

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIHCRA2020/0002

BETWEEN:

THE KING

Appellant

and

**[1] YAN EDWARDS
[2] ALLEN BAPTISTE**

Respondents

Before:

The Hon. Mde. Gertel Thom
The Hon. Mde. Margaret Price-Findlay
The Hon. Mr. Trevor Ward

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Kellee-Gai Smith for the Appellant
Mr. Sherfield Bowen for the 1st Respondent
Mr. Israel Bruce for the 2nd Respondent

2022: October 4;
2023: March 10.

Criminal appeal – Disclosure – Duty to disclose – Justice Protection Program – Section 23 of Justice Protection Act No. 18 of 2011 - Whether disclosure of the information ordered by the learned judge was permissible at common law or pursuant to the Justice Protection Act

During the trial of Yan Edwards and Allen Baptiste, they made an application for disclosure of any immunity, pardon or arrangement made by the Office of the Director of Public

Prosecutions and or the police force with the witnesses Henito Penn and Vaughn Cameron. Henito Penn and Vaughn Cameron are participants in the Justice Protection Program established pursuant to the Justice Protection Act (or "the Act"). They contend that the prosecution had a common law duty to disclose such information to them to ensure the fairness of the trial process. The Crown objected to the disclosure application on the grounds that disclosure of the information sought was impermissible both at common law and under the Constitution of the Territory of the Virgin Islands ("BVI") and the Justice Protection Act.

The learned judge found that the prosecution had a duty to disclose and ordered that disclosure be made to the court for the court to determine what information should be disclosed in full or in a redacted or anonymised form. In addition to making his ruling that the Crown had a duty to disclose, stayed the proceedings until further notice pursuant to section 23 (4) of the Justice Protection Act, at the request of the Crown. The prosecution being dissatisfied with the ruling of the learned judge appealed the ruling. In their notice of appeal, they outlined three grounds of appeal. The issue raised in the grounds is whether disclosure of the information ordered by the learned judge was permissible at common law or pursuant to the Justice Protection Act.

Held: dismissing the appeal; discharging the order for the stay of execution; and ordering that the trial commence *de novo* before another judge, that:

1. At common law, the prosecution has a duty to disclose to the defense all relevant material. This duty at common law is also outlined in section 23(2) of the Justice Protection Act. However, where the material held by the prosecution, tending to undermine the prosecution or assist the defense, or creates a risk of prejudice to important public interest, and/or negatively impacts the fairness of the trial, a judge may grant a non-disclosure order to prevent the information from being disclosed fully or even at all. The judge is required to balance the need to preserve the public interest in non-disclosure against the interest of justice and fairness. Where there is a potential for miscarriage of justice if there was non-disclosure, then an order for disclosure should be made. Additionally, where disclosure is necessary to establish the innocence of the accused then it would be allowed.

R v Ward [1993] 2 ALL ER 577 applied; **R v Davis** [1993] 1 WLR 613 applied; **R v H and others** [2004] UKHL 3 applied.

2. In this case, the public interest immunity identified was very general. It was based on the fact that the witnesses were part of the Justice Protection Program, and it was therefore not in the interest of the public that the information sought be disclosed. The Crown in its submissions failed to identify any evidence and indeed none could be detected, how disclosure of the information sought would affect the safety of the witnesses, or in any way compromise any aspect of the Justice Protection Program. Further, the court by its order, had not yet determined whether to make an order for full disclosure or disclosure in a redacted or anonymised form to the respondents.

There is therefore no merit in the Crown's submission that the learned judge erred in the application of the common law principles applicable to public interest immunity.

3. The Justice Protection Act makes provision for, among other things, the establishment of a program which provides protection and assistance to certain witnesses and persons related to them in criminal and civil proceedings. The program is administered by the Justice Protection Agency and the Administrative Centre which are established under the Justice Protection Act. For a person to be admitted as a participant of the Protection Program, he/she is required to provide the personal information in accordance with section 7 of the Act and to sign a memorandum of understanding in the terms set out in schedule 3(3) of the Justice Protection Act. Under the Justice Protection Act, the Administrative Centre is also given very wide discretion to include in the memorandum of understanding matters that it considers necessary in addition to the matters outlined in schedule 3. However, the Act does not expressly require disclosure to the Administrative Centre of any amnesty or pardon or any arrangement between the Director of Public Prosecutions' Office, the Attorney General or Police and the participant. Further, the record of the proceedings below does not show that there was any evidence before the learned judge that the documents sought to be disclosed were included in the memorandum of understanding signed by the witnesses, nor did counsel for the Crown at the hearing or in her written submissions refer the court to any evidence which so indicates.

