

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3 **INDICTMENT NO: 103/2012**

4  
5 **THE QUEEN**

6  
7 **v.**

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9 **TICHINA SHEVONDA RICKFIELD**

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12 **Appearances:**

**Ms. Toyin Salako, for the Crown**

13  
14 **Mr. Fiona Robertson of Samson and**  
15 **McGrath for the Defendant**

16 **Before:**

**The Hon. Mr. Justice Charles Quin**

17 **Trial:**

18 **15<sup>th</sup> December 2014 – Jury of 7 (with 2 in**  
19 **reserve) empanelled and asked to return at**  
**a later date.**

20 **Abuse of Process Submissions Heard:**

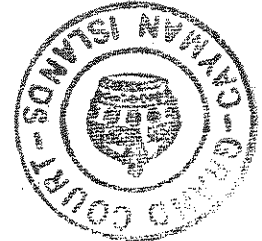
**16<sup>th</sup> December 2014**

21 **Crown's Reply to Defence Submissions:**

**17<sup>th</sup> December 2014**

22 **Further Written Submissions filed:**

**29<sup>th</sup> December 2014**



23  
24 **RULING ON ABUSE OF PROCESS APPLICATION**  
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- 26 1. On the 15<sup>th</sup> December 2014 the Defence made a submission that the Court should  
27 stop the prosecution of this case and stay proceedings on the grounds that, to allow  
28 the trial to continue would be an abuse of the Court's process. Counsel on behalf of  
29 the Defendant submits that the application is founded on the grounds of delay and  
30 failure of the prosecuting authorities to obtain, retain or disclose material relevant to  
31 the case.

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In relation to the first ground of this application – that of delay – Crown counsel concedes that there has been some delay but not sufficient to prevent the Defendant from having a fair trial.

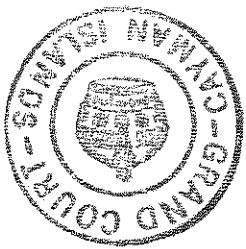
- 2. The case brought by the prosecution charges the Defendant, in her capacity as Acting Secretary of the Work Permit Board of the Cayman Islands Department of Immigration (hereinafter referred to as ‘the Board’) with fifteen (15) counts of Making a Document Without Authority, contrary to s.293(a) of the Penal Code and one (1) count of Misconduct in Public Office contrary to common law.

**CHRONOLOGY**

- 3. In order to properly consider the applicant’s submissions, both on delay and on non-disclosure, it is important to record the relevant chronology of events which is largely agreed between the parties as follows:



Year	Date	Activity
2009	8 <sup>th</sup> Oct.	Suspicious first raised about the defendant's conduct. Decision made to review the matter internally.
2010	20 <sup>th</sup> Jan.	Further concerns raised about the defendant's conduct
	25 <sup>th</sup> Jan.	Internal review of immigration record begins
	29 <sup>th</sup> Jan.	Defendant placed on required leave
	1 <sup>st</sup> Feb.	Email from Franz Manderson
	3 <sup>rd</sup> Feb.	Second Audit requested.
	4 <sup>th</sup> Feb.	Second Audit commenced.
	9 <sup>th</sup> Feb.	Allegations put to defendant in meeting at Immigration Dept.
	18 <sup>th</sup> Feb.	Defendant provides a response to the allegations in a letter from her attorney.
	5 <sup>th</sup> March	Second Audit completed.
	13 <sup>th</sup> March	Krista Wood was interviewed by the RCIPS
	18 <sup>th</sup> March	DPP asked to provide a preliminary view as to whether, based on the information provided thus far, there is the possibility of the commission of criminal offences such that the matter should be referred for investigation to the RCIPS in addition to the proposed disciplinary proceedings.
	18 <sup>th</sup> March	The DPP was provided with the following documents: <ul style="list-style-type: none"> <li>1. Report dated 4<sup>th</sup> February 2010 from the Director and Chairman of the Work Permit Board;</li> <li>2. Audit report dated 11<sup>th</sup> March 2010 compiled by ACIO Jeremy Scott and AST Regina Jackson; and</li> <li>3. Letter dated 18<sup>th</sup> February 2010 from Thorp Alberga on behalf of the Defendant.</li> </ul>
	18 <sup>th</sup> March	The DPP concluded " <i>I recommend that it would be appropriate for Senior Officers to consider whether this is a matter which should be referred to the RCIPS for investigation, including as to any relevant financial matters and thereafter for further assessment of all evidence obtained.</i> "
May	File provided to the RCIPS	



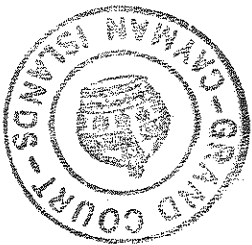


	10 <sup>th</sup> August	DS Betty Anne Ebanks was tasked by Detective Chief Inspector Brady to investigate " <i>allegations made by Linda Evans, the Chief Immigration Officer on certain questionable irregularities, purportedly conducted by Tichina Rickfield in her capacity as acting secretary of the Work Permit Board. The mentioned irregularities spanned over a sporadic period of 6 March to 16 December 2009.</i> "
	22 <sup>nd</sup> December	DS Betty Ann Ebanks sent a Memorandum to DCI Brady within which she recommended " <i>an internal decision should be taken for Ms. Rickfield to explain on what ground she made what is now considered unauthorized entries to the computer system (IMSS) validating the approvals of the various work permits, which did not follow the system and procedures applicable to the renewing and issuing of work permits.</i> "



