

IN THE CARIBBEAN COURT OF JUSTICE  
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No BBCR2024/001  
BB Criminal Appeal No 2 of 2021

BETWEEN

STUART KENNY MACMILLAN HAREWOOD

APPELLANT

AND

THE STATE

RESPONDENT

And

CCJ Appeal No BBCR2024/002  
BB Criminal Appeal No 3 of 2021

BETWEEN

SCOTT COLBY RICHARDSON HAREWOOD

APPELLANT

AND

THE STATE

RESPONDENT

[Heard together on 19 July 2024]

Before:

Mr Justice Anderson  
Mme Justice Rajnauth-Lee  
Mr Justice Barrow  
Mr Justice Burgess  
Mr Justice Jamadar

Date of Judgment:

17 October 2024

Appearances

Ms Safiya Moore and Mr Martie Garnes for the Appellants

Ms Krystal Delaney, Mr Neville Watson and Mr Romario Straker for the Respondent

*Criminal law – Non-Capital Murder – Delay – Sentencing – Right to a fair hearing within a reasonable time – Whether there should be a discount in sentence for delay – Whether there was a breach of the right to a fair hearing within a reasonable time – Constitution of Barbados 1966, s 18(1).*

## SUMMARY

This appeal from Barbados is a consolidation of appeals by Scott and Stuart Harewood who were convicted of murder. The Appellants were charged in June 2014. They were indicted on 31 August 2016, arraigned on 21 October 2020 and pleaded guilty to non-capital murder. On 25 March 2021, they were sentenced by the High Court ('HC'). In April 2021, the Director of Public Prosecutions ('DPP') filed for a review of the sentences as being too lenient, and the Appellants appealed that they were too severe. Fourteen months later, on 7 July 2022 the appeals were heard. Fifteen months after that, on 13 October 2023 the Court of Appeal ('CA') delivered its judgment, finding that the sentences imposed were not too lenient, and also dismissed the appeals, and affirmed the sentences of the trial judge. The Appellants were granted special leave to appeal to the Caribbean Court of Justice ('CCJ') on the ground that the CA erred in law and/or in principle when they failed to reduce the sentences on the basis of delay. The Appellants sought a reduction in their sentences on the sole basis of delay.

Jamadar J in delivering the decision of this Court held that while the Appellants have clearly demonstrated significant, and even unacceptable, periods of delay, the totality of considerations is insufficient for the Court to conclude that the impugned delay crosses the threshold to become constitutionally unreasonable or in breach of fair hearing standards. This was so as: (i) the Appellants accept responsibility for part of the time-lapse between indictment and sentence (four years and seven months, out of a total of six years and nine months for disposition at the trial level), (ii) there was no official statement sought or reasonable opportunity given to the judiciary to explain delay at the appellate level (two years and six months, which includes the period of fifteen months taken to deliver judgment), (iii) the DPP has advised this Court, and it has not been refuted, that during the period while the appeals were pending the effects of the COVID-19 pandemic were still

impacting the judiciary and the CA in Barbados, and as well that the Court of Appeal was not fully constituted but operating with only three justices of appeal, and (iv) any prejudice to or impact on the Appellants resulting from the time lapses have not been demonstrated as rendering the court proceedings constitutionally unfair or unreasonable.

The CA in the exercise of its discretion to grant constitutional relief was not bound to grant the remedy of a reduction in sentence if there was a breach of the right to a fair hearing within a reasonable time. This discretion does not result in any prescriptive relief or remedy. A remedy upon finding unconstitutional delay must therefore be made on a case-by-case basis. Furthermore, although s 18(1) of the Constitution gives distinct and free-standing rights, these can be interrelated depending on the circumstances of the case, and constitutional analyses must be alive to these overlaps.

Moreover, addressing the issue of delay requires a nuanced and multi-perspectival approach to judging. Among other things, both the impact of delay on an accused/perpetrator (in the criminal justice system) and the interconnectedness and interdependencies of the criminal justice system as a whole, are to be considered in a fair, reasonable, and balanced way. From the perspective of time standards, constitutional delay is not functionally the same as timelines though it may be implicated by established time standards. Time lapses in court process, between certain milestones and events function purposefully, setting benchmarks; these can be mandatory or discretionary and include overarching time standards. Failure to meet these time standards is not presumptively proof of either delay or unconstitutionality although they may be relevant considerations. Unacceptable delay depends on the assessment of whether the delay in all the circumstances is unwarranted, inappropriate, out of proportion, and/or reasonably avoidable. Delay may be unconstitutional if it is such as to render a hearing or court process unreasonable and/or unfair by failure to complete it within reasonable times.

