IN THE COURT OF APPEAL OF BELIZE AD 2013

CIVIL APPEAL NO 20 OF 2011

(1) LOIS YOUNG BARROW
(2) NESTOR VASQUEZ
(3) SOCIAL SECURITY BOARD — Appellants

v

GLENN TILLETT — Respondent

BEFORE
The Hon Mr Justice Manuel Sosa — President
The Hon Mr Justice Dennis Mendes — Justice of Appeal
The Hon Madam Justice Minnet Hafiz Bertram — Justice of Appeal

Dr L Barnett, and N Ebanks for the first and second above-named appellants.
A Segura Gillett for the third above-named appellant.
E A Marshalleck SC for the respondent.

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25 March and 28 June 2013.

SOSA P

[1] I concur in the reasons for judgment given, and the orders proposed, in the judgment of Mendes JA, which I have read in draft.

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SOSA P

MENDES JA

The Issue

[2] In ***Froylan Gilharry v Transport Board et al*** (Civil Appeal No. 32 of 2011, 20 July 2012), this Court (Sosa P, Morrison and Mendes JJA) held that section 3(1) of the Public Authorities Protection Act ("the PAP Act") does not apply to applications for judicial review brought pursuant to Part 56.1(1)(a) of the Supreme Court (Civil Procedure) Rules 2005 ("the CPR"). The question on this appeal is whether section 3(1) applies to applications for declaratory relief made pursuant to Part 56.1(1)(c) of the CPR in respect of alleged breaches of public law rights.

The Claim

[3] By his fixed date claim form, expressly stated to be issued pursuant to Part 56.1(1)(c), the respondent seeks declarations that the decision by the Investment Committee of the Social Security Board, made in or around 20 September 2010, to recommend an investment of $50 million in Belize Telemedia Limited through the purchase of shares from the Government of Belize, and the decision of the Social Security Board made on 2 November 2010 to purchase shares in Belize Telemedia from the Government of Belize, are unlawful and void. The respondent also seeks an order prohibiting the first and second appellants from taking part in any future decisions of the Social Security Board whether or not to invest in Belize Telemedia. The order sought against the first appellant was to last for so long as she remained a Government representative on the Social Security Board, while at the same time holding the post of Company Secretary of Belize Telemedia. The order against the second appellant was to last whilst he was a Government representative on the Social Security Board, and at the same time held the post of Executive Chairman of Belize Telemedia.

[4] The primary ground upon which the application, as amended, is based is the apparent bias of the first and second appellants arising from their dual roles just mentioned. It is alleged that a fair minded and well-informed observer would conclude that there was a real possibility that the decisions impugned were not impartially made

and did not have the appearance of independence. It is alleged further that the first and second appellants had an indirect pecuniary interest in the investment, and by failing to declare their respective interests and by participating in the said decisions, they acted in breach of section 12 of the second schedule of the Social Security Act 2003, section 49(11) of that Act and section 50 of the Interpretation Act.

The Trial Judge's Ruling

[5] When the Claim came on for trial, the appellants applied to the first instance judge, Awich J (as he then was), for an order striking out the claim on the ground that the respondent had not complied with section 3(1) of the PAP Act. Section 3(1) provides as follows:

> "No writ shall be sued out against, nor a copy of any process be served upon any public authority for anything done in the exercise of his office, until one month after notice in writing has been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process, or by his attorney or agent, in which notice shall be clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent."

[6] It is not in dispute, and it does not appear to have been in dispute in the court below, that where section 3(1) does apply to the originating process "sued out", the failure to deliver a notice as described in section 3 is fatal to the claim and the presiding judge would have no choice but to enter judgment for the defendant, with costs – ***Castillo v Corozal Town Board*** (1983) 37 WIR 86. What the respondent is recorded by the trial judge as having argued is that the notice is not required when a claim is brought by a fixed date claim form. It is required only where a claim is brought by a general claim form, which has replaced the 'writ' referred to in section 3. He argued further that the notice was not required on the facts of this case because the appellants had been fully aware of the claim which was intended to be brought against them.

