STATUTORY INSTRUMENTS

1962 No. 1086

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

The British Caribbean Court of Appeal Order in Council 1962

Made - - - -	23*rd May* 1962
Laid before Parliament	29*th May* 1962
Coming into Operation	1*st June* 1962

At the Court at Buckingham Palace, the 23rd day of May 1962

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue of the powers conferred upon Her by section 4 of the West Indies Act 1962(a) and all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows :—

Citation and commencement.

1.—(1) This Order may be cited as the British Caribbean Court of Appeal Order in Council 1962.

(2) This Order shall come into operation on the 1st June 1962.

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"appeal" includes a reserved question of law and a case stated;

"the Commissioner" means the Commissioner appointed under the provisions of the West Indies (Dissolution and Interim Commissioner) Order in Council 1962(b);

"the Court" means the Court constituted by this Order;

"the existing Court" means the Court constituted by the Constitution of the West Indies;

"the Territories" means the following territories (with their respective dependencies, if any), that is to say, the Colonies of—

(*a*) Antigua,
(*b*) Barbados,
(*c*) British Guiana,
(*d*) Dominica,
(*e*) Grenada,
(*f*) Jamaica,
(*g*) Montserrat,
(*h*) Saint Christopher, Nevis and Anguilla,
(*i*) Saint Lucia,
(*j*) Saint Vincent,
(*k*) the Cayman Islands,
(*l*) the Turks and Caicos Islands,
(*m*) the Virgin Islands, and
(*n*) Trinidad and Tobago,

and "Territory" means any of the territories aforesaid.

(a) 10 & 11 Eliz. 2. c. 19. (b) S.I. 1962/1084 (1962 II. p. 1220).

(2) In this Order, unless the context otherwise requires, references to the holder of an office by the term designating his office include references to any person lawfully discharging the functions of that office.

(3) Where by this Order a power is conferred to make appointments to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, if such other person is on leave of absence pending his relinquishment of that office; and when two or more persons are holding the same office by reason of an appointment made in pursuance of this paragraph, then for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of that office.

(4) The Interpretation Act 1889(a) shall apply, with the necessary adaptations, for the purpose of interpreting this Order or otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

Constitution of Court.

3.—(1) There shall be a court of appeal for the Territories which shall be styled the British Caribbean Court of Appeal.

(2) The judges of the Court shall be a President and two or more Justices of Appeal, who shall be appointed by the Commissioner in accordance with instructions given by Her Majesty through a Secretary of State.

(3) A person shall be qualified for appointment to the office of President or Justice of Appeal of the Court if, and shall not be so qualified unless—

(*a*) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; or

(*b*) he has been in practice as an advocate in such a court or courts for a period of, or periods amounting in the aggregate to, not less than ten years.

(4) For the purposes of paragraph (3) of this article a person serving in an office under the Government of some part of the Commonwealth the functions of which include appearing as an advocate in such a court on behalf of that Government shall be deemed to be in practice as an advocate in such a court.

(5) At any time when the office of President of the Court is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by such one of the Justices of Appeal as may from time to time be designated in that behalf by a Secretary of State.

(6) The Commissioner may, in accordance with such instructions as he may receive from Her Majesty through a Secretary of State, as occasion may require, appoint any person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal and such person shall act as a Justice of Appeal until his appointment is terminated by the Commissioner in accordance with any such instructions, or he resigns.

(7) The Court shall have and use a seal bearing the style of the Court and a device approved by the President.

(a) 52 & 53 Vict. c. 63.

(8) Every person appointed to be a judge of the Court shall, before entering upon the functions of his office, make and subscribe before such person as may be authorized by a Secretary of State in that behalf the oath or affirmation of allegiance and the judicial oath or affirmation in the forms set out in Schedule 1 to this Order.

Tenure of office of judges.

4.—(1) Subject to the provisions of this article, a person holding the office of President or Justice of Appeal of the Court shall vacate his office on attaining the age of sixty-five years:

Provided that a Secretary of State may permit any such person to continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) The President or a Justice of Appeal of the Court may at any time resign his office by writing under his hand addressed to the Commissioner.