In cases of delay unrelated to delivering judgments, a broader assessment of fairness, reasonableness, and the accused's rights must be made. The courts must consider whether the delay is disproportionate, avoidable, or prejudicial to the accused. Both parties can

present evidence on these points. Additionally, the accused has a responsibility to cooperate in avoiding delays in the legal process. Public interest and the rule of law also play key roles. The justice system must balance the rights of the accused with societal needs for accountability and the interests of victims. Judicial officers, like any party, are entitled to natural justice, and to the opportunity to explain delays transparently. Furthermore, whenever there is judicial delay in court proceedings or in the delivery of judgments, there is a constitutional, ethical, and moral duty on the court and judicial officers to transparently, candidly, and openly (on the record) explain the circumstances that have caused the delay. The Court dismissed the appeal and made no order as to costs.

### **Cases referred to:**

*A-G of Trinidad and Tobago v FR* (TT CA, 22 July 2024); *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104; *Barbados Rediffusion Service Ltd v Mirchandani (No 1)* [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35; *Bell v DPP* [1985] AC 937 (JM PC); *Bond v Dunster Properties Ltd* [2011] EWCA Civ 455; *Boodhoo v A-G* TT 2001 CA 71 (CARILAW), (14 December 2001); *Boodhoo v A-G* [2004] UKPC 17, (2004) 64 WIR 370 (TT); *Boolell v The State* [2006] UKPC 46, [2007] 2 LRC 483; *Bridgelall v Hariprashad* [2017] CCJ 8 (AJ) (GY), (2017) 90 WIR 300; *Citco Banking Corp NV v Pusser's Ltd* [2007] UKPC 13, (2007) 69 WIR 308 (VG); *Darmalingum v The State* [2000] 5 LRC 522; *Dyer v Watson* [2004] 1 AC 379; *Fields v R* (BB CA, 18 October 2022); *Flowers v R* (2000) 57 WIR 310 (JM PC); *Gaskin v Minister of Natural Resources* [2024] CCJ 14 (AJ) GY; *Gibson v A-G of Barbados* [2010] CCJ 3 (AJ) (BB), (2010) 76 WIR 137; *Gibson v A-G of Guyana* [2008] CCJ 7 (AJ) (GY), (2008) 73 WIR 265; *Howard v R* BB 2004 CA 2 (CARILAW), (16 January 2004); *Hyles v DPP* [2018] CCJ 12 (AJ) (GY), (2018) 93 WIR 353; *Ince v R* BB 2022 CA 1 (CARILAW), (2 November 2022); *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW); *Maya Leaders Alliance v A-G of Belize* [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178; *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332; *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36; *Parris v A-G* BB 2022 HC 26 (CARILAW), (7 July 2022); *Peters v The State* TT 2010 CA 5 (CARILAW), (26 February 2010); *Pratt v A-G* [1993] 43 WIR 340 (JM PC); *Prescod v R* BB 2006 CA 7 (CARILAW), (6 March 2006); *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42; *R v Waithe* BB 2022 HC 67 (CARILAW), (18 November 2022); *Radchikov v Russia* [2007] ECHR 65582/01; *Reid v Reid* [2008] CCJ 8 (AJ) (BB), (2008) 73 WIR 56; *Singh v Harrychan* [2016] CCJ 12 (AJ) (GY), (2016) 88 WIR 362; *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70; *Weekes v The State* (BB CA, 27 July 2023).

### **Legislation referred to:**

**Barbados** - Constitution of Barbados 1966, Criminal Appeal Act, Cap 113A; **Guyana** - Time Limit for Judicial Decisions Act, Cap 3:13; **Mauritius** - Constitution of Mauritius 1968; **United Kingdom** - Magna Carta 1215.

### **Treaties and International Materials referred to:**

American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123; International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171.

### **Other Sources referred to:**

Barbados Judicial System, 'Judicial Code of Conduct' (Barbados Judicial Council, 6 June 2006) < <https://www.barbadoslawcourts.gov.bb/judicial-system/judicial-code-of-conduct> > accessed 12 August 2024; Barrow D, Judge of the Caribbean Court of Justice, 'Judgment Delayed is Justice Denied' (Caribbean Association of Judicial Officers Biennial Conference, Willemstad Curacao, 28 September 2017); Barrow D, 'Judgment Delayed is Justice Denied: Delays in Delivering Judgments in the Eastern Caribbean' (2009) 35 *Commw L Bull* 429; Byron D, 'The CCJ and its Integral Role in Development of Caribbean Jurisprudence' ("Eminent Speakers" Lecture of the UWI Law Society Faculty of Law, Cave Hill Campus Barbados, 9 November 2011); Byron D, President of the Caribbean Court of Justice, 'Case Management for the African Court on Human and Peoples' Rights' (Judicial Education and Training Programme for Judges of the African Court of Human and Peoples' Rights, Arusha, Tanzania, 5-7 March 2014); Caribbean Association of Judicial Officers (CAJO), *Criminal Bench Book for Barbados, Belize, Guyana* (2023) < <https://thecajo.org/newcajo/wp-content/uploads/2023/09/FINAL-e-book-Crim-BB-for-Barbados-Belize-and-Guyana.pdf> > accessed 29 July 2024; Caribbean Association of Judicial Officers (CAJO), *Disability and Awareness Guidelines for Judiciaries and Judicial Officers* (2023) < <https://thecajo.org/newcajo/wp-content/uploads/2023/03/Consolidated-Disability-and-Inclusion-Awareness-Guidelines.pdf> > accessed 29 July 2024; 'CourTools' (National Centre for State Courts (NCSC), 2023) < <https://www.ncsc.org/courttools> > accessed 29 July 2024; 'Global Measures of Court Performance' (3rd edn, International Consortium for Court Excellence, 2020) < [https://www.courtexcellence.com/\\_data/assets/pdf\\_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf](https://www.courtexcellence.com/_data/assets/pdf_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf) > accessed 29 July 2024; 'International Framework for Court Excellence (IFCE)' (3rd edn, International Consortium for Court Excellence (ICCE), 2020) < <https://www.courtexcellence.com/> > accessed 23 July 2024; Jamadar P and Elahie E, *Proceeding Fairly: A Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Republic of Trinidad and Tobago* (Judicial Education Institute of Trinidad and Tobago, 2018) < <https://www.tlawcourts.org/jeibooks/> > accessed 29 July 2024; Judicial Education Institute of Trinidad and Tobago, *Procedural Fairness a Manual: a Guide to the*

