act, includes the Director of Public Prosecutions;

"Court" means the Court of Appeal;

"Court of Appeal" means the Court of Appeal established for Solomon Islands by section 85 of the Constitution;

"decision" includes an order, judgment or decree;

"High Court" means the High Court of Solomon Islands;

"President" means the President of the Court of Appeal;

"Registrar" means the Registrar of the Court of Appeal;

"sentence" includes any order of the Court made on conviction with reference to the person convicted, and any disqualification, penalty, punishment or recommendation made or imposed by the Court, and "sentenced" shall be construed accordingly.

**PART II**  
**SOLOMON ISLANDS COURT OF APPEAL**

**3.-(1)** The Court of Appeal shall be called "the Solomon Islands Court of Appeal".

Name of Court and  
general jurisdiction

**(2)** The Court shall have-

(a) power and jurisdiction to hear and determine all appeals which lie to the Court by virtue of the Constitution, this Act or of any other law for the time being in force;

(b) all such powers and jurisdiction as are or may from time to time be vested in the Court under or by virtue of the Constitution, this Act or any other law for the time being in force.

**4.** The Court of Appeal shall have and use as occasion may require a seal in accordance with section 89 of the Constitution.

Seal of Court

**5.-(1)** The judges of the Court of Appeal, other than the President, shall, as between themselves, take precedence and have seniority as the President shall from time to time determine.

Precedence and seniority

(2) In the determination of such precedence and seniority due regard shall be had to the date of appointment to, and the nature of, any judicial office held, or formerly held, by the judges respectively.

(3) In default of a determination under subsection (1) judges or retired judges of any superior court in the Commonwealth (including the High Court of Solomon Islands) shall take precedence and seniority according to the respective dates of their first appointment as puisne judges in any territory.

(4) In the absence of the President the senior member of the Court present at any proceedings thereof shall be Vice-President and shall preside; such seniority being at all times determined according to the provisions of this section.

**6.-(1)** For the purpose of hearing and determining appeals the Court of Appeal shall be summoned in accordance with directions given by the President and the Court shall be duly constituted if it consists of not less than three judges, but provision may be made by rules of court for the hearing and determining of special classes of cases by two judges of the Court of Appeal.

Number of judges

(2) Notwithstanding the provisions of the preceding subsection, the Court of Appeal shall be duly constituted if it consists of not less than two judges in any case or cases where the President is of opinion that it is impracticable to summon a Court of three judges.

(3) In all appeals and applications brought before the Court of Appeal the determination of any question shall be according to the opinion of the majority. If on the hearing of an appeal or application the Court of Appeal is equally divided the appeal or application as the case may be shall be dismissed.

**7.** The Court of Appeal shall sit at such places from time to time as the President may determine.

Sessions of Court of Appeal

**8.** The Registrar of the High Court of Solomon Islands shall be Registrar of the Court of Appeal.

Registrar of Court of Appeal

**9.** A judge of the Court of Appeal shall not sit as a judge on the hearing of an appeal from any order, judgment or decision made by himself or on the hearing of an appeal against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

Judges not to sit on appeals from their own decisions

**10.** With respect to appeals under enactments of, or in force in Solomon Islands other than this Act, the jurisdiction, powers and authorities of the Court of Appeal shall be subject to the provisions of such enactments.

Appeals under other enactments

### PART III

#### APPEALS IN CIVIL CASES

**11.-(1)** Subject to the provisions of the next succeeding subsection, an appeal shall lie under this Part of this Act in any cause or matter, not being a criminal proceeding, to the Court of Appeal-

Appeals in civil cases

(a) from any decision of the High Court sitting in first instance, including any decision of a judge in chambers;

(b) from any decision of the High Court under the provisions of the Islanders' Divorce Act; and

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(c) on any ground of appeal which involves a question of law only, from any decision of the High Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal.

(2) No appeal shall lie-

(a) from an order allowing an extension of time for appealing from a decision;

(b) from an order of a judge giving unconditional leave to defend an action;

(c) from the decision of the High Court or of any judge thereof where it is provided by any enactment that such decision is to be final;

(d) from an 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;

(e) without the leave of the Court or judge making the order, from an order of the High Court or any judge thereof made with the consent of the parties or as to costs only;

(f) without the leave of the judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge of the High Court except in the following cases, namely-

(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 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;

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(iv) in the case of a decree *nisi* in a matrimonial cause or a judgment or order in an Admiralty action determining liability;

(v) in such other cases as may be prescribed by rules of Court.

(3) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.

**12.** For all the purposes of and incidental to the hearing and determination of any appeal under this Part of this Act and the amendment, execution and enforcement of any order, judgment or decision made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the High Court of Solomon Islands and such power and authority as may be prescribed by rules of Court.

Powers of Court of  
Appeal in civil appeals

**13.** The Court of Appeal shall not grant a new trial or reverse any judgment by reason of the ruling of a court that the stamp upon any document is sufficient or that the document does not require a stamp.

Wrong ruling as to sufficiency of stamp

**14.** In addition and without prejudice to the right of appeal conferred by this Part of this Act, a judge of the High Court may reserve for consideration by the Court of Appeal, on a case to be stated by him, any question of law which may arise on the trial of any cause or matter, and may give any judgment or decision, subject to the opinion of the Court of Appeal, and the Court of Appeal shall have power to hear and determine every such question.

Power to reserve questions of law for the decision of the Court of Appeal

**15.** Subject to the provisions of the next succeeding section, the Court of Appeal shall not entertain any appeal made under the provisions of this Part of this Act unless the appellant has fulfilled all the conditions of appeal as prescribed by rules of Court.

Conditions precedent to appeal

**16.** Notwithstanding anything hereinbefore contained, the Court of Appeal may entertain an appeal made under the provisions of this Part of this Act on any terms which it thinks just.

Discretionary power of the Court of Appeal

**17.-(1)** The decision of the Court of Appeal in any proceedings under this Part of this Act or of any judge taking part in the determination of the proceedings may be delivered by or in the presence of a court constituted differently from that which heard the proceedings, and may, at the discretion of the presiding judge, be delivered by a judge who was not present at the hearing of the proceedings, or by the Registrar, in the presence of the Court as for the time being constituted.