Sections 7 (2), 8 (c), 11 (1)-(4), 23 (1)-(4) and Schedule 3 (3) of the **Justice Protection Act** No. 18 of 2011, Laws of the Territory of the Virgin Islands applied.

4. Section 23 (1) prohibits orders for disclosure to officers of the Administrative Centre and its agencies to produce or disclose information received pursuant to the Act. This includes all information disclosed in and or related to the memorandum of understanding. Section 23 (1) of the Act does not offer protection against disclosure of matters which could be included in the memorandum of understanding but are not so included. Rather, the Act provides protection for disclosure of matters that are disclosed in the memorandum of understanding. In this case, no evidence was adduced that any arrangement relating to amnesty or pardon between the witnesses and the DPP and or the Attorney General was at any time disclosed to the Administrative Centre or any of its agencies. The Crown did not lead evidence showing that the documents requested were disclosed or produced to the Centre or its agencies for the purposes of the Act.

Sections 23(1) and (2) the **Justice Protection Act** No. 18 of 2011, Laws of the Territory of the Virgin Islands applied.

5. Section 23(2)(b) provides an exception when disclosure could be made of otherwise prohibited information. The subsection provides two conditions which must be satisfied. Unless both are satisfied the court cannot order disclosure of information to which 23(1) applies. While the learned judge made a specific finding that disclosure was necessary in the interest of justice, the learned judge did not make any finding on the second limb of the subsection on whether disclosure was likely to adversely affect the intent and purposes of the Act. However, w the learned judge considered the provisions of the Act, he specifically stated that his order for disclosure was not made pursuant to the Act but rather the common law. The order was not prohibited at common law or pursuant to section 23 of the Act. There is therefore no basis on which this Court could find that the learned judge erred in making the disclosure information order.

Sections 23(1) and (2)(b) the **Justice Protection Act** No. 18 of 2011, Laws of the Territory of the Virgin Islands applied.

JUDGMENT

- [1] **THOM JA:** During the trial of the respondents Yan Edwards and Allen Baptiste for the offence of murder, their attorneys-at-law made an application to the trial judge for disclosure by the Crown of all correspondence and communication in relation to any arrangement made by the Office of the Director of Public Prosecutions and or the police force with the witnesses Henito Penn (“Penn”) and Vaughn Cameron (“Cameron”) in order for them to testify on behalf of the Crown. Both Penn and Cameron are participants in the Justice Protection Program established pursuant to the **Justice Protection Act** (or “the Act”).¹

- [2] Alternatively, they sought an order for the disclosure to be made to the court and that the court determine whether the documents should be disclosed. The respondents contended that the prosecution had a duty of disclosure at common law to ensure the fairness of the trial process.

- [3] The Crown objected to the disclosure application on the grounds that disclosure of the information sought was impermissible both at common law and under the

¹ Act No. 18 of 2011, Laws of the Territory of the Virgin Islands.

Constitution of the Territory of the Virgin Islands (“BVI”) and the **Justice Protection Act**.

- [4] Mr. O’Neil Simpson who appeared for the Crown in the court below, claimed public interest immunity and submitted that in those circumstances disclosure was not permissible at common law. He also relied on sections 38, which provides for the functions of the Deputy Governor, and section 59, which provides for the functions of the Director of Public Prosecutions, of the Virgin Islands Constitution Order, 2007 and section 23 of the **Justice Protection Act**, which specifically prohibits disclosure of certain information save in specified circumstances outlined in the Act. These provisions will be discussed later in more detail.

- [5] The learned judge having heard the submissions ruled in the following terms:

“I hold the view that the Crown is under a duty to disclose any immunity, pardon and or arrangement with Henito Penn and or Vaughn Cameron in the exchange for their testimony in this trial. I further say that such information or such documents ought to be made available to the court for perusal and the court will determine to what extent if any such information ought to be redacted and I rule accordingly.”