*Implementation of Procedural Fairness in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago* (2018) < [https://www.tlawcourts.org/jeibooks/books/Procedural\\_Fairness\\_A\\_Manual.pdf](https://www.tlawcourts.org/jeibooks/books/Procedural_Fairness_A_Manual.pdf) > accessed 29 July 2024; Judicial Reform and Institutional Strengthening (JURIST) Project, *Final Research Report Disability Inclusion and Awareness* (2022) < <https://thecajo.org/newcajo/wp-content/uploads/2023/03/JURIST-Research-Report-Finalv2.pdf> > accessed 29 July 2024; ‘Needham’s Point Declaration on Criminal Justice Reform in the Caribbean: Achieving A Modern Criminal Justice System’ (CCJ Academy for Law Seventh Biennial Conference, Bridgetown Barbados, 20 October 2023); Robinson T, Bulkan A, and Saunders A, *Fundamentals of Caribbean Constitutional Law* (2nd edn, Sweet and Maxwell 2021); ‘Self-assessment Checklist’(International Consortium for Court Excellence) [https://www.courtexcellence.com/\\_data/assets/pdf\\_file/0026/66608/Self-Assessment-Checklist.pdf](https://www.courtexcellence.com/_data/assets/pdf_file/0026/66608/Self-Assessment-Checklist.pdf)> accessed 29 July 2024; Sourdin T and Burstyner N, ‘Justice Delayed is Justice Denied’ (2014) 4 Victoria U L & Just J 49; Sourdin T, ‘The Timeliness Project: Background Report’ (Australian Centre for Justice Innovation, Monash University, October 2013); United Nations Office on Drugs and Crime (UNODC), ‘Bangalore Principles of Judicial Conduct’(2018)< <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf> > accessed 25 July 2024).

## JUDGMENT

### Reasons for Judgment:

Jamadar J (Anderson J, Rajnauth-Lee J, Barrow J and Burgess J concurring) [1] – [110]

**Disposition** [110]

## **JAMADAR J:**

### **Introduction**

*Time, timeliness and delay ...*

*'If any person is charged with a criminal offence, then, ... the case shall be afforded a fair hearing within a reasonable time ...'.<sup>1</sup>*

[1] Cries for 'justice' are legion and influenced by perspective, experiences, and values. In the criminal justice system, there are many voices crying out for justice, and currently, in Caribbean spaces, many of those voices are mixed with strong and strident feelings of frustration, fear, hopelessness, and despair. Barbados is no exception.

[2] 'Justice for who?' is what 'town' says quizzically in the streets of Caribbean capitals, towns, and in the villages spread across our lands. Courts are looked to for relief, and for some, for deliverance, from the plague that is rampant and wanton violent crime and criminality. Dealing with this is a great burden to bear, and an enormous responsibility to discharge. Alas! Judicial officers freely choose their careers and all that is demanded of them as holders of this elevated office. Judicial ethics and conscience, informed by constitutional values, principles and the law, compel the meeting of often challenging performance standards, standards that are fast coming under public scrutiny, and rightly so. This is the nature of the job. This is what citizens expect. This is what our Caribbean democracies demand. In these times, strident insistence on efficiency and effectiveness is justified in the arena of criminal justice.

### **Background**

[3] On 3 June 2014, Derek Hunte ('Hunte') was murdered by the Appellant, Stuart Harewood ('SH'), in an area located in Lynches St Phillip, Barbados called 'the

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<sup>1</sup> Constitution of Barbados 1966, s 18(1). See also s 18(8): 'Any court or other tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such court or other tribunal, the case *shall be given a fair hearing within a reasonable time*' (emphasis added).