Judgments

(2) It shall be lawful for any decision to be delivered by the effect thereof being pronounced, in such terms as the Court or judge shall think appropriate provided that the full terms of the decision shall have been reduced to writing and that a copy thereof is made available to the parties.

**18.-(1)** If, in the course of any proceedings under this Part of this Act, or in the case of a reserved judgment in any such proceedings at any time before delivery thereof, any judge taking part or having taken part in the hearing of the proceedings dies, or is unable through illness or any other cause to attend, or continue to attend, the proceedings or otherwise exercise his functions as a judge of appeal in relation thereto, the proceedings shall, if the parties consent, continue before, and, without prejudice to the provisions of the last preceding section, the judgment or reserved judgment, as the case may be, shall be given by, the remaining judges of the Court, not being less than

Continuation of civil appeal notwithstanding absence of a judge

two, and the Court as so remaining constituted shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death, absence or inability to act of such judge as aforesaid.

(2) Where, in any such case as is referred to in the preceding subsection, proceedings continue to be heard before the remaining judges, the proceedings shall be decided in accordance with the opinion of the majority of the remaining judges, and, if there is no such majority, the decision appealed against shall stand.

(3) If the parties do not consent that the proceedings should continue or that judgment should be given in accordance with the provisions of subsection (1) the appeal shall be re-heard.

**19. The powers of the Court under this Part of this Act-**

Powers of a single judge  
of appeal

(a) to give leave to appeal;

(b) to extend the time within which a notice of appeal or an application for leave to appeal may be given or within which any other matter or thing may be done;

(c) to give leave to amend a notice of appeal or respondent's notice;

(d) to give directions as to service;

(e) to admit a person to appeal in *forma pauperis*;

(f) to stay execution or make any interim order to prevent prejudice to the claims of any party pending an appeal;

(g) generally, to hear any application, make any order, or give any direction incidental to an appeal or intended appeal, not involving the decision of the appeal,

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 to exercise any such power or if any party is aggrieved by the exercise of such power, the applicant or party aggrieved shall be entitled to have the matter determined by the Court as duly constituted for the hearing and determining of appeals under this Act.



PART IV  
APPEALS IN CRIMINAL CASES

**20.** A person convicted on a trial held before the High Court of Solomon Islands may appeal under this Part of this Act to the Court of Appeal-

Right of appeal in criminal cases

(a) against his conviction on any ground of appeal which involves a question of law alone;

(b) with the leave of the Court of Appeal or upon the certificate of the judge who tried him 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 any other ground which appears to the Court to be a sufficient ground of appeal; and

(c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.

**21.-(1)** Subject to the provisions of this section, the Director of Public Prosecutions may appeal under this Part of this Act to the Court of Appeal where-

Right of appeal in case of acquittal or where sentence is manifestly inadequate  
9 of 1987, s. 2

(a) a person is tried before the High Court in the first instance and acquitted, (whether in respect of the whole or part of the indictment) on any ground of appeal which involves a question of law only; or

(b) in the opinion of the Director of Public Prosecutions the sentence imposed by the High Court is manifestly inadequate.

(2) On an appeal brought under the provisions of this section, the Court of Appeal may, if it thinks that the decision of the High Court should be set aside or varied on any ground of a wrong decision on any question of law, make such order which the High Court could have made or remit the case, together with the judgment or order to the High Court for determination whether or not by way of trial *de novo* or re-hearing, with such directions as appear to the Court of Appeal to be necessary or expedient

**22.-(1)** Any party to an appeal from a Magistrate's Court to the High Court may appeal, under this Part of this Act, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only (not including severity of sentence):

Appeals from High Court in its appellate, etc., jurisdiction in criminal cases

Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a Magistrate's Court.

(2) For the purposes of this section, a decision of the High Court in the exercise of its revisional jurisdiction or on a case stated, under the provisions of the Criminal Procedure Code, shall be deemed to be a decision of the High Court in such appellate jurisdiction as aforesaid.

(3) On any appeal brought under the provisions of this section, the Court of Appeal may, if it thinks that the decision of the Magistrate's Court or of the High Court should be set aside or varied on the ground of a wrong decision on any question of law, make any order which the Magistrate's Court or the High Court could have made, or may remit the case, together with its judgment or order thereon, to the Magistrate's Court or to the High Court for determination, whether or not by way of trial *de novo* or re-hearing, with such directions as the Court of Appeal may think necessary:

Provided that, in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against, it shall not (save as provided in the next succeeding subsection) increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the Magistrate's Court or by the High Court, unless the Court of Appeal thinks that such sentence was an unlawful one or was passed in consequence of an error of law, in which case it may impose such sentence in substitution therefor as it thinks proper.

(4) If it appears to the Court of Appeal that a party to an appeal brought under this section, though not properly convicted on some charge, has been properly convicted on some other charge, the Court may, in respect of the charge on which it considers that the appellant has been properly convicted, either affirm the sentence passed by the Magistrate's Court or by the High Court or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper.

(5) Where a party to an appeal brought under the provisions of this section has been convicted of an offence and the Magistrate's Court or the High Court could lawfully have found him guilty of some other offence, and on the finding of the Magistrate's Court or of the High Court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the Magistrate's Court or by the High Court a conviction of guilty of that other offence, and pass such sentence (whether more or less severe) in substitution for the sentence passed by the Magistrate's Court or by the High Court as may be warranted in law for that other offence.

(6) On any appeal brought under the provision of this section, the Court of Appeal may, notwithstanding that it may be of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no

substantial miscarriage of justice has in fact occurred.

(7) Without prejudice to the application of sections 33 and 35, in any case where an appeal under the provisions of this section is pending a judge of the High Court may in his discretion grant bail to any convicted person who is a party to such appeal.

(8) The provisions of sections 25, 26, 30, 32, 33, 34, 35, and 38 shall apply *mutatis mutandis* to appeals brought under the provisions of this section.

**23.**-(1) The Court of Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict 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 whom the appellant was convicted should be set aside on the ground of a wrong decision on any question of law or that on any ground there was miscarriage of justice, and in any other case shall dismiss the appeal:

Determination of appeal  
in ordinary cases

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 occurred.

(2) Subject to the special provisions of this Act, the Court of Appeal shall, if they allow an appeal against conviction, either 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.

