

CHAPTER 117A

SUPREME COURT OF JUDICATURE

1981-27

This Act came into operation on 4th November, 1991 by Proclamation (S.I. 1991 No. 146).

Amended by:

<i>1990-17</i>	<i>1996-10</i>	<i>2004-6</i>
<i>1990-18</i>	<i>1996-28</i>	<i>2005-8</i>
<i>1992-14</i>	<i>2000-24</i>	<i>2006-4</i>
<i>1993-5</i>	<i>2003-7</i>	<i>2007-35</i>

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985	1993	2003
1991	1998	2007

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 117A

**SUPREME COURT OF JUDICATURE
1981-27**

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*CONSTITUTION AND APPOINTMENT OF THE JUDICIAL COUNCIL AND
RELATED MATTERS*

**BARBADOS**SUPREME COURT OF JUDICATURE
1981-27

An Act to make provision with respect to the constitution, jurisdiction and proceedings of the Supreme Court of Judicature, to make provision respecting the administration of justice, and for matters incidental thereto and connected therewith.

[Commencement: 4th November, 1991]

CITATION

Short title

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

*Interpretation***Definitions**

2. In this Act,
“action” means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding by or in the name of the Crown;

“cause” includes any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by or in the name of the Crown;

“costs” includes fees, charges, disbursements, expenses or remuneration;

“defendant” includes any person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;

“division” means division of the High Court;

“enactment” has the same meaning as in the *Interpretation Act*, Cap. 1;

“heretofore” means immediately before the date of commencement of the provision in which it occurs;

“inferior court” means any tribunal or authority, other than the Supreme Court, that exercises judicial or quasi-judicial functions;

“Judge” means a judge of the High Court other than the Chief Justice;

“judgment” includes order, decision or decree;

“jurisdiction” includes power and authority;

“Justice of Appeal” means a judge of the Court of Appeal other than the Chief Justice;

“Master” means a Master of the High Court;
[2006-4]

“matter” includes every proceeding in court not in a cause;

“order” includes decision and rule;

“party” includes every person served with notice of, or attending, any proceeding, although not named on the record;

“petitioner” includes every person making application to the Supreme Court, whether by petition, motion or summons, otherwise than against any defendant;

“plaintiff” includes every person asking any relief, otherwise than by way of counterclaim as defendant, against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

“pleading” includes a petition or summons, the statement in writing of the claim or demand of a party, and of the defence or reply of a party to a claim or demand made against him;

“prescribed” means prescribed by rules of court;

“Registrar” means the Registrar of the Supreme Court;

“Rules Committee” means the Committee established by section 81;

“rules of court” includes the rules in force by virtue of this Act as well as any rules to be made under the authority of this Act, and also includes forms;

“suit” includes action;

“Supreme Court” means the Supreme Court of Judicature as constituted under section 3.

PART I

SUPREME COURT

Jurisdiction, powers etc. of Supreme Court of Judicature

3. The Supreme Court of Judicature consisting of the High Court and of the Court of Appeal, as they are constituted under sections 4 to 6, shall, subject to section 52(2)(b), continue to have and exercise the jurisdiction, powers and authority heretofore vested in those Courts, and any other jurisdiction, powers and authority conferred respectively on those Courts by this Act or by any other Act.

*High Court***Constitution of High Court**

- 4.(1) The High Court consists of
- (a) the Chief Justice, *ex officio*; and
 - (b) not more than 8 judges to be styled “Judges of the High Court”.
- (2) *[Repealed by 2003-7.]*
- (3) All the judges of the High Court have, in all respects, equal jurisdiction and shall be addressed in the manner in which judges of the High Court were customarily addressed heretofore.
- (4) A person who holds the office of Judge of the High Court and is subsequently appointed to the office of Justice of Appeal may sit in the High Court as if he were a Judge of that Court for the purpose of delivering judgment or doing any other thing in relation to proceedings which were commenced before him whilst he was a Judge of the High Court.

[1996-10]

[1993-5; 2003-7]

*Court of Appeal***Constitution of Court of Appeal**

- 5.(1) The Court of Appeal consists of
- (a) the Chief Justice, who shall be the President of that Court; and
 - (b) not less than 2 and not more than 5 other Judges, who shall be styled Justices of Appeal.
- (2) Subject to Part V, for the purpose of exercising its jurisdiction the Court of Appeal shall be constituted in accordance with the directions of the Chief

Justice and shall consist of an uneven number of Judges, such number being not less than 3.

(3) All the judges of the Court of Appeal have, in all respects, equal jurisdiction with the Chief Justice and among themselves, and shall be addressed in the manner in which a judge of the Court of Appeal was customarily addressed heretofore.

[1990-18; 2003-7]

Courts duly constituted

6. The High Court and the Court of Appeal are duly constituted notwithstanding any vacancy in the office of any judge of either Court.

Judiciary

Qualifications of judges of High Court and Court of Appeal

7.(1) Any person is qualified for appointment as a judge of the High Court who

- (a) is or has been judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or
- (b) is qualified to practise as an attorney-at-law, advocate or barrister-at-law in such a court and has so practised for a period of, or periods amounting in the aggregate to not less than, 10 years.

(2) Any person is qualified for appointment as Chief Justice or as a judge of the Court of Appeal who

- (a) is a judge of the High Court; or
- (b) is qualified to practise as an attorney-at-law, advocate or barrister-at-law in such a court and has been in practice as such for a period of, or periods amounting in the aggregate to not less than, 15 years.

(3) In this section, “practise for a period as an attorney-at-law” includes any period during which a person served as an attorney-at-law, advocate, barrister-at-law, Magistrate or Registrar of a court in some part of the Commonwealth or as Parliamentary Counsel or as a Professor or teacher of law at the University of the West Indies or at a School for legal education approved by the Judicial and Legal Service Commission.

Precedence

8.(1) The Chief Justice has precedence over all other judges of the Supreme Court.

(2) Judges of the Court of Appeal rank next in order to the Chief Justice and among themselves according to the priority of the dates on which they respectively became judges of the Court of Appeal; and have precedence over the judges of the High Court

(3) The Judges of the High Court rank among themselves accordingly to the priority of the dates on which they respectively became judges of the High Court.

Transitional

9.(1) A Judge of the High Court who, before 4th November, 1991 sat and acted as a Judge of the Court of Appeal may, after 4th November, 1991 sit and act as a Judge of the Court of Appeal for the purpose of giving judgment in, and otherwise acting in relation to, any case heard by him or by that Court while he so sat and acted.

(2) A Judge of the High Court shall not, under subsection (1) be treated as a Judge of the Court of Appeal for the purposes of any enactment relating to

- (a) the appointment, retirement, removal or disqualification of a Judge of that Court;
- (b) the tenure of office and oaths to be taken by a Judge of that Court;

- (c) the remuneration allowances or pensions of a Judge of that Court.

[Act 1990-17 Constitution of Barbados (Amendment) Act that came into force on 4th November, 1991 contains this transitional provision.]

[1990-17]

Power of Judge to act in cases relating to taxes

10.(1) The Chief Justice, a Justice of Appeal or a Judge of the High Court is not incapable of acting in his judicial office in any proceeding by reason of his being one of any class of persons liable, in common with others, to contribute to or eligible to be benefited by any tax that might be increased, diminished or in any way affected by that proceeding.

(2) In this section, “tax” means any tax, duty or assessment, and also any fund formed from the proceeds of any such tax, duty or assessment or applicable to the purposes to which any such tax, duty or assessment might be applied or applicable to any similar purposes.

Exercise of functions of Chief Justice

11.(1) Anything that, by virtue of this Act or of any other enactment, is for the time being authorised or required to be done to or by the Chief Justice may, if the Chief Justice is not available because

- (a) of absence, or
- (b) of other reason, or
- (c) his office is vacant,

be done during such unavailability or vacancy to or by the senior Justice of Appeal.

PART II

JURISDICTION AND POWERS OF HIGH COURT

*General Jurisdiction***Jurisdiction of High Court**

12.(1) Subject to section 52(2)(b), the High Court may exercise

- (a) all such jurisdiction as was heretofore capable of being exercised by the High Court; and
- (b) such other jurisdiction as is conferred by this Act or by any other Act.

(2) The jurisdiction vested in the High Court includes, except as provided by this Act, the jurisdiction heretofore capable of being exercised by the High Court or any judge or officer thereof in pursuance of any enactment, prerogative, law or custom, and also all ministerial and other powers, duties and authorities incident to any part of the jurisdiction so vested.

