



## CHAPTER 10.

### An Act Constituting a Court of Appeal and Declaring its Jurisdiction.

[25th April, 1907.]

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. This Act may be cited as the “Court of Appeal Act, 1907.” Short title.

*Constitution of the Court.*

2. (1.) There shall be and there is hereby constituted a Provincial Court of Appeal constituted, to be called the “Court of Appeal,” which shall consist of a Chief Justice who, as long as the present Chief Justice of British Columbia continues to hold such office, shall be styled “The Chief Justice of the Court of Appeal,” and three other Judges, to be called Justices of Appeal.

(2.) So soon as the present Chief Justice of British Columbia ceases to hold that office, the Chief Justice of the Court of Appeal shall be styled “Chief Justice of British Columbia,” and the Chief Justice of the Supreme Court shall thereafter be styled “Chief Justice of the Supreme Court.”

3. The Chief Justice and every Judge of the Court of Appeal, Oath of office. previous to entering upon the duties of his office, shall take the following oath, to be administered by the Lieutenant-Governor, the Chief Justice of British Columbia, or any Puisne Judge of the Court of Appeal:—

“I, \_\_\_\_\_, do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge,

exercise the powers and trusts reposed in me as Chief Justice (*or* of one of the Puisne Judges) of the Court of Appeal for British Columbia. So help me God.”

Precedence.

4. The Chief Justice of British Columbia shall have rank and precedence over all other Judges of the Courts in British Columbia; the Chief Justice of the Court of Appeal or of the Supreme Court, as the case may be, shall have rank and precedence next after the Chief Justice of British Columbia; the Justices of Appeal shall have rank and precedence next after the Chief Justice of the Court of Appeal or of the Supreme Court, as the case may be, and among themselves according to their seniority of appointment.

Seal.

5. The seal of the said Court shall be of such design as shall be approved by the Lieutenant-Governor in Council.

*Jurisdiction.*

Jurisdiction.

6. The Court of Appeal hereby constituted shall be a Superior Court of Record, and, to the full extent of the power of the Legislature of the Province of British Columbia to confer jurisdiction, there shall be transferred to and vested in such Court all jurisdiction and powers, civil and criminal, of the Supreme Court of British Columbia and the Judges thereof, sitting as a Full Court, that were held and exercised prior to the passing of this Act, and all other appellate jurisdiction and appellate powers, statutory and otherwise, and howsoever arising or conferred, that have heretofore been held or exercised by the Supreme Court sitting as a Full Court. And without restricting the generality of the foregoing an appeal shall lie to the Court of Appeal—

- (1.) From every judgment, order or decree made by the Supreme Court, or a Judge thereof, and whether final or interlocutory, and whether in respect of a matter specified in the Rules of Court or not:
- (2.) From judgments, orders or decrees of any County Court or County Court Judge, whether final or interlocutory, in respect whereof an appeal will lie under the provisions of the “County Court Act”:
- (3.) From the opinion of a Judge of the Supreme Court upon any matter referred to him by the Lieutenant-Governor in Council under section 11 of the “Supreme Court Act”:
- (4.) From every decision of the Supreme Court, or a Judge thereof, or of the County Court or a County Court Judge, in any of the following matters, or in and proceeding in connection with them, or any of them:—
  - (a.) Certiorari:
  - (b.) Quo Warranto:
  - (c.) Mandamus:

(d.) Prohibition :

(e.) Case stated under the "Summary Convictions Act":

(f.) Any point of law taken or raised on an appeal to the County Court under the "Summary Convictions Act."

And in any matter arising under the sub-paragraphs (a) to (f), inclusive, in which the appellant is in custody, the Court of Appeal, if sitting, shall give the appeal precedence over every other appeal, and if not sitting shall promptly sit for the purpose of hearing such appeal :

(5.) Under the provisions of any Act or Ordinance.

**7.** The Court of Appeal shall further have and exercise such original Jurisdiction. jurisdiction as may be necessary or incidental to the hearing and determination of any appeal.

**8.** For all the purposes of and incidental to the hearing and deter- Jurisdiction. mination of any matter within its jurisdiction, and the amendment, execution and enforcement of any judgment or order, and for the purpose of every other authority expressly or impliedly given to the Court of Appeal by this Act, the Court of Appeal shall have the power, authority and jurisdiction vested in the Supreme Court.

**9.** Subject to the Rules of Court and save as hereinafter provided, When proceedings to be in Court of Appeal. after notice of appeal has been given all further proceedings in relation to the appeal shall be had and taken in the Court of Appeal.

