

**POST-APPEAL APPLICATIONS IN
CAPITAL CASES ACT 2022**

No. 41 of 2022.

An Act to amend the Supreme Court of Judicature Act 1969 and the Criminal Procedure Code 2010 to introduce a new procedure for post-appeal applications in capital cases, to provide for findings of abuse of process under certain circumstances, to make related amendments to the procedure on the review of earlier decisions of an appellate court, and to make a consequential amendment to the Coroners Act 2010.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Post-appeal Applications in Capital Cases Act 2022 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of Supreme Court of Judicature Act 1969

2. The Supreme Court of Judicature Act 1969 is amended —

(a) by deleting subsection (1) of section 49 and substituting the following subsection:

“(1) The Court of Appeal has the civil jurisdiction mentioned in section 53, the criminal jurisdiction mentioned in section 60D and the jurisdiction to deal with any application or action that is to be dealt with by the Court of Appeal as is provided in Division 4 of this Part.”; and

(b) by inserting, immediately after section 60E in Part 5, the following Division:

“Division 4 — Post-appeal application in capital case and finding of abuse of process

Interpretation of this Division

60F. In this Division, unless the context otherwise requires —

“application for PACC permission” means an application for permission to make a PACC application;

“application for review permission” means an application for permission to make a review application;

“counsel” means any advocate and solicitor;

“Judge of the Court of Appeal” means a Judge sitting in the Court of Appeal in accordance with this Act and the Constitution;

“PACP” means a prisoner awaiting capital punishment;

“post-appeal application in a capital case” or “PACC application” means any application (not being a review application) —

(a) made by a PACP after the relevant date; and

(b) to which either of the following applies:

(i) the application is for a stay of the execution of the death sentence on the PACP;

(ii) the determination of the application calls into question, or may call into question, the propriety of the conviction of, the imposition of the sentence of death on, or the carrying out of the sentence of death on, the PACP;

Examples

Examples of an application made by a PACP the determination of which calls into question, or may call into question, the propriety of the conviction of, the imposition of the sentence of death on, or the carrying out of the sentence of death on, the PACP are —

(a) an application challenging the President’s order;

(b) an application challenging the manner in which the death sentence is to be carried out;

(c) an application challenging the imposition of the sentence of death as a form of punishment (such as an application alleging that the death penalty is an unlawful deprivation of life under Article 9(1) of the Constitution);

- (d) an application challenging the Public Prosecutor’s decision not to certify that the PACP has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore, under section 33B(2)(b) of the Misuse of Drugs Act 1973; and
- (e) an application challenging the Public Prosecutor’s decision to institute and conduct proceedings against the PACP for an offence punishable with death.

“President’s order”, in relation to a PACP, means the order of the President under section 313(1)(f) of the Criminal Procedure Code 2010 stating that the sentence of death is to be carried out against the PACP;

“relevant application” means —

- (a) an application for PACC permission;
- (b) a PACC application;
- (c) an application for review permission;
or
- (d) a review application;

“relevant date” means —

- (a) in relation to the first PACC application by a PACP —
 - (i) the date of dismissal of the appeal by the Court of Appeal (whether before, on or after the date of commencement of the Post-appeal Applications in Capital Cases Act 2022) in relation to the offence for which the sentence of death was imposed on the PACP;

- (ii) the date of imposition of the sentence of death by the Court of Appeal (whether before, on or after the date of commencement of the Post-appeal Applications in Capital Cases Act 2022) in an appeal against the acquittal of the PACP of an offence punishable with death, or against a non-capital sentence imposed on the PACP; or
 - (iii) the date of the issuance by the Court of Appeal of a certificate (whether before, on or after the date of commencement of the Post-appeal Applications in Capital Cases Act 2022) confirming the imposition of the sentence of death on the PACP; and
- (b) in relation to the second or any subsequent PACC application (called the instant application) by a PACP —
- (i) the date mentioned in paragraph (a); or
 - (ii) if prior to the making of the instant application, there has been a determination of —
 - (A) any application for PACC permission (not being an application for PACC permission for the instant application); or

(B) any PACC application,
in relation to the PACP, the date
of the most recent of any such
determination;

“review application” means a review application
within the meaning of section 394F of the
Criminal Procedure Code 2010 where the
application is to review an earlier decision of
the Court of Appeal relating to the offence for
which the sentence of death was imposed on a
PACP.