[7] Awich J was not persuaded. In his judgment, section 3 prohibited service of a writ of summons or any process of court, if notice of the claim had not been given. He continued (at para 23):

> "A process of court is by definition, a document issued by court to require the attendance of parties, or the performance of some initial step in the proceedings by a defendant. So a process used to initiate proceedings is referred to as an originating process. A fixed date claim is a process of court under s. 3 of Cap. 31; it has not been expressly excluded."

[8] The trial judge accepted that, in respect of some claims, notice to a public authority is not required. In this category would be included a claim for breach of the fundamental rights guaranteed by the constitution, which are not subject to conditions, and in any case, "such conditions would have to be provided for in the Constitution itself." In his view, the deciding factor as to whether section 3 applied or not was "whether the wrongful act or omission alleged in the intended claim has been done or carried out "in the exercise of [the] office" of the public authority... [T]he wrongful act or omission must arise or be connected to the exercise of office, that is, to the functions or duties of the office of the public authority." ***Castillo v Corozal Town Board*** was such a case, he thought. There, an accident was caused by the Town Board's driver while driving in the course of his employment and in furtherance of the duties of the Board. In Awich J's view, "It was not because the claim was in tort that notice of the claim was required to the public authority. It was because the wrongful act occurred in the course of carrying out duties." As such, since the decisions of the appellants which were under challenge were made in the exercise of the functions of their office under the Social Security Act, section 3 applied. The only question therefore was whether the required notice had been given.

[9] In this regard, Awich J noted that section 3 does not provide any format to be adopted for the notice, although it must contain a reference to the cause of action, the name and place of abode of the person who is bringing the action and the name and place of abode of his attorney or agent. In his view, a letter dated 3 November 2010,

which was sent by the respondent to the first appellant, met these requirements, but he did not condescend to any reasons for this conclusion.

The Appeal

[10] The appellants appealed on the ground that the trial judge erred in law and misdirected himself in holding that the respondent had delivered a notice which fulfilled the requirements of section 3(1). The respondent, on the other hand, cross-appealed alleging that Awich J was wrong in law in finding that section 3(1) applied to his application. Before us, it was not disputed that the notice which the trial judge found to have complied with the requirements of section 3(1) was in fact not the notice required to be delivered since, inter alia, it did not state any intention to institute legal proceedings, was not addressed to the first appellant at her usual place of abode, was not addressed to the second and third appellants at all, did not contain a clear statement of all the causes of action relied on, and did not give a full month's notice. I fully agree. As such, the sole question on the appeal, as noted, is whether Awich J was right in finding that section 3(1) applied at all.

[11] Both Dr. Barnett, who appeared for the appellants, and Mr. Marshalleck, who appeared for the respondent, accept that the answer to this question depends on a proper construction of section 3(1). For his part, Mr. Marshalleck noted, firstly, that the CPR has done away with the old style writ of summons and replaced it with claim forms. This has brought about a fundamental change since, whereas a writ is an order of the court under seal commanding the defendant to answer the claim, a claim form merely gives notice of the claim and informs the defendant that if the claim is not answered the court might proceed to judgment. Accordingly, he submitted, the first part of section 3(1) prohibiting the "suing out" of a writ against a public authority until one month after the delivery of the notice, is no longer applicable to modern-day civil proceedings. On the other hand, the prohibition against service of process on a public authority until after one month of giving the notice continues to apply despite this fundamental shift in procedure, but the failure to deliver a notice merely creates an irregularity which is not necessarily fatal to the proceedings, since an irregularity may be cured or waived, and

in fact the appellants either waived the irregularity or are estopped from relying on section 3(1) to defeat the claim.

[12] Alternatively, Mr. Marshalleck submitted that if the prohibition against 'suing out' a writ applied to proceedings commenced by claim form, section 3(1) was to be confined to those proceedings which could formerly be commenced by writ of summons. So interpreted, section 3(1) does not apply to public law proceedings which, at the time the PAP Act was passed, were commenced by originating motion or summons. This was consistent with the court's decision in ***Gilharry***, he submitted.