The judge also noted that he did not make an order pursuant to section 23(2) of the **Justice Protection Act**. At the request of the Crown the learned judge stayed the proceedings until further notice pursuant to section 23(4) of the **Justice Protection Act**.

Justice Protection Act

- [6] The prosecution being dissatisfied with the ruling of the learned judge appealed. In their notice of appeal, they outlined three grounds of appeal being:

- (1) The learned judge erred in ordering disclosure of information covered by public interest immunity protection under the provisions of the **Justice Protection Act**.

(2) The learned trial judge erred in ruling that the decision was not made subject to the provision of the **Justice Protection Act**, given that the information sought existed exclusively due to the operation of the said Act.

(3) The Crown as an aggrieved party to this order has the right to appeal pursuant to section 23(3) of the **Justice Protection Act**.

[7] I pause to state that ground 3 is not a ground of appeal against the judge's order. Section 23(3) of the **Justice Protection Act** merely provides for a right of appeal by specified persons against an order made pursuant to section 23(2). The issue raised in the grounds is whether disclosure of the information ordered by the learned judge was permissible at common law or pursuant to the **Justice Protection Act**.

[8] Ms. Kellee- Gai Smith ("Ms. Smith") for the Crown acknowledged that at common law the prosecution has a duty to disclose to the defense all relevant material and that the general principles at common law are outlined in **R v Ward**.² Ms. Smith contends however that this duty is not absolute and exceptions include instances of public interest immunity in which situation, there can be a departure from the general principles. Learned counsel relied on the case of **R v H and others**.³ Ms. Smith also contended that as the witnesses were participants of the Justice Protection Program, it was not in the public interest that the information be disclosed.

[9] Counsel for the respondents, Mr. Sherfield Bowen ("Mr. Bowen") and Mr. Israel Bruce ("Mr. Bruce") made substantially the same submissions in response. They contended that the issue of disclosure is governed by the common law and the learned judge correctly applied the common law principles. The learned judge in ordering disclosure to be made to the court and that the court would determine

² [1993] 2 ALL ER 577.

³ [2004] UKHL 3.

whether and to what extent the documents should be redacted, was simply adopting the approach outlined in **R v Ward**.

Discussion

- [10] It is well settled, as all counsel acknowledged, that the prosecution has the duty at common law to disclose all relevant material to the defense. This is illustrated **R v Ward**, **R v Davis**⁴ and subsequently in **R v H and others**. While the United Kingdom has enacted the Criminal Procedure Investigation Act 1996, section 23(2) specifically retains the common law principles of non-disclosure based on public interest immunity.
- [11] The above authorities show that the courts have also recognised that circumstances may arise in a case where the material held by the prosecution and tending to undermine the prosecution or assist the defense, cannot be disclosed to the defense fully or even at all without the risk of prejudice to important public interest. In such circumstances a court may hold that the information should not be disclosed. However, the courts have also emphasised that a non-disclosure order should not be made if it would negatively impact the fairness of the trial. Fairness is the underpinning theme of disclosure. Every accused person has a right to a fair trial.
- [12] Public interest immunity provides an exception to the general duty of disclosure at common law. In **R v Davis** the court provided guidance on the approach which should be adopted where public interest immunity is claimed by the Crown as follows:
- (a) If the prosecution wishes to rely on public interest immunity to justify non-disclosure, then in most cases, they must notify the defense that they are applying for a ruling by the court and indicate to the defense at least the category of the material which they hold. The defense must then have the opportunity of making representation to the court.

⁴ [1993] 1 WLR 613.

- (b) Where however, the public interest would be injured if disclosure was made of the category of material, the prosecution should still notify the defense of the application but need not specify the category of material. The defense would be able to address the court on the procedure to be adopted but the application itself would be ex parte. If the court on that application found that there should be an inter-partes application, it would so order. If not, it would rule on the ex parte application.
- (c) In a highly exceptional case where even to reveal that an ex-parte application was to be made would injure the public interest, the prosecution would apply to the court ex parte without notice. Again, if the court on hearing the application considered that notice should have been given to the defense, or even that the normal inter-partes hearing should have been adopted it was so ordered.