(3) In addition to the jurisdiction and functions exercisable by him under or by virtue of any other provision of this Act, the Chief Justice may, except as provided by this Act, exercise all the jurisdiction and ministerial and other powers, duties and authorities that, in pursuance of any enactment, prerogative, law or custom, were heretofore capable of being exercised by the Chief Justice otherwise than as a Judge of the High Court and Court of Appeal.

Powers of single Judge

13.(1) A Judge may, subject to the rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the High Court in all such causes or matters and in all such proceedings in any causes or matters as heretofore may have been heard in court or in chambers or as may be directed or authorised to be so heard by rules of court.

(2) A Judge sitting in court, or a division thereof, constitutes a court or division as the case requires.

Proceedings in High Court to be disposed of by single Judge

14. Every proceeding in the High Court in a civil cause or matter, and all business arising out of those proceedings shall, so far as is practicable and convenient, and subject to this Act or any other Act, be heard and disposed of by a Judge sitting alone; and all proceedings in any action or matter subsequent to the trial or hearing, down to and including the final judgment or order, shall, so far as is practicable and convenient, be taken before the Judge before whom the trial or hearing took place.

Divisions of High Court

15.(1) There shall be three divisions of the High Court, namely

- (a) a Civil Division;
- (b) a Criminal Division; and
- (c) a Family Division.

(2) A judge of the High Court may sit in any division.

(3) The jurisdiction vested in the High Court in its Civil Division or Family Division belongs to those Divisions alike.

Jurisdiction of Family Division

16.(1) All causes and matters involving the exercise of the High Court's jurisdiction in proceedings specified in the First Schedule are assigned to the Family Division.

(2) Subsection (1) does not limit section 13(1).

Declaratory judgments

17.(1) No action or other proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby.

(2) The High Court may make binding declarations of right in any action or other proceeding whether or not any consequential relief is or could be claimed therein.

(3) Notwithstanding that the events on which a right depends have not occurred, the High Court may in its discretion make a binding declaration of right, if it is satisfied that

- (a) the question for decision involves a point of general public importance, or that it would in the circumstances be unjust or inconvenient to withhold the declaration; and
- (b) the interests of persons not parties to the proceedings would not be unjustly prejudiced by the declaration.

Application for *habeas corpus*

18.(1) The High Court has the same jurisdiction as heretofore to hear and determine an application for a writ of *habeas corpus*.

(2) An application under subsection (1) shall be made in accordance with rules of court.

(3) Notwithstanding anything in any enactment or rule of law, when a criminal or civil application for *habeas corpus* has been made by or in respect of any person, no such application for *habeas corpus* may again be made to any court or Judge by or in respect of that person on the same grounds, unless fresh evidence is adduced in support of the application.

(4) Where the person by whom or in respect of whom an application for *habeas corpus* is made is restrained as a person liable to be detained under the *Mental Health Act*, Cap. 45, otherwise than by virtue of sections 7 and 13 or of any other provisions of Part II of that Act the application shall, for the purpose of this section and of any appeal in the proceedings, be deemed to constitute a criminal cause or matter.

(5) In this section, “application for *habeas corpus*” means an application for a writ of *habeas corpus ad subjiciendum*; and references to a criminal application

or civil application shall be construed accordingly as the application does or does not constitute a criminal cause or matter.

Application for *certiorari*

19.(1) Where a person has been sentenced for an offence by a magistrate's court and an application is made to the High Court for an order of *certiorari* to remove the proceedings of the magistrate's court into the High Court, and the High Court determines that the magistrate's court had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence that the magistrate's court has power to impose.

(2) Any sentence passed by the High Court by virtue of this section in substitution for the sentence passed in the proceedings of a magistrate's court begins to run, unless the High Court otherwise directs, from the time when it would have begun to run if passed in those proceedings.

(3) Subsections (1) and (2) apply, with the necessary modifications, in relation to any order of a magistrate's court that is made on, but does not form part of, the conviction of an offender as they apply in relation to a conviction and sentence.

(4) The High Court may grant bail to a person who has been convicted or sentenced by a magistrate's court and has applied to the High Court for an order of *certiorari* to remove the proceedings of the magistrate's court into the High Court, on his entering into a recognizance, with or without sureties, to appear on the date fixed for the hearing by the High Court.

[1996-28]

(5) The time during which a person is released on bail under this section does not count as any term of imprisonment or detention under his sentence; and any sentence of imprisonment or detention imposed by the magistrate's court after the imposition of which a person is so released on bail begins to run or to be resumed as from the date on which he is, under the sentence, received in prison.

[1996-28]

- (6) Rules of court may be made for the purposes of
- (a) prescribing the persons before whom, and the manner in which, a recognizance under subsection (4) is to be entered into by a person who is applying for an order of *certiorari*;
 - (b) prescribing the manner in which such a recognizance can be enforced; and
 - (c) authorising the recommittal of persons so applying.

Wards of Court

20.(1) Subject to this section, no minor becomes a ward of court except by an order made by the High Court.

(2) Where application is made to make a minor a ward of court, the minor becomes a ward of court with effect from the making of the application, but ceases to be a ward of court at the expiration of such period as may be prescribed by rules of court, unless within that prescribed period an order is made in accordance with the application.

(3) Either upon an application in that behalf or without an application, the High Court may order that a minor who is a ward of court cease to be a ward of court.

(4) The power of the High Court to make a minor a ward of court or to make an order in relation to a minor who is a ward of court may be exercised irrespective of whether the minor has property of any kind.

Maintenance of wards of court

21.(1) Subject to this section, the High Court may make an order

- (a) requiring either parent of a ward of court to pay to the other parent; or
- (b) requiring either parent or both parents of a ward of court to pay to any other person having the care and control of the ward,

such weekly or other periodical sums towards the maintenance and education of the ward as the High Court thinks reasonable, having regard to the means of the person or persons on whom the requirement is imposed.

(2) The High Court may by order vary or discharge any previous order under this section.

Property etc. of patients

22.(1) Subject to subsection (2), the High Court continues to exercise all jurisdiction in matters relating to patients heretofore vested in and exercisable by that court under the *Mental Health Act*, Cap. 45, or conferred on it by this Act or any other enactment.

(2) In this section, “matters relating to patients” includes all matters relating to

- (a) the care and commitment of the custody of idiots, lunatics and persons of unsound mind;
- (b) their property; and
- (c) the guardianship of persons of weak mind and the protection of their property.

Co-ordination of jurisdiction

23.(1) Rules of court may provide for the co-ordination of the jurisdiction exercised by the judges of the High Court

- (a) in respect of any cause or matter affecting a person under a disability of any kind, where that person is brought before a judge other than the judge to whom causes or matters particularly affecting persons under disability of that kind are assigned;
- (b) in relation to minors for the purposes of enabling an order making a minor a ward of court to be made by a judge other than the judge to whom such causes or matters are assigned, or of enabling an order to

be made for the transfer by a judge of the question of wardship or of any other question arising in the proceedings that affects the welfare, including care, custody or control or property of a minor who is already a ward of court, to the judge to whom such causes or matters are assigned.

- (2) Rules made pursuant to this section
- (a) may require the judge to furnish to the judge to whom the cause or matter is assigned a report on the relevant facts and proceedings, together with such observations and recommendations as he thinks;
 - (b) may empower a judge to whom a cause or matter is transferred or a question is referred to proceed as though the cause, matter or question had originated before him;
 - (c) must provide for the transmission to the Registrar of a copy of the order of a judge (other than a judge to whom such causes or matters are assigned) that
 - (i) relates to a person under disability and brings him within the provisions of the *Mental Health Act*, Cap. 45;
 - (ii) makes a minor a ward of court; or
 - (iii) directs a copy of the order to be so transmitted.

Contempt

24.(1) The High Court has the same jurisdiction as heretofore to deal with cases of contempt, and all such jurisdiction as is vested in that Court by this Act or any other enactment.

(2) Where, in any proceedings before the High Court for contempt, there are, in the opinion of the Court, exceptional circumstances that render it necessary in the interest of justice, the Court may order that the proceedings be not heard in open court.

Innocent publication etc.

25.(1) A person is not guilty of contempt of court on the ground that he has published any matter calculated to interfere with the cause of justice in connection with any proceedings pending or imminent at the time of publication if, at that time, and having taken all reasonable care, he did not know, and had no reason to suspect, that the proceedings were pending or imminent.

(2) A person is not guilty of contempt of court on the ground that he has distributed a publication containing matter mentioned in subsection (1) if, at the time of the distribution and having taken all reasonable care, he did not know and had no reason to suspect that the publication contained any such matter.

[2007-35]

(3) The onus of proving any particular fact that tends to establish a defence under this section on proceedings for contempt of court lies upon the person who asserts that particular fact.