[13] As a further alternative, he submitted that on the authority of ***Gilharry***, section 3 does not apply to cases involving the supervisory jurisdiction of the Supreme Court in relation to the violation of public law rights. This was such a case since this court (Sosa, Carey, Morrison JJA) had decided in ***Belize Bank Limited v Association of Concerned Belizeans*** (Civil Appeal No. 18 of 2007, 13 March 2008) that the vindication of public law rights could be pursued under Part 56 of the CPR either on an application for judicial review for the usual prerogative orders or, alternatively, on an application for declaratory relief only.

[14] Dr. Barnett submitted that section 3 ought to be interpreted as applying to the types of matters which could be commenced by writ or the other processes available when the PAP Act was passed. He pointed out that the addition of the phrase "any process" in section 3(1) was apt to capture types of originating processes other than writs, of which notices of motion and originating summonses were the primary examples. Alternatively, the word 'writ' should be interpreted in a generic sense as referring to any initiating process. Construed in context, therefore, section 3 is concerned with any legal action taken to challenge the acts of a public authority. At the time the PAP Act was enacted, he submitted, a claim for declaratory or injunctive relief could be pursued by writ of summons, or by originating summons in special circumstances. An application for prerogative orders, on the other hand, which under the CPR are now to be pursued on an application for judicial review, was not initiated

either by writ or originating summons and was accordingly not caught by section 3(1). Moreover, by their very nature, it is clear that the prerogative writs are not covered by the PAP Act since, in an application for a prerogative order, the complaint is that the public authority has failed to comply with the Queen's command and, as such, the complainant is not cast in the traditional role of plaintiff but rather is the instrument through which the rule of law is vindicated on behalf of the Crown.

[15] He submitted further that although the CPR has done away with the old style writs, motions and originating summonses, section 3 must be interpreted as always speaking, which means that it must be interpreted in a manner which gives effect to the intention of the legislature in the context of the conditions which obtain today - ***McCartan Turkington Breer (A Firm) v Times Newspaper Limited*** [2001] 2 AC 277, 292 A-B. Accordingly, the fact that the CPR provides only for claim forms and fixed date claim forms does not mean that section 3(1) ceases to have any effect. Rather, section 3(1) would apply to such claim forms and fixed date claim forms by which causes of action originally covered by section 3(1) are now pursued. Claims for declarations and injunctions were once pursued by originating summons which now finds its equivalent in the fixed date claim form. Accordingly, the fixed claim form commenced in these proceedings pursuant to Part 56.1(1)(c) for declarations and an injunction is caught by section 3(1).

[16] Dr Barnett relied on the decision of Conteh CJ in ***Eurocaribe Shipping Services Limited v Attorney General et al*** (Claim No. 289 of 2009, 15 May 2009), not necessarily for the support it gave to the rationale he put forward for the applicability of section 3(1), but more for the fact that the result accorded with the interpretation of section 3(1) he would have us accept. In that case, the claimant brought proceedings against the defendants for declarations that they had abused their powers when they allowed the illegal erection of a concrete wall on the boundary of the claimant's property and that the decision made by them permitting the erection of the wall, was "unlawful void and a nullity." Conteh CJ held that section 3 applied to an application under Part 56.1(1)(c) for declaratory relief. He said (at para 13):

> "It does not matter, in my view, that the claimant is seeking administrative orders in the claim for declaration and an order directing the defendants to remove the concrete wall on the boardwalk … The requirements of section 3 of the Public Authorities Protection Act are mandatory to include the relief the claimant's seek."

[17] In ***Gilharry***, this court distinguished ***Eurocaribe*** on the ground that it did not deal with an application for judicial review.

Discussion

[18] I would say first of all that I agree with Dr. Barnett that section 3(1) must be interpreted as always speaking. In his dissenting judgment in ***Royal College of Nursing of the United Kingdom v Department of Health and Social Security*** [1981] AC 800, Lord Wilberforce set out what has come to be accepted as the correct approach to the interpretation of statutes in the light of changing circumstances – see ***R (Quintavalle) v Secretary of State for Health*** [2003] 2 AC 687, pp. 695H – 696A, 702H-703A, 704G, 708F; ***Fitzpatrick v Sterling Housing Association Ltd*** [2001] 1 AC 27, pp 33F, 45F, 63F-64A, 67H-68A. Lord Wilberforce said (at p. 822):

> "In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs. Leaving aside cases of omission by inadvertence, ... when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the parliamentary intention. They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made. How liberally these principles may be applied must depend upon the nature of the enactment, and the strictness or otherwise of the words in which it has been expressed. The courts should be less willing to extend expressed meanings if it is clear that the Act in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. They will be much less willing to do so where the subject matter is different in kind or dimension from that for which the legislation was

> passed. In any event there is one course which the courts cannot take, under the law of this country; they cannot fill gaps; they cannot by asking the question 'What would Parliament have done in this current case-not being one in contemplation-if the facts had been before it?' attempt themselves to supply the answer, if the answer is not be found in the terms of the Act itself."