(3) On an appeal against sentence, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, or may dismiss the appeal or make such other order as they think just.

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

Powers of Court in  
special cases

(2) Where the appellant has been convicted of an offence and the judge could on the information have found him guilty of some other offence, and on the findings of the judge it appears to the Court of Appeal that the judge 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 verdict found by such judge a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) If on any appeal it appears to the Court of Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody in such place and in such manner as the Court shall direct until the Governor-General's pleasure be known, and the Governor-General may thereupon and from time to time give such order for the safe custody of the appellant during pleasure and in such place and in such manner as to the Governor-General may deem fit.

**25.-(1)** The operation of any order made on conviction by the judge before whom the conviction takes place for the payment of compensation or of any of the expenses of the prosecution or for the restoration of any property to any person, and the operation of the provisions of any law re-vesting in the case of any such conviction in the original owner or his personal representative the property in stolen goods, shall (unless the judge before whom the conviction takes place directs to the contrary in any case in which in his opinion the title of the property is not in dispute) be suspended-

Suspension of order for restoration of payment of compensation or expenses, etc.

(a) in any case until the expiration of thirty days after the date of the conviction; and

(b) in cases where notice of appeal or leave to appeal is given within thirty days after the date of conviction, until the determination of the appeal, and in cases where the operation of any such order or provisions is suspended until the determination of the appeal, the order or provisions shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) The Court of Appeal may by order annul or vary an order made in the trial for the payment of compensation or of any of the expenses of the prosecution or 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.

**26.** Where a person convicted desires to appeal under this Part of this Act to the Court of Appeal, or to obtain leave of that 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 the rules of Court within thirty days of the date of conviction.

Time for appealing

**27.** The judge before whom a person is convicted, shall in the case of an appeal under this Part of this Act against the conviction or against the sentence, or in the case of an application for leave to appeal under this Part of this Act, furnish to the Registrar, in accordance with the rules of Court, his notes of the trial; and shall furnish to the Registrar in accordance with rules of Court a report giving his opinion upon the case or upon any point arising in the case.

Judge's notes and report to be furnished on appeal

**28.** In the exercise of their jurisdiction under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice-

Supplemental 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) 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, or in the absence of rules of Court making provision in that behalf, as they may direct, before any judge of the Court or before any officer of the Court or Magistrate or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and

(c) 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 application; and

(d) where any question arising in 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 the 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 as 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 of Appeal on appeals in civil matters and issue any warrants necessary for enforcing the orders of sentences 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.** For the purposes of this Act, the Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor.

Director of Public  
Prosecutions to be party

**30.** The Court of Appeal may at any time assign counsel to an appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Legal assistance to  
appellant

**31.** (1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it and is not prevented by sickness or other cause, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and 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 of Appeal gives him leave to be present.

Right of appellant to be  
present

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

**32.**-(1) On the hearing and determination of an appeal under this Part of this Act no costs shall be allowed to either side.

Costs of appeal

(2) The expenses of counsel assigned to an appellant under this Part of this Act and the expenses of any witness attending on the order of the Court of Appeal or examined in any proceedings incidental to the appeal, and of the appearance of an appellant when in custody on the hearing of his appeal or on any proceedings preliminary or incidental to an 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, shall be defrayed out of the Consolidated Fund up to an amount allowed by the Court but subject to any provision as to rates and scales of payment made by rules of Court.

**33.** (1) An appellant who is not admitted to bail pending the determination of his appeal may, at his own request, be treated in like manner as a prisoner awaiting trial.

Admission of appellant to  
bail and custody when  
attending Court

(2) The Court of Appeal may, if it sees fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

(3) When an appellant under this Part of this Act is admitted to bail under this Act the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(4) Subject as hereinafter provided, six weeks of the time during which any appellant, when in custody, is treated as a prisoner awaiting trial in pursuance of the provisions of subsection (1), or the whole of that time if it is less than six weeks, shall be disregarded in computing the term of any such sentence as aforesaid:

Provided that-

(a) the foregoing provisions of this subsection shall not apply where leave to appeal is granted under this Part of this Act or where any such certificate as is mentioned in paragraph (b) of section 20 has been given for the purpose of the appeal; and

(b) in any other case, the Court of Appeal may direct that no part of the said time, or such part thereof as the court thinks fit (whether shorter or longer than six weeks) shall be disregarded as aforesaid.

(5) Subject to the foregoing provisions of this section, the term of any sentence passed by the Court of Appeal under this Part of this Act in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought shall, unless the court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings, and references in this section to any sentence to which an appellant is for the time being subject shall be construed accordingly.

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

Duties of Registrar with respect to notices of appeal, etc.

(2) If it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any 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 may, if they consider 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 or to appear for the Crown thereon.

(3) Any documents, exhibits or other things connected with the proceedings on the trial of any person before the High Court who, if convicted, is entitled or may be entitled to appeal under this Part of this Act, 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 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) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of this Act to any person who demands the same, and to officers of courts, the Superintendent of Prisons and such other officers or persons as he thinks fit and the Superintendent of Prisons shall cause these forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Act and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Court or some judge thereof any case in which it appears to him that although no application has been made for the purpose, counsel ought to be assigned to an appellant under the powers given to the Court by this Act.

**35.** The powers of the Court of Appeal under this Part of 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 admit an appellant to bail, 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 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 as duly constituted for the hearing and determining of appeals under this Act.

Powers which may be exercised by a judge of the Court

**36.-(1)** In an appeal under this Part of this Act the Court shall ordinarily give only one judgment, which may be given by the senior member of the Court present at the hearing of the appeal as he may direct:

Judgment in criminal appeals

Provided that

(a) if any judge dissents from the judgment of the Court it shall not be obligatory on him to sign the same; and

(b) separate judgments shall be given if the Court is of the opinion that it is



convenient that there should be separate judgments.

(2) The judgment of the Court or of any judge present at the hearing of the appeal shall be delivered in open Court either at the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(3) The judgment of the Court or of any judge present at the hearing of the appeal may be read in open Court by any judge, whether present at the hearing of that appeal or not, or by the Registrar.

