[2016] CCJ 12 (AJ)

CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No. GYCR2015/001
GY Criminal Appeal No. 7 of 2010

BETWEEN

SURAJ SINGH D/CPL. 18041 **APPELLANT**

AND

SICHAN HARRYCHAN **RESPONDENT**

Before The Right Honourable and the Honourables

Sir Dennis Byron, President
Mr Justice A Saunders
Mr Justice J Wit
Mr Justice W Anderson
Mme Justice M Rajnauth-Lee

Appearances
Mrs S. Hack, Director of Public Prosecutions and Mrs Judith Gildharie-Mursalin, Assistant Director of Public Prosecutions, for the Appellant

Mr Ronald Burch-Smith for the Respondent

REASONS FOR THE DECISION
of
The Right Honourable Sir Dennis Byron, President, and the Honourable Justices Saunders, Wit, Anderson and Rajnauth-Lee

Delivered by

The Right Honourable Sir Dennis Byron, President CCJ
and the Honourable Mr Justice Winston Anderson, JCCJ
on the 10th day of June, 2016

Introduction

[1] This is an appeal from a decision of the Court of Appeal of Guyana on the interpretation to be given to section 8(2) of the Summary Jurisdiction (Appeals) Act[1] ('the Act'). The Act governs appeals from decisions of magistrates in Guyana. In delivering its majority decision, the Court of Appeal made two important determinations of the meaning of section 8(2). The first was that the clerk of the court from which an appeal is brought was required to prepare the record of the magisterial proceedings as well as to notify an appellant of the readiness of this record within twenty-one days of the receipt of the memorandum of reasons or conviction order from the magistrate. The court held that this requirement was mandatory and that failure to comply rendered the clerk's notice to an appellant invalid. The second was that the clerk was required to notify the readiness of the record to an appellant personally, so that notification sent to that appellant's attorney-at-law was contrary to the statutory provision and therefore was also invalid and of no legal force and effect.

[2] These interpretations of section 8(2) are opposed by the Office of the Director of Public Prosecutions ('DPP') which represents the Appellant in these proceedings. The DPP accepts and relies upon the minority decision in the Court of Appeal which found that the statutory twenty-one days was the period within which the clerk was required to commence preparation of the record and that the clerk must have the record prepared within a reasonable time thereafter. Failure to notify an appellant within the period of twenty-one days did not deprive the clerk of jurisdiction to send the notice. Furthermore, sending the notice to counsel for an appellant was to be equated to notice sent to that appellant.

[3] The DPP sought and, on 7 April 2016, obtained special leave from this Court to advance this appeal. Arguments were heard from both sides on 22 April 2016 and immediately following that hearing this Court issued certain orders and directions which are reproduced herein at paragraph [34].

[1] Cap 3:04.

[4] Throughout the course of the special leave application and during the course of the hearing of the appeal, it became painfully obvious that the differing views in the court below as to the interpretation of section 8(2) were in essence attempts to grapple with the impact and implications of the serious and apparently endemic delays being experienced in the criminal justice system in Guyana.

[5] The present case is illustrative of the problem. This matter dates back to an incident which occurred in September 2007 in respect of which an employee of the Guyana Power & Light Company, Sichan Harrychan, the Respondent before us (but the Appellant in the Court of Appeal), along with another individual, was convicted by a magistrate on 4 November 2010, of the offence of demanding with menace in contravention of section 225 of the Criminal Law (Offences) Act,[2] and sentenced to 3 years' imprisonment. On 18 November 2010 (14 days after conviction and sentence) the Respondent's Notice of Appeal was lodged with the clerk of the court and he was placed on bail pending the appeal. However, it was not until some 3 years after conviction and sentence (on 30 October 2013), that the magistrate submitted the memorandum of reasons to the clerk. Some 17 months after the memorandum was submitted the clerk (on 26 March 2015) issued the notice of readiness of proceedings by registered post to the Respondent's attorney which was, at least according to the clerk, received by the attorney on 11 April 2015.