Block'. On the day in question, SH and Hunte got into an argument. SH then left the Block and returned 15-20 minutes later and began to argue with Hunte. SH drew a firearm and shot into the air. Hunte and SH got into a scuffle. Witnesses recall a loud click, but no discharge of a firearm. The scuffle culminated with Hunte holding SH by the throat and releasing him. SH fled and returned with his brother Scott Harewood ('SCH'), the Co-appellant. Hunte began to flee. SCH gave chase, discharging a firearm and firing four to five shots. SCH and his brother then left the Block. Hunte was later pronounced dead at the scene.

- [4] Stuart Harewood was taken into custody on 4 June 2014 and charged on 10 June 2014. Scott Harewood was taken into custody on 12 June 2014 and charged sometime between 15 June and 15 July 2014. Both were held in custody upon being charged. On 31 August 2016 they were indicted. On 21 October 2020 they were arraigned and pleaded guilty to non-capital murder. And on 25 March 2021, they were sentenced.
- [5] The trial judge using a starting point of 35 years for both Appellants, applied the one-third discount for the guilty plea, deducted time spent in custody, and arrived at a sentence of 16 years, 7 months and 2 weeks imprisonment for Stuart Harewood, and 19 years, 10 months and one 1-week imprisonment for Scott Harewood.
- [6] In April 2021, the Director of Public Prosecutions ('DPP') filed for a review of the sentences<sup>2</sup> on the basis that they were too lenient, and the Appellants appealed on the basis that they were too severe. Fourteen months later, on 7 July 2022 the appeals were heard, written submissions having been filed in advance of the hearing and oral arguments made on the day. Fifteen months later, on 13 October 2023 the Court of Appeal delivered its judgment, finding that the sentences imposed were not too lenient, dismissed the appeals, and affirmed the sentences of the trial judge.

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<sup>2</sup> Pursuant to the Criminal Appeal Act, Cap 113A s 36(B).



- [7] The Appellants were granted special leave to appeal to the Caribbean Court of Justice ('CCJ') on the sole ground, 'that the learned Justices of Appeal erred in law and/or in principle when they failed to pronounce on the issue of delay in their decision despite the existence of the *James Fields* principle on delay in sentencing.'
- [8] The Appellants seek orders quashing their sentences and replacing them each with a lesser sentence. That is, the relief they seek is a reduction in their sentences. They do so on the sole basis of delay in the overall conduct of the court proceedings and in the delivery of the Court of Appeal's judgment. What then are the implicated time periods in this matter?
- [9] *From charge to indictment* a period of about two years and two months and two weeks had elapsed. *From indictment to arraignment* a period of about four years and just under two months had elapsed. *From arraignment (guilty plea entered) to sentence* a period of a little under five months had elapsed. Thus, from *indictment to sentence* a period of about four years and seven months had elapsed. And *from charge to sentence* a period of about six years and nine months had elapsed. In the Court of Appeal, from the *lodging of appeals to hearing* them 15 months elapsed. And a further 15 months elapsed from the *hearing of the appeals to the delivery of judgment* by the Court of Appeal. That is a total of 30 months, about two years and five months, elapsed from the filing of appeals to their final disposition. From charge to the disposition of the appeals, a total of about 9 years and three months have elapsed (emphasis added).
- [10] It is these time periods of alleged delay in the delivery of justice that inform this appeal. What is sought is a reduction in sentence for an alleged breach of the Appellants' rights under s18 of the Constitution to a fair hearing within a reasonable time. Thus, the constitutional values and standards of fairness and/or reasonableness are impugned.

## **Disposition**

[11] While the Appellants have clearly demonstrated significant, and even unacceptable, periods of delay, the totality of evidence in this matter is insufficient to conclude that the impugned delay crosses the threshold to be deemed constitutionally unreasonable or in breach of fair hearing standards. This is particularly so as: (i) the Appellants accept partial responsibility for the intermediate time-lapse period between indictment to sentence (four years and seven months, out of a total of six years and nine months for disposition at the trial level), (ii) there has been no reasonable opportunity given to or evidence elicited from the judiciary as to the reasons for delay at the appellate level (two years and six months, which includes the period of 15 months taken to deliver judgment), (iii) the DPP has advised this Court, and it has not been refuted, that during the period from the filing of the appeals, the effects of the COVID-19 pandemic were still impacting the judiciary and the Court of Appeal in Barbados, and as well that the Court of Appeal was not fully constituted operating with only three justices of appeal, and (iv) any prejudice to or impact on the Appellants as a result of the time lapses in this matter have not been demonstrated to render their court proceedings either constitutionally unfair or the timeliness of the conduct and disposition of these court proceedings constitutionally unreasonable.

[12] It is to be noted that the issue of delay was not raised before the Court of Appeal. In any event, the Court of Appeal in the exercise of its discretion to grant constitutional relief was not bound to apply a reduction in sentence if there was a breach of the right to a fair hearing within a reasonable time. In this regard, s 24(2) of the Constitution is apposite: ‘The High Court ... may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 12 to 23 ...’. This discretion applied to the impact of delay on sentencing does not yield

any prescriptive relief or remedy.<sup>3</sup> The *Fields v R* decision of the Court of Appeal,<sup>4</sup> upon which much reliance has been placed, is therefore merely illustrative of the application of this discretion in the circumstances of that case and does not create a new sentencing principle.

