

- The Court of appeal may also determine a question of law reserved by the High Court or requested by the Attorney General.
- Under the Trade Dispute Act, there is a right of appeal to the Court of Appeal against a decision of the Industrial Court.

## THE SITTINGS AND COMPOSITION OF THE COURT

- The sittings and quorum of the Court are prescribed under sections 8 and 9 of the Court of Appeal Act.
- The Court of Appeal also comprises of the High Court Judges, *ex officio*. Although the law requires that no Judge should sit on an appeal from his own decision.
- The decision of the Court of Appeal is by majority opinion.
- Generally, the quorum of the Court Appeal is three.
- There are exceptions to this Rule, for instance, in interlocutory matters or where leave of Court is sought to appeal to the Court of Appeal after the High Court had refused to grant leave, a single Judge may preside as a Court of Appeal.
- When hearing an appeal under section 18 of the constitution or an appeal concerning the interpretation of the constitution under section 106 of the constitution the court will be quorate if it

consists of any five members selected by the President of the Court. *In other words, an appeal on a constitutional issue must be heard by a full bench*

- The Court of Appeal is the final Court in the country.



Administration of Justice

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# COURT OF APPEAL OF BOTSWANA

## COURT OF APPEAL OF BOTSWANA A SYNOPSIS ON THE BACKGROUND OF THE COURT OF APPEAL

The Court of Appeal named “The Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal was established in 1955 as a superior court of record.

The establishment of this court terminated appeals directed from the High Court to the Judicial Committee of the Privy Council although appeals still lay to the Privy Council from the Court of Appeal, until 1973 when this was discontinued. The Court initially sat in Swaziland which had better court facilities.

After Independence the Court of Appeal continued being served by expatriate Judges from all over the Commonwealth until recently and sat when required in Lobatse. This arrangement has no doubt enriched our jurisprudence which has benefited from the wisdom of distinguished retired Justices who were drawn from different parts of the commonwealth with the Common Law and Roman Dutch law experience.

These have included many renowned former Chief Justices and Court Presidents from other jurisdictions.

### LOCALISATION OF THE COURT OF APPEAL

The appointment of a citizen Judge President Justice I.S Kirby took place in October

2010. Shortly thereafter three other Judges were appointed on a full time basis being the late Justice Elijah Legwaila in January 2012, Justice Isaac Lesetedi and Justice Monametsi Gaongalelwe in August 2012. Presently, in addition to ex officio Justices, there are three permanent citizen Judges and five visiting Justices from Scotland and South Africa.

The Court of Appeal is now housed in its own buildings in the Central Business District of Gaborone with a dedicated complement of staff. It holds two short sessions a year, In April and October and two long Sessions in January and July. In addition, **four Applications Sessions** are held to decide Interlocutory matters. Urgent Appeals are often heard between sessions.

The Court of Appeal is the apex court of Botswana. It is presided over by the President of the Court appointed by the State President, and such number of Justices of Appeal as may be prescribed by parliament. The Chief Justice and the other judges of the High Court are also ex officio members of the Court of Appeal and may be called upon to fill in when required.

### THE ROLE OF THE COURT OF APPEAL

#### *The Authority of the Court of Appeal*

The Court of Appeal’s jurisdiction is general and territorially defined. It also enjoys all power and authority vested in the High Court by the Constitution and any other law.

The Court of Appeal is a Supreme Court of record, with plenary review, appellate and, where appropriate first instance jurisdiction. It hears all appeals from the High Court and Industrial Court.

### NATURE OF APPEALS THAT LIE TO THE COURT OF APPEAL

An appeal to the Court of Appeal may take two forms namely as of right or by special leave.

- Section 10 of the Court of Appeal Act allows appeals as of right in addition to those provided for in the constitution from any final decisions in any proceedings in which the High Court sat at first instance, where the High Court was exercising its powers or duties under section 18 of the constitution, and where provision for such appeal is made under any law.
- Alternatively, an appeal may lie to the Court of Appeal with leave of the High Court or if leave has been refused with leave of Court of Appeal itself, in matters heard on appeal by the High Court and in interlocutory matters.
- Litigants may appeal to the Court of Appeal on both questions of law and of fact.
- However, the prosecution’s right of appeal in criminal cases, whether as of right or by leave of court, is limited to questions of law.