[19] At the time the PAP Act was passed, the legislators would have had in mind the processes then in existence and would have used language which reflected the then existing state of affairs. Now that the CPR has bought about a total revamping of civil procedure, making the procedural landscape totally unrecognisable to a nineteenth century law maker, the task of the Supreme Court today is to determine whether the legislature intended the Act to apply to this new state of affairs. Viewed in this way, Mr Marshalleck's contention that the CPR has brought about such a fundamental change as to render the Act otiose, at least in part, can only gain traction if it can be discerned that the legislature's intention was to require the delivery of the notice described in section 3 only in respect of certain specific types of processes, rather than in respect of the underlying causes of action which these processes were designed to facilitate. I can find no such intention in the Act. It seems clear to me that the legislature intended the PAP Act to apply to certain causes of action arising out of the exercise by public authorities of their statutory and other duties. If therefore the cause of action being pursued, on a proper interpretation of the Act, is caught by section 3(1), it would matter not that the claim was not commenced by writ or any of the other processes in contemplation of the legislature at the time the Act was passed. The process by which a claim is to be brought before the Supreme Court changes over time. The fact that the CPR has brought about a comprehensive overhauling of civil procedure cannot therefore render the PAP Act automatically obsolete.

[20] By the same token, if on a proper construction of the PAP Act, a particular cause of action was not intended to be covered, the fact that that cause of action must or may now be pursued by a process which can be seen to have its equivalent in a process in existence at the time the Act was passed, could not make the Act applicable where previously it was not. Thus, for example, if the rules were amended to provide that the

prerogative remedies (which the appellants accept are not caught by the Act) must be pursued by the writ of summons with which the nineteenth century legislators would have been familiar, that change in the rules could not be held to cause what would in effect be an amendment to the Act - cf ***Matthew v State of Trinidad and Tobago*** [2005] 1 AC 433, para 26.

[21] Accordingly, I do not accept that the precise ambit of the PAP Act is to be determined solely by attempting to catalogue those causes of action which could be pursued by the initiating processes extant at the time the Act was passed and which could properly be captured by the words 'writ' and 'process' used in section 3. That no doubt would be a factor to be taken into account. But any such focus would ignore other indicators in the other provisions of the Act which might tend to show that it was not the legislature's intention that a particular cause of action was caught. Rather, as this court made clear in ***Gilharry*** (at para 71):

> “The question whether section 3 of the PAP Act applies to (judicial review) proceedings is at the end of the day essentially one of construction, taking into account all relevant factors, such as context, history, previous authority and the salutary caution that the right of access to the courts for the purposes of judicial review can only be abrogated by clarity of intent and of language."

[22] In my judgment, in answering the question posed on this appeal, Morrison JA's analysis of the PAP Act in relation to judicial review proceedings is both instructive and, for the most part, determinative. In concluding that section 3 did not apply to judicial review proceedings, he said:

> "[72] In my judgment, there is nothing in the language of the PAP Act to compel an affirmative answer to this question (whether section 3 applies to judicial review proceedings) and, indeed, there are several indicia to the contrary. In the first place, ***the actual language of section 3(1) and (2)*** (“No writ shall be sued against”; “the cause of action”; “no verdict shall be given for the plaintiff”) ***is plainly more appropriate to an action between disputing parties to enforce private rights than to an application to the court to review the conduct of a public body.*** The same point can be made about section 5 (“if the plaintiff becomes non-suited or

