

BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.3 OF 2006

BETWEEN:

MORGAN & MORGAN TRUST CORPORATION LIMITED

Appellant

and

[1] **FIONA TRUST & HOLDING CORPORATION**
[2] **FIONA MARITIME AGENCIES LIMITED**

Respondents

Before:

The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Denys Barrow, SC
The Hon. Mr. Hugh A. Rawlins

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Susan Prevezer Q.C. with Mr. Jack Husbands for the Appellant
Mr. Phillip Jones with Ms. E. Sparshot for the Respondents

2006: May 12;
September 25.

JUDGMENT

[1] **GORDON, J.A.:** On 26th January 2006 the High Court of the British Virgin Islands (BVI) granted to the respondents what is referred to as Norwich Pharmacal¹ relief as against the appellant. The Order (hereafter referred to as "the 26th January 2006 Order") was in broad terms and read, in part, as follows:

"The Discovery Respondent do disclose to the Applicants or to the Applicants' solicitors copies of all documentation (including electronic and digital information) in their possession custody or power relating to or

¹ Norwich Pharmacal Co v Customs and Excise Commissioners [1974] AC 133

connected with the following International Business Companies incorporated pursuant to the laws of the BVI ("the Companies"):

Kosta International S.A. (IBC 443513)

Amon International Inc. (IBC 495275)

Premium Nafta Products Ltd. (IBC 242466)

Lawrence Consulting Inc. (IBC 569074)

and copies of all documentation related to or connected with any companies for which the Discovery Respondent acts as registered agent that are owned or controlled either by the Companies or by the same principal(s) as the Companies by M Yuri Privalov, Mr Dimintry Skarga, Mr Yuri Niktin, Standard Maritime Holding Corporation, Milmont Finance Limited, Sisterhood Participation Corporation and Meino Group Limited. Without prejudice to the generality of the foregoing, the documentation to be disclosed shall include, in particular, the following:

- (a) The identity and address of the persons who have since the date of its incorporation held any shares, stock, debentures, loan notes or other debt or equity instruments issued by any of the companies identified above stating in each case:
 - (i) the nature and amount of the shares, stock, debentures, loan notes or other debt or equity instruments held;
 - (ii) the date on which the same was acquired and disposed of;
 - (iii) the manner of acquisition of the same;
 - (iv) the manner of disposal of the same;
 - (v) the consideration provided for such acquisition or disposal; and
 - (vi) any funds or other assets passing into or out of the companies' account.
- (b) The identity and address of the persons who have held any beneficial interest since the date of its incorporation in any shares, stock, debentures, loan notes or other debt or equity instruments issued by any of the companies identified above stating in each case:
 - (i) the nature and extent of such interest and the manner in which the same arose, identifying any relevant trustee, co-beneficiary and donee of any power;
 - (ii) the date of which the same was acquired and disposed of;
 - (iii) the manner of acquisition of the same;
 - (iv) the manner of disposal of the same;
 - (v) the consideration provided for such acquisition or disposal;
 - (vi) any funds or other assets passing into or out of the companies' accounts.
- (c) The identity and address of the officers, directors, registered agents and donees of any power of attorney of the companies

identified above and of any persons concerned in any way in its management from the date of its incorporation;

- (d) The identity and address of the accountants who prepared and/or audited the accounts of any of the companies identified above from the date of its incorporation;
- (e) Full details of any funds or other assets which have been passed through the accounts of such companies and if any funds or other assets have been transferred, the destination thereof, and copies of all such entries."

- [2] In 2005 the respondents, among others, commenced proceedings in England against, initially, some 18 defendants of whom 15 were juristic persons ("the English proceedings"). Fraud, bribery, secret profits and all manner of wrongful behaviour were alleged as against the defendants. According to the respondents, the wrong doings by the defendants to the English proceedings cost the plaintiffs in excess of \$500 million. The amount at stake is of complete irrelevance in this appeal, though because figures have been mentioned with such frequency in the arguments of the respondents, no doubt to impress the court with the gravity of the matter, I mention the figure here as a courtesy and for the only time.
- [3] Prior to the granting of the 26th January 2006 Order the High Court had granted an earlier Norwich Pharmacal Order dated 8th September 2005 directed to the same discovery respondent (the appellant) in respect of certain other companies incorporated in the BVI, namely Standard Maritime Holding Corporation, Milmont Finance Limited, Sisterhood Participation Corporation and Meino Group Limited. No appeal was filed against the 8th September 2005 order and so I am not in any way required to comment upon it.
- [4] Resulting, it would appear, from information gleaned from of the 8th September 2005 Order, an application for another Norwich Pharmacal Order was filed in the High Court of the BVI on 12th December, 2005 together with a supporting affidavit sworn to by one Stuart Wayne Shepherd of London. That application resulted in the 26th January 2006 Order which is the genesis of this appeal.