**10.** In any cause or matter pending before the Court of Appeal, any Powers of single Judge of Court of Appeal. direction incidental thereto not involving a decision of the appeal may be given by a single Judge of the Court of Appeal, and a single Judge of the Court of Appeal may at any time during vacation make an interim order to prevent prejudice to the claims of any parties pending an appeal, as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal.

**11.** Any three of the Judges of the Court of Appeal shall constitute Quorum. a quorum.

*Procedure.*

**12.** From and after the coming into force of this Act, all appeals, Continuation before Court of Appeal of appeals, etc., to Full Court. motions and other applications to the Full Court, save such as have been heard or partly heard, shall, ipso facto, and without any formal motion or other proceeding, be transferred to and continued in the Court of Appeal.

**13.** The jurisdiction by this Act transferred to the Court of Appeal Mode of exercising jurisdiction. shall be exercised (so far as regards procedure and practice) in the manner prescribed by the "Supreme Court Act" and the Rules of Court, and where no special provision is contained in this Act, the

“Supreme Court Act” or Rules of Court, it shall be exercised, as nearly as may be, in the same manner as the same might formerly have been exercised by the Full Court.

Sittings of Court.

**14.** The Court of Appeal for the hearing of all appeals or other matters, and the disposal of all business which may be lawfully brought before it, shall sit at the City of Victoria and at the City of Vancouver, and shall hold four sittings in each year, commencing on the days following, and continuing in each said city until the business before the Court is disposed of, that is to say :—

The first sitting on the first Tuesday in January after the third day of said month at the City of Victoria.

The second sitting on the first Tuesday in April at the City of Vancouver.

The third sitting on the first Tuesday in June at the City of Victoria.

The fourth sitting on the first Tuesday in November at the City of Vancouver.

Any appeal entered for hearing at Victoria or Vancouver as above may, by consent, be heard at Vancouver or Victoria, as the case may be.

In addition to the above sittings the Court of Appeal may hold special sittings, either at Victoria or Vancouver, for the hearing of any appeal or appeals which might be heard at the next regular sitting at either of such places.

Appeal not to be defeated merely because it has been brought as interlocutory and not final.

**15.** No appeal shall be defeated or dismissed merely by reason of the fact that it has been brought as an interlocutory and not as a final appeal, but any such appeal may be heard and determined by the Court at the sitting for which it was set down, or may be adjourned to be disposed of at a regular or special sitting of the Court, on such terms as to costs, amendment of the notice of appeal, and otherwise, as to the Court may seem meet.

Notice of preliminary objection or motion must be given.

**16.** (1.) No notice to quash or dismiss an appeal, and no preliminary objection thereto shall be heard by the Court of Appeal unless notice specifying the ground thereof shall have been served upon the opposite party at least one clear day before the time set for the hearing of the appeal.

No appeal to be defeated by reason of irregularity, etc.

(2.) No appeal shall be defeated by reason of the existence of any irregularity or the taking of any preliminary objection relating to a matter of procedure, but in directing the appeal to be heard the Court may impose such terms as to adjournment, payment of costs and otherwise as to the Court may seem just ; Provided, that nothing in this section contained shall be deemed to extend the several times hereinbefore appointed for the bringing of appeals hereunder.

**17.** Unless otherwise provided by Rules of Court, the appeals set down for hearing shall be entered by the Registrar on the list divided into three parts, and to be numbered and headed as follows:—Number One, Number Two, and Number Three; and the Registrar shall, before each sitting of the Court of Appeal, enter all appeals in which all the counsel engaged are non-residents of the place where such sitting of the Court is to be held on part numbered One, and all appeals in which all the counsel engaged are residents of the place at which such sittings is to be held on part numbered Three, and the remaining appeals on part numbered Two in the order in which they are respectively received, and such appeals shall be heard and disposed of in the following order, that is to say: First those on part numbered One, then those on part numbered Two, then those on part numbered Three, unless otherwise ordered by the Court.

Entry of appeals.

**18.** The party appealing shall, before the filing of the præcipe for hearing the appeal, procure the settlement of the appeal book by the District Registrar of the Court from which appeal is brought. The Registrar so settling the appeal book shall certify on one of the copies of the appeal book filed that the same has been duly settled, and the respondent in the appeal shall be entitled to have delivered to him by the party appealing at or before the filing of the præcipe one copy of the appeal book so settled as aforesaid.

Settling appeal book.

**19.** In any appeals or other proceedings the Court of Appeal or a Judge may enlarge or abridge the time for doing any act or taking any proceeding, upon such (if any) terms as the justice of the case may require, and that notwithstanding the expiration of the prescribed term.