Application for permission to make PACC application

60G.—(1) Subject to section 60I, before making a
PACC application, the applicant must apply to the
Court of Appeal for, and obtain, the permission of that
court to do so.

(2) Despite section 50(1), an application for PACC
permission may be heard and determined by a single
Judge of the Court of Appeal.

(3) An application for PACC permission must be
fixed for hearing within such period as is prescribed
by the Rules of Court.

(4) The applicant in an application for PACC
permission must file written submissions in support
of that application, and such other documents as are
prescribed in the Rules of Court, within such periods
as are prescribed in the Rules of Court.

(5) The respondent in an application for PACC
permission may file written submissions in relation to
that application within such period as is prescribed in
the Rules of Court.

(6) The Registrar or any Supreme Court Judge may extend or abridge any period mentioned in subsection (3), (4) or (5).

(7) In deciding whether or not to grant an application for PACC permission, the Court of Appeal must consider the following matters:

- (a) whether the PACC application to be made is based on material (being evidence or legal arguments) that, even with reasonable diligence, could not have been adduced in court before the relevant date;
- (b) whether there was any delay in filing the application for PACC permission after the PACP or counsel for the PACP obtained the material mentioned in paragraph (a) and the reasons for the delay;
- (c) whether subsection (4) is complied with;
- (d) whether the PACC application to be made has a reasonable prospect of success.

(8) An application for PACC permission may, without being set down for hearing, be summarily dealt with by a written order of the Court of Appeal.

(9) Before summarily refusing an application for PACC permission under subsection (8), the Court of Appeal, in addition to considering the matters mentioned in subsection (7) —

- (a) must consider the applicant's written submissions, if any; and
- (b) may, but is not required to, consider the respondent's written submissions, if any.

(10) Before summarily granting an application for PACC permission, the Court of Appeal, in addition to considering the matters mentioned in subsection (7) —

- (a) must consider the applicant's written submissions, if any; and
 - (b) must consider the respondent's written submissions, if any.
- (11) The Court of Appeal may —
 - (a) before deciding any application for PACC permission;
 - (b) when granting an application for PACC permission; or
 - (c) when summarily granting an application for PACC permission,do one or both of the following:
 - (d) make any incidental directions or give any interim orders (including a stay of execution of the death sentence) as the Court considers necessary;
 - (e) take additional evidence.
- (12) The Court of Appeal may, if it thinks additional evidence needs to be taken under subsection (11) —
 - (a) where the application for PACC permission is dealt with by a single Judge of the Court of Appeal — take such evidence itself; or
 - (b) where the application for PACC permission is dealt with by 3 or any greater uneven number of Judges sitting in the Court of Appeal — either take such evidence itself or have such evidence taken by one of those Judges.
- (13) If the Court of Appeal does not grant the application for PACC permission, no further proceedings may be taken in respect of the PACC application.

(14) Subsection (13) does not prevent the taking of any proceedings against the PACP's counsel (if any) in relation to the counsel's conduct in the application for PACC permission.

(15) Despite any provision in this section, if an application for PACC permission is made by a PACP, and prior to the making of that application, the applicant is found by the Court of Appeal —

(a) to have abused the process of the court in relation to a relevant application that was filed on or after the date of commencement of the Post-appeal Applications in Capital Cases Act 2022; or

(b) to have abused the process of the court in order to delay or frustrate the carrying out of the sentence of death in relation to an application (other than a relevant application) or action that was filed on or after the date mentioned in paragraph (a),

the Court of Appeal must not grant the application for PACC permission unless —

(c) the PACP adduces material (being evidence or legal arguments) that was not adduced in court before the date of the most recent of any such finding of abuse of process by the Court of Appeal; and

(d) the material could not, even with reasonable diligence, have been adduced in court before the date mentioned in paragraph (c).

Hearing of PACC application

60H.—(1) Subject to section 60I, where the Court of Appeal grants the application for PACC permission, the PACC application must be made to the Court of Appeal, and fixed for hearing, within such period as is prescribed by the Rules of Court.

(2) The applicant in a PACC application must file such documents in support of that application, within such period, as are prescribed in the Rules of Court.

(3) The respondent in a PACC application must file such documents in relation to that application, within such period, as are prescribed in the Rules of Court.