[6] Evidently then, over three years had elapsed between the incident and the conviction and sentence, and another four years and five months between the Respondent's notification of his intention to appeal and the receipt by his attorney of notification that the judicial system was ready to proceed with the appeal. Even so, other steps remained to be taken before the appeal could be heard. These included the lodging by the Respondent with the clerk of the grounds of appeal and the transmission of the Record of Appeal by the clerk to the Registrar within seven days of the grounds being lodged (section 13 of the Act). The Record appears to have been transmitted *sans* the grounds of appeal; Mr Burch-Smith contended before us that his office never received the notice of readiness. Failure to lodge the grounds of appeal had consequences. On 7 July 2015, the Appellant filed submissions urging the Court of

[2] Cap 8:01.

Appeal to treat the Respondent's appeal as abandoned on account of his failure to file grounds of appeal within 14 days of the notice of readiness to proceed. The Respondent's reply was understandably swift. Two days later, on 9 July 2015, he applied to the Court of Appeal for an extension of time to submit grounds of appeal arguing: (i) the clerk of court had failed to properly notify him, in breach of section 8(2) of the Act, that a copy of the proceedings was ready and could be received by him to file his grounds of appeal within the stipulated period; and (ii) the provisions of section 8(2) of the Act are mandatory in nature and the clerk of court did not have a discretion to notify him outside of the prescribed 21 days after receipt of the conviction order and memorandum of reasons from the magistrate.

[7] These were the grounds which were argued by the Respondent before the Court of Appeal and which found favour with a majority of the judges in that court. Roy JA and Persaud J (Additional Judge) held that section 8(2) of the Act requiring the issuance of the notice within the prescribed 21 days was mandatory and not directory, so that the notice sent by the clerk on 26 March 2015 was a nullity and of no legal effect. Where the clerk was unable to comply strictly with the prescribed time limit it was his bounded duty to apply to the court for an extension of time pursuant to section 14 of the Act. Section 8(2) specifically required the notice to be sent to the appellant of the magisterial decision and section 38 makes provisions for service of documents in respect of the 'party to be served'. This expression could not include the Respondent's attorney. Invoking the inherent power of the court to prevent abuse of its process that would cause an injustice, as stated by Alderson B in 1841 in *Cocker v Tempest*,[3] the majority ordered the clerk to notify the Respondent in writing of the readiness of the record within 14 days of the judgment.

[8] The minority opinion by Cummings-Edwards J.A. took the view that section 8(2) did not require that the preparation and notification of the record must be completed within twenty-one days. The requirement was for the clerk to *prepare* the record within the stipulated time and to notify the appellant of the magistrate's decision when the record was ready.[4] This should be within a reasonable time. In any event, the critical issue was not whether the statutory requirement was mandatory or

[3] (1841) 151 ER 864.
[4] *Sichan Harrychan v Suraj Singh (D/CPL 18041)* (Court of Appeal of Guyana, 31 July 2015) [41] (Cummings-Edwards JA).

directory but rather what was the consequence flowing from non-compliance. As the attorney on record, the Respondent's attorney had the authority of his client to accept service of the notice. The judge would have disposed of the appeal by granting the Respondent a 14-day extension of time within which to file his grounds of appeal.

[9] The issues that arise therefore are firstly whether there is a statutory obligation on the clerk to prepare *and* serve the notice of proceedings within twenty-one days and the consequences for non-compliance with any such requirement, and, secondly, whether service of the notice on the attorney was valid. In the course of the proceedings before us it became clear that a third issue had emerged and which, it is true to say, engaged the attention of this Court with most intensity, namely, the effect of the delay on the prosecution of the appeal.

Nature of the section 8(2) requirement and consequences of non-compliance

[10] Section 8 of the Summary Jurisdiction (Appeals) Act[5] provides as follows:

Copy of proceedings and notice of grounds of appeal.

> **8.** (1) On compliance by the appellant with the requirements of sections 4 and 5, the magistrate shall draw up a formal conviction or order and a statement of his reasons for the decision appealed against.
>
> (2) The statement shall be lodged with the clerk, who shall forthwith, and at least within twenty-one days of the receipt thereof, prepare a copy of the proceedings including the reasons for the decision, and when the copy is ready he shall notify the appellant in writing and, on payment of the proper fees, deliver the copy to him.
>
> (3) The appellant shall, within fourteen days after receipt of the notice, draw up a notice of the grounds of appeal in Form 3, and lodge it with the clerk and serve a copy thereof on the opposite party. Section 4(2) shall apply to a notice of the grounds of appeal.