2011	10 <sup>th</sup> February	CI Brady sent a Memo to Eric Bush, subject title: Investigation – Tichina Rickfield. Within this Memo DCI Brady reached the following conclusion <i>“At the completion of the research, it is concluded that at the time we are unable to proceed with any criminal investigation against Ms. Rickfield and suggest that the Department of Immigration to proceed under section 5 of the Public Service Management Law (2010 Revision). After perusing the documents, it appears that Ms. Rickfield may have “fast tracked” application for Mr. Alberga and Mr. Watler but there is no evidence that she benefited financially or otherwise and shows that she has broken the workplace rule, if there are rules applicable to the process of work permit applications”</i>
	15 <sup>th</sup> February	Statement and signature date of Jeremy Scott’s statement.
	3 <sup>rd</sup> March	DCI Brady sought advice from the now DPP providing a copy of DS Ebanks report
	11 <sup>th</sup> March	Letter sent to Michael Alberga stating the matter had been referred to the Attorney General’s Office for ruling.
	21 <sup>st</sup> May	The currently incumbent DPP sent an email to DCI Brady subject: Misconduct in Public office – Absence of Remuneration attaching the case of <i>R v Belton</i> [2011] 1 Cr. App. R 20.
	23 <sup>rd</sup> May	File transferred to DC Spence
	28 <sup>th</sup> May	The currently incumbent DPP sent an email to Allyson Minus-Phillips that she had been advised by the police that they were continuing with the investigation with a view to submitting a full file for ruling as to whether any criminal charges should be laid.
	1 <sup>st</sup> June	Meeting between AG’s Chambers and Immigration.
	20 <sup>th</sup> June	Date of Linda Evans’ statement.
		Date of Sherryl Miller’s statement.
	22 <sup>nd</sup> June	DC Spence drafted statement of Linda Evans.
	28 <sup>th</sup> June	DC Spence met with Linda Evans and Sherryl Miller. Statements drafted and sent to Linda Evans and Sherryl Miller.
	21 <sup>st</sup> November	Linda Evans signed her statement. Sherryl Miller signed her statement.
	30 <sup>th</sup> November	First interview of the Defendant.

<b>2012</b>	9 <sup>th</sup> January	DC Spence continues to contact the applicants.
	19 <sup>th</sup> January	DC Spence still contacting the applicants
	20 <sup>th</sup> January	Orrett Lenard Connor statement date and signature.
	28 <sup>th</sup> January	Lemuel Hurlston statement date and signature.
	31 <sup>st</sup> January	Franz Manderson statement and signature.
	7 <sup>th</sup> March	Second Interview of the Defendant.
	March	Case sent to the DPP for Ruling.
	10 <sup>th</sup> April	DC Spence completes her reports and refers it to DI Lavine.
	12 <sup>th</sup> April	File submitted to the ODPP for ruling
	30 <sup>th</sup> April	Michael Snape's Ruling
	29 <sup>th</sup> May	Tichina Rickfield formally arrested and charged.
	7 <sup>th</sup> June	Charges laid.
	19 <sup>th</sup> June	First Summary Court appearance.
	7 <sup>th</sup> December	First Grand Court appearance. John Furniss indicates that he will write to the Crown re disclosure.
<b>2013</b>	29 <sup>th</sup> August	Email from Michael Snape to Suzanne Livingston, John Furniss copied into the email indicating that the trial date of the 7 October is likely to be vacated.
	26 <sup>th</sup> September	Defence disclosure request.
	7 <sup>th</sup> October	First trial date vacated on joint application due to outstanding disclosure.
	10 <sup>th</sup> October	Michael Snape sent DC Spence John Furniss disclosure request.
<b>2014</b>	10 <sup>th</sup> March	Second trial date vacated for defence counsel's convenience
	24 <sup>th</sup> March	Third trial date vacated for crown counsel's convenience
	20 <sup>th</sup> October	Fourth trial date. Moved to 22 <sup>nd</sup> October 2014 for Crown counsel's convenience. Defence application to adjourn due to lack of legal aid is refused.
	22 <sup>nd</sup> October	Trial date vacated due to lack of court space.



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1 ***THE DEFENDANT'S/APPLICANT'S SUBMISSIONS***

2 4. *The case has aged for five (5) years:* Counsel on behalf of the Applicant submits  
3 that the result of the delay is that the Defendant will now stand trial for matters  
4 which first came to light five (5) years ago. Counsel submits that whilst a delay of  
5 five years in the matter coming to trial is of concern, it is the delay from May 2010  
6 to March 2012 that causes most concern and the most significant prejudice to the  
7 Defendant. Counsel submits that no good or proper reasons have been provided for  
8 such a lengthy delay in the investigation by the Department of Immigration and  
9 then by the RCIPS and submits that the effect is that the Applicant first formally  
10 answered questions in relation to the allegations three (3) years after they first  
11 arose.

12 5. *Defendant's early Response and Requests for Information:* Counsel places great  
13 store on the letter of the Applicant's attorneys, Thorp Alberga, dated the 18<sup>th</sup>  
14 February 2010 and states that this letter sets out the Defendant's position and asks  
15 for further discovery. It is the Applicant's case that her attorneys chased up this  
16 request with the Department of Immigration – asking that the Applicant either be  
17 taken off required leave or civil proceedings for wrongful termination would be  
18 filed. Accordingly, counsel on behalf of the Applicant submits that the Applicant  
19 did make efforts to assert her rights.