[13] Finally, it is noteworthy that s 11 of the Constitution acknowledges that guaranteed rights may be subject to the rights and freedoms of others and to the public interest. Section 13(3) of the Constitution provides that where a person is arrested and not tried within a reasonable time, certain remedies are available. And s 24(2) of the Constitution circumscribes the discretion to grant constitutional relief where there are alternative and adequate means of redress otherwise available under the law. Thus, ‘breach of the reasonable time guarantee does not necessarily prevent a valid trial being held.’<sup>5</sup> A finding of unconstitutional delay must therefore be made on a case-by-case basis.<sup>6</sup> Indeed, in some cases, an appropriate and effective remedy may be a simple declaration without more.

### **Many Voices, Many Perspectives**

*‘Justice delayed is justice denied.’<sup>7</sup>*

[14] Whether there is constitutionally objectionable delay in the delivery of justice is always a matter of context. Unacceptable delay depends on an assessment of whether, in all the circumstances, any delay is inappropriate, out of proportion, or reasonably avoidable.<sup>8</sup> Historically and in the criminal justice system, the

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<sup>3</sup> See in the context of Belize, *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW) at [104] (Barrow J): ‘There is no right to any particular remedy.’ And see further [111], [112], and [114]. See also in the context of Guyana, *Singh v Harrychan* [2016] CCJ 12 (AJ) (GY), (2016) 88 WIR 362 at [29] (Byron P and Anderson J): ‘In some cases, the consequence of the delay may result in a reduction of the sentence, whereas this may not be an appropriate remedy in others’ (footnotes omitted). And in the context of Barbados and s 18 of the Constitution, see *Gibson v A-G of Barbados* [2010] CCJ 3 (AJ) (BB), (2010) 76 WIR 137 at [42]: ‘Section 24 is deliberately couched in broad terms because, as was said by Lord Bingham in *Gairy v A-G of Grenada (No 2)*, the court has, and must be ready to exercise, power to grant effective relief for a contravention of a protected constitutional right’ (footnote omitted).

<sup>4</sup> *Fields v R* (BB CA, 18 October 2022).

<sup>5</sup> *Gibson v A-G of Barbados* [2010] CCJ 3 (AJ) (BB), (2010) 76 WIR 137 at [57].

<sup>6</sup> *ibid* at [58].

<sup>7</sup> In largely common-law legal thinking, the idea is said to have first been expressed in the biblical writings of Pirkei Avot 5:8, a section of the Mishnah (1st century BCE – 2nd century CE) in which it is stated ‘Our Rabbis taught: ...[t]he sword comes into the world, because of justice delayed and justice denied...’; as well as in the Magna Carta of 1215, cl 40 of which reads, ‘[t]o no one will we sell, to no one will we refuse or delay, right or justice.’; and William Gladstone, British Prime Minister famously stated in the late 1800s ‘justice delayed is justice denied’ and Martin Luther King Jr also said ‘justice too long delayed is justice denied’ in his Letter from Birmingham Jail (1963). See Tania Sourdin and Naomi Burstyner ‘Justice Delayed is Justice Denied’ (2014) 4 Victoria U L & Just J 49.

<sup>8</sup> See Tania Sourdin and Naomi Burstyner, ‘Justice Delayed is Justice Denied’ (2014) 4 Victoria U L & Just J 49, 61.

experience of an accused who was subjected to unreasonable delay in the time taken for the resolution of their cases, could result in a classification of the judicial process as ‘unjust’ because it has taken ‘too long’ to complete, with consequential remedies. This is because delay can have adverse and prejudicial effects on an accused. For example, before or during proceedings delay can adversely affect the preparation and presentation of a defence and can have detrimental physiological, psychological and financial impacts on an accused (who is presumed innocent until otherwise decided and who may be in custody during this period). There can also be adverse consequences because of delays in appellate processes and in the delivery of judgments. In such instances, justice delayed may be justice denied.

[15] However, the unconstitutionality of delay involves a more complex analysis and assessment of relevant circumstances. In current justice systems the perspective of the accused or perpetrator of a crime is one point of view and consideration, albeit an important one and one protected by constitutional values and standards.<sup>9</sup> Indeed, research demonstrates that the time taken to finally dispose of a matter (from the time of commencement), is a critical factor in determining whether a justice system is perceived and experienced as fair and reasonable.<sup>10</sup>

[16] There are however other relevant perspectives (beyond that of the accused/perpetrator). For example, those of virtual complainants/victims and their families, friends, and communities, witnesses and other court users, lawyers, court administrators and staff, judges and judicial officers, and the general public (society). And as well and more institutionally, the views of the executive, legislature, judiciary, legal profession, and the Office of the DPP. In all of these instances, delay may be experienced, understood, and assessed differently.