> discontinues the action, or if upon a verdict or an application to strike out the plaintiff's statement of claim on the ground that it discloses no reasonable cause of action judgment is given against the plaintiff"); and section 7 ("if the Court or jury… shall give a verdict for the defendant…"; the "defendant may by leave of the court, at any time before issue joined, pay money into court as in other actions").
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> [73] Section 6 invites special attention in this context. The various references to a "verdict" being obtained against the public authority, the "cause" being "tried" and to "damages", which was certainly not a remedy available on applications for prerogative orders in 1884 when the PAP Act was first enacted, are all additional indicia that the Act was not intended to apply to applications for such orders. Perhaps most significantly, section 6 gives the power to the court, even where it considers that the public authority acted illegally, to certify that "there was reasonable and probable cause to warrant the public authority in having acted or assumed to act in the manner [it] did", and to award a purely nominal sum in lieu of damages. It is difficult to see how, in public law, such a power, in effect, to excuse illegal conduct on the part of the public authority, can possibly be consonant with the principle which lies at the heart of judicial review, which is that "[i]f a public body acts in a way that is not permitted, or exceeds the powers that the courts recognise the body as possessing – whatever the source of the power – the courts will regard the body as acting ultra vires in the sense of going beyond its legal powers" (Lewis, para 5-003).
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> [74] So, textually, a close reading of the PAP Act does not compel the conclusion that it was intended to apply to prerogative proceedings, the precursor to judicial review in the modern law." (Emphasis added)

[23] It was not disputed that the respondent's case is founded in public law and that an application for judicial review of the decisions of the Investment Committee and the Board would have been appropriate. It would follow that had the respondent framed his case in judicial review, this court's judgment in ***Gillharry*** would have applied and an objection based on section 3 of the PAP Act would not have been available to the appellants.

[24] It is also common ground that Part 56.1(1)(c) provides an alternative process by which a public authority might be made to account for violations of public law rights.

This is the effect of the judgment of this court in ***Belize Bank Limited v Association of Concerned Belizeans***. It was argued in that case that where a claim is based solely on an alleged breach of public law rights, it must be made by way of judicial review, and it would be an abuse of the process of the court to bring such a claim under Part 56.1(1)(c), having regard to the procedural and other hurdles (such as the requirement that leave be sought, and delay) which apply exclusively to applications for judicial review. The decision of the House of Lords in ***O'Reilly v Mackman*** [1983] 2 AC 237 in relation to the English Order 53 was cited in support. Rejecting this argument, Carey JA, with whom Sosa JA (as he then was) agreed, said (at para 9):

> "In my view, any comparison of Part 56 with Order 53 of the English Rules will show a difference which necessarily I would suggest, creates disparate effects. The administrative applications are of course a much wider grouping than Order 53 which essentially is concerned with judicial review. Part 56 relates to four discrete categories of applications. Declarations other than those spelled out in 56.1(c) are dealt with in a separate and distinct rule, viz. Part 8 of the Supreme Court Rules. ***A litigant who seeks a declaration in which the other party is as set out in the Rule, has a right to do so in virtue of this rule*** and in common with any other litigant applying for an administrative order he must have standing, which means, he must show that he has a "sufficient interest" in the matter under challenge...
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> Mr. Plemming, Q.C. pinned a deal of his submissions to the mast of *O'Reilly v. Mackman [1981] A.C. 237* where it was held that where a litigant is seeking to enforce public law rights, it is an abuse of process not to proceed by way of judicial review. At p. 285 it was stated that:
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> > "as a general rule be contrary to public policy, and as such an abuse of process of the court to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of ordinary action and by this means to evade the provisions of Ord. 53 for the protection of such authorities".
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> It is plain that *O'Reilly v. Mackman (supra)* was decided with Ord. 53 in mind. Of course, it is as well to remind, that, that decision was arrived at well before the Woolf Reforms took effect in England. The winnowing or filter process which it is argued, is demonstrated by

the leave process to which judicial review applications are initially subject, is not absent from administrative applications under Belizean Rules. Such applications are the subject of a case management process which serves the like process of filtering out frivolous or unmeritorious applications. It is of course, true that there is no three months time limit for bringing such applications. But declaratory orders being discretionary, the court might refuse to grant the declaration if it served no useful purpose. I venture to think that a claim made after protracted delay, is unlikely to serve any useful purpose for any sense of grievance would have long dissipated, and in point of fact, Rule 56.5(1) accords the power to refuse relief in case of unreasonable delay." (Emphasis added)