(3) A person holding the office of President or Justice of Appeal of the Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this article.

(4) A person holding the office of President or Justice of Appeal of the Court shall be removed from office by a Secretary of State if the question of his removal has been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that that person ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If a Secretary of State considers that the question of removing a person holding the office of President or a Justice of Appeal of the Court under this article ought to be investigated then—

(*a*) the Secretary of State shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, being persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and

(*b*) the tribunal shall enquire into the facts of the case and report thereon to the Secretary of State, and shall state whether, in the opinion of the tribunal, there are grounds for referring the question of the removal of that person from office to the Judicial Committee.

(6) If the question of removing a person holding the office of President or Justice of Appeal of the Court from office has been referred to a tribunal under paragraph (5) of this article, a Secretary of State may suspend that person from performing the functions of his office and any such suspension may at any time be revoked by the Secretary of State and shall in any case cease to have effect if the Judicial Committee advises Her Majesty that that person ought not to be removed from office.

Jurisdiction in the Territories.

5.—(1) The Court shall have jurisdiction to hear and determine such appeals from the courts of each Territory as may be prescribed by any law in force in that Territory.

(2) In connection with any appeal from a court of a Territory the Court shall, subject to the provisions of this Order and any law in force in the Territory, have all the powers and jurisdiction that are possessed by that court under any law in force in the Territory; and decisions of the Court in respect of any appeal from a court of a Territory shall, subject as aforesaid, be enforced in the Territory in the same way as decisions of that court.

(3) The Court may, in accordance with any directions issued from time to time by the President, sit in any Territory for the purpose of exercising any jurisdiction and powers conferred upon it by or under this article or by any rule made under article 6 of this Order; and for that purpose it shall be a superior court of record having in each Territory similar powers relating to contempts of itself as are possessed under the law of that Territory by such a court.

Practice and procedure on appeals from the Territories.

6.—(1) Subject to the provisions of this Order, the President and any two other judges of the Court selected by the President may make rules for regulating the practice and procedure of the Court with respect to appeals from the courts of the Territories and, in connection with such appeals, for regulating the practice and procedure in any court of a Territory from which such appeals are brought.

(2) Without prejudice to the generality of paragraph (1) of this article, rules of court may be made for the following purposes:—

(*a*) for regulating the sittings of the Court, whether in divisions or otherwise, and the selection of judges for any purpose;

(*b*) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court;

(*c*) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;

(*d*) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay;

(*e*) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;

(*f*) for prescribing and regulating the powers and duties of registrars and officers of the Court;

(*g*) for prescribing the time within which any requirement of the rules is to be complied with.

(3) Rules made under this article may fix the number of judges of the Court who may sit for any purpose:

Provided that—

(*a*) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be less than three; and

(*b*) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according

to the opinion of a majority of the judges who sit for the purpose of determining that matter.

Officers of the Court.

7. There shall be such Registrars, officers and servants of the Court, appointed in such manner as a Secretary of State may direct.

Terms of service of judges and other officers.

8.—(1) Subject to the provisions of this Order, the President and the Justices of Appeal of the Court and the Registrars, officers and servants of the Court shall receive such emoluments and be subject to such other terms and conditions of service as may be prescribed by a Secretary of State.

(2) For the purposes of any power vested in the Commissioner to provide for the grant of pensions, gratuities and other like benefits in respect of service in the service of the Commissioner the offices of judges, registrars, officers and servants of the Court shall be offices in that service.

(3) The emoluments and terms and conditions of service of the President or a Justice of Appeal of the Court, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during his continuance in office.

Financial provisions.

9.—(1) The expenses of the Court shall be defrayed by the Commissioner, and the Commissioner shall from time to time certify the amount of the expenses of the Court defrayed by him and the Government of each Territory shall pay to the Commissioner such proportion of that amount as Her Majesty may direct by instructions through a Secretary of State.

(2) All fees payable in respect of proceedings in the Court shall be paid into the general revenues of the Territory wherein the proceedings giving rise to the appeal were commenced.