[5] Summary Jurisdiction (Appeals) Act Cap 3:04, s 8.

[11] The focus of the appeal is on the nature and implications of the prescription of twenty-one days in section 8(2) but evidently from its wording, that provision must be framed first in relation to section 8(1) and then sections 4 and 5. The twenty-one days within which the clerk must prepare the record begins to run from the date when the magistrate lodges with the clerk the statement of the reasons for his or her decision. The magistrate draws up the statement after the person challenging the decision has complied with sections 4 and 5. Section 4 permits the giving of verbal notice of the appeal at the time of pronouncement of the decision and the lodging of written notice to the clerk up to fourteen days after the pronouncement of the decision. When the appellant gives or lodges the notice of appeal, section 5 requires the lodging of financial security for the due prosecution of the appeal.

[12] It may be worthy to note in passing that a weak spot in the system may be that there are no obvious statutory time-limits governing the magistrate's duty to draw up his or her reasons and lodge them with the clerk once sections 4 and 5 have been complied with. Roy, JA in the court below suggested[6] that the magistrate was allowed six weeks to do so but did not cite the supporting statutory provision. Section 35 of the Summary Jurisdiction (Procedure) Act[7] does prescribe a six-week time frame for decisions in summary matters but this provision relates to the period between hearing and delivering the decision in a summary matter, not to the lodging of the reasons with the clerk. In any event, where the magistrate does not furnish the reasons within a reasonable period of the pronouncement of judgment, any person prejudiced thereby may bring proceedings under section 37 of the Act to compel the magistrate to produce those reasons.

[13] It is unfortunate that the majority framed the issue in terms of whether the provisions of section 8(2) were directory or mandatory. Having found them to be mandatory, the court was driven to conclude that non-compliance rendered service of the notice by the clerk outside of the prescribed period null and void. The court then identified a procedure that could ameliorate the draconian implications of this ruling by suggesting that the clerk, prior to the expiry of the prescribed 21-day time frame, could seek an extension of time by applying to the court pursuant to section 14 of

[6] *Sichan Harrychan v Suraj Singh (D/CPL 18041)* (Court of Appeal of Guyana, 31 July 2015) [23] (Roy JA).
[7] Cap 10:02.

the Act. This proposition is, however, untenable since section 14 was clearly intended to apply to the parties to the matter before the magistrate, namely the appellant and the named respondent, one or both of whom may have time-lines to observe in the performance of acts related to the appeal. Furthermore, placing the obligation on the clerk to seek an extension of time under section 14 would place the viability of the appeal entirely in the hands of the clerk with the dire consequence that if an extension is not sought the conviction of an appellant would stand. Equally, a prosecutor may not wish to have the viability of his or her appeal left to an obligation on the clerk to seek an extension of time within which to perform the section 8 (2) functions.

[14] The difficulty with drawing a bright line between matters that are directory as opposed to mandatory was pointed out by Lord Penzance as early as 1877 in *Howard v Bodington*[8] and echoed in modern times by Lord Hailsham in the House of Lords in *London & Clydeside Estates Ltd. v Aberdeen DC*,[9] when he said the following:

> When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events…though language like 'mandatory,' 'directory,' 'void,' 'voidable,' 'nullity' and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the courts, in deciding the consequences of a defect in the exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of Procrustes invented by lawyers for the purposes of convenient exposition. As I have said, the case does not really arise here, since we are in the presence of total non-compliance with a requirement which I have held to be mandatory. Nevertheless I do not wish to be understood in the field of administrative law and in the domain where the courts apply a supervisory jurisdiction over the acts of subordinate authority

[8] (1877) 2 PD 203, 210.
[9] [1979] 3 All ER 876.

purporting to exercise statutory powers, to encourage the use of rigid legal classifications. The jurisdiction is inherently discretionary and the court is frequently in the presence of differences of degree which merge almost imperceptibly into differences of kind.[10]

[15] This approach has been expressly approved time and again throughout the commonwealth: *Central Tenders Board and another v White (trading as White Construction Services*[11]; *R v Soneji*[12]; *Society Promoting Environmental Conservation v Canada (Attorney General)*[13]; and *Wang v Commissioner of Inland Revenue*[14]. We agree with this approach. Where statute prescribes a time period within which a public official is to perform a function it may be unhelpful or even misleading to resort to an analysis of whether the statutory obligation was mandatory or directory. Instead, the crucial and distinct questions to be asked and answered are: (1) whether the lawmaker intended that the public official should rigorously comply with the time limit; and (2) whether the lawmaker intended that non-compliance would deprive the public official of jurisdiction to perform the function.

