Crimes (Criminal Appeals) Amendment Act 2001

Public Act 2001 No 92
Date of assent 13 November 2001
Commencement see section 2

Contents

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Crimes (Criminal Appeals) Amendment Act 2001.

(2) In this Act, the Crimes Act 1961 is called "the principal Act".

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

Part 1
Amendments to principal Act

3 Interpretation

Section 379 of the principal Act is amended by adding to the definition of **rules of Court** the words "and section 51C of the Judicature Act 1908".

4 Revesting and restitution of property on conviction

Section 387(1) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

"(a) in any case, until the expiration of any period within which an appeal against conviction or sentence may be lodged; and

"(b) if an appeal against conviction or sentence is lodged, until the determination of the appeal, unless otherwise ordered by the Court,—".

5 Time for appealing

(1) Section 388(1) of the principal Act is amended by omitting the words "10 days" in both places where they occur, and substituting in each case the words "28 days".

(2) Section 388(1) of the principal Act is amended by omitting the second and third sentences.

6 New section 390 substituted

The principal Act is amended by repealing section 390, and substituting the following section:

"390 **Duty of Solicitor-General**

"(1) It is the duty of the Solicitor-General to—

"(a) represent the Crown on every appeal against conviction or sentence; and

"(b) appear at every hearing involving oral submissions on an appeal or application for leave to appeal under this Part.

"(2) The Solicitor-General's duties under subsection (1)—

"(a) may be performed by any other counsel employed or engaged by the Crown; and

"(b) do not apply in the case of a private prosecution."

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

(1) Section 392 of the principal Act is amended by inserting, after subsection (1), the following subsections:

"(1A) For every appeal against conviction or sentence, the Registrar must prepare a preliminary case on appeal comprising—

"(a) the trial transcript; and

"(b) the trial Judge's summing up to the jury, if the Registrar considers it relevant to the grounds of appeal; and

"(c) any other documents, exhibits, or other things connected with the proceedings that the Registrar considers are relevant to the grounds of appeal and appropriate for inclusion in the preliminary case on appeal.

"(1B) A preliminary case on appeal prepared under subsection (1A) must be given to—

"(a) the Court or Judge deciding the mode of hearing; and

"(b) the parties to the appeal; and

"(c) the Legal Services Agency, on request by the Agency."

(2) Section 392(2) of the principal Act is repealed.

(3) Section 392 of the principal Act is amended by adding the following subsections:

"(6) When notifying parties about the decision on the mode of hearing, the Registrar must also advise parties of the procedure and time frames required by the rules of Court relating to—

"(a) making written submissions on the mode of hearing; and

"(b) in the case of a hearing on the papers, making written submissions on the appeal or application, for consideration at the hearing; and

"(c) in the case of an oral hearing, providing written material to the Court and the other party; and

"(d) in all cases, exercising the right of reply.

"(7) After an appeal or application is determined by the Court, the Registrar must send a copy of the decision to the parties as soon as is reasonably practicable."

8 New sections 392A and 392B inserted

The principal Act is amended by inserting, immediately before section 393, the following sections:

"392A **Decision about mode of hearing**

"(1) An appeal or application for leave to appeal must be dealt with by way of a hearing involving oral submissions unless the Judge or Court making the decision on the mode of hearing determines, on the basis of the information contained in the notice of appeal, notice of application, or other written material provided by the parties, that the appeal or application—

"(a) can be fairly dealt with on the papers; and

"(b) either has no realistic prospect of success or clearly should be allowed.

"(2) In determining whether an appeal or application can be fairly dealt with on the papers, the Judge or Court may consider any matters relevant to the decision on the mode of hearing, including such matters as—

"(a) whether the appellant has been assisted by counsel in preparing the appeal or application:

"(b) whether the appellant has been provided with copies of the relevant trial documentation:

"(c) the gravity of the offence:

"(d) the nature and complexity of the issues raised by the appeal or application:

"(e) whether evidence should be called:

"(f) any relevant cultural or personal factors.

"(3) A Judge of the Court of Appeal, acting alone, may make a decision about the mode of hearing a particular appeal or application, but no Judge acting alone may reverse a decision on mode that has been made by the Court.

"(4) The Court of Appeal may, at any time, either on its own initiative or on the application of any party, change the mode of hearing a particular appeal or application to an oral hearing, having regard to any written submissions made by the parties concerning the mode of hearing.

"(5) The Court or Judge making the decision on the mode of hearing must apply section 392B(2) to (5) (with all necessary modifications) in the same way as the Court would apply them in determining an appeal or application for leave to appeal.

"(6) Every decision about the mode of hearing an appeal or application must be in writing, be accompanied by reasons (unless

the decision is that the hearing will be an oral hearing), and be provided by the Registrar to the parties.

"392B **Hearings on the papers**

"(1) This section applies to appeals and applications for leave to appeal that are disposed of by the Court of Appeal by way of a hearing on the papers.

"(2) The parties to the appeal or application may make written, but not oral, submissions to the Court, and may include in their submissions—

"(a) additional relevant written material; and

"(b) responses to any submissions made by the other party.

"(3) Neither the parties nor their representatives may appear before the Court.

"(4) The appeal or application must be determined by the Court on the basis of the written material before it.

"(5) Consideration of the written material may be undertaken in whatever manner the Court thinks fit.

"(6) Paragraphs (b), (c), (d), and (e) of section 389 do not apply.

9 Right of appellant to be represented

(1) The heading to section 395 of the principal Act is amended by adding the words "**, and restriction on attendance**".