Norwich Pharmacal Order

- [5] In **Norwich Pharmacal Co et al v Customs and Excise Commissioners**² the appellants were the owners and licensees of a patent for a chemical compound known as furazolidone. It appeared that the patent was being infringed by illicit importations of the chemical manufactured abroad. The appellants had no idea who were the importers of the chemical and so they brought an action against the Commissioners of Customs and Excise for an order that Customs disclose who were the importers. The House of Lords held (quoting directly from the head-note):

“that where a person, albeit innocently and without incurring any personal liability, became involved in the tortious acts of others he came under a duty to assist the one injured by those acts by giving him full information by way of discovery and disclosing the identity of the wrongdoers.”

- [6] As Lord Morris of Borth-Y-Gest said in delivering his opinion:³

“The case proceeded therefore on the basis (a) that it consisted solely of a claim for limited discovery against the commissioners and (b) that no other relief could be or could have been claimed against the commissioners. It must be approached on the footing that it was and always had been an action solely for discovery.”

Lord Morris continued:⁴

“The plaintiffs are in a position to assert that the persons who have imported, whoever they are, must have been infringers and therefore wrongdoers. The commissioners know the names and addresses of these people. The plaintiffs wish to sue such people and intend to sue them if they can find out who they are. The plaintiffs say they are unable to find out who the people are unless the commissioners tell them... In this situation two questions arise: (1) Is it within the power of the courts to assist the plaintiffs or is the law powerless? (2) If the court has power to make the desired order – would it be against the public interest to make it?”

Lord Morris answered the first question in the affirmative and the second negatively.

² [1974] AC 133

³ *Ibid* at p.177

⁴ *Ibid* at p.178

- [7] Viscount Dilhorne came to a similar conclusion after an analysis of the authorities. He said:⁵

"In these circumstances it is, in my opinion, far too late to challenge that decision. [Orr v Diaper⁶] What exactly did it decide? In my view, that a discovery can be granted against a person who is not a mere witness to discover, the fact of some wrongdoing being established, who was responsible for it."

- [8] In the course of his judgment in the same case (page 199) Lord Cross of Chelsea recognised a potential problem and dealt with it in this way:

"In the course of the argument fears were expressed that to order disclosure of names in circumstances such as exist in this case might be the 'thin edge of the wedge,' that we might be opening the door to 'fishing requests' by would be plaintiffs who want to collect evidence or the requests for names made to persons who had no relevant connection with the person to be sued or with the events giving rise to the alleged cause of action but just happened to know the name. I think these fears are groundless. In the first place, there is a clear distinction between simply asking for the name of a person you wish to make a defendant and asking for evidence. This case has nothing to do with the collection of evidence." (emphasis added)

- [9] Lord Kilbrandon dealt with the same subject in this way⁷:

"This may be the place to dispose of the "mere witness" rule. It is settled, rightly or wrongly, that you cannot get discovery against someone who has no connection with the litigious matters other than that he might be called as a witness either to testify or produce documents at the trial. We are not here in that territory. The defendant is not a mere witness, or any kind of witness, because the whole basis of the application is that, until the defendant has disclosed what he knows, there can be no litigation in which he could give evidence. Furthermore, if he were to disclose, either voluntarily or under compulsion, the names of the third parties whom the plaintiff desires to pursue, even then he might well not be a witness in the ensuing litigation. He might have no evidence to give; what he knew would not necessarily be required post litem motam.