(4) The Registrar or any Supreme Court Judge may extend or abridge any period mentioned in subsection (1), (2) or (3).

(5) The Court of Appeal which hears a PACC application may exercise any power and make any order that could have been exercised and made by the Appellate Division or the General Division (whether or not exercising its original jurisdiction).

(6) A PACC application may, without being set down for hearing, be summarily dealt with by a written order of the Court of Appeal.

(7) Before summarily refusing a PACC application under subsection (6), the Court of Appeal —

(a) must consider the applicant's written submissions, if any; and

(b) may, but is not required to, consider the respondent's written submissions, if any.

(8) Except where subsection (7) applies, before summarily deciding a PACC application on its merits, the Court of Appeal —

(a) must consider the applicant's written submissions, if any; and

(b) must consider the respondent's written submissions, if any.

(9) The Court of Appeal may —

(a) before deciding a PACC application;

(b) when granting a PACC application; or

(c) when summarily granting a PACC application,

do one or both of the following:

(d) make any incidental directions or give any interim orders (including a stay of execution of the death sentence) as the Court considers necessary;

(e) take additional evidence.

(10) The Court of Appeal may, if it thinks additional evidence needs to be taken under subsection (9), either take such evidence itself or have such evidence taken by one of the Judges of the Court of Appeal.

Procedure for making PACC application, etc., when there is pending PACC application, etc.

60I.—(1) Where any application for PACC permission, or any PACC application, made by a PACP (each called in this section the specified application) is pending determination, the PACP cannot make a subsequent application for PACC permission or a subsequent PACC application (each called in this section the subsequent application) unless the PACP has the permission of the Court of Appeal dealing with the specified application to do so.

(2) The Court of Appeal dealing with the specified application may do any one of the following:

(a) grant permission for the PACP to adduce further material when the Court of Appeal is dealing with the specified application;

(b) grant permission for the PACP to make the subsequent application separately under section 60G or 60H, as the case may be;

(c) refuse to grant permission under paragraph (a) or (b).

(3) When dealing with any specified application or subsequent application under this section, the Court of Appeal may give such directions as the Court of Appeal thinks necessary or expedient —

(a) in the case of a specified application — in respect of that application or a subsequent application; or

(b) in the case of a subsequent application — in respect of that application.

Court of Appeal may determine whether application is, or action contains, application for PACC permission or PACC application, etc.

60J.—(1) Where any application or action by a PACP (called in this section the specified application or specified action, as the case may be) is filed in a court other than the Court of Appeal, the Court of Appeal may determine whether the specified application is, or the specified action contains, an application for PACC permission or a PACC application.

(2) Despite section 50(1), a determination under subsection (1) may be made by a single Judge of the Court of Appeal.

(3) If the Court of Appeal makes a determination under subsection (1) that the specified application is, or the specified action contains, an application for PACC permission or a PACC application, the Court of Appeal may —

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- (a) proceed to determine the specified application, or that part of the specified action containing an application for PACC permission or a PACC application, in accordance with section 60G or 60H, as the case may be; or
 - (b) strike out the specified application or specified action, in whole or in part.
- (4) The Court of Appeal may, in making any determination under subsection (1), do one or both of the following:
- (a) make any incidental directions or give any interim orders (including a stay of execution of the death sentence) as the Court considers necessary;
 - (b) take additional evidence.
- (5) The Court of Appeal may, if it thinks additional evidence needs to be taken under subsection (4) —
- (a) where the determination under subsection (1) is being made by a single Judge of the Court of Appeal — take such evidence itself; or
 - (b) where the determination under subsection (1) is being made by 3 or any greater uneven number of Judges sitting in the Court of Appeal — either take such evidence itself or have such evidence taken by one of those Judges.

Operation of Division 1B of Part 20 of Criminal Procedure Code 2010

60K. Nothing in this Division affects the operation of Division 1B of Part 20 of the Criminal Procedure Code 2010.

Stay of execution of death sentence

60L. Despite anything in this Act or any other written law, a stay of execution of the death sentence may only be granted by the Court of Appeal.

