

THE CRIMINAL APPEAL (AMENDMENT) BILL
(No. XIX of 2013)

Explanatory Memorandum

The object of this Bill is to amend the Criminal Appeal Act to provide –

- (a) that the Director of Public Prosecutions may appeal to the Court of Criminal Appeal not only against a sentence by the Supreme Court but also against an acquittal or a conviction for a lesser offence by the Supreme Court;
- (b) that the Director of Public Prosecutions or a convicted person may apply to the Court of Criminal Appeal for a review of the proceedings relating to an acquittal or a conviction before the Supreme Court, and the Court of Criminal Appeal may, in the course of the review proceedings, quash the acquittal or conviction and order a retrial,

and for related matters.

S. V. FAUGOO
Attorney-General

12 July 2013

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
 2. Interpretation
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 4. Section 3 of principal Act amended
 5. Section 5 of principal Act amended
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A BILL

To amend the Criminal Appeal Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Criminal Appeal (Amendment) Act 2013.

2. Interpretation

In this Act –

“principal Act” means the Criminal Appeal Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended, in subsection (1), in the definition of “appellant”, by adding the words “and includes, where appropriate, the Director of Public Prosecutions where he desires to appeal under section 5”.

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended, in subsection (2), by inserting, after the words “appeals”, the words “and applications for review”.

5. Section 5 of principal Act amended

Section 5 of the principal Act is amended by repealing subsection (2) and replacing it by the following subsection –

(2) The Director of Public Prosecutions may appeal to the Court against a final decision of the Supreme Court where –

- (a) a charge has been dismissed;
- (b) a person has been convicted of a lesser offence than the one with which he was charged; or
- (c) he is of opinion that the sentence passed is wrong in law or unduly lenient.

6. Section 6 of principal Act amended

Section 6 of the principal Act is amended by inserting, after subsection (2), the following new subsection –

(2A) On appeal against –

(a) the dismissal of a charge, the Court may –

- (i) affirm or reverse the dismissal of the Supreme Court and substitute therefor the appropriate determination or order a new trial; or
- (ii) declare the trial to be a nullity and order a fresh hearing where the Court is of opinion that a serious irregularity has occurred;

(b) a conviction for a lesser offence than the one with which a person was charged, the Court may –

- (i) affirm or reverse, amend or alter the conviction, order or sentence and substitute therefor the appropriate determination or order a new trial, and may, if the order made or sentence passed is one which the Supreme Court had no power to make or pass, as the case may be, amend the judgment by substituting for the order or sentence such order or sentence as the Supreme Court had power to make or pass, as the case may be; or
- (ii) declare the trial to be a nullity and order a fresh hearing where the Court is of opinion that a serious irregularity has occurred.

7. Section 9 of principal Act amended

Section 9 of the principal Act is amended, in subsection (1) –

- (a) by inserting, after the words “Supreme Court”, the words “or the Director of Public Prosecutions”;
- (b) by adding the words “or dismissal of the charge, as the case may be”.

8. New section 19A inserted in principal Act

The principal Act is amended by inserting, after section 19, the following new section –

19A. Application to Court for review and retrial

(1) (a) Where a person has been acquitted following a trial before the Supreme Court or appellate proceedings before the Court, the Director of Public Prosecutions may, subject to paragraph (b), apply to the Court for a review of the proceedings relating to the acquittal.

(b) Paragraph (a) shall not apply to a person who has been acquitted following a retrial ordered pursuant to subsection (4).

(2) Where a person has been convicted following a trial before the Supreme Court or appellate proceedings before the Court, the convicted person may apply to the Court for a review of the proceedings relating to the conviction.

(3) (a) Subject to paragraph (b), an application under subsection (1) or (2) shall be made in accordance with Rules of Court.

(b) Sections 10, 11, 14, 15, 16, 17 and 18 shall apply *mutatis mutandis* to an application for review under this section.

(4) Where the Court is satisfied that –

(a) there is fresh evidence and compelling evidence in relation to the offence or a lesser offence; and

(b) it is likely that the retrial will be fair, having regard to the circumstances, including the length of time since the offence is alleged to have been committed,

the Court –

(i) shall grant the application and quash the conviction or acquittal, as the case may be;

(ii) shall order that the person be retried for the offence with which he was originally charged or a lesser offence; and

(iii) may make such other order as it considers appropriate.

(5) In this section –

“compelling evidence” means evidence which is –

- (a) reliable;
- (b) substantial; and
- (c) highly probative in the context of the issues in dispute at the trial;

“fresh evidence” means evidence which –

- (a) was not adduced at the trial of the offence; and
 - (b) could not, with the exercise of reasonable diligence, have been adduced at the trial.
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