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<sup>9</sup> See Constitution of Barbados (n 1) s 18(1).

<sup>10</sup> In Caribbean spheres, research by the Judicial Education Institute of Trinidad and Tobago, has discovered that delay is a major source of court user dissatisfaction: ‘The delays in hearing matters and infrastructural inefficiencies stood out as impediments to customer satisfaction.’ See Peter Jamadar and Elron Elahie, *Proceeding Fairly: A Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Republic of Trinidad and Tobago* (Judicial Education Institute of Trinidad and Tobago 2018) <[https://www.ttlawcourts.org/jelibooks/books/Proceeding\\_Fairly\\_Report.pdf](https://www.ttlawcourts.org/jelibooks/books/Proceeding_Fairly_Report.pdf)> accessed 23 July 2024, 51. See also T Sourdin, ‘Mediation in the Supreme and County Courts of Victoria’ (Report prepared for the Department of Justice, Victoria, Australia, April 2009) 117–118 cited in Tania Sourdin, ‘The Timeliness Project: Background Report’ (Australian Centre for Justice Innovation, Monash University, October 2013), Executive Summary, v.

- [17] For example, for a litigant, party or witness, time spent in court may have personal, relational and economic implications which delay can exacerbate. For court administrators delay may be viewed through the lenses of case backlogs, clearance rates, and other institutional performance standards. For judges and judicial officers, the needs of careful fact finding, research, reflection and analysis, and the aspiration to deliver just and competent outcomes may prevail. For the Office of the DPP, the responsibility to effectively and efficiently manage the investigation and prosecution of criminality and to achieve justice for citizens and society may dominate. The executive and legislature may see things through wider societal and macro-policy lenses which may include constituent demands and expectations, budgetary and economic drivers, and national credibility in regional and international affairs including international treaty obligations and standards.
- [18] Then there is the matter of time and timeliness itself. Timeliness in the hearing and disposition of criminal cases is also, undoubtedly, a critical factor in the public's perception of whether a justice system is just, fair and efficient. It influences public trust and confidence in the administration of justice, the rule of law, and democracy. It is therefore an important consideration.<sup>11</sup> However, timeliness is contingent upon current justice system environments, which include sometimes complex and critical relationships with multiple stakeholders over which a judiciary may have little or no control.
- [19] Indeed, conceptually, timeliness and delay are not the same, as we shall see, and time-lapses in court proceedings are an essential part of an efficient and effective criminal justice framework. The point is, the delivery of an efficient and effective criminal justice system is a complex, interconnected, and interdependent undertaking in which, among other things, a judiciary *per se* is only one actor, even if *primus inter pares*.

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<sup>11</sup> See Sourdin and Burstynier (n 8). See also, for example, *Singh v Harrychan* [2016] CCJ 12 (AJ) (GY), (2016) 88 WIR 362 at [28].

- [20] Finally, there are also ideological perspectives, constitutional values, principles and standards, that are fundamentally constitutive of and supreme in Barbados. These include the rule of law, the protection of the law, and fundamental fairness. Though overtly qualitative, they are impacted by quantitative considerations such as timeliness and systemic environmental factors.
- [21] Addressing the issue of delay requires a nuanced and multi-perspectival approach to judging, in which, among other things, both the impact of delay on an accused/perpetrator (in the criminal justice system) and the interconnectedness and interdependencies of the criminal justice system as a whole, are considered in a fair, reasonable, and balanced way. Overly rigid prescriptiveness could lead to unjust outcomes, especially when one understands the jurisprudential functions of timeliness and the distinctions compared to delay. What is really involved is a 360-degree, whole-system evaluation and analysis.
- [22] Cast in jurisprudential terms, under the umbrella of the right to the protection of the law and the principle of fundamental fairness, and as pointed out by Wit J since 2018 in *Hyles v DPP*<sup>12</sup> (and in the context of the double jeopardy principle):

Certainly, accused persons have, and should have, a guaranteed and fundamental right to protection of the law but they are not the only ones. ... The principle of fundamental fairness in art 144(1) of the Constitution equally requires the protection of the rights of other stakeholders in the criminal justice process and it demands ‘to the maximum extent possible, a fair balance between the interests of an individual and the need to ensure the effectiveness of the system of criminal justice.’<sup>13</sup> It is true that a criminal justice system must be fair and be seen to be fair but above all it must be effective in protecting the rights of all; in fact, a profusely ineffective criminal justice system can hardly ever be fair.

- [23] Whole-system fairness is an integral and overarching consideration. Wit J would exemplify, in practical terms, the kinds of 360-degree considerations that the notion of constitutional fairness encompasses.<sup>14</sup>

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<sup>12</sup> [2018] CCJ 12 (AJ) (GY), (2018) 93 WIR 353 at [42].

<sup>13</sup> Citing, *Radchikov v Russia* [2007] ECHR 65582/01 para 43.

