

COURTS-MARTIAL APPEALS BILL

EXPLANATORY NOTE

THIS Bill provides for the establishment of a Court of Appeal for the Navy, Army, and Air Force, to which every person convicted by a Court-martial may, with the leave of the Court, appeal against his conviction.

There will be no appeal to the Court against sentence, but the Bill preserves the Royal prerogative of mercy, under which the sentence may be mitigated or remitted or a free pardon may be granted, whether the convicted person appeals to the Court against the conviction or not. The Bill also preserves all existing provisions of the New Zealand Army Act 1950 and the other Service Acts for the revision, remission, and suspension, etc., of sentences.

The Judges of the Court are to be the Chief Justice and the other Judges of the Supreme Court, and barristers or former Judges of the Supreme Court to be appointed by the Governor-General in Council.

The Court will be duly constituted if it consists of an uneven number of Judges, not being less than three, of whom at least one is a Judge of the Supreme Court and at least one is an appointed Judge.

The decision of the Court will be final, subject to a further right of appeal to the Court of Appeal on a point of law of exceptional public importance.

The Bill follows in many respects the Courts-Martial (Appeals) Act 1951 of the United Kingdom Parliament, and in some respects our own Criminal Appeal Act 1945.

The following notes show the effect of each clause of the Bill.

Clause 1: The Act is to come into force on a day appointed by Order in Council, and will apply to convictions on or after that day.

Clause 2: Interpretation.

Clause 3 constitutes the Courts-Martial Appeal Court, to consist of the Judges of the Supreme Court and persons appointed as Judges by the Governor-General in Council, being either barristers of not less than seven years' standing or former Judges of the Supreme Court. The appointed Judges are to be appointed for such terms as the Governor-General in Council determines, and are to be eligible for reappointment. Their remuneration is to be fixed by the Minister of Finance.

Clause 4 provides that the Court for any sitting shall consist of an uneven number of Judges (not less than three), at least one being a Judge of the Supreme Court and at least one being an appointed Judge, unless, in the case of a sitting outside New Zealand, the Chief Justice directs that the Court is to consist exclusively of appointed Judges. The Court may sit in two or more divisions and is to be a superior Court of record. Decisions are to be given by the majority of the Judges present.

Clause 5 provides for the appointment of a Registrar and other officers of the Court. The Registrar of the Court of Appeal is to act as Registrar if no other person is appointed.

Clause 6 provides that any person convicted by a naval, military, or air force Court-martial may, with the leave of the Court, appeal to the Court against his conviction.

Clause 7 requires an application for leave to appeal to be in the form prescribed by rules of Court and to be lodged within the prescribed period with the Registrar or such other person as may be prescribed, who will forward particulars to the Registrar forthwith and send the application to the Registrar as soon as possible. The Court may extend the period for applying for leave to appeal. When the Court dismisses an application for leave to appeal and considers it frivolous or vexatious, the Court may order the appellant's sentence to run from the date of the dismissal of the application.

Clause 8 empowers the Court to allow an appeal if it thinks that the finding of the Court-martial is unreasonable, or cannot be supported having regard to the evidence, or involves a wrong decision on a question of law, or that on any other ground there was a miscarriage of justice. But the Court may dismiss any appeal if it considers that no substantial miscarriage of justice has actually occurred. Where the Court allows an appeal it may either direct an acquittal or direct a new trial. The power to order a new trial is in accordance with section 4 (2) of the Criminal Appeal Act 1945, which gives a similar power to the Court of Appeal in ordinary criminal cases. A new trial cannot be ordered in the United Kingdom either in Court-martial appeals or in ordinary criminal appeals, but the power has been extensively used by the Court of Appeal in New Zealand.

Clause 9 empowers the Court to substitute another lawful conviction for the conviction appealed from and, where necessary, to substitute an appropriate sentence for the sentence of the Court-martial (without in any case increasing the sentence). *Subclause (4)* makes the usual provision for the custody of insane persons until the pleasure of the Minister of Justice is known. A substituted sentence is to run from the date of the original sentence unless the Court otherwise orders, and is to be subject to confirmation, revision, remission, and suspension, etc., in the same way as the original sentence.