[13] In **R v H and others**, the House of Lords outlined the various considerations which a court should take account of when deciding whether material should not be disclosed in the public interest as follows:

- (1) The court must first identify whether the material which the prosecution seeks to withhold is material that may weaken the prosecution's case or strengthen that of the defense. If the material cannot be so described- because for instance it is neutral or damaging to the accused then it should not be disclosed. If it can be so described, the golden rule is that disclosure should be made unless public interest immunity considerations prevented.
- (2) Next, in determining whether public interest immunity applies, the court is to apply the test of whether there is a real risk of serious prejudice to an important and identified public interest. If the material

does not satisfy that test, it does not attract public interest immunity and must be disclosed.

- (3) If the material does attract public interest immunity, the court must then consider whether the accused's interest can be protected without disclosure or whether disclosure can be ordered to an extent or in a way which will give adequate protection to the public interest in question and also afford adequate protection to the interest of the defense.
- (4) In considering whether limited disclosure is possible, the court must give consideration to ordering the prosecution to make admissions, prepare summaries or extracts of evidence, or provide documents in an edited or anonymised form.
- (5) If the court is minded to order limited disclosure of this kind it must first ask whether it represents the minimum derogation necessary to protect the public interest in question. If not, then it must order more disclosure. If, however the effect of limited disclosure be to render the whole trial process unfair to the accused, fuller disclosure should be ordered even if this leads the prosecution discontinued the proceedings.⁵
- (6) The issue of disclosure of the material should be reviewed as the trial unfolds, evidence is adduced and the defense advanced.

[14] The judge is required to balance the need to preserve the public interest in non-disclosure against the interest of justice and fairness. Where the interest of justice outweighs the considerations of public interest as identified by the Crown, an order for disclosure should be made. In other words, if there is a potential for miscarriage of justice if there was non-disclosure, then an order for disclosure

⁵ Anthony Hopper et al, *'Blackstone's Criminal Practice 2012'* Oxford University Press, 2012.

should be made. Also, where disclosure is necessary to establish the innocence of the accused then it would be allowed. The prosecution will have to decide whether to disclose or abandon the case. The public interest immunity identified in this case was very general. It was based on the fact that the witnesses were part of the Justice Protection Program, and it was therefore not in the interest of the public that the information sought be disclosed.

[15] Applying the guidance in **R v H and others**, it cannot be disputed that information which shows whether the witnesses were granted amnesty or pardon would be material as it may strengthen the defense as it goes towards the issue of the witnesses being witnesses with an interest to serve which would be a factor in assessing their credibility. Also undoubtedly, the public interest in the safety of a witness would be of great weight in the balancing exercise.

[16] The Crown has not shown by way of evidence or in its submissions how disclosure of the information sought would affect the safety of the witnesses, or in any way compromise any aspect of the Justice Protection Program. It must be noted that the court by its order, has not yet determined whether to make an order for full disclosure or disclosure in a redacted or anonymised form to the respondents. The court has not yet completed the balancing exercise it is required to undertake as outlined in the authorities above. Disclosure to the court would enable the court to determine whether there was any information which could negatively impact the public interest and if there was such information whether it could be omitted without a resulting miscarriage of justice. In my view there is no merit in the Crown's submission that the learned judge erred in the application of the common law principles applicable to public interest immunity.

Section 23

[17] Ms. Smith submitted alternatively that even if disclosure of the information was permissible at common law, the Virgin Islands has specific legislation being the **Justice Protection Act** which governs disclosure of information in relation to

persons including witnesses who are participants in the Justice Protection Program. The learned judge was therefore required to apply the **Justice Protection Act** in determining whether to make any order for disclosure. In applying the principles of common law and not the provisions of the **Justice Protection Act**, the learned judge fell into error. Ms. Smith further submitted that section 23 (1) prohibits the disclosure to a court of any information obtained in relation to the discharge of a function or duty under the Act. This included all documents and information contained in the memorandum of understanding pursuant to section 8 and schedule 3. Penn and Cameron being participants in the Justice Protection Program, the information sought only came into existence as a consequence of their participation in the program thus any order for disclosure had to be made in accordance with section 23 of the Act. This section provides for disclosure in certain specified circumstances and an order for disclosure could only be made pursuant to section 23 (2) (b) if it is necessary in the interest of justice to do so and disclosure is not likely to adversely affect the intent and purposes of the Act.