Power of Court of Appeal to make finding of abuse of process when dealing with application or action

60M.—(1) When dealing with any application or action, the Court of Appeal may, on its own motion or upon the application of the Attorney-General or the Public Prosecutor, decide whether to make a finding that a PACP, or a counsel for a PACP, has in the commencement, continuation or conduct of the proceedings relating to the application or action —

- (a) committed an abuse of process, in the case of a relevant application; or
- (b) committed an abuse of process in order to delay or frustrate the carrying out of the sentence of death imposed on the PACP, in the case of an application (other than a relevant application) or action.

(2) In deciding whether to make a finding under subsection (1), the Court of Appeal may inquire into and take into account the following matters:

- (a) in relation to an application for PACC permission —
 - (i) whether the PACC application to be made is based on material (being evidence or legal arguments) that, even with reasonable diligence, could not have been adduced in court before the relevant date;
 - (ii) whether there was any delay in filing the application for PACC permission

after the PACP or counsel for the PACP obtained the material mentioned in sub-paragraph (i) and the reasons for the delay; and

(iii) whether the PACP has complied with section 60G(4);

(b) in relation to a PACC application —

(i) whether the PACC application was based on material (being evidence or legal arguments) that, even with reasonable diligence, could not have been adduced in court before the relevant date;

(ii) whether there was any delay in filing the application for PACC permission after the PACP or counsel for the PACP obtained the material mentioned in sub-paragraph (i) and the reasons for the delay; and

(iii) whether the PACP has complied with section 60H(2);

(c) in relation to an application for review permission —

(i) whether the PACP has complied with the conditions or the requirements in sections 394G, 394J and 394K of the Criminal Procedure Code 2010;

(ii) whether the application for review permission was filed within a reasonable time after the PACP or counsel for the PACP had obtained the material mentioned in section 394J(2) of the Criminal Procedure Code 2010; and

- (iii) whether the PACP has complied with section 394H(3) of the Criminal Procedure Code 2010;
- (d) in relation to a review application —
 - (i) whether the PACP has complied with the conditions or the requirements in sections 394G, 394J and 394K of the Criminal Procedure Code 2010;
 - (ii) whether the application for review permission granted in respect of the review application was filed within a reasonable time after the PACP or counsel for the PACP had obtained the material mentioned in section 394J(2) of the Criminal Procedure Code 2010; and
 - (iii) whether the PACP has complied with section 394I(2) of the Criminal Procedure Code 2010.

(3) Despite section 50(1), where a relevant application is heard before a single Judge of the Court of Appeal, a finding under subsection (1) may be made by that Judge.

(4) In deciding whether to make a finding under subsection (1), the Court of Appeal may, if it thinks additional evidence is necessary —

- (a) where the relevant application is being heard by a single Judge of the Court of Appeal — take such evidence itself; or
- (b) where the relevant application is being heard by 3 or any greater uneven number of Judges sitting in the Court of Appeal — either take such evidence itself or have such evidence taken by one of those Judges.”.

Amendment of Criminal Procedure Code 2010

3. The Criminal Procedure Code 2010 is amended —

(a) by inserting, immediately after paragraph (i) of section 313, the following paragraph:

“(ia) the warrant may be carried out unless —

(i) the Court of Appeal has granted a stay of execution;

(ii) there is an application for permission to apply for a stay of execution, or an application for a stay of execution, filed in the Court of Appeal and served on the Singapore Prison Service (unless any prescribed exemption from such service applies) in accordance with the regulations made under section 428; or

(iii) the President has ordered a respite of the execution of the warrant pursuant to paragraph (h);”;

(b) by renumbering section 313 as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

“(2) Despite subsection (1)(ia)(ii), the warrant may be carried out if —

(a) the application mentioned in that provision has been filed by a PACP who had previously been found —

(i) by the Court of Appeal to have abused the process of the court in relation to a relevant application that was filed on or after the date of commencement of the Post-appeal

Applications in Capital Cases Act 2022; or

(ii) by the Court of Appeal to have abused the process of the court in order to delay or frustrate the carrying out of the sentence of death in relation to an application (other than a relevant application) or an action that was filed on or after the date mentioned in sub-paragraph (i); and

(b) the PACP does not have the permission of the Court of Appeal to make a PACC application under section 60G of the Supreme Court of Judicature Act 1969, or to make a review application under section 394H.