Clause 10 provides that the decision of the Court on any appeal is to be final, unless the Attorney-General grants a certificate that a point of law of exceptional public importance is involved and that a further appeal is desirable in the public interest, in which case an appeal may be made to the Court of Appeal. *Subclause (3)* provides that on such an appeal the Court of Appeal is to have the same powers as the Courts-Martial Appeal Court.

Clause 11 prescribes the powers of the Court as to evidence and witnesses, and enables the Court to refer matters to special commissioners or to appoint assessors with expert knowledge to assist the Court.

Clause 12 enables an appellant's case to be presented to the Court in writing, instead of orally.

Clause 13 enables the Court to assign a solicitor and counsel or counsel only to an appellant who has not sufficient means to enable him to obtain legal aid for himself. The Registrar is to report to the Court any case in which it appears that legal aid should be granted under this clause.

Clause 14 provides that an appellant is not to be present at the hearing of his appeal unless the Court gives him leave or the rules of Court provide for his presence.

Clause 15 requires the Naval Board, the Army Board, or the Air Board to undertake the defence of appeals under the Act.

Clause 16 provides that no costs are to be allowed on appeals under the Bill, and that the expenses of solicitors and counsel assigned to an appellant and the expenses of witnesses are to be fixed by regulations and are to be defrayed in the same manner as in ordinary criminal cases. The clause follows section 13 of the Criminal Appeal Act 1945 (as amended by section 9 of the Statutes Amendment Act 1948) instead of the United Kingdom Act, which enables the Court to award costs.

Clause 17 provides that the proceedings of the Court are to be open to the public, unless it is necessary to clear the Court for reasons of security, justice, or public morality.

Clause 18 provides for the suspension of a death sentence until all rights of appeal under the Bill have been exhausted, except where the safety of a force on active service requires the execution of the sentence. *Subclause (3)* requires appeals to be dealt with expeditiously in such cases. The clause does not affect the necessity for obtaining the Governor-General's approval before a death sentence is executed.

Clause 19 provides that orders made by a Court-martial for the restitution of stolen property are to be suspended pending an appeal, and may be annulled or varied by the Court. Rules of Court may provide for the safe custody of any property while an order relating to it is suspended.

Clause 20 provides that a person whose conviction is quashed on appeal under the Bill is not to be tried again for the same offence by any Court.

Clause 21 enables Naval Orders or Army Orders or Air Board Orders or prisons regulations to provide for the removal of appellants in custody for the purposes of the Bill.

Clause 22 requires the Judge Advocate of the Fleet or the Judge Advocate General of the Army or Air Force to furnish to the Court all documents relating to the trial of an appellant.

Clause 23 prescribes the duty of the Registrar to lay all relevant documents before the Court and provides for forms and instructions in relation to appeals being made available to persons sentenced by Court-martial.

Clause 24 enables the finding of a Court-martial to be referred to the Court for review, as on appeal,—

- (a) By the Judge Advocate of the Fleet or the Judge Advocate General where a point of law of exceptional importance is involved; or
- (b) By the Minister of Defence where the finding appears to need reconsideration.

Clause 25 enables a Judge of the Court to exercise certain incidental powers of the Court.

Clause 26 enables rules of Court to be made for the purposes of the Bill in the same manner as rules of Court for the Supreme Court.

Clause 27 provides that the Bill is not to affect the Royal prerogative of mercy.

Hon. Mr Macdonald

COURTS-MARTIAL APPEALS

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A BILL INTITULED

AN ACT to establish a Courts-Martial Appeal Court and to provide for appeals thereto from Courts-Martial and certain naval disciplinary Courts. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 117—1

Short Title and commencement.
Cf. Courts-Martial (Appeals) Act 1951 (14 & 15 Geo. VI, ch. 46), s. 25 (U.K.)