"The most attractive way to state an acceptable principle, intellectually at least, may be as follows. The dispute between the plaintiff and the defendants is of a peculiar character. The plaintiff is demanding what he

⁵ Ibid at p.188

⁶ 4 Ch. D 92

⁷ Norwich Pharmacal Co. et al v Customs and Excise Commissioners [1974] AC 133 at p. 203

conceives to be his right, but that right in so far as it has patrimonial substance is not truly opposed to any interest of the defendants; he is demanding access to a court of law, in order that he may establish that third parties are unlawfully causing him damage. If he is successful, the defendants will not be the losers, except in so far as they may have been put to a little clerical trouble. If it be objected that their disclosures under pressure may discourage future customers, the answer is that they should be having no business with wrongdoers. Nor is their position easily distinguishable from that of the recipient of a subpoena, which, in total disregard of his probable loss of time and money, forces him to attend the court for the very same purpose as that for which discovery is ordered, namely, to assist a private citizen to justify a claim in law. The policy of the administration of justice demands this service from him."

- [10] Not surprisingly, the possibilities opened up by the Norwich Pharmacal jurisdiction have been probed, exploited and expanded by the courts resulting in some refinements and some confusion. As Lord Woolf CJ said in **Ashworth Hospital Authority v MGN Ltd**⁸, a decision of the House of Lords:

"The Norwich Pharmacal jurisdiction is an exceptional one and one which is only exercised by the courts when they are satisfied that it is necessary that it should be exercised. New situations are inevitably going to arise where it will be appropriate for the jurisdiction to be exercised where it has not been exercised previously. The limits which applied to its use in its infancy should not be allowed to stultify its use now that it has become a valuable and mature remedy. That new circumstances for its appropriate use will continue to arise is illustrated by the decision of Sir Richard Scott V.C. in *P v T Ltd* [1997] 1 WLR 1309 (where relief was granted because it was necessary in the interests of justice albeit that the claimant was not able to identify without discovery what would be the appropriate cause of action).

"What I have said in relation to the disclosure of the identity of the source with a view to possible criminal proceedings does not detract from the requirement that the person from whom disclosure is sought must have been involved, whether innocently or otherwise, in the wrongdoing which would in these circumstances be criminal. It is this requirement that means the *Norwich Pharmacal* jurisdiction does not offend the general principle that at common law there is no legal duty to provide the police with information or otherwise to assist them with their inquiries: see *Rice v Connolly* [1966] 2 QB 414, 419E per Lord Parker CJ.

One of the arguments Mr. Browne placed before their Lordships for not adopting the non-technical approach which I regard as being correct was that if the disclosure was not linked with proceedings which would actually

⁸ [2002] 1 WLR 2033 at paragraphs 57 - 60

be brought, there would be no means of the court protecting a defendant against misuse of the material which was disclosed.

"I agree that this is a matter for concern. However, this concern will be met if an order for disclosure is not made unless a claimant has identified clearly the wrongdoing on which he relies in general terms and identifies the purposes for which the disclosure will be used when it is made. The use of the material will then be restricted expressly or implicitly to the disclosed purposes unless and until the court permits it to be used for another purpose."

- [11] In **Mercantile Group (Europe) A.G. v Aiyela and others**⁹ Hoffman LJ, as he then was, giving the decision of the Court of Appeal of England said:¹⁰

"Mr. Mann says the Norwich Pharmacal principle is limited to finding out the identity of a tortfeasor. But this is not the only situation, which falls outside the mere witness rule. In *Bankers Trust Co v Shapira* [1980] 1 WLR 1274 discovery was ordered against a bank which had received the proceeds of fraud. The purpose of discovery was to trace what had happened to the money. The bank had innocently become mixed up in the fraud and there was no infringement of the mere witness rule because there would be no point in the plaintiff seeking the information at the trial. By that time the money would be gone."

- [12] **Axa Equity and Life Assurance PLC and others v National Westminster Bank PLC and others**¹¹, an appeal to the court of appeal of England, was launched against the refusal of Mr. Justice Rimmer to invoke the Norwich Pharmacal jurisdiction in aid of the appellants who were claimants in the court below. The application was for the discovery of documents against, among others, National Westminster Bank Plc, Midland Bank Plc and others. The application was not made in the course of a pending action, but in reliance on the Norwich Pharmacal jurisdiction. The documents were required in connection with proceedings brought by the appellants against Coopers & Lybrand for damages pursuant to section 150 of the Financial Services Act 1986 and in negligence. It was alleged that Coopers had overstated the assets of a company in which the appellants, in reliance on the Cooper's report, had invested. It was the view of the solicitors for the appellants that they were not in possession of a sufficiency of