Publication of information

26.(1) The publication of information relating to proceedings before any court sitting in private is not itself contempt of court, except in the following cases, that is to say:

- (a) where the proceedings relate to the wardship or adoption of a minor, or wholly or mainly to the guardianship, custody, maintenance or upbringing of a minor, or rights of access to a minor;
- (b) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
- (c) where the information relates to a secret process, discovery or invention that is in issue in the proceedings;

- (d) where the court having power to do so, expressly prohibits the publication of all information relating to the proceedings or of information of the description published.
- (2) Without affecting subsection (1), the publication of the text or a summary of the whole or part of an order made by a court sitting in private is not itself contempt of court, except where the court having power to do so expressly prohibits the publication.
- (3) In this section, references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting *in camera* or in chambers.
- (4) Nothing in this section makes punishable as contempt of court anything that would not be punishable apart from this section as contempt of court.

Writ ad melius enquirendum

27. Upon the application of the Attorney-General and notwithstanding anything in the *Coroners Act*, Cap. 113, the High Court may, if it appears to the Court that any inquest is for any cause inadequate, issue a writ *ad melius enquirendum* directed either to the coroner whose inquest is inadequate or to such other coroner as the Court thinks fit.

Admiralty Jurisdiction

Admiralty and prize jurisdiction

28. The High Court continues to exercise its Admiralty jurisdiction over the like places, persons, matters and things as heretofore vested in that Court, and is a prize court of unlimited jurisdiction in matters of prize; and, subject to rules of court, shall exercise its jurisdiction under this section in accordance with the same rules and principles, and have the same regard to international law and the comity of nations as the High Court had heretofore in the exercise of its jurisdiction.

*Powers of High Court***Suit in respect of possession of land by mortgagor**

29.(1) Unless an express declaration contained in the mortgage provides otherwise, a mortgagor who is entitled for the time being to the possession or receipt of the rents and profits of any land for which no notice of intention to take possession or to enter into the receipt of the rents and profits has been given by the mortgagee may

- (a) sign and cause to be served notices to quit;
- (b) determine tenancies or accept surrenders thereof;
- (c) sue in his own name only for possession or for the recovery of the rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

(2) An action, suit or proceeding referred to in subsection (1) is not defeated by proof that the legal estate is vested in a mortgagee in respect of the land

- (a) the possession of which is sought to be recovered,
- (b) of which the rents or profits are sought to be recovered, or
- (c) against which the trespass or other wrong has been committed.

Power of court in action by mortgagee for possession of dwelling house

30.(1) Where the mortgagee under a mortgage of land that consists of or includes a dwelling-house brings an action in which he claims possession of the mortgaged property, not being an action for fore-closure in which a claim for possession of the mortgaged property is also made, the High Court may exercise any of the powers conferred on it by subsection (2) if it appears to the court that if it exercises that power the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage, or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage.

- (2) The Court may,
- (a) adjourn the proceedings, or
 - (b) on giving judgment, or making an order for delivery of possession of the mortgaged property, or at any time before the execution of such judgment or order,
 - (i) stay or suspend execution of the judgment or order, or
 - (ii) postpone the date for delivery of possession,

for such periods as the Court thinks reasonable.

(3) Any adjournment, stay, suspension or postponement under subsection (2) may be made subject to such conditions with regard to payment by the mortgagor of any sum secured by the mortgage or the remedying of any default as the Court thinks fit.

(4) The Court may from time to time vary or revoke any condition imposed under this section.

(5) This section has effect in relation to an action referred to in subsection (1) and begun before the date on which this section comes into force, unless in that action judgment has been given or an order made for delivery of possession of the mortgaged property and that judgment or order was executed before that date.

Power of court to give possession of land sold

31.(1) Where, on the sale by order of the High Court of any land or any estate or interest therein, the purchaser becomes entitled to the immediate possession of the land, then, if any other person is found to be in possession or occupation of the land and neglects or refuses to deliver up possession thereof to its purchaser, the High Court may, subject to subsection (2), on the application of the purchaser, issue a warrant under the hand of a judge directed to any one or more writ officers commanding them within a period to be therein named, and being not less than

3 nor more than 10 clear days from the date of the warrant, to enter by force if necessary into the land and give possession of the land to the purchaser.

(2) Entry under warrant under subsection (1) may not be made on Sunday, Good Friday or Christmas Day, or any public holiday made by proclamation, or at any time of the day except between the hours of 8 in the morning and 5 in the afternoon.

Execution of instrument by order of Court

32. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the High Court may, on such terms and conditions, if any, as it considers just, order that the conveyance, contract or other document be executed or that the negotiable instrument be endorsed by such person as the Court may nominate for that purpose; and a conveyance, contract, document or instrument so executed or endorsed operates and is for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

Power of Court to impose charges on land of judgment debtor

33.(1) The High Court may, for the purpose of enforcing a judgment or order of the court for the payment of money to a person, by order impose on any such land or interest in land of the debtor as may be specified in the order a charge for securing the payment of any moneys due or to become due under the judgment or order.

(2) An order under subsection (1) may be made either absolutely or subject to conditions as to notifying the debtor, or as to the time when the charge is to become enforceable, or as to other matters.

(3) The *Registration of Judgments Act*, Cap. 210 and the *Land Registration Act*, Cap. 229, apply in relation to orders under subsection (1) as they apply in relation to other writs or orders affecting land issued or made for the purpose of enforcing judgments, but, save as aforesaid, a charge imposed under

subsection (1) has the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand.

(4) This section applies in relation to a judgment, order, decree or award, however called, of any court or arbitrator, including any foreign court or foreign arbitrator, that is or has become enforceable, whether wholly or to a limited extent, as it applies to a judgment or order of the High Court.

Receivers

34.(1) The power of the High Court to appoint a receiver by way of equitable execution is hereby extended to operate in relation to all legal estates and interests in land.

(2) The power referred to in subsection (1) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 33 for the purpose of enforcing the judgment, decree, order or award in question; and that power is in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.

(3) Where an order under section 33 that imposes a charge for the purpose of enforcing a judgment, decree, order or award has been registered under section 2 of the *Registration of Judgments Act*, Cap. 210, subsection (1) of section 3 of that Act does not apply to an order appointing a receiver made either in proceedings for enforcing the charge or by way of equitable execution of the judgment, decree, order or award, or, as the case may be, of so much thereof as requires payment of moneys secured by the charge.

Power to award interest on debt or damages

35.(1) Subject to subsection (2), in any proceedings tried in the High Court for the recovery of debt or damages, that Court may, if it thinks fit, order that there be included in the sum for which judgment is given interest at such rate as may be prescribed by rules of court on the whole or any part of the debt or

damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

- (2) Nothing in this action
 - (a) authorises the giving of interest upon interest;
 - (b) applies in relation to any debt upon which interest is payable as of right, whether under any agreement or otherwise; or
 - (c) affects the damages recoverable for the dishonour of a bill of exchange.
- (3) Where in any proceedings under subsection (1), judgment is given for a sum that represents or includes damages in respect of personal injuries to the plaintiff or any other person, then, without prejudice to the exercise of the power conferred by that subsection in relation to any part of that sum that does not represent such damages, the Court shall exercise that power so as to include in that sum interest on those damages or on such part of them as the Court considers appropriate, unless the Court is satisfied that there are special reasons why no interest should be given in respect of those damages.
- (4) An order under this section may provide for interest to be calculated at different rates in respect of different parts of the period for which interest is given, whether that period is the whole or part of the period mentioned in subsection (1).
- (5) The Court shall award interest at such rate as may be prescribed by rules of court on
 - (a) a judgment debt or on such part thereof as for the time being remains unsatisfied from the date of judgment until satisfaction;
 - (b) costs from the date that such costs are ascertained or taxed until payment is made.

Power to restrict institution of vexatious actions

36.(1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and

without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order

- (a) that no legal proceedings be instituted by him in any court without the leave of the High Court;
 - (b) that no legal proceedings instituted by him in any court before the making of the order be continued by him without leave of the High Court.
- (2) A copy of an order made under this section shall be published in the *Official Gazette*.

PART III LAW AND EQUITY

Law and equity to be concurrently administered

37. Subject to the express provisions of any other enactment, law and equity shall continue to be administered by the High Court in accordance with sections 38 to 46 in every civil cause or matter commenced in that Court.

Equities, common law, statutory rights and duties

38.(1) The High Court and the Court of Appeal respectively shall give the same effect as heretofore

- (a) to all equitable estates, titles, rights, remedies, reliefs, counterclaims, duties and liabilities; and
- (b) to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by common law or by any custom, or created by any statute,

and both Courts shall ensure that, as far as possible and subject to any enactment, including subsection (2), to the contrary, all matters in dispute in a cause or matter before those Courts can be completely and finally determined without further proceedings in respect thereof.