1. (1) This Act may be cited as the Courts-Martial Appeals Act 1953.

(2) This Act shall come into force on a day to be appointed for the commencement thereof by the Governor-General by Order in Council. 5

(3) This Act applies in relation to—

(a) Convictions by naval Courts-martial on or after the date of the commencement of this Act:

(b) Convictions by army or air force Courts-martial the findings whereof are promulgated on or after the date of the commencement of this Act. 10

Interpretation.
Cf. 14 & 15 Geo. VI, ch. 46, s. 24 (U.K.)

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

“ Air Board ” means the Air Board constituted under the Air Force Act: 15

“ Air Force Act ” means the Royal New Zealand Air Force Act 1950:

“ Air force Court-martial ” means a Court-martial under the Air Force Act: 20

“ Appellant ” includes a person who has been convicted by a Court-martial and desires to appeal under this Act to the Court:

“ Appointed Judge ” means a Judge of the Court appointed under paragraph (b) of subsection one of section three of this Act: 25

1950, No. 39

“ Army Act ” means the New Zealand Army Act 1950:

“ Army Board ” means the Army Board constituted under the Army Act: 30

“ Army Court-martial ” means a Court-martial under the Army Act:

“ Court ” means the Courts-Martial Appeal Court constituted by this Act:

“ Court of Appeal ” means the Court of Appeal of New Zealand constituted under Part II of the Judicature Act 1908: 35

See Reprint of Statutes, Vol. II, p. 78

“ Court-martial ” means a naval, army, or air force Court-martial:

“ Minister ” means the Minister of Defence: 40

1950, No. 63

“ Naval Board ” means the Naval Board of New Zealand constituted under the Naval Defence Amendment Act 1950:

5 “ Naval Court-martial ” means a Court-martial under the Naval Discipline Act in its application to the New Zealand Naval Forces under section eighteen of the Naval Defence Act 1913; and includes a disciplinary Court constituted under section fifty-seven A of the Naval Discipline Act in its application to the New Zealand Naval Forces as aforesaid:

See Reprint of Statutes, Vol. II, p. 648

10 “ Prescribed ” means prescribed by rules of Court:
 “ Registrar ” means the Registrar of the Court:
 “ Rules of Court ” means rules of Court made under section *twenty-six* of this Act.

15 (2) In this Act the expression “ on active service ”, in relation to a person subject to military law, has the meaning assigned to it by subsections four, five, and six of section two of the Army Act and, in relation to a person subject to the Air Force Act, has the meaning assigned to it by section three of the Air Force Act; and a person who is deemed for the purposes of either
 20 of those Acts to be on active service shall be deemed also for the purposes of this Act to be on active service.

25 (3) For the purposes of this Act, any finding or sentence substituted, by virtue of powers conferred in that behalf by the Army Act or the Air Force Act, for a finding of, or sentence passed by, a Court-martial shall be deemed to be a finding of, or sentence passed by, that Court-martial, and any conviction obtained by virtue of a finding substituted as aforesaid shall be deemed to be a conviction by the Court-martial.

30 *The Courts-Martial Appeal Court*

3. (1) There shall be a Courts-Martial Appeal Court, of which the Judges shall be—

Constitution of Courts-Martial Appeal Court.

(a) The Judges of the Supreme Court; and
 35 (b) Such other persons, being barristers of the Supreme Court of not less than seven years’ standing or former Judges of the Supreme Court, as the Governor-General in Council may appoint.

Cf. 14 & 15 Geo. VI, ch. 46, s. 1 (1)-(3) (U.K.)

40 (2) The appointment of a person under paragraph (b) of subsection *one* of this section to be a Judge of the Court shall be for such term and subject to such

conditions as the Governor-General in Council may determine; and a person appointed as aforesaid who ceases to hold office as a Judge of the Court shall be eligible for reappointment.

(3) There shall be paid to each appointed Judge, out of money appropriated by Parliament, such remuneration by way of fees or salary and such travelling and other allowances as are from time to time approved by the Minister of Finance. 5

Supplementary provisions as to Court. Cf. 14 & 15 Geo. VI, ch. 46, s. 2 (U.K.)