1           6.     Board's Workload/Agenda for Meetings: Counsel highlights the fact that there are  
2           fifteen counts of making a document without authority contrary to s.293(a) of the  
3           Penal Code – spanning the period from the 12<sup>th</sup> January 2009 until the 21<sup>st</sup> January  
4           2010. During this period the Applicant was the Acting Secretary of the Board –  
5           which, counsel contends, was seriously overworked during this time and there was  
6           an almost chaotic backlog. For example, if a work permit ran out in January 2010  
7           and the applicant would apply for renewal for 12 months, frequently the application  
8           for the renewal was not considered until later in 2011 – long after the renewal  
9           period had expired. Counsel contends that there were tens of thousands of  
10          applications for work permit renewals.

11           In addition, the Board was dealing with *de novo* applications for work permits,  
12           applications for renewals, and, applications for variations of permits. At any one  
13           meeting there could be up to eighty items to be dealt with by the Board.

14          7.     Additions to the Board's Meeting Agenda: In addition, there were what was called  
15          “walk-ons”; these were files that may have gone missing and were then located.

16           Also, members of the Board at various times asked for certain applications, which  
17           were not on the original agenda for meetings, to be dealt with.

18           The Defence has been supplied with the Chairman's Agenda and Minutes but the  
19           Defence is seeking to obtain the agendas of all the Board members because the  
20           Defence seeks the notes the Board members made on their respective Agendas  
21           which may indicate additions to the agenda at meetings.

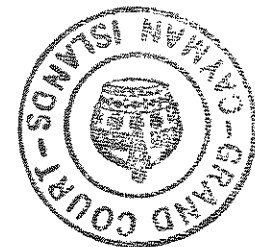
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1 8. Delay with Disclosure: The Defence complains about a significant delay and lack  
2 of disclosure but submits further that the delay feeds into the disclosure.

3 9. Defendant's passcode(s) given to other staff members: The Defence submits that  
4 the Defendant had a higher access level to information in the computer data  
5 base/IMSS system, than some of her staff, but, in light of the sheer pressure of  
6 work, she delegated certain tasks to other members of the Department and, on those  
7 occasions, the Defendant would allow other members of the Department to use her  
8 access passwords.

9 10. Faulty computer/IMSS system: In addition, after Board meetings the results of the  
10 applications and the Minutes were fed in to the computer IMSS system and it is  
11 common ground that the integrity of the computer system has been called into  
12 question (prior to this case) and, in addition, there have been faults with the  
13 printouts from the system.



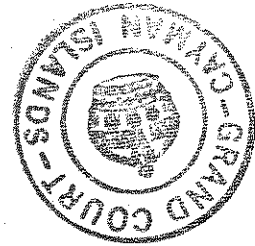
1 **THE CROWN'S SUBMISSIONS**

2 11. The Crown alleges that the Defendant made unauthorized changes to the Minutes of  
3 the Meetings and the Board's decision(s). In addition, the Crown alleges that the  
4 Defendant accelerated certain specific applications, thus giving these specific  
5 applications favourable treatment.

6 12. Accordingly, the first audit on the Defendant's role as Acting Secretary of the  
7 Board was carried out on the 29<sup>th</sup> January 2010, with the first report completed on  
8 the 4<sup>th</sup> February 2010.

9 13. A second audit was undertaken which extended the period of time reviewed and a  
10 subsequent report was submitted in early March 2010.

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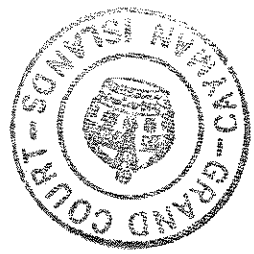
**DELAY**

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14. The Defence complains of the delay of almost five (5) years before this case has come to trial, but, the Defence specifically complains about the delay from May 2010 to March 2012, which, they submit, causes the most significant prejudice to the Defendant/Applicant.

15. Defence counsel makes no complaint about the conduct of the DPP, but complains about the delay caused by the inactivity of the Department of Immigration and the RCIPS from May 2010 to March 2012. The Defence submits that no proper reasons have been provided for such a lengthy delay in the investigation by the Department of Immigration and the RCIPS.

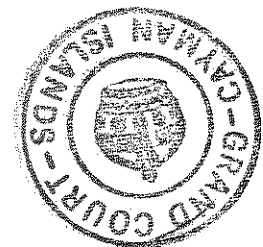
16. The Defence points out that at a meeting on the 1<sup>st</sup> June 2011 between the Attorney General's Chambers and the Immigration Department the Defendant's response to the allegation was considered. The Defence complains that efforts were made to mitigate or close the gaps in the case against the Defendant and attempts were made to avoid other parties being implicated in the allegations. Accordingly, the Defence submits that, (in the face of the current delay) the independence of the Attorney General's Chambers must be called into question as those Chambers should be providing legal advice and not acting as the investigative body and this, in and of itself, caused further delay.

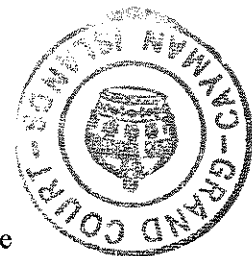


1        17.     The Defence submits that the 22-month delay allowed the prosecuting authorities in  
2                    conjunction with the Immigration Department to strengthen their case against the  
3                    Defendant – as they had the benefit of the Defendant’s response to the allegations  
4                    along with the time and the resources to counteract her defence. Counsel further  
5                    submits that the Attorney General’s Chambers’ assistance to the Immigration  
6                    Department and the RCIPS raises concern about the independence of the AG’s  
7                    Department. Furthermore, the Defence submits that the delay caused by the AG’s  
8                    Chambers’ interference in the process has resulted in prejudice to the Defendant.