(2) The High Court and the Court of Appeal respectively, may, acting on equitable grounds, and without limiting any other powers exercisable by either Court, stay any proceedings or the execution of any process in any cause or matter before the Court, subject to such conditions as that Court thinks fit.

(3) Nothing in this Act authorises a cause or proceeding pending in the High Court or the Court of Appeal to be stayed by prohibition or injunction.

Equities appearing incidentally

39. The High Court or the Court of Appeal shall take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, and shall give the same effect thereto as heretofore.

Rules of equity to prevail

40. Subject to the express provisions of any other enactment, the rules of equity shall prevail

(a) in questions relating to the custody and education of minors, and,

(b) generally, in all matters not particularly mentioned in this Act,

in which there was or is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter.

Certain stipulations not to be of essence of contract

41. Stipulations in a contract as to time or otherwise that according to rules of equity are not deemed to be or to have become of the essence of the contract are to be construed and have effect at law also in accordance with those rules.

Merger

42. There is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Equitable waste

43. An estate for life without impeachment of waste does not confer, nor shall it be deemed to confer, upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer that right expressly appears by the instrument creating the estate.

Orders for sale and for mandatory or other injunctions and receivers

44. The High Court may, at any stage of any proceedings,

- (a) order a sale of any property;
- (b) grant a mandatory or other injunction; or
- (c) appoint a receiver,

where it appears to the Court to be just or convenient to do so for the purposes of the proceedings before it; and, if the case is one of urgency, the Court may grant a mandatory or other injunction before the commencement of the proceedings.

Order, injunction or appointment may be made conditionally or on terms etc.

45.(1) Any order, injunction or appointment under section 44 may be made either unconditionally or on such terms and conditions as the Court thinks just, including, if an injunction is granted before the commencement of the proceedings, a condition requiring proceedings to be commenced.

(2) If, whether before, or at, or after, the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted if the Court thinks fit, whether

- (a) the person against whom the injunction is sought is or is not in possession under any claim or title or otherwise, or, if he is out of possession, he does or does not claim a right to do the act sought to be restrained under colour of any title, and
- (b) the estates claimed by both or by either of the parties are legal or equitable.

Damages in lieu of or in addition to injunction or specific performance

46. Where a Court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to or in substitution for an injunction or specific performance.

PART IV

DISCOVERY AND RELATED PROCEDURE

Definitions

47. In this Part,

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

“property” includes any land, chattel or other corporeal property of any description;

“Rules Committee” means the Rules Committee established under section 81.

Order for disclosure, etc. of documents before commencement of proceedings

48. On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in the High Court in which a claim in respect of personal injuries to a person, or in respect of a person's death is likely to be made, the High Court may, in such circumstances as are specified in the rules, order that a person who appears to the Court to be likely to be a party to the proceedings and likely to have or to have had in his possession, custody or power any documents that are relevant to an issue arising, or likely to arise, out of that claim

- (a) disclose whether those documents are in his possession, custody or power; and
- (b) produce to the applicant such of those documents as are in his possession, custody or power.

Extension of existing powers of Court to order disclosure of documents, inspection of property etc.

49.(1) On the application, in accordance with rules of court, of a party to any proceedings in which a claim in respect of personal injuries to a person or in respect of a person's death is made, the High Court may, in such circumstances as may be specified in the rules, order that a person who is not a party to the proceedings and who appears to the Court to be likely to have or to have had in his possession, custody or power any documents that are relevant to an issue arising out of that claim

- (a) disclose whether those documents are in his possession, custody or power; and
- (b) produce to the applicant such of those documents as are in his possession, custody or power.

(2) On the application, in accordance with rules of court, of a party to any proceedings referred to in subsection (1), the High Court may, in such circumstances as may be specified in the rules, make an order providing for any one or more of the following matters, that is to say:

- (a) the inspection, photographing, preservation, custody and detention of property that is not the property of, or in the possession of, any party to the proceedings, but that is the subject matter of the proceedings or concerning which any question arises in the proceedings; and
- (b) the taking of samples of any property mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(3) Subsections (1) and (2) do not affect the exercise by the High Court of any power to make orders that is exercisable apart from those subsections.

Sections 48 and 49 bind the Crown

50.(1) Sections 48 and 49 bind the Crown.

(2) The High Court may not make an order under section 48 or 49 if the Court considers that compliance with the order, would be likely to be injurious to the public interest.

Rules of Court

51.(1) The Rules Committee may prescribe

- (a) the manner in which an application for an order under section 48 can be made and the circumstances in which such an order can be made; and
- (b) the circumstances in which an order under section 48 or 49 can be made.

(2) The Rules Committee may include in any rules made under subsection (1) such incidental, supplementary and consequential provisions as the Rules Committee considers necessary or expedient.

(3) Without limiting the generality of subsection (1)(b) and subsection (2), the Rules Committee shall provide in the rules of court that the costs of and incidental to proceedings for an order under sections 48 and 49 that are incurred by the person against whom the order is sought must be awarded to that person unless the Court otherwise directs.

PART V

JURISDICTION AND POWERS OF COURT OF APPEAL

Jurisdiction of Court of Appeal

52.(1) Except as otherwise provided in this or any other enactment, the Court of Appeal has jurisdiction to hear and determine, in accordance with the rules of court, appeals from any judgment or order of the High Court or a judge thereof.

(2) Subject to this Act, the Court of Appeal may exercise

- (a) all such jurisdiction as was heretofore capable of being exercised by the former Court of Appeal;
- (b) all such jurisdiction as was heretofore capable of being exercised by the Divisional Court of the High Court:
- (c) such other jurisdiction as is conferred by this Act or by the *Criminal Appeal Act*, Cap. 113A or by any other Act.

(3) The Divisional Court of the High Court ceases to exist on 4th November, 1991, and any reference in any enactment in force before 4th November, 1991 to the Divisional Court is to be construed as a reference to the Court of Appeal.

Powers of a single judge

53.(1) A single judge of the Court of Appeal may exercise any of the following powers of the Court of Appeal under the *Criminal Appeal Act*, Cap. 113A, namely:

- (a) under Part I, the power
 - (i) to give leave to appeal;
 - (ii) to extend the time within which notice of appeal or of application for leave to appeal may be given;
 - (iii) to allow an appellant to be present at any proceedings;
 - (iv) to order a witness to attend for examination;
 - (v) to admit an appellant to bail;
 - (vi) to make orders under subsection (2) of section 16 of the *Criminal Appeal Act*, Cap. 113A, and to discharge or vary such orders;
 - (vii) to hear and determine such other matters preliminary or incidental to an appeal as may be prescribed; and
 - (b) under Part II, the power
 - (i) to extend the time for applying for leave to appeal;
 - (ii) to make an order for or in relation to bail; and
 - (iii) to grant legal assistance under the *Community Legal Services Act*, Cap. 112A.
- (2) Subject to subsection (4), a single judge of the Court of Appeal may, as he thinks fit in any cause or matter pending before that Court,
- (a) give any directions incidental to the appeal and not involving the decision of the appeal;

- (b) at any time during the period of vacation prescribed by rules of court, make
 - (i) an order granting leave to appeal to the Court of Appeal; or
 - (ii) any interim order to prevent prejudice to the claims of any parties pending appeal.
- (3) An appellant who is aggrieved by the decision of a single judge made under subsection (1) is entitled to have the matter re-heard and determined by the Court of Appeal as constituted under section 60; and every order made under subsection (2) by a single judge, other than an order granting leave to appeal, may be discharged or varied by the Court of Appeal.
- (4) Subsection (2) does not apply to an appeal under the *Criminal Appeal Act*, Cap. 113A.