4. (1) For the purpose of hearing and determining appeals under this Act, or any matter preliminary or incidental to an appeal, the Court shall be summoned in accordance with directions given by the Chief Justice, and shall be deemed to be duly constituted if— 10

(a) It consists of an uneven number of Judges, not being less than three; and 15

(b) Subject to subsection *four* of this section, at least one of the Judges of whom it consists is a Judge of the Supreme Court and at least one is an appointed Judge. 20

(2) If the Chief Justice so directs, the Court may sit in two or more divisions.

(3) The Court shall sit in such place as the Chief Justice directs, whether within or outside New Zealand.

(4) Where the Court is directed to sit at a place outside New Zealand, the Chief Justice may, if he thinks it expedient so to do, direct that the Court shall consist exclusively of appointed Judges. 25

(5) The determination of any question before the Court shall be according to the opinion of the majority of the Judges of the Court hearing the case. 30

(6) The Court shall be a superior Court of record and shall, for the purposes of and subject to the provisions of this Act, have full power to determine, in accordance with this Act, any question necessary to be determined for the purpose of doing justice in any case before the Court. 35

Registrar and officers of Court. Cf. 14 & 15 Geo. VI, ch. 46, s. 1 (4) (U.K.) See Reprint of Statutes, Vol. VII, p. 522

5. (1) There may from time to time be appointed under the Public Service Act 1912 a Registrar of the Court and such other officers of the Court as may be required. Any such office may be held either separately or in conjunction with any other office in the Public Service. 40

(2) Unless any other person is appointed under subsection *one* of this section to hold office as the Registrar of the Court, the person who for the time being holds office as the Registrar of the Court of Appeal shall, without further appointment, be deemed to have been appointed under this section to be also the Registrar of the Courts-Martial Appeal Court.

Appeals to the Court

6. A person convicted by a Court-martial may, with the leave of the Court, appeal to the Court against his conviction.

Right of appeal from Court-martial.
Cf. 14 & 15
Geo. VI, ch. 46,
s. 3 (U.K.)

7. (1) Leave to appeal to the Court shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged, within the prescribed period, with the Registrar, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

Application for leave to appeal.
Cf. 14 & 15
Geo. VI, ch. 46,
s. 4 (U.K.)

(2) Rules of Court may provide that, in such circumstances as may be specified in the rules, any such application as aforesaid which is lodged with such person (other than the Registrar) as is specified in the rules shall be treated, for the purposes of subsection *one* of this section, as having been lodged with the Registrar.

(3) Where an application for leave to appeal to the Court is lodged with a person other than the Registrar in accordance with rules of Court having effect by virtue of subsection *two* of this section, it shall be the duty of that person—

(a) To forward the application to the Registrar with as much expedition as possible; and

(b) If it appears to that person that it is practicable to furnish the Registrar, before the receipt by him of the application, with such particulars of the application as will enable him to prepare a copy of it, and that in all the circumstances it is expedient so to do, forthwith to furnish him with those particulars.

(4) The Court may extend the period within which an application for leave to appeal must be lodged, whether that period has expired or not.

(5) Where the Court dismisses an application for leave to appeal it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismisses the application. 5

Determination of appeals in ordinary cases. Cf. 14 & 15 Geo. VI, ch. 46, s. 5 (U.K.)

8. (1) Subject to the provisions of section *nine* of this Act, on an appeal under this Act the Court shall allow the appeal if it thinks that the finding of the Court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any other ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal: 10 15

Provided that the Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred. 20

(2) If the Court allows an appeal under this Act, it shall quash the conviction and in its discretion either direct a judgment and finding of acquittal to be entered or direct a new trial.

Powers of Court in special cases. Cf. 14 & 15 Geo. VI, ch. 46, s. 6 (U.K.)