9        18.     By the time of the first interview in November 2012 the allegations were  
10                   approximately three (3) years old. Defence submits that the Defendant was on  
11                   required leave without access to the Immigration systems or files and her ability to  
12                   answer the allegations and prepare her defence has been severely compromised.

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*FAILURE TO PROVIDE DISCLOSURE.*

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19. The Defence complains that, along with the prejudice caused by the delay is the failure of the prosecuting authorities to provide important disclosure to the Defendant.

20. The Defence relies on the fact that the prosecution case is based on inconsistencies (in the documentary exhibits) between the Board Agenda Minutes and the IMSS entries.

21. Each application before the Board is listed for a meeting and added to the Agenda. The defence submits that each member of the Board had their own Agenda on which each member noted the outcome of the decision making process. As the decision is made in the meeting it is simultaneously recorded in the Minutes which are checked, amended, and signed off at the end of each meeting. The result of each meeting is then recorded in the IMSS system by the secretarial staff. The Defence states that it has been asking for each Board member's agenda so that they could see whatever notes each member made at the relevant meetings. Defence submits that this is vital to the Defence's case because it is only by cross referencing the respective Board Members' agendas that the Defence will be able to establish whether the correct decision was recorded and what, if any documents, the Defendant made without authority and with intent to deceive.

22. The Defence submits that the Immigration Department and the RCIPS had a duty to collect and preserve all the relevant material and evidence as soon as possible and provide it to the Defence. The Defence contends that the Immigration Department and the RCIPS have failed in this duty and, without complete and full disclosure the Defence is severely curtailed in its ability to challenge the prosecution's case.

1       23.     Defence contends that, whilst the period primarily complained of is between the  
2             Defendant's suspension and her charge, the overall delay must be considered as no  
3             adequate explanation has been offered for the unconscionable delay from May 2010  
4             to May 2011 and the Defendant has not been afforded a trial within a reasonable  
5             period of time, which is a clear breach of her rights under Section 7 of the Bill of  
6             Rights.

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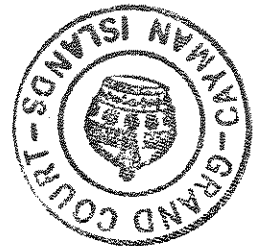
*CROWN'S CASE*

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24. The Crown accepts that there has been some delay from the 29<sup>th</sup> January 2010, when the Defendant was placed on required leave until the 12<sup>th</sup> April 2012 when the matter was referred to the DPP.

25. Crown counsel highlights the fact that, between the 29<sup>th</sup> January 2010 when the Defendant was put on required leave until the 12<sup>th</sup> April 2012, the following tasks were completed before the file could be referred to the DPP for a Ruling:

- i. Investigation into any irregularities from January 2009 to January 2010;*
- ii. Investigation of into any irregularities from January 2009 to January 2010;*
- iii. Collating the material where irregularities were identified;*
- iv. Meeting with Tichina Rickfield;*
- v. Interview of Krista Wood;*
- vi. Advice from the now DPP;*
- vii. Initial file to the RCIPS to consider;*
- viii. Taking of statements;*
- ix. Advice from the Attorney General's Chambers;*
- x. Collation of statements;*
- xi. Initial interview of TR;*
- xii. Contact with the various applicants.*
- xiii. DC Spence spoke to representatives from the following companies whose work permit applications form part of this investigation, namely:*
  - A. Cell Cellular World;*
  - B. Quadscape Ltd;*
  - C. Funky Tangs;*



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- D. *Carlton Dawkins;*
- E. *Dennis Pascal;*
- F. *Jeli Centre;*
- G. *Magnum Jewelers;*
- H. *Shivells Beauty Centre;*
- I. *Motions Unlimited;*
- J. *Princess World Jewelers*



26. Crown counsel submits that DC Spence spent considerable time interviewing these work permit applicants, but regrettably, none of the applicants in 25.xiii A-J above were prepared to provide a written statement. However, these efforts disclosed the fact that it was a complex investigation which simply took time to complete. The file was submitted to the DPP once the investigation had been completed and the evidence collated.

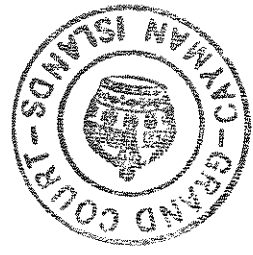
27. Crown counsel said this is not a case where the delay can be said to be deliberate or unconscionable due to inefficiency on the part of the Prosecution. It is purely the nature of the allegation and the necessary investigation that has caused the delay.

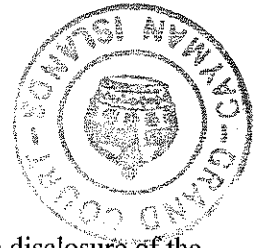
28. Towards the end of 2010 the RCIPS was of the view that this matter could have been dealt with “internally” (within the Department of Immigration). Furthermore, there seemed to be some confusion about whether there had to be some evidence of some kind of benefit – whether financial or otherwise – to the Defendant, before a criminal charge could be laid. In addition the Department of Immigration sought the advice of the Attorney General’s Chambers, which again took time to process and consider.

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29. It is therefore the Crown's case that this was a complex investigation involving many documents and care had to be taken over the documents and audits. In addition, careful consideration had to be applied in relation to whether the Defendant's conduct amounted to a criminal offence, or whether this was matter for internal discipline, and then come to a final decision.

30. Crown counsel advises that the RCIPS officer, DS Ebanks who was initially assisting Detective Inspector Brady in this case became ill and the file was ultimately transferred to DC Spence from the 23<sup>rd</sup> May 2011. This illness caused delay. As DS Ebanks was taken off the case, DC Spence had to read into the file and then began to take statements in June 2011.