**37.** In addition and without prejudice to the right of appeal conferred by this Part of this Act, a judge of the High Court, at the conclusion of the hearing by him of any appeal or case stated from a Magistrate's Court in any criminal cause or matter, may reserve, on a case stated by him, any question of law which seems to him to be of general public importance and which may have arisen during such hearing, for consideration by the Court of Appeal, and shall give his judgment subject to the opinion of the Court of Appeal on such point of law. The Court of Appeal shall have power after hearing the appellant or his barrister and solicitor, if he appears, and the respondent or his barrister and solicitor, if he appears, to determine every such question and shall notify the High Court of its decision, and the judge shall make such order, conformable with the decision of the Court of Appeal, as may be necessary:

Power to reserve question of law for the decision of the Court of Appeal

Provided that in the event of such judge dying or departing from Solomon Islands or being otherwise incapacitated from acting, another judge may make such order.

**38.** Nothing in this Act shall affect the prerogative of mercy as determined by section 45 of the Constitution.

Prerogative of mercy

## PART V

### RULES

**39.-(1)** The President of the Court of Appeal may make rules of Court for carrying this Act into effect and for regulating generally the practice and procedure under this Act.

Power to make rules of Court

(2) The power to make rules conferred by this section shall include power to adopt, or make rules in the terms of, any of the Rules of Her Majesty's Supreme Court of Judicature in England or Her Majesty's Court of Criminal Appeal in England as made from time to time, with or without modifications.

## CHAPTER 6

### COURT OF APPEAL

#### *Subsidiary Legislation*

#### THE COURT OF APPEAL RULES

LN 66/1983  
LN 85/1983

(Section 39 read with section 90 of the Constitution)

[1st October 1983]

#### PART I

##### PRELIMINARY

1. These Rules may be cited as the Court of Appeal Rules.

Citation

2. Subject to these Rules and without prejudice to the powers of the Rules Committee as set out in section 90 of the Constitution, the Rules Committee hereby adopt the contents of the Court of Appeal Act.

Adoption

3. In these Rules, unless the context otherwise requires:-

Interpretation

"the Act" means the Court of Appeal Act;

"appeal" includes cross-appeal;

"appellant" includes cross-appellant;

"Court" means the Court of Appeal for Solomon Islands;

"Form" has the meaning assigned to it in rule 43;

"full court" means the Court as duly constituted for the purposes of section 6 of the Act;

"High Court" means the High Court of Solomon Islands;

"judge" means a judge of the Court;

"party" includes any person who is entitled to appeal in the Court and any person who has applied successfully to the Court to be heard.

**4.** At the hearing and determination of the following matters the Court shall be duly constituted for the purposes of section 6(1) of the Act if it consists of two judges-

Constitution of the Court

(a) in civil matters-

(i) an application which, pursuant to section 19 of the Act, may be heard and determined by any judge of the Court; and

(ii) an appeal against an interlocutory order or an interlocutory judgment;

(b) in criminal matters-

(i) any application which pursuant to section 35 of the Act may be heard and determined by any judge of the Court; and

(ii) an appeal against sentence.

**5.** The Court may at any stage, on the application of any party to an appeal or application or of its own motion, add a party or substitute for a party any other person in any proceeding and may order any person to be served with the proceedings if in the opinion of the Court such a course is desirable in the interests of justice and, without prejudice to the generality of the foregoing, may make the Director of Public Prosecutions a party to an appeal or application in a criminal matter whether in addition to, or in substitution for, a private prosecutor as the Court shall think fit.

Joinder and Substitution of parties

**6.** In any appeal or matter before the Court any party may appear in person or be represented by a barrister or solicitor entitled to practise in the High Court:

Appearances

Provided that a party who is not a natural person shall be so represented unless the Court, in the interests of justice, makes other orders.

## PART II

## APPEALS IN CIVIL CASES

**7.** The conditions precedent to appeal in civil cases for the purposes of section 15 of the Act shall be as set out in rules 8, 10, 11 and 12.

Conditions precedent to appeal

**8.-(1)** An appeal to the Court shall be by notice of appeal (in this Part referred to as "notice of appeal") which may be given either in respect of the whole or any specified part of the decision of the court below.

Notice of appeal

(2) The notice of appeal shall be in Form A and shall state-

(a) whether the whole or part only, and what part, of the judgment or order is appealed from;

(b) briefly, but specifically, the grounds of appeal; and

(c) what judgment the appellant seeks in lieu of that appealed from.

(3) The notice of appeal shall be filed with the Registrar and within 7 days of such filing or such greater time as the Registrar shall allow shall be served by the appellant upon all parties directly affected by the appeal, and it shall not be necessary to serve the parties not so affected: but the Court of Appeal may direct notice of the appeal to be served on all or any of the parties to the cause or matter, or upon any person not a party, and in the meantime may postpone or adjourn the hearing upon such terms as may be just and may give such judgment or make such order as might have been given or made if the persons served with such notice had been originally parties.

**9.-(1)** An application for leave to appeal shall be in Form B and shall state the grounds upon which it is said the leave should be granted.

Application for leave to appeal

(2) The conditions precedent or considering an application for leave to appeal shall be, with the necessary adaptations, those set out in rules 10, 11, and 12.

**10.-(1)** Except where otherwise provided in any Act every notice of appeal shall, subject to paragraph (3), be filed within thirty days of the decision complained of, calculated from the date upon which the judgment or order of the court below was signed, entered or otherwise perfected.

Time for Appealing and applying for leave to appeal

(2) Every application for leave to appeal shall be filed within fourteen days of the decision the subject of the appeal calculated as in paragraph (1).

(3) Where an application for leave to appeal is granted the time for filing the notice of appeal for the purposes of paragraph (1) shall start from the date when the applicant is informed of the grant.

**11.-(1)** At any time after the filing of the notice of appeal or application, any party may apply to the Registrar to impose such special conditions precedent, whether as to giving deposit, or security for damages with the Court or for staying execution, or giving undertakings to the Court or making such other interim orders to prevent prejudice to the claims of any party pending the determination of the appeal or otherwise.

Imposition of special conditions on an appeal

(2) An application under this rule shall be made by notice of motion supported by affidavit and the notice shall be served not less than two days before the return date.

(3) The Registrar may impose such special conditions.

(4) Notwithstanding the generality of the foregoing, the Court or a judge may at any time impose such conditions precedent on an appeal or the continuation thereof as the Court sees fit, in the interests of justice, to impose.