<sup>14</sup> *Hyles* (n 12) at [43] (footnote omitted).

The fundamental right to life, however, is not just a right but, because it needs to be protected, it also includes, inter alia, a positive *obligation* on the judicial authorities of the State, particularly the police and the DPP, to thoroughly and properly investigate the case, to uncover the truth, and to bring the perpetrators to justice. Not only the relatives of the murdered victims but also society as a whole have a right to know the truth and what transpired. They have a right to see those responsible for the murders prosecuted, convicted and faced with appropriate consequences. ... That is why in exceptional circumstances the rights of the accused must to the maximum extent in fairness possible give way to the rights of others.

### **One Test, Two Standards: Fairness and Reasonableness**

- [24] Section 18(1) of the Barbados Constitution (1966) states, ‘if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.’
- [25] In 1973, Barbados ratified the International Covenant on Civil and Political Rights<sup>15</sup>. Article 9(3) mandates that a person arrested or detained on a criminal charge ‘shall be entitled to trial within a reasonable time or to release.’ And Article 14(3)(c), provides that, ‘in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (c) To be tried without undue delay;’
- [26] Barbados has also signed (1978) and ratified (1981) the American Convention on Human Rights<sup>16</sup>. Articles 7(5) and 8(1) are apposite. The former provides that a person ‘shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings.’ And the latter, which carries the caption ‘Right to a Fair Trial’, provides that: ‘Every person has the right to a hearing ... within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law...’.

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<sup>15</sup> (Adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171.

<sup>16</sup> (Adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.

[27] Barbados' international treaty obligations align with s 18(1) of the Constitution. It is trite, that national laws should as far as possible be interpreted and applied consistently with international obligations.<sup>17</sup> However, the Constitution of Barbados is the supreme law.<sup>18</sup> It sets the jurisprudential standards by which this appeal is to be judged. It is a values-centric approach. There is a single test. It is, whether the Appellants were afforded a fair trial within a reasonable time. It is an objective test, grounded in the constitutional values-principles of fairness and reasonableness. The right to a fair trial in criminal proceedings, guaranteed by s 18(1) of the Constitution, is a core constitutional right. So much so, that it is well accepted: 'that a person charged with having committed a criminal offence should receive a fair trial and that, if he cannot be tried fairly for that offence, he should not be tried for it at all.'<sup>19</sup>

[28] There is some debate in relation to the time-based issues in this appeal, whether s 18(1) of the Constitution contains separate stand-alone rights (i) to a fair trial, (ii) to a hearing within a reasonable time, and (iii) to an independent and impartial court established by law. That is, whether the rights are separate and distinct, though they could be related. On both plain and purposive readings, it is arguable that the reasonable time standard may be read, interpreted, and applied together with the constitutional value-standard of fairness, or as completely separate and distinct. The right is to 'a fair hearing within a reasonable time by an independent and impartial court established by law'. Interpreting and applying the section as creating three distinct rights affords the most generous interpretation and the widest protection. This Court has held that the reasonable time guarantee creates a distinct element that has its own unique sets of rights and responsibilities,<sup>20</sup> but that does not necessarily mean it may not also be circumstantially related to the element of fairness, and even to the elements of impartiality and independence.

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<sup>17</sup> *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332; *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36.

<sup>18</sup> Constitution of Barbados (n 1) s 1.

<sup>19</sup> *R v Horseferry Road Magistrates' Court, ex p Bennett* [1994] 1 AC 42, at 68.

<sup>20</sup> See *Gibson* (n 5) at [54]: 'Section 18(1) gives three different and free-standing rights to any person who is charged with a criminal offence. These rights correspond to separate obligations imposed by the Constitution on the state. For every accused person whose charge has not been withdrawn the state is obliged to afford a hearing that is: (a) fair; (b) before an independent and impartial tribunal established by law, and (c) held within a reasonable time.'



[29] Therefore, in relation to the reasonable time requirement, both fairness and reasonableness can ‘form part of one embracing form of protection afforded to the individual.’<sup>21</sup> However, a conviction by a proper court and by an otherwise fair process apart from delay, can be impugned on the basis of delay. This is because delay on its own can render proceedings unconstitutional.<sup>22</sup> In relation to the fair hearing guarantee, this is not bound to the reasonable time requirement and can stand alone as a constitutional fairness value-standard guarantee. However, the right to a fair trial may also be implicated by delay if the delay renders proceedings or their effects constitutionally unfair. So also, with respect to the guarantee of an independent and impartial tribunal established by law, in relation to which unconstitutional deficits can clearly also compromise fairness. And as well, unconstitutional delay may in certain circumstances also impugn the guarantees of independence and impartiality.

[30] In summary, a core right guaranteed in s 18(1) is the entitlement to a fair trial, and the guarantees of timeliness and the propriety of the court, though distinct, can also be related to aspects of fairness and at the same time, intersect. The point is that although s 18(1) gives three distinct and free-standing rights, they can be interrelated depending on the circumstances of the case, and constitutional analyses must be alive to these overlaps.