**DISCLOSURE**

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31. It is the Crown's case that the Defendant was provided with all the disclosure of the material on which the Crown sought to rely and the Defendant has had that material and the majority of the evidence since February 2010.

32. In addition, the Department of Immigration has invited the Defendant and her attorneys to review the IMSS documentation at any time. This invitation has never been rescinded.

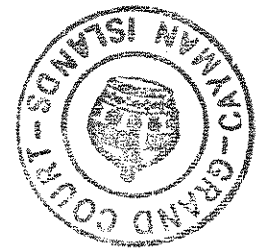
33. Crown counsel submits that during her interview on the 7<sup>th</sup> March 2012 the Defendant was shown all the evidence on which the Crown intends to rely, in addition to all the disclosure that was provided on the 8<sup>th</sup> and 9<sup>th</sup> of February 2010.

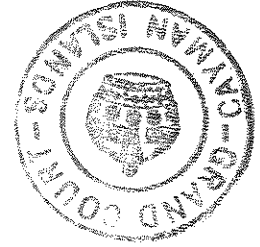
34. Since the initial request the Crown have sought to respond to all disclosure requests. To date the outstanding disclosure is as follows:

- i. All correspondence between the defendant, board members, Miller, Williams, Hurlston, Manderson and HR for the relevant period relating to problems with the immigration or computer systems, including items not showing on agendas, items not printing or duplication of items: First requested on 13 October 2013.
- ii. Copies of all agendas (i.e. for all members present) for the board meetings for the dates on the indictment: First requested by John Furniss. Crown counsel states that she has met with the Acting CIO Bruce Smith and his tasked Jeremy Scott to obtain the necessary information.
- iii. Copies of all amended minutes for the board meetings for the dates on the indictment: Not previously requested.

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- iv. Copies of all computer records relating to the meetings for the dates on the indictment: Not previously requested
  
- v. Computer records/access records for the printing of term limit sheets (showing whose name is displayed for entries after such an action): Not previously requested.
  
- vi. IMSS entries for all matters hearing on 20 January -- board meeting when 2 items are alleged to have been expedited: First requested 16 October 2014.
  
- vii. What period was subject to the internal review and how many cases were considered/checked: The Crown has endeavoured to provide full and complete disclosure of all the records and documentation from January 2009 to January 2010.





1 **THE LAW**

2 **DISCLOSURE**

3 35. In the recent case of *Regina v. Fernando Mendes*<sup>1</sup> dated the 12<sup>th</sup> August 2014, the  
4 Court reviewed the case law in relation to disclosure in criminal cases.

5 36. Lord Hope of Craighead in the House of Lords case of *Regina v Brown (Wilson)*<sup>2</sup>  
6 stated at letter G on page 374:

7 *“The rules of disclosure which have developed by the common law owe their*  
8 *origin to the elementary right of every defendant to a fair trial. If the Defendant*  
9 *is to have a fair trial he must have adequate notice of the case which is to be*  
10 *made against him. Fairness also requires that the rules of natural justice must*  
11 *be observed. In this context as Lord Taylor of Gosforth C. J. observed in Reg.*  
12 *v. Keane*<sup>3</sup>. *The great principle is that of open justice. It would be contrary to*  
13 *that principle to withhold from the Defendant material which might undermine*  
14 *their case against him or which might assist his defence.”*

15  
16 37. The learned Chief Justice Anthony Smellie applied Lord Hope’s dicta in the case of  
17 *In Re Eurobank Corp*<sup>4</sup> where he set out the principles of pre-trial disclosure as they  
18 apply to the Cayman Islands:

19 *“(i)The Crown has a duty to disclose to the defence all relevant unused*  
20 *material, whether or not advantageous to the defence. (ii) Witness evidence of*  
21 *documents satisfying the criteria for materiality would be those that were*  
22 *relevant or possibly relevant to an issue in the case, those that raised or*  
23 *possibly raise a new issue the existence of which was not apparent from the*  
24 *prosecution’s evidence, and those that had a real prospect of providing a lead*  
25 *on evidence pertinent to the above. (iii) Disclosure would be required not only*  
26 *if the material were relevant to the offence charged, but also if it had some*  
27 *bearing on the surrounding circumstances.”*

28  
<sup>1</sup> Indictment No. 0081/2011

<sup>2</sup> (H.L. (E)) [1998] AC 7

<sup>3</sup> [1994] 1 W.L.R. 746, 750 G

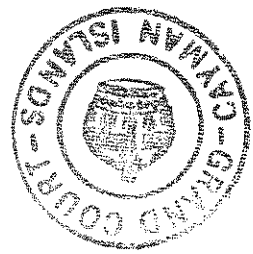
<sup>4</sup> [2002] CILR 15

1 38. Deborah Barker Roye in her Third Edition of *Criminal Litigation in the Cayman*  
2 *Islands* provides a very helpful chapter on pre-trial disclosure. The learned author  
3 cites the English Court of Appeal case of *R v. Ward*<sup>5</sup> which was applied by the  
4 Chief Justice in *In Re Eurobank Corp.*, and which is authority for the proposition  
5 of material which might assist the defence is not limited to evidence which would  
6 obviously advance the defence case. The Defendant is to be afforded the  
7 opportunity of considering all the material evidence which the prosecution has  
8 gathered.