[18] Ms. Smith submitted further that while the learned judge made reference to section 23, he failed to correctly apply the provisions of section 23 (2). The provision requires the judge to conduct a balancing exercise of the competing interests of the respondents and the public interest. If the learned judge had conducted such an exercise, he would not have made the order for disclosure.

[19] Learned counsel for the respondents submitted that although the learned judge made the disclosure order pursuant to the common law, they stressed that the learned judge was alive to the provisions of the act and particularly the provisions of section 23. They contend that the learned judge considered the provisions of 23 (2) (b) and found that it was just and reasonable to make the disclosure order, therefore the disclosure order could have been made under the common law or under the Act.

- [20] Learned counsel further submitted that whether or not a witness is granted immunity or pardon is not a matter that is governed by the Act. Also, the information ordered to be disclosed does not fall within the parameters of the Act, in particular sections 8 and 11 and scheduled 3 which deal with the Memorandum of Understanding ("MOU"). Rather the information ordered to be disclosed concerns issues of animosity and pardon.

Discussion

- [21] The **Justice Protection Act** makes provision for, among other things, the establishment of a program which provides protection and assistance to certain witnesses and persons related to them in criminal and civil proceedings. The program is administered by the Justice Protection Agency and the Administrative Centre which are established under the Act. The Director and other persons necessary for the functioning of the Act are appointed by the Governor.
- [22] In relation to criminal matters, in circumstances where the Director of Public Prosecutions ("DPP") is satisfied that the witness or prospective witness should enter the program, the DPP is required to make an application to the Centre for the person to be admitted into the program.
- [23] The specific provisions which are relevant to the issues at hand are sections 7 (2), 8 (c), 11 (1)-(4), 23 (1)-(4) and schedule 3 (3).
- “(7)(2): A prospective participant shall disclose to the Centre
- (a) details of all of his or her outstanding legal obligations;
 - (b) details of all of his or her outstanding debts;
 - (c) details of his or her criminal history;
 - (d) details of any civil proceedings that have been instituted against him or her;
 - ...
 - (k) details of any court order relating to sentences imposed on him or her or to which he or she is subject in relation to criminal prosecutions;
 - (l) details of any relevant court order or arrangements relating to his or her custody of or access to children; and
 - (m) details of any arrangements that he or she has made for
 - (i) the service of documents on him or her;

- (ii) representation in proceedings in any court;
- (iii) enforcement of judgments in his or her favor; or
- (iv) compliance with the enforcement of judgments against him or her.

(8) The center shall not include a prospective participant in the program unless

(c) he or she understands and signs a memorandum of understanding in accordance with this Act or if he or she is under 18 years of age or otherwise lacks legal capacity to sign the memo.

- (i) It is signed by a parent or guardian; or
- (ii) If there is no parent or guardian, it is signed by a person appointed by the court to be his or her guardian.
- (iii) Section 11 (1) the center shall, in accordance to legal advice given by the Attorney General prepare an MOU which shall subject to subsection (2) contained the matters set out in schedule 3.

(3) The center may, where it considers necessary in a particular case include any other matter in the memorandum of understanding.

(4) The memorandum of understanding shall be signed; (a) by the prospective participant; or (b) where the circumstances so require, by the person referred to in section 8 (c), in the presence of two witnesses one of whom may be the participants' legal practitioner.

(5) A prospective participant is included in the program when the memorandum of understanding is countersigned by the person authorized by the attorney general.

(5) The Centre may after consultation with the Attorney General vary the MOU.

Section 23 (1)-(4) of the Act states:

(1) Subject to subsection (2), an officer of the center, the Investigation Agency or the Protective Agency shall not be required to:

(a) Produce in any court or to another approved authority any document that has come into the custody or control of the center. The Investigative Agency or the Protective Agency in the course of or because of, the performance of a function or discharge of a duty under this act; or

(c) Disclose, communicate or produce to or before any court or to another approved authority, any matter or thing that has come to the notice of

the officer in the performance of a function or discharge of a duty under this act.

(2) Subsection 2 (1) shall not apply where:

(a) it is necessary to do so for the purpose of carrying the provisions of this act into effect; or

(b) disclose, communication or produce to or before any court or to another approved authority any matter or thing that has come to the notice of the officer in the performance of a function or discharge of a duty under this act.