⁹ [1994] QB 366

¹⁰ Ibid at page 374 g - h

¹¹ Case No. CHANF 98/0236 CMS3 Thursday, 7th May 1998

evidence to enable them to properly plead their case in negligence. In the course of his delivery of the judgment of the court Morritt LJ said the following:

"In my view it is obvious that the court must have regard to all of the evidence but is not bound by the conclusion of the Investors' (appellants') solicitor as to the ability of the Investors to plead and prove their claim so far as it depends on matters before the court... Bearing in mind that a party is required to plead the material facts on which he relies, not the evidence by which he hopes to prove them, I see no problem in counsel for the Investors pleading a good cause of action in relation to the two specific matters to which I have referred earlier. In relation to each of them the fact and the nature of the overstatement of assets, how it arose and why Coopers should have spotted it can be properly pleaded. Whether all those matters can be proved is another matter; that will depend on what facts are denied, what is produced on discovery, in answer to interrogatories or in response to subpoenas. In my view it is plain that the Investors have sufficient information to ensure that there is a trial of the case they seek to make against Coopers if they choose to make it."

[13] In the result the court of appeal in England dismissed the appeal concluding:

"(b) the orders for discovery sought against the Banks and the Company would infringe the 'mere witness' rule because the investors can plead an arguable case against Coopers such as to give rise to a trial in due course in which both the Banks and the Company may be compelled to produce the documents now sought."

[14] As can readily be imagined there are a large number of cases in which the Norwich Pharmacal jurisdiction has been used, but I believe that the references above adequately assist us to determine how far the jurisdiction goes and whether in the circumstances of this case the jurisdiction is available to the respondents.

The case at bar

[15] As stated at paragraph 4 above, the application dated 12th December 2005 for the 26th January 2006 Order was supported by an affidavit by Stuart Wayne Shepherd. On its face, it is stated to be the 4th affidavit by Mr. Shepherd. Mr. Shepherd is an English solicitor authorized by the 11 claimants in suit BVIHCV Claim No. 205 of 2005 to swear this affidavit. This affidavit will hereafter be referred to as the 4th Affidavit.

[16] The 4th Affidavit states that ancillary disclosure is being sought in respect of (1) Kosta Continental International S.A. (Kosta) (The same company is referred to in the application as Kosta International S.A. (IBC 443513). This judgment is predicated on the assumption that the difference in names is a typographical error and hence no significance is ascribed to such difference.) (2) Amon International Inc (Amon) (3) Premium Nafta Products Ltd (Premium) and (4) Lawrence Consulting Inc (Lawrence). Each of the companies, according to the 4th Affidavit is incorporated in the BVI and on the application (though not on the 4th Affidavit) an IBC number is ascribed to each company and each of the companies has as its registered agent the discovery respondent, the appellant in these proceedings. In other words, there is no doubt as to the identity of the alleged wrongdoer.

[17] Paragraph 25 of the 4th Affidavit contains the basis of the application. After reciting in previous paragraphs of the 4th Affidavit various payments made to Kosta, Amon, Premium and Lawrence, paragraph 25 reads as follows:

“As we are now aware that some of the payments have been made to companies after proceedings were issued in England, it is now necessary for us to ascertain both the identity of the beneficial owners behind Kosta, Amon, Premium and Lawrence and to determine how those funds have been applied, and for what purpose, in furtherance of additional steps being taken for the preservation of those funds and in aid of English proceedings.”

[18] An affidavit sworn to by Imogen Jane Rumbold, a solicitor in England instructed on behalf of respondents 1, 2 and 4 to claim 205 Of 2005, was filed in response to the 4th Affidavit. At paragraph (viii) of that affidavit in response, Ms. Rumbold trenchantly points out that Mr. Shepherd has failed to point out to the court that at paragraph 64 (4) of the defence in main proceedings in England, which defence was served on the 30th November 2005 the following statement appears:

“Kosta is and was at all material times owned beneficially by Mr. Nikitin”
Mr. Nikitin is the third defendant in the English proceedings.”