9 39. At paragraph 5.2.2, in relation to unused material, Mrs. Barker-Roye refers to the  
10 English Court of Appeal decision of *R v. Maguire & Ors*<sup>6</sup>:

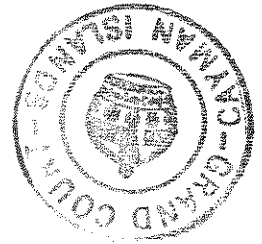
11 *“The Crown is not to be excused from this duty on the basis that it was not*  
12 *made aware of material information.”*

13  
14 It is a well-established principle under the law of the Cayman Islands that the  
15 Crown has a duty to provide full and complete disclosure of all material which may  
16 assist the case for the Defence or undermine the Crown’s case.



<sup>5</sup> [1993] 1 WLR 619  
<sup>6</sup> [1993] 94 Cr App R. 123

1 **DELAY**



2 40. Lloyd LJ stated in the case of *Gateshead Justices ex parte Smith*<sup>7</sup>:

3 *“Proceedings may be stayed as an Abuse of Process due to delay, even if the*  
4 *delay has not been deliberate, where the delay has been unconscionable due to*  
5 *the prosecution’s inefficiency and prejudice to the Defendant can be proved or*  
6 *inferred.”*

7  
8 41. The Prosecution in this context would include the Director of Public Prosecutions,  
9 the Attorney General’s Chambers, the RCIPS and the Department of Immigration  
10 as the investigating bodies.

11 42. In *Bell v DPP of Jamaica*<sup>8</sup> the Privy Council laid down guidelines for determining  
12 whether delay would deprive the accused of a fair trial. The relevant factors were  
13 said to be:

- 14 i. The length of delay;
- 15 ii. The reasons given by the prosecution to justify the delay;
- 16 iii. The responsibility of the accused for asserting his rights; and
- 17 iv. The prejudice to the accused.

18 43. In this case, the Defence submits that the delay from the 29<sup>th</sup> January 2010, when  
19 the Defendant was placed on required leave, until March 2012, when the case as  
20 sent to the DPP for a Ruling, was unconscionable and has prevented the Defendant  
21 from having a fair trial.

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<sup>7</sup> (1985) 149 J.P. 681)

<sup>8</sup> [1985] AC 937

1 44. The factors which the Court should take into account when considering the effect of  
2 delay on fairness of trial are very clearly set out in *Blackstone's Criminal Practice*  
3 *2015* at paragraph D3.79. The learned editors refer at D3.79 on page 1328 to the  
4 judgment of the former Chief Justice, Lord Lane, in *Attorney General's Ref (No. 1*  
5 *of 1990)*<sup>9</sup>:

6 "Stays imposed on the grounds of delay or for any other reason should only be  
7 employed in exceptional circumstances...In principle, therefore, even where the  
8 delay can be said to be unjustifiable, the imposition of a permanent stay should  
9 be the exception rather than the rule. Still more rare should be cases where a  
10 stay can be properly imposed in the absence of any fault on the part of the  
11 complainant or prosecution. Delay due merely to the complexity of the case or  
12 contributed to by the actions of the Defendant himself should never be the  
13 foundation for a stay ...[N]o stay should be imposed unless the defendant  
14 shows on the balance of probabilities that owing to the delay he will suffer  
15 serious prejudice to the extent that no fair trial can be held: in other words,  
16 that the continuance of the prosecution amounts to a misuse of the process of  
17 the court. In assessing whether it is likely to be prejudicial and if so whether it  
18 can properly be described as serious, the following matters should be borne in  
19 mind: first, the power of the judge in common law [and under the PACE 1984]  
20 to regulate the admissibility of evidence; secondly, the trial process itself,  
21 which should ensure that all relevant factual issues arising from the delay will  
22 be placed before the jury as part of the evidence for their consideration,  
23 together with the powers of the judge to give appropriate direction to the jury  
24 before they consider their verdict."

25  
26 45. Section 7(1) of the *Bill of Rights of the Cayman Islands* is in exactly the same  
27 terms as Article 6 of the *European Convention of Human Rights (ECHR)* and  
28 reads:

29 "Everyone has a right to a fair and public hearing in the determination of his  
30 or her legal rights and obligations by an independent Court within a  
31 reasonable time."

32  

---

<sup>9</sup> [1992] Q.B. 630 (at pages 643-4)



1 46. The learned editors of the 2015 edition of *Archbold* refer to the House of Lords  
2 decision in *A-G's Ref (No. 2 of 2001)*<sup>10</sup>.

3 *"The House of Lords ruled that criminal proceedings may be stayed on the*  
4 *ground that ... (a) there can no longer be a fair hearing, or (b) it would be*  
5 *otherwise unfair to try the defendant (per Lord Bingham at 24). It was said that*  
6 *it would be anomalous if breach of the reasonable time requirement were to*  
7 *have an effect that is more far-reaching than breach of the accused's other*  
8 *Article 6(1) rights."*

9  
10 47. In *Dyer v. Watson*<sup>11</sup> Lord Bingham, giving the opinion of the Privy Council said at  
11 paragraph 52 that the threshold of proving that a trial has not taken place within a  
12 reasonable time "*is a high one, not easily crossed.*" However, his lordship went on  
13 to say:

14 *"If the period which has elapsed is one which, on the face, gives ground for*  
15 *real concern, it is necessary to look into the detailed facts and circumstances of*  
16 *the particular case and it must be possible to explain and justify any lapse of*  
17 *time which appears to be excessive."*

18  
19 Lord Bingham, at paragraph 53 stated that regard must be had to the complexity of  
20 the case, the conduct of the accused (he cannot properly complain of delay of which  
21 he is the author) and the manner in which the case has been dealt with by the  
22 prosecution and the courts. As regards the latter, Lord Bingham said that there is no  
23 general obligation for a prosecutor to act with all due expedition and diligence, but  
24 a marked lack of expedition, if unjustified, would point towards a breach of the  
25 reasonable time requirement.