[2007-35]

Appeals

- 54.(1)** No appeal lies to the Court of Appeal
- (a) except as provided by the *Criminal Appeal Act*, Cap. 113A, from any judgment of the High Court in any criminal cause or matter;
 - (b) from an order allowing an extension of time for appealing from a judgment or order;
 - (c) from an order of a judge of the High Court giving unconditional leave to defend an action;
 - (d) from an order or judgment of the High Court or any judge thereof where it is provided by or under any enactment that that order or judgment or the decision or determination upon which it is made or given is to be final;
 - (e) from a decree absolute for the dissolution or nullity of marriage by a party aggrieved thereby who, having had the time and opportunity to

appeal from the *decree nisi* on which the decree absolute was founded, has not appealed from that *decree nisi*;

- (f) without the leave of the Court of Appeal or of the judge making the order, from
 - (i) an order of the High Court or a judge thereof made with the consent of the parties;
 - (ii) an order as to costs only;
 - (iii) a final order of a judge of the High Court made in a summary proceeding;
- (g) without the leave of the judge or of the Court of Appeal, from any interlocutory order or 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 minors 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*, Cap. 308 in respect of misfeasance or otherwise;
 - (iv) in the case of a *decree nisi* in a matrimonial cause;
 - (v) in the case of a judgment or order determining liability in an admiralty action;
 - (vi) in the case of an order on a special case stated under the *Arbitration Act*, Cap. 110;
 - (vii) in such other cases as may be prescribed that are cases appearing to the Rules Committee to be of the nature of final decisions;

- (h) from the decision of the Election Court on any question of law, whether on appeal or otherwise, under sections 36 to 51 of the *Election Offences and Controversies Act*, Cap. 3; and
 - (i) from an order refusing leave for institution or continuance of legal proceedings by a person who is the subject of an order for the time being in force under section 36.
- (2) An order refusing unconditional leave to defend an action shall be deemed not to be an interlocutory order within the meaning of this section.
- (3) Subject to subsection (2), any doubt that arises about what orders or judgments are final and what are interlocutory shall be determined by the Court of Appeal.

Appeals relating to fundamental rights and freedoms

55. An appeal to the Court of Appeal lies as of right from any decision of the High Court that is given in exercise of the jurisdiction conferred on the High Court by section 24 of the *Constitution*.

Criminal appeals

56.(1) The *Criminal Appeal Act*, Cap. 113A applies for the purposes of appeals to the Court of Appeal against convictions before or sentences passed by, the High Court in the exercise of its criminal jurisdiction.

(2) The Court of Appeal has full power to determine in accordance with the *Criminal Appeal Act*, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

Appeals in cases of contempt

57.(1) Subject to this section, an appeal lies under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court, including criminal contempt, and in relation to any such order or decision

this section has effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.

(2) An appeal under this section lies in any case at the instance of the defendant, and, in the case of an application for committal or attachment, at the instance of the applicant.

(3) An appeal under this section lies

(a) to the Court of Appeal from an order or decision of an inferior court or of the High Court or of any court having the power of the High Court or of a judge of that court; and

(b) with leave of the Court of Appeal, to the Caribbean Court of Justice from an order or decision of the Court of Appeal, including an order or decision of the Court of Appeal on an appeal under this section.

[2007-35]

(4) The Court to which an appeal is brought under this section may confirm, reverse or vary the order or decision of the court below and make such other order as is just; and the judge or magistrate who made the order shall proceed to carry out and enforce his order as confirmed or varied in the same manner as if there had been no appeal against the same.

(5) Without prejudice to the inherent powers of any court referred to in subsection (2) or (3), the Rules Committee may make provision by rules of court for authorising the release on bail of an appellant under this section.

(6) In this section “Court” includes any tribunal or person having power to punish for contempt.

(7) References in this section to an order or decision of a Court in the exercise of jurisdiction to punish for contempt include references

(a) to an order or decision of the High Court to deal with an offence as if it were contempt of court in the face of the High Court;

(b) to an order or decision of a magistrate's court under section 230 of the *Magistrate's Courts Act*, Cap. 116A in so far as that section confers jurisdiction in respect of contempt of court; and

[2007-35]

(c) to an order or decision of a magistrate's court under subsection (3) of section 109 of the *Magistrate's Courts Act* (Act 2007-35),

but do not include references to orders under section 3 of the *Debtors Act*, Cap. 198, or under any provision of the *Magistrate's Courts Act*, Cap. 116A except those referred to in paragraphs (b) and (c).

[2007-35]

(8) This section does not apply to a conviction or sentence in respect of which an appeal lies under the *Criminal Appeal Act*, Cap. 113A, or to a decision of the Court of Appeal under that Act; and for the purposes of that Act and of this subsection an order for the punishment of any person for contempt of court in proceedings in which he has a right of appeal against his sentence shall be treated as part of that sentence in those proceedings.

Appeals in *habeas corpus* proceedings

58.(1) An appeal lies to the Court of Appeal in any proceedings upon application for *habeas corpus*, whether civil or criminal, against an order for the release of the person restrained as well as against the refusal of such an order.

(2) An appeal brought under this section does not affect the right of the person restrained to be discharged in pursuance of the order under appeal.

(3) In this section, "application for *habeas corpus*" has the meaning given by section 18(5).

Appeals from magistrate's courts

59. Subject to rules of court, the provisions of the *Magistrate's Courts Act*, Cap. 116A regulating appeals apply in respect of appeals under that Act or

under any other enactment to which the procedure in respect of appeals under that Act is applied.

[2007-35]

Composition of Court of Appeal

60.(1) Subject to this section and section 53, every appeal or reference to the Court of Appeal, and every matter preliminary or incidental to such an appeal or reference may only be heard before 3 judges of that court, and, if necessary, be determined according to the opinion of the majority.

(2) No judge of the Court of Appeal may sit as a judge on the hearing of, or may determine, any application in proceedings incidental or preliminary to

- (a) an appeal against a conviction before him or a sentence passed by him; or
- (b) an appeal from a judgment or order made by him when sitting in the High Court or in a division of the High Court; or
- (c) a reference to the Court of Appeal under the *Criminal Appeal Act*, Cap. 113A, of any cause or any point arising in any case tried before him.

(3) On any appeal to the Court of Appeal, the judgment or opinion of the Court shall be pronounced as follows:

- (a) if the President of the Court is taking part in the hearing of the appeal, by the President of the Court or such other Justice of Appeal taking part in the hearing of the appeal as the President of the Court directs;
- (b) if the President of the Court is not taking part in the hearing of the appeal, by the senior Justice of Appeal taking part in the hearing of the appeal or such other Justice of Appeal taking part in the hearing of the appeal as that senior Justice directs.

[2007-35]

(4) Any member of the Court of Appeal taking part in the hearing of an appeal may deliver a separate judgment or opinion concurring in or dissenting from the judgment or opinion

(a) of the Court; or

(b) of any other member of the Court taking part in the hearing of the appeal.

[2007-35]

Powers of Court of Appeal

61.(1) Subject to subsection (5), for all the purposes of and incidental to the hearing or determination of any appeal against any decision or determination of a court, tribunal, authority or person, in this section referred to as “the original court,” and the amendment or enforcement of any judgment or order made thereon, the Court of Appeal has, in addition to all other powers exercisable by it, all the jurisdiction of the original court and may

(a) confirm, reverse or vary the decision or determination of the original court;

(b) remit the appeal or any matter arising thereon to the original court with such declaration or directions as the Court of Appeal thinks proper;

(c) in the case of an appeal from a decision on determination of the High Court, order a retrial or make any such order as could be made in pursuance of an application for a new trial;

(d) adjourn the hearing from time to time;

(e) draw any inference of fact that might have been drawn, or give any judgment or make any order that might have been given or made by the original court, and make such further or other order as the case requires;

(f) when the appeal is by case stated, amend the case stated or remit it, with such declarations or directions as the Court thinks proper, for

hearing and determination by the original court or for restatement or amendment or for a supplemental case to be stated thereon;

- (g) make such order as to the costs and expenses incurred in the appeal and in the proceedings in the original court as the Court of Appeal thinks fit;
- (h) in special circumstances, order that such security be given for the costs of an appeal as appears just; and
- (i) make such other order as is necessary for the due determination of the appeal.

(2) The powers of the Court of Appeal in respect of an appeal to which subsection (1) applies

- (a) are not restricted by reason of any interlocutory order from which there has been no appeal; and
- (b) may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the original court, or by any particular party to the proceedings in that court, or that any ground for allowing appeal or for affirming or varying the decision of that court is not specified in such a notice,

and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(3) It is the duty of the original court to have regard to all such declarations and to obey all such directions, if any, as are given by the Court of Appeal pursuant to subsection (1).

(4) Judgments and orders made by the Court of Appeal have the like effect and may be enforced in like manner as judgments and orders made by the original court.

(5) Subsection (1) does not apply to an appeal under the *Criminal Appeal Act*, Cap. 113A.

New trials

62.(1) Subject to this section, on the hearing of an appeal in any civil cause or matter, the Court of Appeal shall, if it appears to the Court that a new trial should be held, have power to set aside the order appealed against and order that a new trial be held.

(2) On the hearing of an appeal in any civil cause or matter, a new trial may be ordered on any question without interfering with the finding or decision upon any other question, and the Court of Appeal may make such final or other order as the circumstances of the case may require.