9. (1) If it appears to the Court that an appellant, though not properly convicted on some charge preferred against him before the Court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the Court-martial on the appellant was not warranted by the relevant Act for the offence of which he was convicted on the other charge, the Court shall pass on the appellant, in substitution for the sentence passed on him by the Court-martial, such sentence so warranted as it thinks proper. 25 30 35

(2) Where an appellant has been convicted of an offence and the Court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Court that the Court-martial must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead 40

of allowing or dismissing the appeal, substitute for the finding of the Court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the Court-martial, 5 such sentence as the Court thinks proper, being a sentence warranted by the relevant Act for that other offence, but not being a sentence of greater severity.

(3) Where—

10 (a) An appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Court that the Court-martial by which he was tried ought to have found him guilty of the offence as being committed 15 under circumstances involving the lower degree of punishment; or

(b) An appellant has been convicted of an offence and it appears to the Court that the Court-martial by which he was tried ought to have found him guilty of the offence subject to 20 exceptions or variations—

the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the Court-martial a finding of guilty of the offence as having been committed 25 under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations, and pass on the appellant, in substitution for the sentence passed on him by the Court-martial, such sentence as it thinks 30 proper, being a sentence warranted by the relevant Act for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the Court that the appellant was insane at the time of the commission of 35 the offence and should have been acquitted on account of his insanity, the Court may quash the conviction and order the appellant to be kept in custody under section sixty-eight of the Naval Discipline Act, section one hundred and fourteen of the Army Act, or section one 40 hundred and fourteen of the Air Force Act, as the case may require, in like manner as on a special finding of insanity by the Court-martial by which the appellant was convicted.

(5) The term of any sentence passed by the Court under any of the foregoing provisions of this section shall, unless the Court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the Court as aforesaid shall be deemed, for the purposes of the Naval Discipline Act or the Army Act or the Air Force Act, as the case may be, to be a sentence passed by the Court-martial by which the appellant was convicted. 5 10

(6) In this section the expression "the relevant Act" means, in relation to an appellant, the Act under which he was tried.

Decision of Court to be final subject to appeal to Court of Appeal.
Cf. 14 & 15 Geo. VI, ch. 46, s. 7 (U.K.)

10. (1) If, in the case of an appeal under this Act, the Attorney-General, upon an application in that behalf made to him within a period of fourteen days from the date when the decision of the Court was given, grants to the appellant or to the Naval Board, the Army Board, or the Air Board a certificate that the decision of the Court involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be brought, an appeal to the Court of Appeal from the decision of the Court shall lie at the instance of the person or Board to whom the certificate is granted; but subject to the foregoing provisions of this subsection the determination by the Court of any appeal or other matter which it has power to determine shall be final, and no appeal shall lie from the Court to any other Court. 15 20 25

(2) The Courts-Martial Appeal Court may extend the period within which an application for a certificate under this section must be made, whether that period has expired or not. 30

(3) For the purposes of an appeal to the Court of Appeal, that Court shall have the same powers as the Courts-Martial Appeal Court, and the provisions of this Act, as far as they are applicable and with the necessary modifications, shall apply as they apply for the purposes of an appeal to the Courts-Martial Appeal Court. 35

11. For the purposes of this Act the Court may, if it thinks it necessary or expedient in the interests of justice,—

Supplementary powers of the Court.
Cf. 14 & 15 Geo. VI, ch. 46 s. 8 (1) (U.K.)

5 (a) Order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to the Court to be necessary for the determination of the case:

10 (b) Order the taking of such steps as are requisite to obtain from any member of the Court-martial by which the appellant was tried or the person who officiated as Judge Advocate at the trial a report giving his opinion upon the case or upon any point arising therein or containing a statement as to any facts whereof the ascertainment appears to the Court to be material for the purpose of the determination of the case:

20 Provided that the Court shall not make an order under this paragraph for the purpose of obtaining a report from a member of a Court-martial other than the President thereof unless it also makes such an order for the purpose of obtaining a report from the President or is satisfied that the obtaining of a report from him is impracticable or would involve undue delay:

25 (c) Order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in the prescribed manner before any Judge of the Court or before any other person appointed by the Court for that purpose, and allow the admission of any depositions so taken as evidence before the Court:

30 (d) Receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant makes an application for the purpose, of the husband or wife of the appellant in cases

where the evidence of the husband or wife could not have been given at the trial except on such an application:

- (e) Where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in the prescribed manner for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as the Court thinks fit to adopt it: 5
- (f) Appoint any person with special expert knowledge to act as an assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case,— 10

and may issue any warrants necessary for enforcing the orders or sentences of the Court. 20

12. An appellant may, if he so desires, instead of presenting his case orally, present it in writing.

Right of appellant to present his case in writing.

Cf. 14 & 15
Geo. VI, ch. 46,
s. 9 (U.K.)

Legal aid to appellants.

Cf. 14 & 15
Geo. VI, ch. 46,
s. 10 (1)-(4)
(U.K.)

13. (1) The Court may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to obtain that aid. 25

(2) If, on a question of granting an appellant legal aid under this section, there is a doubt whether it is desirable in the interests of justice that the appellant should have legal aid or whether he has sufficient means to enable him to obtain that aid, the doubt shall be resolved in favour of granting him legal aid. 30

(3) Before a person is granted legal aid under this section he may be required to furnish a written statement in the prescribed form about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid, and if a person in furnishing such a written statement as aforesaid (whether required 40

so to do or not) knowingly makes any false statement or false representation he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding four months

5 or to both.

(4) The Registrar shall report to the Court or a Judge thereof any case in which it appears to him that, although no application has been made for the purpose, legal aid ought to be granted under this section to an

10 appellant.

14. An appellant shall not be entitled to be present at the hearing of an appeal under this Act to the Court or at any proceedings preliminary or incidental to such an appeal except where rules of Court provide that he

15 shall have the right to be present or the Court gives him leave to be present, and accordingly any power of the Court under this Act to pass a sentence may be exercised notwithstanding the absence of the appellant.

15. It shall be the duty—

20 (a) On an appeal under this Act to the Court against a conviction by a naval Court-martial, of the Naval Board;

(b) On such an appeal against a conviction by an army Court-martial, of the Army Board; and

25 (c) On such an appeal against a conviction by an air force Court-martial, of the Air Board—

to undertake the defence of the appeal.

16. (1) On the hearing and determination of an appeal or any proceedings preliminary or incidental

30 thereto under this Act no costs shall be allowed on either side.

(2) The expenses of any solicitor or counsel assigned to an appellant under this Act, and the expenses of any witnesses attending on the order of the Court or

35 examined in any proceedings incidental to the appeal, and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted

40 by any person appointed by the Court for the purpose, or any reference of a question to a special commissioner appointed by the Court, and the expenses of any person appointed as assessor to the Court shall be defrayed in the same manner as the expenses of a trial of a

45 criminal case in the Supreme Court.

Right of appellant to be present.

Cf. 14 & 15 Geo. VI, ch. 46, s. 11 (U.K.)

Defence of appeals.

Cf. 14 & 15 Geo. VI, ch. 46 s. 12 (U.K.)

Costs of appeal.

Cf. 1945, No. 23, s. 13; 1948, No. 77, s. 9 (2), (3)

(3) The Governor-General may from time to time, by Order in Council, make regulations prescribing the fees payable to any solicitor or counsel assigned to an appellant under this Act, and the rates and scales of payment of the expenses of witnesses and other expenses referred to in subsection *two* of this section. 5

Proceedings to be in open Court, unless it is necessary to clear the Court.

Cf. 1950, No. 39, s. 111; 1950, No. 40, s. 111

17. The proceedings of the Court shall be conducted in open Court, except when the Court is dealing with matters of procedure or is deliberating:

Provided that the presiding Judge may cause the Court to be cleared of all persons or of any persons or classes of persons if he considers it necessary in the interests of national safety or for the due administration of justice or proper in the interests of public morals. 10

Supplementary Provisions as to Appeals 15

Suspension of death sentence.