(3) Where a court makes an order under subsection (1) for production, communication or disclosure, the Attorney General or a person aggrieved by the order may:

(a) upon the making of the order give oral notice; or (b) within seven days of the making of the order give written notice, of his or her intention to appeal against the order.

(4) Where notice is given, under subsection (3), the court shall stay the execution of the order pending the outcome of the appeal.”

[24] When the above provisions are read conjointly, in order for a person to be admitted as a participant of the Protection Program, he/she is required to provide the personal information outlined in section 7. The person is also required to sign a MOU in the terms set out in schedule 3. Section 11 (2) gives the Centre a very wide discretion to include in the MOU matters that it considers necessary in addition to the matters outlined in schedule 3.

[25] In my view, this provision is very broad and therefore matters such as any amnesty or pardon could be included in the MOU if disclosed to the Centre. The provisions do not expressly require disclosure to the Centre of any amnesty or pardon or any arrangement between the DPP's Office, the Attorney General or Police and the participant. Further, the record of the proceedings below does not show that there was any evidence before the learned judge that the documents sought to be disclosed were included in the MOU signed by the witnesses, nor did counsel for the Crown at the hearing or in her written submissions refer the court to any evidence which so indicates.

- [26] Section 23 (1) of the Act does not offer protection against disclosure of matters which could be included in the MOU but are not so included. Rather, the Act provides protection for disclosure of matters that are disclosed in the MOU.
- [27] It must be noted, that section 23 (1) prohibits orders for disclosure to officers of the Centre and its agencies to produce or disclose information received pursuant to the Act. This would no doubt include all information disclosed in and or related to the MOU. However, section 23 (2) provides two exceptions where the prohibition against disclosure would not apply. Firstly, where it is necessary to give effect to the provisions of the Act such as section 12 which provides for agreements with other States and Territories for THE cooperation, treatment and security of a participant of the Virgin Islands Program. Secondly, where the court considers it is necessary to do so in the interest of justice and the interest and purpose of the Act is unlikely to be adversely affected by an order for disclosure.
- [28] These provisions are critical to ensure that the safety of witnesses or defendants are not compromised. While I agree with counsel for the Crown that section 23 (1) provides protection from disclosure of matters related to the MOU, the section does not provide protection to matters which could have been in the MOU but are not and were not disclosed to officers of the Centre or its agencies.
- [29] No evidence was adduced that any arrangement relating to amnesty or pardon between the witnesses and the DPP and or the Attorney General was at any time disclosed to the Centre or any of its Agencies. The prohibition is limited to the information disclosed and or produced to the Centre and or its agencies. It does not relate to information relating to a witness who is a participant of the program and such information is in the possession of the DPP, Attorney General or the Police. It was incumbent on the Crown to lead evidence showing that the documents requested were disclosed or produced to the Centre or its agencies for the purposes of the Act. This they failed to do.

[30] Learned counsel for the Crown agreed that section 23 (2) does provide circumstances where disclosure may be made but contends that the second requirement of subsection 2 was not met. I agree with learned counsel. While the learned judge made a specific finding that disclosure was necessary in the interest of justice, the learned judge did not make any finding on the second limb of the subsection on whether disclosure was likely to adversely affect the intent and purposes of the Act. Indeed, there is nothing in the record which suggests that the learned judge gave any consideration to the second limb. As stated earlier, section 23(2)(b) provides an exception when disclosure could be made of otherwise prohibited information. The subsection provides two conditions which must be satisfied. The requirements are cumulative. Unless both are satisfied the court cannot order disclosure of information to which 23(1) applies. However, while the learned judge considered the provisions of the Act, he specifically stated that his order for disclosure was not made pursuant to the Act but rather the common law. Indeed, the respondents did not rely on section 23(2). Their primary submission was that the Act was not applicable.

[31] In my view there is no basis on which this Court could find that the learned judge erred in making the disclosure order. The order was not prohibited at common law or pursuant to section 23 of the Act.

[32] For the reasons set out above, the appeal is accordingly dismissed and the order for the stay of execution is discharged. The court takes judicial notice of the fact that the learned judge who granted the stay is unable to continue the trial. The court therefore orders that, the trial commence *de novo* before another judge.

I concur.
Margaret Price-Findlay
Justice of Appeal

I concur.
Trevor Ward
Justice of Appeal

By the Court

Deputy Chief Registrar