(3) On the hearing of an appeal from an order made in any action tried with a jury,

- (a) the Court of Appeal may make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the High Court;
- (b) in any case where the Court of Appeal could order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court of Appeal, in lieu of ordering a new trial may,
 - (i) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to that court to be proper;
 - (ii) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to that Court to be proper in respect of any distinct head of damages erroneously included in, or excluded from, the sum so awarded;

but, save as aforesaid, the Court of Appeal shall not have power to reduce or increase damages awarded by a jury.

(4) The Court of Appeal may not grant a new trial or reverse any judgment because of a ruling of any court that the stamp upon any document is sufficient or that the document does not require a stamp.

Substituted appeal

63. Where under any enactment passed or made before 4th November, 1991, it is provided that an appeal, either by way of case stated or upon a point of law only,

- (a) lies from any inferior court to the High Court or to a judge of the Supreme Court; and
- (b) the decision of that court or judge is expressed by such enactment to be final,

that appeal lies instead to the Court of Appeal.

64. *[Repealed by 2005-8.]*

65. *[Repealed by 2005-8.]*

PART VI

SITTING AND DISTRIBUTION OF BUSINESS

Sittings

66.(1) Subject to subsection (2), the High Court and the Court of Appeal shall sit at such times and places as may be prescribed by rules of court.

(2) The High Court in its Criminal Division shall sit at such times and places as the Chief Justice appoints.

Assignment of business

67. The Chief Justice may assign to a judge of the High Court any part of the business of a division of that Court.

Vacations

68. Vacations of the court shall be for such periods as may be prescribed by rules of court.

Sittings in vacation

69.(1) The Rules Committee shall provide in the rules of court for the hearing during any vacation by a Judge, Justice of Appeal or by the Registrar of all such causes and matters as require to be immediately or promptly heard.

(2) Writs may be issued and pleadings filed or amended during any vacation of the court.

PART VIA

MASTER OF THE HIGH COURT

Master of the High Court

69A.(1) A Master of the High Court shall be appointed by the Governor-General on the advice of the Prime Minister after consultation with the Chairman of the Judicial and Legal Service Commission.

(2) No person may be appointed as Master unless that person is an attorney-at-law who has practised as such for not less than 10 years.

(3) A Master shall exercise such authority and jurisdiction of a Judge of the High Court sitting in Chambers as is assigned to the Master by this Act or rules of court.

(4) Section 93 of the *Constitution* applies in respect of the removal or discipline of a Master.

[2006-4]

Powers of Master

69B.(1) Where under this Act or rules of court a Master has jurisdiction in relation to any matter to make an order in relation to that matter, the order

- (a) may include provision for costs, certificate for counsel or other consequential matters; and
- (b) shall, subject to this Act, have the same effect as if it had been made by a Judge.

(2) Where under this Act or the rules of court a Master exercises jurisdiction in relation to any matter, then

- (a) in relation to that matter, the Master shall have all the rights, powers, immunities and privileges of a Judge; and
- (b) any party to the proceedings may, if he so desires, appear by an attorney-at-law.

[2006-4]

Appeals

69C.(1) An appeal shall be to the Court of Appeal from any order or decision of a Master made in the exercise of any jurisdiction conferred on him under this Act or by rules of court.

(2) No appeal from an order or a decision of the Master under this section shall operate as a stay of proceedings unless the Master or the Court of Appeal so orders.

[2006-4]

Procedure where hearing is not concluded

69D. Where the hearing of any proceedings has commenced before a Master and

- (a) prior to the conclusion of the hearing, the Master ceases either permanently or temporarily to hold office, the Master may, whether or not he has reserved judgment, be assigned at any time to be the Master for the purpose of concluding the hearing;
- (b) the Master has reserved judgment but ceases to hold office before he has delivered his judgment, the Master may at any time lodge with the Registrar the judgment in writing; and the judgment shall
 - (i) as soon as possible thereafter be read in Chambers in accordance with the directions of the Chief Justice; and
 - (ii) take effect in all respects as if the person who reserved judgment had continued to be the Master and had delivered judgment.

[2006-4]

Remuneration

69E.(1) There shall be paid to a holder of the office of Master a salary at such rate as the Governor-General by order specifies.

(2) An order made under subsection (1) may have retrospective effect and shall be subject to negative resolution.

(3) An order made under this section may contain such supplementary provisions as the Governor-General may consider necessary or expedient for the purposes of the order.

[2006-4]

Pension

69F. The *Pensions Act*, Cap. 25 and the *Pensions Regulations, 1947* (1947-20) shall apply to a Master appointed under this Part.

[2006-4]

PART VII**JUDICIAL FUNCTIONS OF REGISTRAR****Powers**

70.(1) The Registrar has the power and jurisdiction to do such of the things and transact such of the business as by virtue of any enactment or by custom or by the rules and the practice of the High Court are now done and transacted by a judge of the High Court sitting in Chambers as may from time to time be prescribed by rules of court; but the Registrar has no jurisdiction in respect of matters relating to the liberty of the subject.

(2) The Registrar has the authority and powers and shall discharge the duties as heretofore in so far as that authority or those powers and duties relate to any judicial proceedings, and in addition shall perform such duties

- (a) as are necessary for the due conduct and discharge of the business of the courts and as the judges thereof may direct; or
- (b) as may be prescribed by rules of court.

Taxing Master

71.(1) The jurisdiction of the High Court and the Court of Appeal in relation to the taxation of costs is vested in the Registrar, and shall be exercised in accordance with the rules of court.

(2) Costs may be taxed and recovered in any action notwithstanding the death of the party to or against whom those costs were awarded.

Appeals

72. A person aggrieved by any order or decision of the Registrar sitting in Chambers may appeal to the High Court or to the Court of Appeal, as the case may be, in such cases as may be provided for by the rules of court; the rules of court relating to appeals from the Registrar to the High Court or to the Court of Appeal shall be,

- (a) in the case of the High Court, such as are prescribed by rules of court; and
- (b) in the case of the Court of Appeal, the rules of court relating to appeals from a Judge in Chambers.

PART VIII**ADMINISTRATION****Responsibility of Registrar**

73. The Registrar is responsible for the administration of the several departments or sections of the Supreme Court and of the Registration Office and shall be assisted by the deputy and assistant registrars and such other officers as are necessary for the purpose of carrying out the Registrar's functions under this Act and the several enactments vesting duties, authority and responsibility in the Registrar.

Seals

74. The Registrar has custody of the seals of the Court of Appeal and of the High Court and of all documents, records and papers of the Courts.

*Court Service***Court Service**

75. There shall be, within the public service, a unified and distinct service to be known as the Court Service, the functions of which are

- (a) to facilitate the conduct of the business of all the courts in Barbados;
- (b) to give effect to foreign and commonwealth judgments or orders for which reciprocal arrangements are in force;
- (c) to discharge such other functions in relation to the courts or the enforcement of the judgments or orders mentioned in paragraph (b) as are conferred on, or transferred to, it, or any of its officers by or under this Act or any enactment;
- (d) to discharge the functions prescribed under the *Court Process Act*, Cap. 111A.

Court Administrator

76.(1) There shall be a Court Administrator who shall be the person appointed to the office of Court Administrator established under the *Civil Establishments Act*, Cap. 21.

(2) The Court Administrator is an officer of the Supreme Court and is responsible under the general supervision of the Registrar for the administration and organisation of the business of the Supreme Court, the magistrate's courts and the several departments of the Registration Office.

PART IX
FUNDS IN COURT

Accounts

77. The Registrar shall keep proper accounts in accordance with the rules prescribed under section 80.

Bank account

78. The Registrar shall maintain an account at the Barbados National Bank Inc. and, unless the court otherwise orders, shall pay all sums received by him into that account, and shall pay all sums payable by him out of it.

[2000-24]

Payments and Transfers

79.(1) The payment of money into the court is effected by paying it into the Registrar's account maintained under section 78.

(2) The transfer into the court of securities, other than such as are transferable by delivery, is effected by transferring the securities to the Registrar.

(3) The deposit in the court of effects or the transfer into the court of securities transferable by delivery is effected by delivering the effects or securities to the Registrar.