[16] We agree with the critical finding of the majority in the court below that section 8(2) imposed a requirement on the clerk to have prepared and served the record of proceedings on the Respondent within twenty-one days of receiving the statement of reasons from the magistrate. In examining section 8, and the Act as a whole, it is without doubt that Parliament's intention was to have a timely appeal process which necessarily requires prompt execution of the activities relevant to instituting, prosecuting, and concluding an appeal. The requirement for the clerk to act in a timely and expeditious manner is evident from the employment of the words 'forthwith, and at least twenty-one days after receipt'[15]. The notion that there are two time frames under section 8(2) whereby the clerk has twenty-one days to 'prepare' the record but has an indeterminate 'reasonable period' within which to 'notify' an appellant appears to be entirely contrary to a fundamental purpose of the legislation which is to secure timeliness in the disposition of appeals. We consider

[10] ibid, 883 (Lord Hailsham).
[11] [2015] UKPC 39.
[12] [2006] 1 AC 340.
[13] [2003] 4 FCR 959; 228 DLR (4th) 693.
[14] [1995] 1 All ER 367.
[15] Summary Jurisdiction (Appeals) Act Cap 3:04, s 8(2).

it to be clear that Parliament's intent was for the clerk to strictly comply with the statutory duty to 'prepare' and 'notify' within the twenty-one days fixed by section 8(2). To hold otherwise would foreseeably work serious injustices to a party seeking to avail himself or herself of the appellate process and would be diametrically opposed to Parliament's intent to have a well-managed appeal process which has timeliness, fairness and certainty as key hallmarks. We therefore find that there was a breach of the obligation to prepare the record and notify the Respondent within the prescribed statutory twenty-one days.

[17] We are not convinced that the requirement for the clerk to prepare and notify within the prescribed twenty-one days will cause a crisis in the administration of justice. It was argued that there is a lack of relevant human and institutional resources but we agree with the majority in the court below that in an era of modern technology, the routine administrative function of preparing the record of proceedings can be accomplished within the three-week period with the assistance of such equipment as computers, photocopiers, scanners and printers.

[18] As regards the consequences of the breach, we are not of the opinion that the effect of non-compliance with section 8(2) is to deprive the clerk of jurisdiction to serve the notice outside of the prescribed twenty-one days. First, as a matter of practice, upon the expiry of the prescribed period, an appellant would be entitled and expected to seek from the clerk through verbal or written communication, whether directly or through his or her attorney, the notification of the readiness of the record. Secondly, a formal consequence of non-compliance is that the party prejudiced thereby has the legislative right to compel the clerk to perform the section 8(2) functions. Admittedly, section 37 of the Act speaks to compelling performance of duties by a magistrate or a justice of the peace to carry out the duty of his office but applicants may also seek mandamus in relation to a 'person to be affected by the act' of the magistrate or justice. The clerk is the subordinate of the magistrate and performs subsidiary functions that are dependent upon the magistrate carrying out the magisterial duties and is, in our view, a person against whom a section 37 action is possible.

[19] In this regard, we note the observations of Luckhoo CJ (Acting) in *Seecharran v Kunti*[16] made in relation to a dispute over whether or not Sunday should be counted when computing the time within which to lodge grounds of appeal under an earlier precursor to section 8 of the Act. The Acting Chief Justice was of the firm view that the duty of the clerk to notify of the readiness of the record was compellable.

[20] Thirdly, the consequences of non-compliance could have effect beyond entitlement to oral and written communication and applications for mandamus. There may, in appropriate cases, be an entitlement to constitutional relief. This matter is dealt with below in the context of delay.

