

No. 1/2002

BARBADOS
IN THE COURT OF APPEAL
PRACTICE DIRECTION

Re: Appeals in Criminal Matters

The President of the Court of Appeal, after consultation with the Judicial Council, issues the following Practice Direction:

1. This Practice Direction applies to all appeals brought under section Cap. 113A. 3 of the *Criminal Appeal Act* where
- (a) the appellant or the applicant for leave is represented by an Attorney-at-Law; and
 - (b) the hearing date in respect of the appeal is fixed for a date that falls due after the 15th day of September, 2002.

2. BACKGROUND

2.1 It has been the practice in Barbados for an appellant (or his Attorney-at-Law) to fill out the prescribed form of Notice of Appeal or application for leave to appeal against conviction or sentence (Form 1) specifying as Grounds of Appeal a bare formula such as "the trial judge erred in law" or "the sentence is too severe", which invariably is filed as a means of preserving a right of appeal pending receipt of the transcript of proceedings.

2.2 These original grounds of appeal are often presented to the Court of Appeal on the hearing of the appeal, although it can be said that some Attorneys-at-Law also file and serve "amended grounds of appeal". However, these "amended grounds" are often filed so late that they are of little use to opposing Attorneys-at-Law and the court in preparation for the appeal.

2.3 As a result, much valuable judicial time is wasted in preparing entire voluminous records of appeal in total ignorance of specific issues which might help to concentrate judicial attention on only those records which will be the subject of complaint or criticism.

2.4 It is also clear that records of appeal against conviction are not properly settled. This is a practice in breach of Rule 24(2) of the *Appeal Rules, 1983* which states that:

"(2) In settling the record of proceedings, the Registrar shall include

- (a) the indictment or charge and the plea;
- (b) the verdict, any evidence given thereat and the sentence;
- (c) notes of any particular part of the evidence given at the examination, summing up or of any direction given by the Judge relied on as a ground of appeal;
- (d) the notes of all evidence taken in capital cases;
- (e) such other notes of evidence as the Registrar may direct to be included in the copy of the record of proceedings.

2.5 As in civil appeals where the records of appeal are settled in the presence of the Registrar and only material relevant grounds of appeal is included, a similar practice will now be adopted in criminal appeals, excluding appeals in capital cases.

2.6 It is envisaged that by adopting this practice, when appeals come before the Court of Appeal, the issues will have been narrowed down and the documentation will be more manageable by all concerned and there will be substantial savings in costs, time and administrative expenditure. In all, the new procedure will allow the parties to be better prepared.

appeal and will ensure that the appeal will be heard in an atmosphere of greater openness.

3. THE NEW PROCEDURE FOR CRIMINAL APPEALS

3.1 Transcript and Notice to File "Perfected Grounds of Appeal"

As soon as the transcript of proceedings is submitted to the Registrar, the Registrar shall send forthwith copies to the appellant (or his Attorney-at-Law on record) and the Director of Public Prosecutions. The copies must be accompanied by a Notice calling upon the appellant (or his Attorney-at-Law) to file "Perfected Grounds of Appeal" and any particulars thereof within 21 days of receipt of the transcript. Grounds of Appeal must be settled and perfected with sufficient particularity to enable the Registrar and subsequently the Court to identify clearly the matters relied upon. The Notice must also require the appellant (or his Attorney-at-Law) to specify the pages of the transcript on which reliance will be placed in support of the perfected and particularized grounds of appeal. The Notice must also fix a date and time for settling the record of appeal.

3.2 Settling the Record

On the date fixed for settling the record, the parties must attend upon the Registrar and settle the record of appeal for use at the hearing paying due regard to the perfected and particularized grounds of appeal. Particulars should be concise. Prolivity is to be avoided. Grounds of appeal and the particulars must be drafted carefully and accurately. If the Registrar and the parties are unable to agree on the extent of the transcript to be included in the record, the Registrar shall refer the matter to the Chief Justice for directions.

3.3 Timetable For Exchange of Settled Record

Within 14 days of settling the record of appeal, the Registrar must cause copies of the settled record to be served on the appellant (or his Attorney-at-Law) and the Director of Public Prosecutions. Three copies must be kept for use by the Court.

3.4 Lists of Authorities

Lists of authorities to be relied upon at the hearing of must be exchanged between Counsel at least 14 days before hearing and 4 copies thereof must be sent to the Registrar for Court not less than 7 days before the date of hearing.

3.5 Change of Attorney

Where there is a change of the appellant's Attorney-at-Law the settling of the record, the Attorney-at-Law appearing at the the Record must file a Notice on the Registrar of that change; a Attorney-at-Law for the appellant must also give notice of the the Registrar.

3.6 Failure to Comply

Failure to comply with this Practice Direction

- (a) shall render an appeal liable to be struck out by the Court
- (b) may result in costs being awarded against the Attorney-at-Law in default.

Dated this 19th day of June, 2002.

D. A. C. SIMMONS
Chief Justice