(5) Except so far as is otherwise ordered under this rule or by the Court or a judge-

(a) an appeal shall not operate as a stay of execution or a stay of any proceedings pursuant to a decision of the High Court; and

(b) no intermediate act or proceeding shall be invalidated by an appeal.

(6) On any appeal, interest at a rate specified for judgment debts shall be allowed on all sums ordered to be paid by the High Court unless the Court otherwise orders.

**12.-(1)** The appellant shall-

Appeal fee and security for costs

(a) forthwith upon the filing of any notice of appeal, pay to the Registrar the fee prescribed for the filing of such notice; and

(b) upon the request of the Registrar made at anytime after the filing of the notice of appeal-

(i) deposit with the Registrar such sum as the Registrar shall assess as the probable expenses of the preparation, certification and copying of the record; and

(ii) deposit such further sum, or give security therefor to the satisfaction of the Registrar, as the Registrar may fix as security for the payment of all such costs as may be ordered to be paid by the appellant.

(2) Unless the Court otherwise orders-

(a) the dismissal of the appeal shall be sufficient authority to the Registrar for the payment of such sum as may have been deposited or secured under paragraph (1)(b)(ii) of this rule to the successful respondent or respondents in the appeal;

(b) the allowance of an appeal with costs shall be sufficient authority to the Registrar for the payment of such deposit or security to the appellant;

(c) such payments may be made to the solicitors on record for the party entitled.

**13.** In the event of non-compliance with any of the provisions of rules 8, 9, 10, 11 and 12 or in the event of any security required to be given not being given, or being given in part only, within the time directed or within such extended time as may be allowed, all proceedings in the appeal shall be stayed, unless the Court shall otherwise order and the appeal shall be listed for the next sessions of the Court for a formal order of dismissal.

Non-compliance with conditions precedent

**14.-(1)** A respondent who wishes to cross appeal shall, within twenty-one days of the service upon him of the notice of appeal file with the Registrar a notice of cross-appeal stating the matters set out in rule 8(2).

Cross-appeals

(2) The notice of cross-appeal shall be in Form A with the necessary modifications and adaptations.

**15.-(1)** A respondent who wishes to contend on the appeal that the decision of the High Court should be affirmed on grounds other than those relied upon by that Court shall within fourteen days of the service of the notice of appeal on him file with the Registrar a respondent's notice specifying the grounds for that contention.

Respondent's notice

(2) A respondent's notice shall be in Form C.

**16.** Except with leave of the Court, an appellant or respondent shall not be entitled

Parties restricted to terms of notices filed

at the hearing of an appeal to rely upon any ground of appeal or ground of contention under rule 15 or to seek any order other than those set out in a notice filed by him:

Provided that the Court or a judge may at any time give leave to amend a notice upon such terms as it or he may consider just.

**17.-(1)** This rule applies to applications for leave to appeal and other applications to be heard by a single judge.

Preparation of record for hearing of application by a single judge

(2) The Registrar shall not prepare a full record but shall place before the judge the record of the court below or such copies of part of the record as, in the Registrar's opinion, are sufficient to enable the judge to consider and determine the application together with a copy of the application.

(3) The applicant shall be entitled, on payment of the cost thereof, of a copy of the record or part thereof placed before the judge.

(4) Where, in the opinion of the Registrar, the respondent to the application is likely to make submissions on the hearing of the application, he shall provide the respondent with a copy of the record or part thereof to be placed before the judge and the cost of so doing shall be defrayed from the deposit made by the applicant for such purpose:

Provided that should the respondent request a copy of the record it shall be provided to him.

(5) The submissions of the respondent shall be in writing and shall be placed before the judge with the papers referred to in paragraph (2).

**18.-(1)** The judge before whom the application is placed shall consider and determine the application on the papers before him and such further written submissions as he may require and shall communicate his determination to the Registrar.

Determination of an application by the single judge

(2) The Registrar shall notify the parties in writing of the determination.

(3) A party aggrieved by the determination of the judge may by notice of application filed within seven days of the service of the notification under paragraph (2) upon him apply to have the matter heard and determined by the full court.

**19.-(1)** This rule and rules 20 and 21 shall apply to an appeal or an application

Preparation of the record for an appeal and

renewed before the full court.

application to the full  
court

(2) Upon deposit of the sum payable under rule 12(1) (b)(i) in respect of the probable expenses of preparing the record, the Registrar shall, subject to paragraph (3), prepare four copies of the record for the use of the Court and such additional copies as shall enable the parties to have one copy each.

(3) The record shall include such of the following documents as may be necessary for the purposes of the appeal-

- (a) process and pleadings;
- (b) affidavits;
- (c) transcript of the notes of evidence;
- (d) documentary exhibits;
- (e) reasons for the judgment or order under appeal;
- (f) the formal judgment or order under appeal;
- (g) the notice of appeal;
- (h) the respondent's notice.

(4) The Registrar may, after consulting the parties to the appeal, omit from the record any formal parts of the proceedings of the court below and any parts which are, in his opinion, unnecessary for the proper disposal of the appeal by the Court.

**20.** When the record has been prepared the Registrar, shall, on the direction of the President, or if the President is for any reason not available, the judge likely to preside at the hearing of the appeal, list the case for hearing at the next convenient session of the Court and shall serve notice of the proposed date of hearing upon the parties.

Listing of a case for  
hearing

**21.-(1)** The hearing of the appeal shall be by way of rehearing:

Hearing of an appeal or  
application by the full  
court



Provided always that the Court may, pursuant to rule 22, hear evidence and admit such documents as, in the opinion of the Court, is desirable for good cause to do in the furtherance of justice.

(2) A party may, or if the Court or a judge so directs shall, deliver to the Court and to the other parties not less than fourteen days before the proposed date for hearing argument in support of the grounds advanced in his notice of appeal or of application (in these Rules called "an argument in writing").

(3) A party who has delivered an argument in writing may notify the Court in writing that he does not intend to appear at the hearing and the Court shall in determining the appeal have regard to the argument in writing.

(4) Notwithstanding that a party has delivered an argument in writing that party shall be entitled to attend at the hearing of the appeal and make such supplementary submissions as he shall see fit, subject always to rule 16.