Notice to the Respondent's Attorney

[21] Under the terms of section 8(2), when the copy of proceedings is ready the clerk, 'shall notify the appellant in writing' and on payment of the proper fee deliver the copy to him. Section 38 of the Act prescribes the manner in which service of documents for the purposes of the Act is to be effected. It provides that any notice or document may be 'served or transmitted by registered post or may be served by delivering or leaving it at the last known place of abode of the party to be served'.[17]

[22] We cannot agree with the majority of the Court of Appeal that service of the notice of readiness of proceedings on the Respondent's counsel was, in the circumstances of this case, invalid and of no legal effect because section 38 of the Act requires service on 'the party', that party being the Respondent. The facts of this case are that Mr Burch-Smith was the attorney on record for the Respondent and filed the notice of appeal in the proceedings. As such, he was obviously the agent of the 'party' and had the authority to accept service. It was therefore not objectionable, and may even be considered practical, for the clerk to have served notice on counsel.

[23] We do not decide that as a general proposition, service on an attorney is always permissible or in conformity with the Act. The party and the attorney may not be in contact and an appellant may, for a variety of reasons, choose not to retain the

[16] [1946] LRBG 287, 288.
[17] Summary Jurisdiction (Appeals) Act Cap 3:04, s 38.

same attorney. In principle, therefore, the 'party' himself or herself should be served in accordance with the section 38 procedure but it will be permissible to serve an attorney who has actual or ostensible authority to act on behalf of the party in the appeal.

Delay

[24] We end as we began. The most critical aspect of this appeal has not been the construction to be placed on section 8(2) of the Act but the almost nine years that have elapsed between the incident leading to the charge and conviction, and these proceedings. This was a simple offence of demanding with menace and these proceedings remain preliminary to the decision by the Court of Appeal on the merits of the grounds of appeal. There is the possibility that there could be an appeal from any decision of the Court of Appeal to this Court thereby having this relatively uncomplicated matter occupy the attention of the judicial system for over a decade.

[25] The delay in this case has been entirely unacceptable and the fact that the Respondent has been on bail can be no proper excuse for it. The Respondent has a right to have his name cleared if he is not guilty of the offence and, if he is guilty, the requirements of justice must be met with certitude so that the objectives of the criminal justice system can be publicly achieved.

[26] The unacceptable delay poses a severe challenge to this Court to ensure that a just decision is given in all the circumstances of this case. These circumstances include the fact that: (i) although the Respondent was implicated in an offence involving allegation of corruption the matter was considered to be one fit merely for summary trial; (ii) although an attempt was purportedly made, no money was actually taken from the virtual complainant; (iii) the Respondent, who appears not to have a criminal record has steadfastly maintained his innocence throughout the life of this matter; (iv) the Respondent was incarcerated from the 25 November 2010 to 31 December 2010, when he was granted bail in the sum of G$180,000.00, pending appeal; and, most notably, and (v) the delay of four years and five months between the Respondent's notification of his intention to appeal and (on the case most favourable to the State) the receipt by his attorney of notification of readiness to

proceed with the appeal appears to have been entirely the responsibility of the judicial system. There has been no justifiable explanation as to why preparation of the reasons for decision required 3 years and why a further 17 months was required to prepare the record and notify its readiness.

[27] As we have held, the reasons advanced by the State in an effort to justify the clerk's default in this case simply cannot be entertained in the 21st century where the State can avail itself of simple technology such as computers, scanners and photocopiers to expedite preparation of the record.

[28] From the standpoints of fairness and due process, the excessive judicial delay that has characterised this matter from its inception is of grave concern. It cannot be an acceptable situation in any modern justice system that appeals of this nature should be subjected to delays of this magnitude. As this Court has had occasion to remark, inordinate delay denies parties '…the access to justice to which they are entitled and undermine[s] public confidence in the administration of justice': *Barbados Rediffusion Service Limited v Mirchandani (No 1).*[18] In order to maintain that entitlement and the public confidence the judiciary has the responsibility to ensure that cases which come before it are dealt with in as timely and expeditious a manner as possible.