Rules as to funds

80.(1) The Rules Committee may make rules regulating

- (a) the deposit, payment, delivery and transfer into and out of the court, of money, securities and effects that belong to suitors or are otherwise capable of being deposited in or paid or transferred into the court, or are under the custody of the court; and

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- (b) the evidence of the deposit, payment, delivery or transfer and the manner in which money, securities and effects in court are to be dealt with.
- (2) Rules made under subsection (1) may
- (a) require the Registrar to place on deposit, or invest, in accordance with the order of the court, any money paid into or transferred to the court, or prescribe and regulate in the absence of any such order the deposit or investment of the money.
- (b) regulate the crediting of interest accruing on money placed on deposit and the crediting of interest or dividends accruing on securities in which money has been invested by the Registrar pursuant to an order of the court and on other securities in court;
- (c) provide that
- (i) in such cases as may be prescribed, no sum of money, in any amount, may be placed on deposit or be invested in securities;
- (ii) it is not necessary to place on deposit or invest a sum of money of less than a prescribed amount;
- (iii) in such circumstances as may be prescribed, interest and dividends mentioned in paragraph (b) be placed on deposit or be invested in securities;
- (d) establish a procedure for dealing with accounts or effects that, subject to any such exceptions as may be prescribed, have not been dealt with for such period as may be prescribed, not being less than 15 years; and
- (e) prescribe such matters as are necessary for giving effect to this section.

PART X

PRACTICE AND PROCEDURE

Rules Committee of Supreme Court

81.(1) A committee to be known as the Rules Committee of the Supreme Court, in this Act referred to as the “Rules Committee” is hereby established.

(2) The *Second Schedule* applies with respect to the appointment and constitution of the Rules Committee and otherwise in relation thereto.

(3) Any expenses incurred by the Rules Committee shall be paid out of monies voted for the purpose by Parliament.

Functions of Rules Committee

82.(1) The Rules Committee may make rules with respect to

- (a) the pleading, practice and procedure in or affecting, and the forms used in connection with, any proceedings before the High Court or the Court of Appeal or any division, office, judge or officer of either such court, or any person appointed by, or to assist it, including
 - (i) the mode of proof of any fact;
 - (ii) the assessment of damages, compensation or other sums;
 - (iii) the payment of money into and out of court;
 - (iv) the circumstances in which and the terms on which a stay of proceedings or execution may be granted or an interim order may be made, including an order authorising interim payments;
 - (v) costs, including the taxation of costs and security to be given for costs;
 - (vi) the recording of proceedings and the making available of transcripts thereof; and

- (vii) the impounding and release of documents or exhibits;
- (b) the conditions subject to which process may be served out of the jurisdiction of the High Court;
- (c) the manner in which, the time within which and the conditions on which steps in any proceedings mentioned in paragraph (a) may or must be taken;
- (d) the transfer of proceedings to or from any such court, division, judge, officer or person mentioned in paragraph (a);
- (e) the practice and procedure of the High Court in non-contentious probate business;
- (f) the practice and procedure to be followed in exercising jurisdiction over the person, property or affairs of persons under any disability; and
- (g) the extent to which and the circumstances in which documents filed in any proceedings mentioned in paragraph (a) may be inspected and copied.

(1A) The Rules Committee shall make rules regulating the procedure in appeals from the Court of Appeal to the Caribbean Court of Justice.

[2007-35]

- (2) The Rules Committee may make rules
- (a) regulating the sitting of any court, division or judge to which or to whom paragraph (a) of subsection (1) applies and any sitting of the Registrar or person appointed by, or to assist, that court;
 - (b) authorising the exercise by a judge of the High Court of jurisdiction while sitting in Chambers and prescribing when a judge exercising that jurisdiction is to be deemed to constitute the High Court;
 - (c) providing for the distribution of business of the High Court among the several divisions of that Court;

- (d) prescribing what part of the business transacted and of the jurisdiction exercised by the High Court and the Court of Appeal may be transacted or exercised by the Registrar or officers serving in the Supreme Court, and providing for the review of any jurisdiction exercised by those officers;
- (e) regulating or providing for any other matter with respect to which the Rules Committee is authorised to make rules under any other enactment, including any other provision of this Act; and
- (f) generally for the purpose of carrying any of the provisions of this Act into effect.

(2A) Rules of court shall prescribe the matters in which the powers, authority and jurisdiction of a Master may be exercised.

[2006-4]

(3) Rules of court may prescribe the cases in which the jurisdiction or powers of the High Court or a judge may be exercised by a referee appointed by the Court or a referee agreed upon by the parties, and, without limiting subsection (1), may in particular

- (a) authorise the whole of any cause or matter or any question or issue therein to be ordered to be tried before, or any question arising in any cause or matter to be ordered to be referred for enquiry and report to, any such referee; and
- (b) authorise powers of attachment and committal to be exercised by any referee appointed by the Court, but not by any other referee,

and may make any provision incidental to any such provisions.

(4) The decision of a referee, agreed upon by the parties, may be called in question in such manner, whether by an appeal to the Court of Appeal or by an application to the Court, as may be prescribed by rules or court; but rules of court may provide either generally or to a limited extent for a decision of a referee appointed by the Court to be called in question only by appeal on a question of law.

(5) Rules made by the Rules Committee may limit the amount of costs recoverable by any party in proceedings that, having regard to the amount or the nature of the relief claimed or awarded, could have been commenced in the magistrate's courts.

(6) The Rules Committee may not make, without the concurrence of the Minister responsible for Finance, any rule or order that

- (a) directs money to be paid out of or in aid of the Consolidated Fund; or
- (b) prescribes or alters court fees;

but the validity of any such rule may not be called in question in any proceedings in any court, either by the court or by any party to the proceedings, on the ground only that the Minister responsible for Finance did not concur or is not expressed to have concurred in the making of the rule.

(7) Rules made by the Rules Committee may amend or repeal any rules of court in force immediately before the commencement of this section.

Publication of rules

83. Rules of court made by the Rules Committee shall be published in the *Gazette*.

References to Judicial Advisory Council

84. Where in any enactment made or passed before 4th November, 1991 provision is made for the making of rules of court by the Judicial Advisory Council or by the Chief Justice, or by the Chief Justice in concurrence with a person or body of persons, that provision shall be read as if it were a reference to the Rules Committee.

Award costs

85.(1) Subject to rules of court, the costs of and incidental to all proceedings in the High Court and the Court of Appeal, including the administration of estates

and trusts, are in the discretion of the Court and each court has power to determine by whom and to what extent the costs are to be paid.

(2) Where any enactment passed before or after 4th November, 1991 confers jurisdiction on the High Court or any judge thereof in regard to any matter without expressly conferring jurisdiction to award or deal otherwise with the costs of the proceedings connected with that matter, subsection (1) applies to authorise the court or judge, in its or his discretion, to award and deal with those costs.

(3) Nothing in this section alters the practice in any criminal cause or matter.

Wasted costs

85A.(1) In any proceedings in the High Court or the Court of Appeal, the court may

- (a) disallow; or
- (b) order an attorney-at-law to meet,

the whole or any part of wasted costs.

(2) In this section, “wasted costs” means any costs incurred by a party

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of an attorney-at-law or an employee of an attorney-at-law; or
- (b) which, in the light of any improper, unreasonable or negligent act or omission on the part of an attorney-at-law or an employee of an attorney-at-law (being an act or omission occurring after the costs were incurred), the court considers it unreasonable to expect that party to pay.

[2007-35]

Trial with assessors

86.(1) In any cause or matter before the High Court or the Court of Appeal other than a criminal proceeding by or in the name of the Crown, the Court may, if it thinks it expedient, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partly with their assistance.

(2) Any remuneration to be paid to an assessor shall be determined by the Court.

Affidavits taken

87. A document purporting to have affixed or impressed on it or subscribed to it the seal or signature of a court, judge, notary public or person having authority to administer oaths in any part of the Commonwealth in testimony of an affidavit being taken before it or him in such place is admissible in evidence without proof of the seal or signature being the seal or signature of the court, judge, notary public or person.

Court bonds

88.(1) It may be provided by the rules of court that bonds to be given for the purpose of any proceedings in the High Court or the Court of Appeal be given in such form and to such officer of the Court by his official title as prescribed in the rules.

(2) Where a bond has been given for the purpose of proceedings in any court and it appears to the court, upon application made to it, that a condition of the bond has been broken, the Court may order that the bond be enforced.

(3) In the case of an order under subsection (2), the officer of the court to whom the bond was given is entitled by virtue of the order to enforce the bond in his own name as if it had been originally given to him; and, as trustee for all persons entitled thereto, he shall hold all money recoverable for the breach of the condition in respect of which the order was made.

(4) A judge or officer having jurisdiction in a matter to which a bond relates may, upon application made to him, disallow or annul any bond upon evidence that appears to him to be sufficient to justify the disallowance or annulment of the bond.