(5) Where at the hearing of the appeal a party does not appear but relies upon an argument in writing the Court may call for such reply or further argument orally or in writing from that party within such time as the Court may direct where it is necessary for the proper determination of the appeal so to do.

(6) Where at the hearing of the appeal an appellant or applicant does not appear and has not delivered an argument in writing the Court may dismiss the appeal or application or, in the case of a cross-appellant, the cross-appeal:

Provided always that the Court may on good cause being shown set aside a dismissal made under this paragraph and relist the case for hearing upon such terms as to costs or otherwise as it shall determine.

**22.-(1)** The Court shall have full discretionary power to receive further evidence upon questions of fact, which evidence may be taken by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner.

Further evidence

(2) Evidence under this rule, subject to paragraph (3), may be given without special leave.

(3) Leave on special grounds must be granted before further evidence can be given-

(a) upon an appeal from a final judgment;

(b) upon an appeal from a judgment after the hearing of a trial or matter upon

the merits;

Provided always that no such leave shall be necessary in any case as to matters which have occurred after the date of decision from which the appeal is brought.

**23.** On the hearing of an appeal the Court may-

Powers of the Court on appeal

- (a) dismiss the appeal;
- (b) allow the appeal and make such further or other order as the court below was authorised by law to make or as the case may require;
- (c) order a retrial of all or part of the issues in the case before the High Court;
- (d) remit the case to the High Court to hear evidence or further evidence on an issue or otherwise as the Court may specify;
- (e) adjourn the hearing either generally or to a specified date;
- (f) make such order as to costs as it sees fit.

**24.-(1)** In addition to the methods by which judgment may be delivered under section 17 of the Act, where the Court reserves judgment, judgment may, on the written authority of the judge presiding at the hearing, be delivered by the announcement of the decision of the Court by the Registrar in public at a time and place of which notice has been given to the parties at which time the Registrar shall hand down the written judgment or judgments of the Court giving the reasons for such decision.

Delivery of reserved judgment or reasons for judgment  
LN 85/1983

(2) The Court may give judgment by announcing its decision or the substance of its decision at the hearing of the appeal and also announce that it will give the reasons in full in writing for such decision at a later stage and those reasons shall be served on the parties by the Registrar at a subsequent date when they are provided by the Court.

### PART III

#### APPEALS IN CRIMINAL MATTERS

**25.-(1)** Notice of appeal in a case of a conviction by the High Court or in the case of an appeal heard by the High Court or notice of application for leave to appeal shall be

Notice of appeal and application for leave to appeal

in Forms D, E and F respectively and shall be filed with the Registrar within the time allowed by section 26 of the Act:

Provided always that a judge or the Court may for good cause enlarge the time for appealing provided in that section.

(2) A notice of appeal and notice of application shall state briefly but specifically the grounds of appeal or application.

**26.** Upon receipt of a notice under this Part the Registrar shall cause a copy of such notice to be served within 14 days on the respondent.

Service of notice on the respondent

**27.** The respondent to an appeal made under this Part who is entitled to appeal or apply for leave to appeal pursuant to the Act may file a cross-appeal or cross-application within 14 days of the service upon him of the notice of appeal and the provisions of rule 25 shall apply *mutatis mutandis* to such a cross-appeal.

Cross-appeal in criminal matters

**28.-(1)** Upon receipt of a notice of application for leave to appeal the Registrar shall not prepare a full record of the proceedings of the High Court but only the parts thereof which the Registrar may decide, after consultation with the parties, are necessary for proper determination of the application.

Record for the purposes of for leave and appeals

(2) Upon receipt of a notice of appeal the Registrar shall prepare four copies of the record of the High Court and sufficient further copies for the parties to the appeal.

(3) The record shall consist of not less than the information and the judgment and sentence of the court and such other parts of the record as the Registrar may decide, after consultation with the parties, are necessary for the proper determination of the appeal:

Provided always that where any part of the record is omitted the Registrar in his certification shall specify the part omitted.

(4) A judge may in any case certify that the case is a fit one for a full record and thereupon the Registrar shall prepare a full record.

**29.-(1)** In the case of an application for leave to appeal the Registrar shall, upon completion of the record as required by rule 28(1), forward to a single judge the notice

Determination of application for leave to appeal by the single

of appeal and record for consideration by him of the grant of leave to appeal pursuant to section 35 of the Act. judge

(2) The single judge shall determine the application on the papers before him and shall inform the Registrar of his decision who shall notify the applicant in writing and in the case of refusal, with such notification the Registrar shall forward Form G.

(3) If the single judge grants leave the appeal shall be listed in the next convenient session of the Court.

(4) If the single judge refuses leave the applicant may renew his application to the full court by filing notice in Form G within 14 days of the receipt of the notification under paragraph (2) and thereupon the application shall be listed for such determination.

(5) If the application is not renewed within 14 days the refusal of leave by the single judge shall be final.

(6) Where the single judge or court has granted leave to appeal on a notice of application for such leave duly served and in the form provided under these Rules it shall not be necessary for the appellant to give notice of appeal but the application for leave to appeal shall in such a case be deemed to be notice of appeal.

**30.-(1)** The hearing of the appeal shall be by way of rehearing subject to the exercise of the powers of the Court set out in Part IV of the Act. Hearing of the appeal

(2) The appellant shall not without leave of the Court argue any ground of appeal not contained in his notice of appeal or application.

**31.** An appellant or applicant may at any time abandon his appeal by giving notice in Form H to the Registrar and thereupon the appeal shall be deemed to have been dismissed by the Court. Abandonment of appeal

**32.-(1)** An applicant- Application in ancillary matters

(a) for extension of time in which to appeal or apply for leave;

(b) for assignment of legal aid;

(c) to be allowed to be present at proceedings where leave for such is required;

(d) for admission to bail pending appeal,

shall apply in Form I filed with the Registrar.

(2) An application made under this rule shall be forwarded by the Registrar to a single judge and the application shall be determined by him on the papers and he shall inform the Registrar of his decision who shall notify the applicant in writing and with a notification of refusal the Registrar shall forward to the applicant Form G.

(3) If the single judge refuses the application the applicant may renew his application to the full court by filing notice in Form G within 14 days of the receipt by him of the notification under paragraph (2) and thereupon the application shall be listed for such determination.

