

PART XVI

ADMINISTRATIVE (CUSTOMS) PROCEEDINGS

Appeals to Comptroller.

209. (1) Where, in respect of an entry, an importer disputes the amount of duty assessed or any decision of the Comptroller under this Act, the importer—

- (a) shall pay the amount in dispute under protest; and
- (b) may, within three months from the date of payment, file a written protest in respect of that entry requesting the Comptroller to reconsider the disputed decision.

(2) A request made under subsection (1) shall—

- (a) state the grounds for disputing the amount of duty demanded; and
- (b) specify any further documentation or information on which the request is based.

(3) The Comptroller may, after—

- (a) investigating the matter within ninety days of the date of the original assessment; and
- (b) taking into account any further submissions of the importer or his or her agent,

confirm the original assessment or substitute a new assessment for the original assessment.

Customs Appeal Commission.

210. (1) There is hereby established a body to be known as the Customs Appeal Commission for the purpose of hearing appeals under this Part.

(2) The Minister shall, by notice in the *Gazette*, appoint as commissioners persons who—

- (a) have experience in customs matters; or
- (b) in the opinion of the Minister, by reason of their profession and training are qualified to be commissioners.

(3) Notwithstanding the generality of subsection (2), the Fifth Schedule has effect in respect to the constitution of the Commission and other matters relating to the Commission.

Appeals to Commission.

211. A person who is dissatisfied with a decision of the Comptroller under section 209 has a right of appeal against that decision to the Commission within thirty days of the date of the decision.

Procedure.

212. (1) Subject to this Act, the Commission shall conduct its proceedings in such manner as it considers appropriate.

(2) Proceedings before the Commission shall be commenced by the lodging of a notice of appeal in the prescribed form, together with the prescribed fee, if any, with the Commission.

Nature of appeal.

213. Every appeal to the Commission shall be by way of a hearing *de novo*.

Commission may extend time for appeal.

214. Where under this Act a person is entitled to appeal to the Commission within a specified time, the Commission may, on an application made within the specified time, extend the time within which the appeal may be brought.

Hearing.

215. (1) Subject to section 217, as soon as the Commission considers that an appeal is ready to be heard, the Commission shall—

- (a) fix a date, time and place for the hearing of the appeal; and
- (b) notify the appellant and the Comptroller of the date, time and place fixed.

(2) A notice to the appellant under subsection (1)—

- (a) shall, in addition to specifying the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and
- (b) shall be served on the appellant by personal service or by post in accordance with this Act.

(3) At the hearing of an appeal before the Commission, the appellant and the Comptroller—

- (a) may provide evidence; and
- (b) shall be given an opportunity to be heard in person or by a person authorised by the appellant or the Comptroller to appear on his or her behalf, without regard to whether that person is an attorney-at-law.

(4) Where the appellant or the Comptroller fails to appear before the Commission at the time and place appointed, the Commission may, notwithstanding such failure, upon proof of service of the notice of the hearing, proceed to determine the appeal.

(5) Subject to subsection (6), the hearing of an appeal shall be held in public.

(6) The Commission may hold a hearing or any part of a hearing in private if the Commission is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest.

(7) The Commission may, subject to such conditions as the Commission thinks fit, order that any part of any evidence given or the name of any witness not be published.

Commission may decide appeal without oral hearing if both parties consent.

216. (1) Notwithstanding section 219, the Commission may, if—

- (a) the Commission thinks fit; and
- (b) both parties consent,

decide an appeal without holding an oral hearing.

(2) Where the Commission, at any time during its consideration of an appeal in accordance with subsection (1), decides that an oral hearing should be held, the Commission shall fix a date, time and place for the hearing of the appeal in accordance with section 215.

Powers of Commission.

217. For the purpose of hearing and deciding any appeal before it, the Commission has—

- (a) all the powers, duties, functions, and discretions of the Comptroller in making the assessment, decision, ruling, determination or direction;
- (b) all the powers of the Magistrates' Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Commission; and
- (c) such other powers assigned to it under this Part.

Evidence.

218. The Commission may, in respect of its proceedings—

- (a) take evidence on oath;
- (b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying such statement by oath; and
- (c) receive as evidence any statement, document, information or matter which, in the opinion of the Commission, may assist the Commission to deal effectually with the appeal or any other matter before it.

Powers of investigation.

219. (1) For the purposes of dealing with the matters before it, the Commission or a person authorised in that regard by the Commission in writing may—

- (a) inspect and examine any papers, documents, records or articles;
- (b) require any person—
 - (i) to produce for examination any papers, documents, records or articles in the possession or under the control of that person; and

- (ii) to allow the making of copies of, or the taking of extracts from, such papers, documents, records or article; or
- (c) require any person to furnish, in a form approved by or acceptable to the Commission, such information or particulars as the Commission may require.

(2) The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section be verified by statutory declaration or otherwise.

(3) For the purposes of dealing with any matter before it, the Commission may—

- (a) of its own motion or on an application, order that any information or particulars, or a copy of the whole or any part of any paper, document or record furnished or produced to it be supplied to any person appearing before the Commission; and
- (b) impose such terms and conditions, as it thinks fit, in respect of the production and use of such information, particulars, paper, document or record.

Power to summon witnesses.

220. For the purposes of dealing with any matter before it, the Commission may of its own motion, or on an application, issue in writing a summons requiring any person—

- (a) to attend and give evidence at the time and place specified in the summons; and
- (b) to produce any papers, documents, records or articles in that person's possession or under that person's control which are relevant to the matter before the Commission.

Service of summons by Commission.

221. (1) A summons by the Commission to a witness shall be served by—

- (a) delivering it to the person summoned at least twenty-four hours before the attendance of the witness is required; or
- (b) sending it by registered post addressed to the person summoned at that person's usual place of residence or business at least seven days before the date on which the attendance of the witness is required.

(2) Where the summons is delivered by registered post, it is deemed for the purposes of subsection (1)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

Protection of persons appearing before the Commission.

222. (1) Every witness giving evidence before the Commission has the same privileges and immunities as witnesses have in a court of law.

(2) Every counsel or agent or other person appearing before the Commission has the same privilege and immunities as a counsel has in a court of law.

(3) Without prejudice to the generality of subsections (1) and (2), every person appearing before the Commission has in relation to—

- (a) the giving of information to the Commission;
- (b) answering questions put to that person by the Commission; and
- (c) the production of papers, documents, records and articles to the Commission,

the same privileges as witnesses have in courts of law in relation to the matters specified in paragraphs (a), (b) and (c).

Grounds of appeal and burden of proof.

223. (1) Subject to subsection (2), in an appeal, the appellant is limited to the grounds of appeal stated in the appellant's notice of appeal, and the burden of proof is on the appellant.

(2) The Commission may, on the application of the appellant or of its own motion, amend the grounds of appeal stated in the notice of appeal.

Sittings of Commission.

224. (1) The Commission may sit at such times and places as the Commission determines.

(2) The Commission may, before the time of a sitting or at a sitting, adjourn a sitting or modify the place of the sitting.

Commission may dismiss frivolous and vexatious appeals.

225. The Commission may, at any time, dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

Decisions of Commission.

226. (1) Every decision of the Commission shall be given in writing, with a statement of the reasons for the decision.

(2) The Commission shall give a copy of the decision to the parties to the appeal.