This morning the Supreme Court of Appeal (SCA) struck from the roll an appeal by the Director of Public Prosecutions (DPP), Gauteng against a decision in the Gauteng Local Division, sitting as a court of appeal from a decision of the regional court, which held that a minor’s consent to sexual intercourse constituted ‘substantial and compelling circumstances’ justifying a departure from the prescribed minimum sentence of life imprisonment. The high court thereupon reduced the magistrate’s sentence of life imprisonment sentence to 20 years.

The point of contention was whether a decision of the high court, sitting as a court of appeal was appealable before the SCA. To answer this question, the court had to
ascertain whether these circumstances fell under the definition of an appeal as stipulated in section 16(1)(b) of the Superior Courts Act 10 of 2013.

The court had to determine whether the state could appeal before this court under these circumstances before looking into the merits of the case.

The appellant argued that the high court erred by accepting invalid consent as ‘substantial and compelling circumstances’ when imposing the sentence thus making it a question of law entitling the director of prosecutions to an appeal before this court. The respondent argued that the matter had already been on appeal before the high court and could not be appealed again.

Referring to earlier decisions of this court, the SCA found that its hands were tied by reason of the definition of an ‘appeal’ in the Superior Courts Act, read with s 316B of the Criminal Procedure Act 51 of 1977 (CPA). This had the consequence that the DPP could not appeal against a sentence imposed by the high court sitting as a court of appeal.

The SCA nevertheless found that the approach of the high court in this matter was strongly to be deprecated.