[25] Morrison JA was equally clear that Part 56 had forged an alternative to the traditional application for judicial review. He said:

"37. Rule 56(1), in describing the scope of Part 56, states that it deals with applications (described as applications for administrative orders) for (a) judicial review (b) relief under the Constitution (c) a declaration in which a party is the Crown, a court, a tribunal or any other public body, and (d), decisions of ministers or government departments in certain circumstances. The structure of this rule certainly does not suggest that applications for declarations can only be made in the context of applications for judicial review; indeed, it suggests the opposite. All of the provisions to which the appellant points as hallmarks of modern judicial review (liberal standing, the need to obtain permission and the limiting impact of delay) relate explicitly in Part 56 to applications for judicial review and not to any of the other listed types of application for administrative orders (see Rules 56.2, 56.3 and 56.5). In other words the rules do not appear in terms to restrict applications for any of the administrative orders, save for judicial review, with regard to any of these factors. On the face of it, the language chosen by the framers of the rules appears to be plain and unambiguous.

38. To read the rules so as to sanction an application for a declaration under Rule 56.1(3) outside of the context of judicial review, Mr. Plemming SC contends, is to assume that the rule makers have chosen "to sweep away years of learning." But this, it appears to me, is precisely what our rule makers have not only set out to do, but have achieved. In virtually identical language throughout the common law Caribbean (see the Eastern Caribbean Supreme Court CPR, 2000, the Jamaican CPR 2002, and the Trinidad & Tobago CPR 1998), ***Part 56 has, in my view, without any ambiguity whatever, conferred a free standing entitlement***

> ***on litigants to move the court for a declaration, whether it be in respect of public or private law rights, in any case "in which a party is the Crown, a court, a tribunal or any other public body" (Rule 56.1(1)(c))***.
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> 39. Subject, therefore, to the question of standing..., I would conclude that the clear language of ***Part 56 of the CPR does not admit of the gloss for which the appellant contends, so as to oblige an applicant for a declaration to approach the court by way of the prescribed procedure for judicial review.***" (Emphasis added)

[26] In my judgment, for the very reasons which founded this court's decision in ***Gilharry*** that section 3(1) of the PAP Act is inapplicable to judicial review proceedings, an application under Part 56.1(1)(c), to vindicate rights to which a claimant is entitled in public law, is likewise not caught by section 3(1). As this court found in ***Belize Bank Limited v Association of Concerned Belizeans***, a person with sufficient interest in relation to a public law violation has a choice as to the procedure which may be followed to remedy any such violation. The choice which is made will no doubt depend upon whether one or more of the traditional prerogative remedies or, alternatively, declaratory relief is considered appropriate and sufficient on the facts of the particular case. But the 'cause of action' in either case would be the same. The complaint is a breach of public law rights. If it is correct that section 3(1) was never intended to apply to what are now called judicial review proceedings, it is counter-intuitive that the mere fact that a potential claimant chooses instead, as he is entitled, to pursue the same cause of action by way of an application for declaratory relief under Part 56.1(1)(c), would bring section 3(1) into play.

Postcript **- Eurocaribe**

[27] It would follow that the decision of Conteh CJ in ***Eurocaribe Shipping Services Limited v Attorney General et al*** must be overruled. To be fair, it does not appear that the point was fully argued before him. His focus was on the effect of section 3, rather

than its applicability. And, in any event, he did not have the benefit of this court's judgment in ***Gilharry***.

Disposition

[28] For these reasons, I would allow the cross-appeal and refer the matter back to the Supreme Court so that the application may be heard. Given that, technically, the appellants would have succeeded on their appeal, I would order that they pay only ¾ of the respondent's costs fit for Senior Counsel, to be taxed, if not sooner agreed. This order as to costs shall stand unless application be made for a contrary order within 7 days of the date of delivery of this judgment, in which event the matter shall be decided by the Court on written submissions to be filed within 15 days from the said date.

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MENDES JA

HAFIZ BERTRAM JA

[29] I agree with the judgment delivered by Mendes JA, which I have read in draft, and have nothing to add.

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HAFIZ BERTRAM JA