Enlargement, etc., of time.

**20.** All judgments of the Court of Appeal shall be delivered in open court. When judgment has been reserved at the hearing reasonable notice shall be given to all parties of the time when judgment will be delivered, but it shall not be necessary for all the Judges who have heard the argument in any case to be present at the delivery of judgment, and any Judge who has heard the case and is absent at the delivery of judgment may hand his opinion in writing to any Judge present at the delivery of judgment, to be read or announced in open Court and then to be left with the Registrar of the Court.

Delivery of judgment.

**21.** An official stenographer shall attend the delivery of all oral judgments of the Court of Appeal and shall make a note of the proceedings, excepting argument of counsel, if any, and shall furnish transcript of same to any of the parties to or solicitors in the case, subject to the rules governing the making and delivery of transcript for the time being in force.

Official stenographer to attend delivery of oral judgments.

Registrars of Court.

**22.** The District Registrar of the Supreme Court at Victoria shall be the Registrar of the Court of Appeal with respect to all business brought before the Court at the City of Victoria and the District Registrar of the Supreme Court at Vancouver shall be the Registrar of the Court with respect to all business brought before the Court at the City of Vancouver.

*Construction and Interpretation of other Acts.*

Construction of Statutes, etc., to carry out provisions of this Act.

**23.** Whenever in any Act, Ordinance or Rule of Court words are used applicable to the exercise of appellate jurisdiction or procedure or practice in appeal in the Supreme Court or the Full Court, then in reading such Act, Ordinance or Rule of Court for the purpose of this Act, the necessary changes shall be made to give effect to the transfer of appellate jurisdiction from the Supreme Court to the Court of Appeal.

*Saving Clauses.*

Case of appeal heard or partly heard by Full Court.

**24.** Nothing herein contained shall deprive the Supreme Court sitting as a Full Court, and the Judges thereof, of full power and authority to deliver judgment in any appeal or motions awaiting judgment or continuing any partly heard appeals or motions, and making all or any necessary orders so as to fully and completely finish the business before them, and save for the purpose aforesaid the Supreme Court shall, from and after the coming into force of this Act, cease to exercise any appellate jurisdiction.

Appellate jurisdiction of single Judges of Supreme Court.

**25.** Notwithstanding anything hereinbefore contained, whenever by any Act or Ordinance a single Judge of the Supreme Court is authorised to exercise appellate jurisdiction, such jurisdiction may still continue to be exercised, subject to such further right of appeal as may be given by the Act or Ordinance conferring such appellate jurisdiction.

Jurisdiction in the matter of security for costs.

**26.** The Supreme Court, or any Judge thereof, shall have jurisdiction in all questions and matters in relation to security for the costs of an appeal, pursuant to any Act or Rules of Court.

*Rules of Court.*

Rules of Court.

**27.** The Lieutenant-Governor in Council may, from time to time, by Order or Orders in Council, make rules not inconsistent with this Act, for carrying this Act into effect, and in particular for all or any of the following matters, that is to say:—

- (1.) For regulating the sittings of the Court, or otherwise, and of the Judges thereof sitting in Chambers, and for regulating the vacations to be observed by the Court and in the offices thereof:
- (2.) For regulating the pleading, practice and procedure in the Court, and for reporting judgments given in Court or Chambers:

- (3.) Generally for regulating any matters relating to the practice and procedure of the Court, or to the duties of the officers thereof, or relating to the conduct of business coming within the cognizance of the said Court, for which provision is not expressly made by this Act :
- (4.) For regulating the sitting of Judges in Chambers, the issuing and hearing of summonses, and generally for the efficient dispatch of Chamber business :
- (5.) For regulating the re-hearing before the Court of all orders, decrees or judgments of a single Judge :
- (6.) For prescribing, regulating or doing anything which, under this or any other Act, may be prescribed, regulated or done by Rule of Court.

**28.** Order 72 of the Rules of Court, intituled the "Supreme Court Rules, 1906," shall not apply to the Court hereby created or the Judges thereof. Order 72 of Supreme Court Rules not to apply to Court of Appeal.

**29.** The tariff of costs appended to the "Supreme Court Rules, 1906," shall apply to proceedings in the Court of Appeal. Tariff of costs.

*Commencement of Act.*

**30.** This Act shall not come into force until a day to be fixed by the Lieutenant-Governor in Council. Commencement.

---

VICTORIA, B. C. :

Printed by RICHARD WOLFENDEN, I.S.O., V.D., Printer to the King's Most Excellent Majesty.  
1907.