(2) Section 395 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

"(1) At the hearing of an appeal, or an application for leave to appeal, or on any proceedings preliminary or incidental to an appeal or application, the appellant may be represented by counsel.

"(1A) If an appellant is in custody, he or she is not entitled to be present at a hearing involving oral submissions unless—

"(a) the rules of Court provide that he or she has the right to be present; or

"(b) the Court of Appeal gives leave for him or her to be present."

10 Judgment of Court of Appeal

Section 398 of the principal Act is amended by adding, as subsection (2), the following subsection:

"(2) Every judgment of the Court of Appeal on an appeal or application under this Part (other than one relating to a preliminary or incidental matter) must be accompanied by reasons."

11 Rules of Court

(1) Section 409(1) of the principal Act is amended by inserting, after the words "High Court", the words ", the Court of Appeal,".

(2) Section 409 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

"(2) Until such rules are made, and so far as they do not extend, the existing practice and procedure of the High Court and the Court of Appeal remain and are in force in those Courts as far as they are not altered by or inconsistent with the provisions of this Act.

"(3) The practice and procedure of the High Court must be followed by all District Courts in proceedings on indictment."

12 Transitional provisions

(1) If, before the commencement of this Act, a fixture for a hearing involving oral submissions has been set down for an appeal or application, then the principal Act and the Court of Appeal (Criminal) Rules 1997 (as the Act and those rules read immediately before the commencement of this Act) continue to apply to the appeal or application.

(2) Any other appeal or application made before the commencement of this Act must be dealt with as if it had been made after the commencement of this Act, and the principal Act and the Court of Appeal (Criminal) Rules 1997 (as the Act and those rules (or any replacement of them) read immediately after the commencement of this Act) apply to the appeal or application.

Part 2
Validation of determinations

13 Validation of determinations made before Act commences

(1) No determination of an appeal or application for leave to appeal that was made under Part XIII of the principal Act

before the date on which this Act commences is invalid by reason only of any 1 or more of the following:

(a) a failure to comply with Part XIII of the principal Act or the Court of Appeal (Criminal) Rules 1997 (as the Act and Rules were at any time before the commencement of this Act):

(b) a failure to comply with the Criminal Appeal Rules 1946:

(c) a failure to give reasons for the determination or judgment.

(2) Subsection (1) does not apply to any determination of the Court of Appeal that is the subject, as at 6 November 2000, of either of the following proceedings:

(a) *Fa'afete Taito* v *The Queen* (petition for special leave to appeal, CA 4/96):

(b) *James McLeod Bennett and 11 Others* v *Attorney-General and 2 Others* (CP 108/00).

(3) Nothing in this section affects the right of any person to apply for the exercise of the prerogative of mercy.

14 Application for leave for rehearing

(1) This section applies to any person—

(a) who appealed, or applied for leave to appeal, under Part XIII of the principal Act before the date of commencement of this section; and

(b) who applied for legal aid in respect of the appeal or application, but was not granted legal aid in respect of it; and

(c) whose appeal or application was determined without oral submissions being heard; and

(d) whose appeal or application was dismissed.

(2) An applicant to whom this section applies may, at any time before the closing date set by Order in Council made under subsection (4), apply to the Court of Appeal for leave to have his or her original appeal or application reheard under section 16.

(3) An application for a rehearing must—

(a) identify a failure of the sort described in any of paragraphs (a), (b), or (c) of section 13(1) that occurred in relation to the original appeal or application; and

(b) set out the grounds on which the applicant claims that a miscarriage of justice has occurred.

(4) The Governor-General may, by Order in Council, set the closing date by which applications for leave for a rehearing must be received by the Court of Appeal. The Order in Council may not be made until at least 1 year after the date on which the following cases before the Judicial Committee of the Privy Council are finally determined:

(a) *Fa'afete Taito* v *The Queen*:

(b) *James McLeod Bennett and 11 Others* v *The Queen*.

15 Decision on application for leave for rehearing

(1) The decision on an application for leave for a rehearing must be made by a Judge of the Court of Appeal, acting alone, on the basis of—

(a) written material provided by the applicant in his or her application; and

(b) any written submissions made by the respondent; and

(c) any written submissions provided by the applicant in response to written submissions made by the respondent; and

(d) any documents that form part of the Court record that the Judge considers necessary for the proper determination of the application.

(2) Neither the parties nor their representatives may appear before a Judge on an application for leave for a rehearing.

(3) The Registrar must, upon request, supply an applicant or prospective applicant with any documents that form part of the Court record that the Registrar considers necessary for the proper determination of the application.

(4) The Judge must grant leave for a rehearing if he or she is satisfied that—

(a) a failure of the sort described in any of paragraphs (a), (b), or (c) of section 13(1) occurred in relation to the original appeal or application; and

(b) there is an arguable case that a miscarriage of justice has occurred.

16 Rehearing of appeals and applications

(1) The Court of Appeal may rehear any appeal, or application for leave to appeal, for which leave has been granted under section 15.

(2) The rehearing of an appeal or application for leave to appeal must be conducted as if it were an original appeal or application, and Part XIII of the principal Act and the rules of Court apply accordingly.

Legislative history

6 November 2000	Introduction (Bill 76–1)
9 November 2000	First reading and referral to Government Administration Committee
22 February 2001	Reported from Government Administration Committee (Bill 76–2)
1 March 2001	Second reading
12 June 2001	Referred to Justice and Electoral Committee
21 September 2001	Reported from Justice and Electoral Committee
30, 31 October, 1, 6 November 2001	Committee of the whole House (Bill 76–3)
8 November 2001	Third reading
13 November 2001	Royal assent

This Act is administered in the Ministry of Justice.