**33.-(1)** An appellant who is granted bail shall be present in the Court at each and every hearing of his appeal and upon the final determination thereof.

Presence of appellant  
granted bail

(2) Where an appellant who is granted bail does not comply with paragraph (1), the Court may decline to consider the appeal and may proceed summarily to dismiss the same and may issue a warrant for the arrest of the appellant:

Provided that the Court may consider the appeal in his absence and make such other order as they think right.

**34.** Where upon the trial of any person who appeals to the Court an order has been made by the Court of trial for payment of compensation, restoration of property under section 157 of the

Persons entitled to be  
heard as to  
compensation orders etc.

Criminal Procedure Code or for restitution of property under section 158 of the Criminal Procedure Code, any person in whose favour or against whom an order has been made, and with the leave of the Court, any other person, shall on the final hearing of the Court of an appeal in which such order was made, be entitled to be heard by the Court before any order is made under section 25(2) of the Act annulling or varying such order.

Cap. 7

**35.-(1)** The certificate of the judge of the court of trial under section 20(b) of the Act shall be in Form J and shall be forwarded forthwith by the proper officer of the court of

Judge's certificate

trial to the Registrar.

(2) The judge of the court of trial may, in any case before him in which he considers it desirable to do so, whether or not application is made on that behalf, give a certificate under section 20(b) in Form J certifying that the case is a fit case for appeal and shall inform the convicted person accordingly.

**36.-(1)** The Registrar shall, whenever in relation to any appeal under this Part the Court or a judge thereof directs him so to do, request the judge of the High Court before whom the appellant was convicted or sentenced, as the case may be, to furnish him with a report in writing giving his opinion upon the case generally or upon any point arising upon the case of the appellant, and the judge of the High Court shall furnish such report to the Registrar as so requested.

Judge's report to the Court

(2) The report of a judge of the High Court under this rule shall be a report to the Court and, except by leave of that court or a judge thereof, the Registrar shall not furnish the report or any part thereof or disclose any part of the contents thereof to any person.

**37.-(1)** Any documents and exhibits before the court of trial shall be retained, unless the Registrar or a judge otherwise orders, by the proper officer of the court of trial.

Documents and Exhibits

(2) Upon the final determination of an appeal the Registrar shall, subject to any order the court or a judge may see fit to make, return all exhibits or documents to the proper officer of the court of trial or to any other person from whom such documents or exhibits have been obtained.

(3) At any time after a notice of appeal or application has been served under this Part the appellant, applicant or the respondent may obtain from the Registrar or officer of court of trial a copy of any document or exhibit in his possession for the purpose of the application or appeal and such copies shall be provided at the rate prescribed for copying documents in civil proceedings in the High Court:

Provided always that the Court or a judge or the Registrar may waive the payment in the case of a party who has not sufficient means to pay therefor or for any other reasonable cause.

**38.-(1)** On the final determination of an appeal under this Part, the Registrar shall notify in such manner as he thinks most convenient such determination to-

Notification of result of appeal

(a) the proper officer of the court of trial;

(b) the appellant and respondent; and

(c) where appropriate, the Superintendent of Prisons.

(2) The proper officer of the court of trial, on receiving notification shall enter the particulars thereof on the records of the court of which he is such officer.

**39.** The various forms for warrants of arrest, recognisances, summons and notices specified in the Magistrates' Courts (Forms) Rules shall be used by the Registrar and the Court in relation to criminal matters with such necessary amendments, adaptations and modifications as may be required.

Forms of warrants etc.

#### PART IV MISCELLANEOUS

**40.** The Court of Appeal Rules 1973 other than Rule 10 (which requires the payment of fees in civil appeals) and the First Schedule (which prescribes the fees payable in civil appeals) are hereby revoked

Revocation of Court of Appeal Rules 1973

**41.-(1)** Subject to paragraph (2) service required by these Rules or the Act may be effected in any manner prescribed by law for service of document in a High Court civil action.

Service

(2) The Court or a judge may, in any case, make such orders and give such directions as to service as may be required.

**42.** Where these Rules or the Act require any party to file any document such document shall be produced on A4 size paper and four clear copies of the document shall be filed.

Copies to be filed

**43.** Where in these Rules there is a reference to a Form, that Form shall be the Form as set out in the Schedule with such necessary adaptations to conform with the circumstances of the case.

Reference to Forms

**44.** Except in proceedings involving the decision of an appeal or an application for

Court of judge may sit in

leave to appeal heard by the full court, the Court or a judge may sit and act in Chambers.

Chambers

**45.** A judge sitting as a single judge of the Court may sit and act wherever convenient.

Judge to sit and act as may be convenient

**46.-(1)** The Registrar shall be the taxing officer.

Powers of Registrar

(2) Save where otherwise expressly provided any person aggrieved by the decision of the Registrar in any matter may within seven days of such decision apply to a judge to have the decision set aside and the judge on the application may give such directions or make such orders as he shall think fit.

(3) An application made under this rule shall be by notice of application supported by affidavit.

**47.-(1)** Where there has been non-compliance with these Rules by any party the Court or a judge may on such terms and conditions as it or he considers just permit the prosecution of the appeal notwithstanding the non-compliance.

Non-compliance with Rules

(2) Notwithstanding the generality of the foregoing the Court or a judge may order that an appeal be struck out for non-compliance with these Rules or an order made under these Rules or the Act.

**48.-(1)** Where in any trial a shorthand writer has taken a shorthand note of the proceedings by any means then the transcript of that shorthand note duly certified by the person who took it as being an accurate transcription of the note shall constitute the record of the trial in lieu of the notes kept by the judge.

Transcript of shorthand notes to form record

(2) For the purposes of this rule "a shorthand note" includes a record made by machine operated by the person certifying the accuracy of the transcript and "shorthand writer" shall be construed accordingly.



## FORMS

### GENERAL TITLE

In the Court of Appeal for Solomon Islands

Case No.

| |

Between:

Appellant

(Applicant)

| |

And:

Respondent.