(3) Any sum payable by the Government of a Territory under this article shall be a charge upon the revenues of that Territory.

Transitional provisions.

10.—(1) The persons who immediately before the commencement of this Order hold the offices of Chief Justice and Federal Justices of the existing Court shall be deemed to have been respectively appointed at the commencement of this Order and in accordance with its provisions to be the President and the Justices of Appeal of the Court constituted by this Order.

(2) Save as a Secretary of State may otherwise direct, any person who immediately before the commencement of this Order holds office or is acting as a Registrar, officer or servant of the existing Court shall be deemed to have been appointed at the commencement of this Order and in accordance with its provisions to hold or act in the corresponding office of the Court constituted by this Order.

(3) Any person who by virtue of paragraph (1) or paragraph (2) of this article is deemed to have been appointed to hold or act in any office shall, subject to the provisions of this Order, be deemed to have been so appointed with the same emoluments and on the same terms and conditions of service as were applicable to him immediately before the commencement of this Order.

(4) The provisions of this Order shall, in their application to any person who by virtue of paragraph (1) or paragraph (2) of this article is deemed to have been appointed to or to hold or act in any office,

have effect subject to the provisions of the West Indies (Retirement and Compensation) Order in Council 1962(a).

(5) A person deemed under the provisions of this article to have been appointed to be the President of the Court or a Justice of Appeal of the Court, as the case may be, shall not be required before entering upon the functions of his office to make or subscribe an oath or affirmation as prescribed in article 3 (8) of this Order.

Pending proceedings.

11.—(1) Any proceedings relating to appeals from the courts of the Territories that are pending immediately before the commencement of this Order in the existing Court may be continued after the commencement of this Order in the court constituted by this Order.

(2) Any judgment of the existing Court given, but not satisfied, before the commencement of this Order, may be enforced after the commencement of this Order as if it were a judgment of the court constituted by this Order.

Saving of existing appeal laws and rules of court.

12.—(1) Any law in force in any Territory immediately before the commencement of this Order providing for appeals from the courts of that Territory to the existing Court and matters relating thereto shall, subject to amendment or repeal by a law of the Legislature of that Territory or by rules made under article 6 of this Order, continue in force in that Territory after the commencement of this Order, but shall have effect as if it was a law enacted in pursuance of article 5 of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

(2) All rules of court, relating to the hearing and determination of appeals from the courts of each Territory by the existing Court in force immediately before the commencement of this Order shall, subject to amendment or revocation by rules made under article 6 of this Order, continue in force after the commencement of this Order and shall have effect as if they were rules made under article 6 of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

Revocation.

13. The laws mentioned in the first column of Schedule 2 to this Order shall, to the extent respectively specified in relation thereto in the second column of that Schedule, cease to have effect.

W. G. Agnew.

(a) S.I. 1962/1085 (1962 II, p. 1232).

SCHEDULE 1 (article 3 (8))

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Allegiance*

I .....
do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. *Affirmation of Allegiance*

I .....
do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. *Judicial Oath*

I .....
do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*) and I will do right to all manner of people according to the law without fear or favour affection or ill-will. So help me God.

4. *Judicial Affirmation*

I .....
do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*) and I will do right to all manner of people according to the law without fear or favour affection or ill-will.

SCHEDULE 2 (article 13)

Law	*Extent of Cesser*
The British Guiana (Appeals) Order in Council 1957(a).	The whole Order.
The Virgin Islands (Appeals) Order in Council 1957(b).	The whole Order.
The Federal Supreme Court Regulations 1958.	Sections 3, 4, 5, 9, 10, 12, 13 and 14, Part IV and the Schedule.
The Federal Supreme Court (British Guiana Appeals) Act 1958.	The whole Act.
The Federal Supreme Court (Virgin Islands Appeals) Act 1958.	Section 5

(a) S.I. 1957/1527 (1957 I, p. 194). (b) S.I. 1957/1746 (1957 I, p. 198).

EXPLANATORY NOTE

(This Note is not a part of the Order, but is intended to indicate its general purport.)

This Order makes fresh provision for the hearing and determination of appeals from the courts of the British Caribbean territories.