- [19] Ms. Rumbold further points out that at paragraph 78 (4) of the above mentioned defence the following statement appears:

"Amon International is a company beneficially owned by Mr. Nikitin."

- [20] Mr. Shepherd responds to these latter two assertions of Ms. Rumbold in this way at paragraph 15 of his 5th Affidavit:

"15. Ms Rumbold claims that the claimants know who the owners of Kosta and Amon are because it is set out in their client's defence. With respect, my clients do not accept anything Mr. Nikitin says as being truthful unless there is incontrovertible documentary evidence, which corroborates it. None so far has been provided by Mr. Nikitin."

- [21] It seems to me to be quite clear that in so far as Kosta and Amon are concerned what the respondents are seeking to do is to challenge an assertion of fact contained in the defence, or to put it another way, the Norwich Pharmacal jurisdiction is being sought to subvert the 'mere witness' rule. The quotation from the judgment of Morritt LJ in the **Axa Equity and Life Assurance** case set out at paragraph 12 above is apposite. As a matter of law, therefore, no other considerations being considered, I would allow the appeal against that part of the order of the trial judge ordering the disclosure of the identity of persons who hold the shares of Kosta and Amon. See, however, paragraph [24] below.

- [22] The position of Premium and Lawrence are different. Premium is the 20th defendant in the English proceedings. Among many other claims one claim against Premium is:

"(55H) All necessary and consequential accounts and enquiries"

This is, in substance, what the discovery application seeks to expose. In other words, the respondents seek, by way of ancillary proceedings, bereft of any significant evidence, and certainly none tested by cross examination, to achieve what they claim in the English proceedings. This is an abuse of the Norwich Pharmacal jurisdiction and in my opinion should not be countenanced. In any event, the English court seized with the conduct of the English proceedings is the appropriate court to order discovery against a party. Whether or not this fact, that

Premium is a party to the English proceedings, was brought to the attention of the trial judge is unclear. What is clear is that the trial judge did not refer to this fact as influencing the exercise of her discretion. I would therefore allow the appeal against the whole of the Order of the trial judge in so far as it pertains to Premium.

- [23] In so far as Lawrence is concerned, and indeed each of Premium, Kosta and Amon, the 4th Affidavit contains only the statement that significant sums (approximating \$30 million) have been paid by way of dividend to those companies by Milmont Finance Limited, a defendant in the English proceedings. At this point it is apposite to quote from the judgment of Lord Bingham of Cornhill and Lord Hoffman in **The President of the State of Equatorial Guinea and another v The Royal Bank of Scotland International (a company incorporated in Jersey) and others**¹² at paragraph 16:

"The second ground [of appeal] rested on the Lieutenant Bailiff's ruling, when summarising the principles governing the grant of *Norwich Pharmacal* relief, that

'The power to order discovery is discretionary. The Court should not so order unless it is satisfied that it is just and convenient to do so (on the basis of, or by analogy with, [the grant of an injunction].'

The Court of Appeal held this to be misdirection (para 63 of its judgment):

'No *Norwich Pharmacal* type order should be made by the Royal Court unless the plaintiff establishes that it is essential and necessary [to assist the plaintiff in achieving justice] for the order to be made.'

It is true that in some of the cases the word "necessary" has been used, echoing or employing the language of Order 24, rule 13 of the Rules of the Supreme Court. But, as Templeman LJ observed in *British Steel Corporation v Granada Television Limited* [1981] AC 1096, 1132, "The remedy of discovery is intended in the final analysis to enable justice to be done". Norwich Pharmacal relief exists to assist those who have been wronged but do not know by whom. If they have straightforward and available means of finding out, it will not be reasonable to achieve that end by overriding a duty of confidentiality such as that owed by banker to customer. If, on the other hand, they have no straightforward or available, or any, means of finding out, *Norwich Pharmacal* relief is in principle available if the other conditions of obtaining relief are met. Whether it is said that it must be just and convenient in the interests of justice to grant

¹² [2006] UKPC 7

relief, or that relief should only be granted if it is necessary in the interests of justice to grant it, makes little or no difference of substance. In the present case the appellants were concerned to identify those who had financed the abortive coup in March 2004. It is not suggested that there was any legal means of doing so open to the appellants other than that which they chose." (Emphasis added)