Cf. 14 & 15 Geo. VI, ch. 46, s. 14 (U.K.)

18. (1) Where a conviction by Court-martial involves sentence of death—

- (a) The sentence shall not in any case be executed until the expiration of the period prescribed under this Act as the period within which an application for leave to appeal to the Court against the conviction must be lodged; 20
- (b) If such an application is duly lodged, the sentence shall not be executed until either the application is finally refused or is withdrawn or the appeal is determined or abandoned; 25
- (c) If leave to appeal is granted and the appeal is dismissed, the sentence shall not be executed until the expiration of the period within which an application may be made under section *ten* of this Act for a certificate of the Attorney-General; and 30
- (d) If an application under the said section *ten* is duly made, the sentence shall not be executed until the grant of a certificate is refused or the application is withdrawn or the further appeal that lies to the Court of Appeal by virtue of the grant of a certificate is determined or abandoned: 35

Provided that, where a sentence of death passed on a person on active service by an army or air force Court-martial is confirmed, and the authority who confirms the sentence certifies that it is essential in the interests of discipline and for the purposes of securing the safety of the force with which that person is present that the sentence should be carried out forthwith, the foregoing provisions of this subsection shall not apply to the sentence.

10 (2) Nothing in this section shall affect any enactment requiring a sentence of death passed by a Court-martial to be approved by the Governor-General before it is executed.

15 (3) Any appeal to the Court against a conviction by a Court-martial involving sentence of death, any application for leave to appeal to the Court against any such conviction, and any appeal to the Court of Appeal against a decision of the Court on an appeal thereto against any such conviction shall be heard and
20 determined with as much expedition as practicable.

19. (1) The operation of any order for the restitution of any property to any person made on a conviction by a Court-martial, and the operation, in the case of any such conviction, of the provisions of subsection one of section
25 twenty-six of the Sale of Goods Act 1908 as to the revesting of the property in stolen goods on conviction shall (unless the Court before which the conviction takes place directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be
30 suspended—

(a) In any case, until the expiration of the period prescribed under this Act as the period within which an application for leave to appeal to the Court against the conviction must be lodged; and
35

(b) If such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned,—

40 and where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal the order or provisions, as the case may be, shall not take effect if the conviction is quashed on appeal.

Restitution of stolen property, etc.

Cf. 14 & 15 Geo. VI, ch. 46, s. 15 (U.K.)

See Reprint of Statutes, Vol. VIII, p. 112

(2) The Court may by order annul or vary any such order as aforesaid although the conviction is not quashed; and the order if annulled shall not take effect and, if varied, shall take effect as varied.

(3) Provision may be made by rules of Court for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said provisions. 5

Person not to be tried again where conviction is quashed.
Cf. 14 & 15 Geo. VI, ch. 46, s. 16 (U.K.)

20. Where the conviction of a person by Court-martial for an offence has been quashed under this Act, he shall not be liable to be tried again for that offence by a Court-martial or by any other Court. 10

Removal of prisoners for purposes of proceedings under this Act.
Cf. 14 & 15 Geo. VI, ch. 46, s. 17 (U.K.)

21. Provision may be made—

(a) By regulations or orders in relation to naval prisons or naval detention quarters: 15

(b) By Army Orders under section seventy-three of the Army Act or orders under section seventy-four of that Act:

(c) By Air Board Orders under section seventy-three of the Air Force Act or orders under section seventy-four of that Act: 20

See Reprint of Statutes, Vol. VI, p. 966

(d) By regulations under the Prisons Act 1908— as to the manner in which an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for the purposes of this Act or any place to which the Court or a Judge thereof may order him to be taken for the purpose of any proceedings of the Court. 25

Furnishing, on appeal, of documents relating to trial.
Cf. 14 & 15 Geo. VI, ch. 46, s. 18 (U.K.)