(3) In subsection (2), “PACC application”, “PACP” and “relevant application” have the meanings given by section 60F of the Supreme Court of Judicature Act 1969.”;

(c) by deleting the words “section 313(i)” in section 324 and substituting the words “section 313(1)(i)”;

(d) by inserting, immediately before the definition of “application for permission” in section 394F(1), the following definition:

““application for PACC permission” has the meaning given by section 60F of the Supreme Court of Judicature Act 1969.”;

(e) by inserting, immediately after the definition of “civil application” in section 394F(1), the following definition:

““post-appeal application in a capital case” or “PACC application” has the meaning given by section 60F of the Supreme Court of Judicature Act 1969.”;

(f) by deleting the full-stop at the end of the definition of “review application” in section 394F(1) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

““specified application” means a civil application, an application for PACC permission, or a PACC application.”;

(g) by deleting the words “civil application” wherever they appear in section 394F(2) and substituting in each case the words “specified application”;

(h) by inserting, immediately after the words “in the Court of Appeal” in section 394H(6)(a), the words “, or by 3 or any greater uneven number of Judges sitting in the Court of Appeal”;

(i) by deleting paragraph (b) of section 394H(6) and substituting the following paragraph:

“(b) in any case where the appellate court is the General Division of the High Court —

(i) by the Judge who made the decision to be reviewed or, if that Judge is not available, by any Judge;

(ii) by the Judges who made the decision to be reviewed, or by any one of those Judges, or if none of those Judges are available, by any Judge; or

(iii) by 3 or any greater uneven number of Judges sitting in the General Division of the High Court.”;

(j) by inserting, immediately after subsection (6) of section 394H, the following subsection:

“(6A) In deciding whether or not to grant an application for permission, the appellate court must consider the following matters:

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- (a) whether the conditions or the requirements in sections 394G, 394J and 394K are satisfied;
 - (b) whether there was any delay in filing the application for permission after the applicant or counsel for the applicant had obtained the material mentioned in section 394J(2) and the reasons for the delay;
 - (c) whether subsection (3) is complied with;
 - (d) whether the review application to be made has a reasonable prospect of success.”;
 - (k) by inserting, immediately after the words “appellate court” in section 394H(8), the words “, in addition to considering the matters mentioned in subsection (6A)”;
 - (l) by inserting, immediately after the words “appellate court” in section 394H(9), the words “, in addition to considering the matters mentioned in subsection (6A)”;
 - (m) by inserting, immediately after subsection (9) of section 394H, the following subsection:
 - “(10) The appellate court may —
 - (a) before deciding whether to grant an application for permission;
 - (b) when granting permission to make a review application; or
 - (c) when summarily granting permission to make a review application,do one or both of the following:
 - (d) make any incidental directions or give any interim orders (including a stay of execution of the sentence) as the court considers necessary;
 - (e) take additional evidence.”;

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- (n) by deleting the words “civil application” in section 394I(6) and substituting the words “specified application”;
 - (o) by deleting the words “civil application” in section 394I(7)(c) and (d) and substituting in each case the words “specified application”;
 - (p) by inserting, immediately after subsection (12) of section 394I, the following subsection:
 - “(13) The appellate court may —
 - (a) before deciding a review application;
 - (b) when deciding a review application; or
 - (c) when summarily deciding a review application,
 do one or both of the following:
 - (d) make any incidental directions or give any interim orders (including a stay of execution of the sentence) as the court considers necessary;
 - (e) take additional evidence.”; and
 - (q) by deleting the words “civil application” wherever they appear in section 394K(2)(a) and (b) and substituting in each case the words “specified application”.

Consequential amendment to Coroners Act 2010

4. Section 25(1) of the Coroners Act 2010 is amended by deleting the words “section 313(m)” in paragraph (b) and substituting the words “section 313(1)(m)”.

Saving and transitional provisions

5.—(1) Sections 2 and 3 do not apply in relation to —

- (a) any application or action filed before the appointed day and that is, or contains, a PACC application; or

(b) any application for permission to make a review application, or a review application, filed before the appointed day,

and any proceedings in relation to such application or action may be dealt with and disposed of in accordance with the law as in force immediately before the appointed day as if sections 2 and 3 had not been enacted.

(2) In this section —

“appointed day” means the date of commencement of the Post-appeal Applications in Capital Cases Act 2022;

“PACC application” has the meaning given by section 60F of the Supreme Court of Judicature Act 1969;

“review application” means a review application within the meaning of section 394F of the Criminal Procedure Code 2010.