26

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<sup>10</sup> [2004] 2 AC 72

<sup>11</sup> [2004] 1 AC 379



1 48. I should state at this juncture that no real blame can be attributed to the Defendant,  
2 but the delay within the Department of Immigration and the RCIPS does give me  
3 ground for some concern, and that makes it necessary for me to look into the  
4 detailed facts and circumstances of this case. I should add that I agree with defence  
5 counsel that the delay in 2010 and 2011 is of more concern than the delay since the  
6 Indictment was laid.

7 49. I do accept the contention that some time was spent by both the Department of  
8 Immigration and the RCIPS in deciding whether a criminal investigation should be  
9 continued or whether the matter should be dealt with internally under the Public  
10 Service Management Law. And I do accept that the Department of Immigration  
11 quite rightly sought the advice of the Attorney General. I also accept that Detective  
12 C I Brady took ill and, therefore, it was not until May 2011 when the file was  
13 transferred to DC Spence that any significant progress was made.

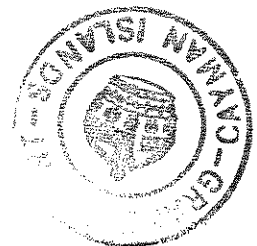
14 50. The learned editors of *Blackstone's* 2015 edition state at paragraph D3.81, the  
15 Privy Council revisited the question of delay in *Speirs v Ruddy*<sup>12</sup> emphasising that a  
16 stay of proceedings is the last resort. The learned editors stated further

17 *“Lord Bingham of Cornhill CJ said (at [16]) that where there has (or may have*  
18 *been) such delay in the conduct of proceedings as to breach a party’s right to*  
19 *trial within a reasonable time, but where the fairness of the trial has not been*  
20 *or will not be compromised, ‘such delay does not give rise to a continuing*  
21 *breach which cannot be cured save by a discontinuation of proceedings. It*  
22 *gives rise to a breach which can be cured, even where it cannot be prevented,*  
23 *by expedition, reduction of sentence or compensation, provided always that the*  
24 *breach, where it occurs, is publicly acknowledged and addressed.”*

25  
26  
27  

---

<sup>12</sup> [2008] 1 AC 873



1 51. The English Court of Appeal in the case of *R v. F (TB)*<sup>13</sup> reviewed the relevant  
2 authorities and sets out the following five propositions in relation to criminal  
3 prosecutions brought after a long delay:

4 “i. *The Court should stay proceedings on some or all counts of the*  
5 *indictment for abuse of process if, and only if, it is satisfied on balance*  
6 *of probabilities that by reason of delay a fair trial is not possible on*  
7 *those counts.*

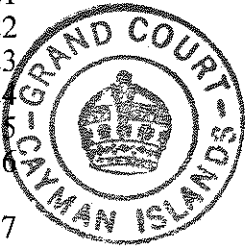
8 ii. *It is now recognised that usually the proper time for the defence to*  
9 *make such an application and for the judge to rule upon it is at trial,*  
10 *after all the evidence has been called.*

11 iii. *In assessing what prejudice has been caused to the defendant on any*  
12 *particular count by reason of delay, the court should consider what*  
13 *evidence directly relevant to the defence case has been lost through the*  
14 *passage of time. Vague speculation that lost documents or deceased*  
15 *witnesses might have assisted the defendant is not helpful. The court*  
16 *should also consider what evidence has survived the passage of time.*  
17 *The court should then examine critically how important the missing*  
18 *evidence is in the context of the case as a whole.*

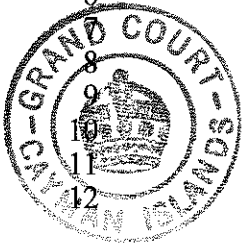
19 iv. *Having identified the prejudice by reason of delay, it is then necessary*  
20 *to consider to what extent the judge can compensate for that prejudice*  
21 *by emphasising guidance given in standard directions or formulating*  
22 *special directions to the jury. Where important independent evidence*  
23 *has been lost over time, it may not be known which party that evidence*  
24 *would have supported. There may be cases in which no direction to the*  
25 *jury can dispel the resultant prejudice which one or other of the parties*  
26 *must suffer, but this depends on the facts of the case.*

27 v. *If the complainant's delay in coming forward is unjustified, that is*  
28 *relevant to the question whether it is fair to try the defendant so long*  
29 *after the events in issue. In determining whether the complainant's*  
30 *delay is unjustified, it must be firmly borne in mind that victims of*  
31 *sexual abuse are often unwilling to reveal or talk about their*  
32 *experiences for some time and for good reason.”*

33  
34 52. Subsequent to the case of *R v. F (TB)*, a five-judge Court of Appeal presided over  
35 by the former Lord Chief Justice Lord Judge, in *R v. F (S)*<sup>14</sup>, the following  
36 principles were set out:



<sup>13</sup> [2011] 2 Cr. App. R. 13/145



1                    *“An application to stay proceedings for abuse of the processes of the court,*  
2                    *made on the grounds of delay, cannot succeed unless, exceptionally, a fair trial*  
3                    *is no longer possible owing to prejudice occasioned by the delay which cannot*  
4                    *fairly be addressed in the normal trial process. The presence or absence of*  
5                    *explanation for the delay is relevant only in so far as it bears on that question.*  
6                    *Such an application, which is a distinct matter from a submission of no-case to*  
7                    *answer must receive distinct and separate consideration, ordinarily to be tried*  
8                    *and determined at the outset of the case and before the evidence is heard,*  
9                    *unless there is a specific reason to defer it because the question of prejudice*  
10                   *and fair trial can better be determined a later stage. On such an application the*  
11                   *trial judge is not responsible for assessing whether, in advance of a conviction,*  
12                   *that conviction would be unsafe.”*