22. (1) In the case of every appeal, or application for leave to appeal, under this Act to the Court against a conviction by a naval Court-martial, it shall be the duty of the Judge Advocate of the Fleet to furnish to the Registrar, in accordance with rules of Court, the proceedings of the Court-martial. 30

(2) In the case of every such appeal or application for leave to appeal as aforesaid against a conviction by an army Court-martial, it shall be the duty of the Judge Advocate General to furnish to the Registrar, in accordance with rules of Court, the proceedings of the Court-martial (including any proceedings with respect to the revision of the finding or sentence of the Court-martial in pursuance of subsection four of section one hundred and twenty-two of the Army Act) and the proceedings with respect to the confirmation of the finding and sentence of the Court-martial. 40 45

(3) In the case of every such appeal or application for leave to appeal as aforesaid against a conviction by an air force Court-martial, it shall be the duty of the Judge Advocate General to furnish to the Registrar, in accordance with rules of Court, the proceedings of the Court-martial (including any proceedings with respect to the revision of the finding or sentence of the Court-martial in pursuance of subsection four of section one hundred and twenty-two of the Air Force Act) and the proceedings with respect to the confirmation of the finding and sentence of the Court-martial.

23. (1) The Registrar shall take all necessary steps for obtaining the determination of an appeal or application under this Act, and shall obtain and lay before the Court in proper form all documents, exhibits, and other things relating to the proceedings in the Court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

Duties of Registrar with respect to appeals, etc.
Cf. 14 & 15 Geo. VI, ch. 46, s. 19 (U.K.)

(2) The Registrar shall furnish the necessary forms and instructions relating to applications for leave to appeal under this Act to any person who demands them, to persons in charge of places where persons sentenced by Court-martial may lawfully be confined for the purpose of serving their sentences, and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to make application for leave to appeal under this Act.

Special References to the Court

24. If, in the case of the conviction of a person by a Court-martial,—

Special references to the Court.
Cf. 14 & 15 Geo. VI, ch. 46, s. 20 (U.K.)

(a) It appears to the Judge Advocate of the Fleet or to the Judge Advocate General of the Army or Air Force that the finding of the Court-martial involves a point of law of exceptional importance which in his opinion should be determined by the Court; or

(b) It appears to the Minister, upon consideration of matters appearing to him not to have been brought to the notice of the Court-martial at

the trial, to be expedient that the finding of the Court-martial should be considered or reconsidered by the Court,—
 the Judge Advocate of the Fleet, the Judge Advocate General, or the Minister, as the case may be, may refer the finding to the Court, and a reference under this section shall, for the purposes of the foregoing provisions of this Act, be treated as an appeal by the person convicted against his conviction. 5

Miscellaneous

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Exercise of certain powers of the Court by a Judge thereof.

Cf. 14 & 15 Geo. VI, ch. 46, s. 21 (U.K.)

25. The powers of the Court under this Act—

(a) To give leave to appeal:

(b) To extend the period within which an application for leave to appeal must be lodged:

(c) To grant an appellant legal aid:

(d) To allow an appellant to be present at any proceedings under this Act—

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may be exercised by any Judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions; but, if the Judge refuses an application on the part of an appellant to exercise in his favour any of the powers mentioned in this section, the appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner, shall be entitled to have the application determined by the Court as duly constituted for the hearing and determination of appeals under this Act. 20 25

Rules of Court.

Cf. 14 & 15 Geo. VI, ch. 46, s. 22 (U.K.)

See Reprint of Statutes, Vol. II, p. 96

26. (1) Rules of Court may be made in the manner provided by the Judicature Amendment Act 1930 for regulating the procedure and practice to be followed in the Court. 30

(2) Rules of Court made for the purposes of any provision of this Act may make different provision in relation to different classes of cases and may provide for any incidental or supplementary matters for which it appears to be necessary or expedient for the purposes of that provision to provide. 35

Saving for prerogative of mercy.

Cf. 14 & 15 Geo. VI, ch. 46, s. 27, (U.K.)

27. Nothing in this Act shall affect Her Majesty's Royal prerogative of mercy.