Engrossment etc. of instruments

89.(1) The Chief Justice may make regulations

- (a) with respect to the enrolment, engrossment, filing or registration in the Supreme Court of documents to which subsection (2) refers; and
- (b) specifying the form in which certificates of enrolment, engrossment, filing or registration are to be granted, or the manner in which the respective rolls, registers or files of documents are to be inspected.

(2) Any document that is required or authorised by any enactment or rule of law or practice to be enrolled or engrossed or filed or registered in any manner in the Supreme Court, not being a document required to be filed or registered pursuant to rules of court, shall be deemed to have been duly enrolled, engrossed, filed or registered, as the case may be, in compliance therewith if it is written on such material and has been filed or registered in such manner as is authorised by regulations under this section.

(3) In subsection (2), “written” includes typewritten, printed, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in a visible form.

(4) Except as provided by subsection (2), nothing in any regulations made under this section affects the operation of any enactment requiring or authorising the enrolment, engrossment, filing or registration of deeds in the Supreme Court.

Lost negotiable instruments

90. In any cause or matter founded on a negotiable instrument, the Court may order that the loss of the negotiable instrument shall not be set up, so long

as an indemnity is given to the satisfaction of the Court or of an officer of the Court specified by the Court, against the claims of any other person upon the negotiable instrument.

Conveyancing counsel

91.(1) The High Court may, for the purposes of any civil cause or matter before it, appoint as conveyancing counsel to the Court an attorney-at-law who has practised in Barbados for not less than 10 years.

(2) Provision may be made in the rules of court with respect to the appointment and allowances of an attorney-at-law appointed under subsection (1).

Right of Attorney-General in constitutional issues

92. In any action or proceedings brought by any person under section 24 of the *Constitution* alleging that any of the provisions of sections 12 to 23 of the *Constitution* has been, is being or is likely to be contravened in relation to him, the High Court shall give notice of the question arising in such proceedings to the Attorney-General, who shall be entitled as of right to be heard either in person or by an attorney-at-law, notwithstanding that the Crown is not a party to the action or proceedings.

PART XI

THE JUDICIAL COUNCIL

Judicial Council

93.(1) There is hereby established a Judicial Council which shall be responsible for the administration of the courts of Barbados and shall

- (a) formulate policy in relation to all matters affecting the performance of the courts;
- (b) keep under review matters of jurisdiction and procedure;

- (c) *[Repealed by 2007-35;]*
- (d) prepare an annual budget for submission to the Minister responsible for Finance.
- (2) The *Third Schedule* applies with respect to the appointment and constitution of the Judicial Council and otherwise in relation thereto.
- (3) The Judicial Council shall meet as often as the business of the Council requires, but not less frequently than once every quarter.
- (4) The Judicial Council shall
- (a) prepare for each calendar year a report on all matters relating to the administration of justice, outlining progress made and any problems anticipated; and
- (b) submit the report to the Attorney-General no later than the 31st March of the year following the calendar year in respect of which the report is prepared.
- [2004-6]*
- (5) The Attorney-General shall forthwith table the report of the Judicial Council in Parliament.

PART XII

TRANSITIONAL, ETC.

Transitional

94.(1) In this section,

- (a) “Divisional Court” means the Divisional Court of the High Court established under Part VI of the former *Supreme Court of Judicature Act*, Cap. 117,* and

**[Cap. 117 was repealed by this Act.]*

- (b) “former Court of Appeal” means the Court of Appeal established under the *Constitution* and constituted under Part VII of the former *Supreme Court of Judicature Act*.*

*[Cap. 117 was repealed by this Act.]

(2) Where in any civil or criminal cause or matter notice of appeal from the judgment or order of the High Court or of the Divisional Court to the former Court of Appeal has been given before 4th November, 1991, all proceedings in respect of that appeal may be continued before the Court of Appeal.

(3) Where in any civil or criminal cause or matter notice of appeal from any judgment or order of the High Court has been given to the former Court of Appeal before 4th November, 1991 but proceedings in respect of that appeal are, after that date, still pending before the last-mentioned court, all those proceedings shall be continued before the Court of Appeal.

(4) Where notice of appeal from any decision of an inferior court has been given to the Divisional Court, or where the Divisional Court has ordered that an appeal be heard by the former Court of Appeal before 4th November, 1991 but proceedings in respect of that appeal are, after that date, still pending before either of those courts, all those proceedings shall be continued before the Court of Appeal.

Act binds Crown

95. This Act binds the Crown, but, as respects civil proceedings to which the *Crown Proceedings Act*, Cap. 197 applies, it does so only so far as, and no further than, those proceedings can be brought by or against the Crown in accordance with that Act.

FIRST SCHEDULE*(Section 16)**BUSINESS ASSIGNED TO FAMILY DIVISION*

1. Proceedings connected with any matrimonial cause or matter in respect of which the High Court exercises jurisdiction.
2. Proceedings for a declaration in respect of
 - (a) the validity of a marriage or of the dissolution or annulment of a marriage by decree, and related matters;
 - (b) the paternity of a child.
3. Proceedings in relation to the wardship of minors.
4. Proceedings under the *Minors Act*, Cap. 215, and otherwise in relation to the guardianship of minors, except proceedings for appointment of a guardian of a minor's estate alone.
5. Proceedings under section 26(3) of the *Marriage Act*, Cap. 218A.
6. Proceedings in which a parent or guardian of a minor applies for a writ of *habeas corpus ad subjiciendum* relative to the custody, care or control of the minor.
7. Proceedings relating to the adoption of minors.
8. Proceedings relating to
 - (a) the enforcement of maintenance orders made overseas for periodical payments to a spouse or dependant;
 - (b) persons under disability.

SECOND SCHEDULE*(Section 81(2))***CONSTITUTION AND APPOINTMENT OF THE RULES COMMITTEE AND
RELATED MATTERS****Constitution of Rules Committee**

1. The Rules Committee consists of
 - (a) the Chief Justice, who shall be chairman;
 - (b) the Justices of Appeal and the Judges;
 - (c) the Solicitor-General;
 - (d) the Chief Parliamentary Counsel;
 - (e) the President of the Bar Association as defined in section 2 of the *Legal Profession Act*, Cap. 370A;
 - (f) 3 attorneys-at-law nominated by the Council of the Bar Association and appointed by the Governor-General,

and has the functions conferred on that Committee by section 82.

Acting appointments

- 2.(1) In the case of the absence of the chairman, or his inability to act as such, the senior judge shall exercise the functions of the chairman.
- (2) Where any member of the Rules Committee nominated by the Chief Justice or the Bar Association is unable to act, the Chief Justice or the Bar Association, as the case may be, may nominate another qualified person to act temporarily in the place of the member who is unable to act.

Secretary

3. The Registrar is Secretary of the Rules Committee.

Meetings

4. The Rules Committee shall meet at such times and places as may be necessary or expedient for the transaction of its business.

Quorum

5.(1) Rules of court may be made, and other powers of the Rules Committee exercised, at a meeting of the Rules Committee by a majority consisting of not less than 3 members and the chairman of the meeting.

(2) In the case where the voting is equal, the chairman shall have a second or casting vote.

Procedure

6. Subject to this Schedule, the Rules Committee may regulate its own procedure.

THIRD SCHEDULE*(Section 93(2))***CONSTITUTION AND APPOINTMENT OF THE JUDICIAL COUNCIL AND
RELATED MATTERS****Appointment of Judicial Council**

1. The Judicial Council shall consist of
 - (a) The Chief Justice, who shall be chairman;
 - (b) the Justices of Appeal and the Judges;
 - (c) the Solicitor-General;
 - (d) a magistrate appointed by the Governor-General;
 - (e) the Registrar;
 - (f) the President of the Bar Association, as defined by section 2 of the *Legal Profession Act*, Cap. 370A;
 - (g) 3 attorneys-at-law nominated by the Council of the Bar Association and appointed by the Governor-General;
 - (h) 2 persons appointed by the Governor-General from among persons who in his opinion are capable of representing the interest of the community.

Tenure of office

2. Subject to the right to resign his office and to that of the Governor-General to revoke his appointment at any time, a person appointed under subparagraph (d), (g) or (h) of paragraph 1 shall hold office for a term of 3 years.

Chairman

3. In the case of the absence of the chairman, or his inability to act as such, the senior judge shall exercise the functions of the chairman.

Secretary

4. The Court Administrator is Secretary of the Judicial Council.

Procedure and meetings

5.(1) The chairman may at any time call a special meeting of the Judicial Council, and shall call such a meeting if required so to do by the Governor-General.

(2) The chairman and 5 other members of the Judicial Council shall form a quorum.

(3) In the case where the voting is equal, the chairman shall have a second or casting vote.

(4) Subject to this Schedule, the Judicial Council may regulate its own procedure.