13

14            53.    Having reviewed the detailed facts and circumstances put before this Court, I find  
15            that, whilst there was initial delay – in the Department of Immigration and the  
16            RCIPS – once DC Spence took over the file the matter was progressed with  
17            reasonable expedition and due diligence. In addition to the material before the  
18            Court I accept the Crown’s submission that the case was a complex one to  
19            investigate. There were very many different forms and documents to review, collate  
20            and disclose.

21            54.    Having heard the submissions of both counsel I am satisfied that the Defendant has  
22            received very full and significant discovery from as far back as February 2010. In  
23            addition, access to the IMSS computer files has always been available and it was  
24            for the Defendant and her attorneys to take up the offer to examine them.

25            55.    The following documents are the most important and relevant documents to this  
26            case:

27            i.    The Chairman’s agenda for the Immigration Board meeting with any formal  
28            amendments to it;

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<sup>14</sup> [2012] QB 703

1           ii. The Minutes of the Immigration Board meeting recording what was considered,  
2           discussed and what decisions were made and then recorded;

3           iii. The decisions of all the applications made at the Board Meeting.

4       56. It is clear that there was some confusion when the Defence was asking for the  
5       individual agendas of the respective Board members. It is regrettable that the  
6       Department of Immigration did not explain to the RCIPS that they were confused  
7       and uncertain as to what specific material was needed. The Department of  
8       Immigration should have reverted back to DC Spence to clarify that request –  
9       which early clarification might have avoided some significant delay.

10      57. However I understand that this material is now being provided to the Defendant.  
11      Should the Defendant and her attorney require more time to consider the recent  
12      disclosure the Court will be sympathetic to further applications for time.

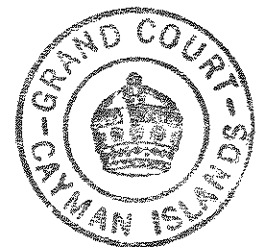
13      58. On the 31<sup>st</sup> December 2014 the Court was provided with an email suggesting that  
14      the individual agendas for the Board members may not now be available.

15      59. All witnesses in relation to the case are alive and available to give evidence.

16      60. The Defendant is not prevented or hampered in testing the evidence of the Crown  
17      witnesses or putting her case to them.

18      61. The delay between the charge being laid and the trial has been justified because  
19      both Defence and Prosecution counsel made separate applications to adjourn the  
20      case and, indeed, on occasions, made joint applications to adjourn.

21



1 62. Whilst some blame can be attached to the Department of Immigration and the  
2 RCIPS for failing to progress this matter with expedition and efficiency from  
3 March 2010 to May 2011, I do accept Crown counsel's submission that the case  
4 was complex, with a very large amount of documentation to be collated reviewed  
5 and disclosed.

6 63. The delay between the charge of 7<sup>th</sup> June 2012 and the trial is approximately 30  
7 months. In *Dyer v. Watson*<sup>15</sup> the delay was 20 months and 28 months. In the *A-G's*  
8 *Ref (No. 1 of 1990)*<sup>16</sup> the delay was 27 months. In *Dyer v. Watson* the delay was  
9 20 months and was not a cause of concern to the Court of Appeal of England and  
10 Wales. In other cases 20 months delay did not reach the high threshold required for  
11 a stay to be granted. The case of *Dyer v. Watson* was dismissed primarily because  
12 the delay of 28 months was justifiably too long – considering the Defendant was a  
13 minor, and hence the delay breached the rights of a child under the United Nations  
14 Convention on the Rights of a Child 1989. In the *A-G's Ref (No. 1 of 1990)* the  
15 delay of 27 months did not reach the high threshold to justify a stay.

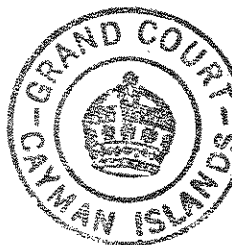
16 64. In this case, the time between the charge and the trial is a few months longer than  
17 the case in England where the Court of Appeal had said a stay is not justified.

18 65. Having taken everything into consideration I find that the Defence have failed to  
19 establish on the balance of probabilities that owing to the delay this Defendant, Ms.  
20 Tichina Rickfield, would suffer serious prejudice to the extent that no fair trial  
21 could be held. I am satisfied that the trial process can ensure that the Defendant has  
22 a fair trial and further that it would not be unfair to the Defendant to continue with  
23 the prosecution of this case.

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<sup>15</sup> Op. cit.

<sup>16</sup> Op. cit.



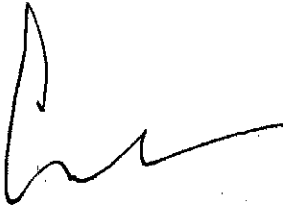
1        66.    I will of course invite both counsel, and in particular, Defence counsel, for their  
2                    input on the appropriate directions to the jury.

3        67.    This case is not an exceptional case to justify a stay and, accordingly, I order the  
4                    trial to continue.

5

6    **Dated this the 5<sup>th</sup> January 2015**

7



8  
9    **Honourable Mr. Justice Charles Quin Q.C.**  
10   **Judge of the Grand Court**