[24] What is clear from the totality of this case is that the respondents know quite clearly who are the alleged wrongdoers. There is more than enough allegation of fact to permit the respondents and the other claimants in the English proceedings to join Lawrence, Kosta and Amon as defendants if they so chose to do. That they have not chosen to do so is no doubt a strategic decision taken by the advisers of the claimants. What is perfectly clear is that the failure to join Lawrence, Kosta and Amon, for whatever reason, cannot be the basis of the invocation of the Norwich Pharmacal jurisdiction. The learned trial judge seemed not to have taken this into account in the exercise of her discretion. Indeed, the trial judge seemed to have been greatly influenced by what she determined to be the ratio in **Mackinnon v Donaldson, Lufkin and Jenrette Securities Corporation et al**¹³.

[25] The trial judge quoted from the affidavit of Ms. Rumbold, relied on by Mr. Husbands for the discovery respondent, to the following effect:

"As the substantive proceeding [sic] action is proceeding in the English High Court, all issues relating to disclosure should properly be made before the English High Court rather than applications being made in a jurisdiction ancillary to the main proceedings."

The trial judge continued:

"This I think is misconceived. The case of McKinnon against Donaldson and Lupkin and Genrette Securities [sic]. In that particular case it was stated that an English Court is unlikely to make an order that a non-party, foreigner outside of the jurisdiction provide any form of disclosure. So it seems even though when the matter goes before the court for a case management and an order as to disclosure has to be made, it will only be made against the parties, the defendants who are parties to the suit, and the English Court is unlikely to make an order that a non-party foreigner outside of the jurisdiction as in the case of here of Morgan and Morgan."

¹³ [1986] Ch 482

[26] The head-note in the Mackinnon case reads as follows:

"In an action brought by the plaintiff against certain company and individual defendants alleging fraud, the plaintiff obtained an order ex parte under section 7 of the Bankers' Books Evidence Act 1879 against an American bank which was not a party to the action. The order required the bank to produce books and other papers, held at its head office in New York, which related to an account of one of the defendants, a Bahamian company, which having been struck off the Bahamian register of companies since the issue of the writ, had ceased to exist. The plaintiff then issued a subpoena duces tecum against an officer of the bank at its London office.

"Bankers' Books Evidence Act 1879, s.7: "On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party..."

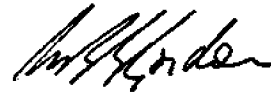
"On a motion by the bank to discharge the order and the subpoena on the grounds that they exceeded the jurisdiction of the court and infringed the sovereignty of the United States:-

"Held, discharging the order and the subpoena, that, save in exceptional circumstances, the court should not require a foreigner who was not a party to an action, and in particular a foreign bank which would owe a duty of confidence to its customers regulated by the law of the country where the customer's account was kept, to produce documents outside the jurisdiction; that the order and the subpoena, taking effect in New York, were infringements of the sovereignty of the United States; and that, in all the circumstances and particularly as legitimate alternative procedures were available to the plaintiff, such infringements were not justified."

[27] Far from reading the Mackinnon case as a reason to expand the Norwich Pharmacal rule, as apparently the trial judge did, I read that case as indicating, in consonance with the majority of cases on the subject, that the jurisdiction is a special one to be used only where no other procedure will achieve the ends of justice.

Conclusion

- [28] I am of the view that the learned trial judge misapprehended the options available to the respondents. The same allegations made against Premium in the English proceedings can be made against the other three companies, namely, Lawrence, Kosta and Amon, and thereafter the English court will have control of all matters pertaining to discovery. I would allow the appeal and discharge the 26th January Order.
- [29] The Notice of Appeal filed by the appellants asks of this court that the costs of this appeal and of the hearing in the court below be awarded to the appellant. This I consider to be fair and reasonable and I would order, in accordance with part 65.11 that costs both in this court and the court below, to be assessed if not agreed, be awarded to the appellant. The assessment of costs (if necessary) is to undertaken by a master or judge.



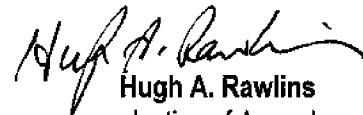
Michael Gordon, QC
Justice of Appeal

I concur.



Denys Barrow, SC
Justice of Appeal

I concur.



Hugh A. Rawlins
Justice of Appeal