### FORM A

Court of Appeal Rules, Rule 8(2)

Civil Appeal

Notice of Appeal

TO (1) The Registrar of the Court of Appeal

(2) (Name of other party) Respondent

(Name of Appellant) having been the (Plaintiff, Defendant or other description) in Case No. in the High Court hereby gives notice of appeal against the judgment or order of that court given on the day of 19

The appellant appeals against (stage whether whole or part only, and what part of the judgment or order is appealed from):-

The grounds of the appeal are:-

The appellant seeks the following judgment in lieu of that appealed from:-

Dated this                      day of                      19                      .

Appellant or his Barrister  
or Solicitor

NB Under Rule 16 of the Court of Appeal Rules you will not, without leave of the Court, be able to argue on the hearing of appeal any ground not contained in the Notice of Appeal.

FORM B

Court of Appeal Rules, Rule 9(1)

(Application for leave to appeal in civil matters)

TO                      (Respondent)

(Name of applicant) having been the Plaintiff/Defendant (description of party) in Case No. before the High Court seeks leave to appeal from a judgment or order of that court as follows:

The applicant appeals against (state whether whole or part only, and what part of the judgment is appealed from):

The grounds of appeal upon which leave to appeal should be granted are:

Dated the                      day of 19                      .

Applicant or his Barrister  
or Solicitor

FORM C

Court of Appeal Rules, Rule 15(2)

Respondent's Notice

TO                      (Appellant)

(Name of Respondent) having received a Notice of Appeal hereby gives notice that he contends that the decision of the High Court should be affirmed on grounds other than those relied upon by that Court.

And that in support of that contention he relies upon the following grounds:-

Dated the                      day of 19                      .

Respondent or his Barrister  
or Solicitor

FORM D

Court of Appeal Rules, Rule 25(1)

(Notice of Appeal in the Case of Conviction)

Notice of Appeal

TO The Registrar of the Court of Appeal.

(Name of Appellant) having been convicted before the High Court on                      day of 19  
of the following offence:

hereby gives notice of appeal against his conviction on the following grounds:

I do/do not (strike out as inapplicable) desire to seek leave to call witnesses at the hearing of my  
appeal/see note 2:

Dated at                      this                      day of 19                      .

Appellant or his Barrister  
or Solicitor

Notes:

1. Applications for leave to appeal against sentence for legal aid, extension of time, bail pending

appeal and permission to be present at an application must be on a separate form (Form I).

2. If you do desire leave to call a witness you must obtain Form K and complete it.

#### FORM E

Court of Appeal Rules, Rule 25(1)

(Notice of Appeal in respect of Appeal heard by the High Court)

Notice of Appeal

TO (1) The Registrar of the Court of Appeal

(2) (Name of other party in High Court) Respondent

(Name of Appellant) having been a party to an appeal to the High Court hereby gives notice of appeal against the judgment given on the                      day of                      19                      . dismissing/allowing the appeal on the following grounds:-

Dated at    this                      day of                      19                      .

Appellant or his Barrister  
or Solicitor

#### FORM F

Court of Appeal Rules, Rule 25(1)

(Application for leave to appeal)

Notice of Application for leave to Appeal

TO The Registrar of the Court of Appeal

(Name of Appellant) having been convicted by the High Court on the                      day of                      19                      . of the following offence:-

and having been sentenced as follows:-

gives notice of his intention to apply for leave to appeal against sentence on the following grounds:

Dated at                      this                      day of                      19                      .

Appellant or his Barrister  
or Solicitor

#### FORM G

Court of Appeal Rules, Rules 29(4) and 32(3)

(Notice of renewal of application to the full court)

#### Notice of Renewal of Application

(Important: If this Form is not completed and returned to Registrar, Court of Appeal, High Court Honiara within 14 days the decision to refuse shall be final)

(Name) of Applicant having had his application (strike out any of those which have not been made or which have been granted)-

- (a) for leave to appeal;
- (b) for extension of time within which notice of appeal or application for leave to appeal may be given;
- (c) that legal aid may be assigned to him;
- (d) that he be allowed to be present at any proceedings;
- (e) that he be admitted to bail pending appeal,

refused by (state name of judge) gives notice that he renews the application to the full court. The notification of the refusal was received on  
day of                      19

Dated at                      the                      day of                      19

Applicant or his Barrister  
or Solicitor

FORM H

Court of Appeal Rules, Rule 31

(Abandonment of Appeal)

Notice of Abandonment of Appeal

(Name of Applicant) having filed Notice of Appeal (Application for leave to Appeal) gives Notice that he abandons his appeal.

Dated at                      the                      day of                      19

Applicant or his Barrister  
or Solicitor

FORM I

Court of Appeal Rules, Rule 32(1)

(Notice of Application in Ancillary matters)

Notice of Application

(Name of Applicant) having filed Notice of Appeal (Application for leave to Appeal) gives notice that he applies for the following (delete as inappropriate):

1. extension of the time within which notice of appeal or an application for leave to appeal may be given on the following grounds:
2. that legal aid may be assigned to him;
3. to allow him to be present at any proceedings in case where he is not entitled to be present without leave;
4. to admit him to bail pending appeal in which case the following persons have agreed to be sureties in the amounts shown:

(Name and address of surety)                      (Occupation)(Amount)

(a)

(b)

Dated at                      the                      day of                      19                      .

Applicant or his Barrister  
or Solicitor

FORM J

The Court of Appeal Rules, Rule 35

Whereas in the session of the High Court held at on the  
day of                      19                      . (name of convicted person) was convicted before me, the undersigned on  
an information charging him with (state shortly the offence) and was thereupon sentenced by me to

I hereby certify that the case is a fit case for an appeal by the said to the Court of Appeal under section  
20(b) of the Court of Appeal Act upon the following grounds:-

(Here specify in general terms the ground on which the certificate granted)

Dated this                      day of                      19                      .Judge of Trial

FORM K

Appellant's Application for Further Witnesses

I,                      , having appealed to the Court of Appeal hereby state my desire that  
the Court shall order the witness(es) hereinafter specified to attend the Court and be examined on my  
behalf.

Signed

Appellant

Dated this                      day of                      19

You are required to fill up this form and sign it:

1. Name and address of witness:
2. Whether such witness gave evidence at trial:
3. If not, why did he not give evidence?
4. On what matters do you wish him to give evidence on the appeal?
5. State shortly the evidence you think he can give:

Signed

Appellant