[29] During the proceedings before us, the DPP was candid in admitting that this case was symptomatic of a larger systemic issue within the legal system of Guyana. A discussion of the mechanisms necessary to ameliorate this systemic problem is outside the scope of this judgment but the Court notes that inordinate and inexcusable delays could raise fundamental rights issues. Where the delay has been inordinate to the point of being wholly unreasonable in the circumstances of the case, particularly if, but not necessarily because, the party aggrieved has done all in his power to demand compliance, fair trial considerations and issues of the fundamental right to a fair trial within a reasonable time could arise. This reasonable time necessarily includes the appellate process and in doing justice, the extent and nature of the delay on the part of public officials, such as the clerk and the magistrate in this case, ought always to be of concern to an appellate court. In

[18] [2005] CCJ 1 (AJ), [45]; (2005) 69 WIR 35, [45].

some cases, the consequence of the delay may result in a reduction of the sentence, whereas this may not be an appropriate remedy in others.[19] For example, it may be appropriate in some instances in which the appeal is brought by the State for the court to dismiss the appeal for want of prosecution. It may also be that a conviction may be vacated for violation of the constitutional right to a fair trial within a reasonable time.

[30] The exercise of these judicial powers are important and far reaching. As the issue of whether or not the constitutional right to a fair trial within a reasonable time had been infringed should first be argued before and decided by the Court of Appeal, we do not think it appropriate for us to further consider this issue.

Reform

[31] It appears to us that several of the issues considered in this judgment surrounding sections 8, 14, 37 and 38 of the Act and section 35 of the Summary Jurisdiction (Procedure) Act[20] could be further clarified or strengthened by legislative reform. The judiciary of Guyana may well identify other issues and concerns in the magisterial appeals process that warrant legislative reform. As regards cases already in the system in which inordinate delay raises issues of the right to due process and a fair trial, it may be necessary for the judiciary to devise an appropriate administrative activity that identifies such cases and to fashion appropriate remedies.

Disposal

[32] We hereby allow the appeal. We accept that the timeline set out in section 8(2) of the Summary Jurisdiction (Appeals) Act must be strictly complied with. While non-compliance may attract administrative sanctions and other consequences, it does not invalidate the notice issued by the clerk outside of the prescribed period. Service of the notice on the lawyer on record for the intended appellant satisfies the service requirement in the circumstances of this case.

[19] See for example *Tapper v Director of Public Prosecutions* [2012] UKPC 26 and *Mills v HM Advocate and another* [2004] 1 AC 441.
[20] Cap 10:02.

[33] In light of all the time that has passed in this case, this Court is confronted with the question of what is the most reasonable course of action at this stage to ensure that justice is done in the circumstances. We are of the view that justice in this case requires that Mr Harrychan ought to have his appeal fully ventilated before the Court of Appeal on its merits. The several issues of merit that warrant appellate adjudication include the actual conviction itself; the sentence imposed by the learned magistrate (specifically whether it is excessive); and the impact of the delay on Mr Harrychan's constitutional right to a fair hearing within a reasonable time.

[34] The matter is remitted to the Court of Appeal for hearing. Mr Burch-Smith, having filed his grounds of appeal, is granted leave to extend the time for filing same, to the time they were in fact filed. It is directed that in hearing the appeal the Court of Appeal should consider the extensive delay in the processing of this matter and its impact on the conviction and sentence imposed by the learned magistrate.

Order

IT IS BY CONSENT ORDERED THAT:

1. The Court should finally dispose of this appeal at this hearing.

AND IT IS ORDERED THAT:

2. The Appeal is allowed.
3. The timelines set out in Section 8 (2) of the Summary Jurisdiction Appeal Act Cap. 3:04, should be strictly followed; although non-compliance with the time limits set out therein may attract administrative or other sanctions, the same does not invalidate the Notice issued by the Clerk.
4. The service of the said Notice by the Clerk on the attorney-at-law on record for the Intended Appellant, satisfies the service requirement in the circumstances of this case.

AND IT IS BY CONSENT ALSO ORDERED THAT:

5. This matter is remitted to the Court of Appeal for hearing.

AND IT IS FURTHER ORDERED THAT:

6. The time for filing of the grounds of appeal is extended to the actual date of the filing of the grounds of appeal by the attorney-at-law for Sichan Harrychan.

AND IT IS ALSO FURTHER ORDERED AND DIRECTED THAT:

7. The Court of Appeal, in hearing the appeal, should also consider the extensive delay in the processing of this matter and its consequential impact on the conviction and sentence imposed by the learned magistrate.

/s/ CMD Byron

The Rt Hon Sir Dennis Byron (President)

/s/ A. Saunders

The Hon Mr Justice A Saunders

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M. Rajnauth-Lee