[31] Framed as a Chapter III individual fundamental right and freedom, a s 18(1) delay assessment necessarily involves whole-system considerations and therefore requires a balancing and weighting of all contextually relevant factors. This is

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<sup>21</sup> See *Flowers v R* (2000) 57 WIR 310 (JM PC) at 332-334 (Lord Hutton), and *Bell v DPP* [1985] AC 937 (JM PC) at 950-951 (Lord Templeman), ‘the three elements of section 20, namely a fair hearing within a reasonable time by an independent and impartial court established by law, form part of one embracing form of protection afforded to the individual.’ Compare, *Boolell v The State* [2006] UKPC 46, [2007] 2 LRC 483 at [32]: ‘(i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of s 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay. (ii) An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all.’ Section 10(1) of the Mauritius Constitution states that where a person is charged with a criminal offence ‘the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law’.

<sup>22</sup> For example, delay may impact and/or prejudice the conduct of a defence or may be so excessive as to be oppressive and therefore *ipso facto* unfair (without the proof of overt prejudice).

because of the complex intersections that inform delay and the distinctions between timeliness and delay, and their potential impact on fairness and/or reasonableness. It is this balancing and weighting process that incorporates the principle of proportionality in the assessment of time lapses that may be constitutionally *vires* or *ultra vires*.<sup>23</sup> As pointed out in *Gibson v Attorney General of Barbados*: ‘A fair trial is not one that is fair only to the accused. It is a trial that is fair to all.’<sup>24</sup>

[32] Yet, one must not lose sight that the focus is clearly on the fundamental rights of the individual accused/perpetrator, as s 18(1) specifically addresses ‘any person charged with a criminal offence’. The balancing exercise involved, is thus one which must consider, protect and promote, above all else, the fundamental rights of an accused/perpetrator such as the Appellants in this matter.<sup>25</sup> It is noteworthy that the s 18 protection is framed in positive terms (‘... the case shall be afforded [given]...’) and creates positive obligations on the state and executing agencies (such as the DPP and judiciary) to enable the enjoyment and benefits of the right.<sup>26</sup> This positive obligation is a part of the democratic *grund norm* of the protection of the law.<sup>27</sup>

[33] Indeed, as pointed out in *Fundamentals of Caribbean Constitutional Law*,<sup>28</sup> the Privy Council has held that under the protection of the law and due process guarantees, ‘the State is under a positive duty to ensure the efficient and timely administration of criminal justice to reduce delays.’<sup>29</sup> And as explained by this Court: ‘The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.’<sup>30</sup>

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<sup>23</sup> *Gibson* (n 5) at [60]: ‘... a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality.’

<sup>24</sup> *ibid* at [44].

<sup>25</sup> *ibid* at [49].

<sup>26</sup> Constitution of Barbados (n 1) s 18(1) and (8); *Pratt v A-G* [1993] 43 WIR 340 (JM PC); *Maya Leaders Alliance v A-G of Belize* [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178; and *Gibson* (n 5) at [55] and [60]. See also Tracy Robinson, Arif Bulkan, and Adrian Saunders, *Fundamentals of Caribbean Constitutional Law* (2nd edn, Sweet and Maxwell 2021) para 6-022.

<sup>27</sup> See Constitution of Barbados (n 1) s 11(c). See also *Darmalingum v The State* [2000] 5 LRC 522 at 528, ‘The stamp of constitutionality is an indication of the higher normative force which is attached to the relevant rights...’

<sup>28</sup> Tracy Robinson, Arif Bulkan, and Adrian Saunders, *Fundamentals of Caribbean Constitutional Law* (2nd edn, Sweet and Maxwell 2021).

<sup>29</sup> *ibid* para 9-003.

<sup>30</sup> *Maya Leaders Alliance v A-G of Belize* [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178 at [47].

[34] The judiciary, as the arm of state with primary responsibility for the administration of criminal justice, carries the weight and responsibility of this positive obligation to guarantee an efficient and effective criminal justice system. However, the executive shares this responsibility: ‘One starts with the premise that the executive branch of government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning.’<sup>31</sup>

[35] Therefore, in the balancing exercise one has to be careful, that even as one considers all relevant factors, such as case specific aspects (complexity, novelty, number of witnesses, documentation), the conduct of an accused/perpetrator (contributing to delays, unreasonable hindering or disrupting of court processes), judicial and administrative resource issues (availability of judicial officers, unexpected case overloads, chronic shortages in essential staff), and wider environmental matters such as uncontrollable external circumstances (natural disasters, debilitating pandemics, global economic upheavals of supply chain challenges), there remains a constitutional duty on the state (and all state actors) to so organise and resource its legal systems to enable and ensure that the constitutionally decreed reasonable time standards for the conduct of court proceedings are met, from charge to final disposition. Delay may be unconstitutional if it is such as to render a hearing or proceedings or their impact, unreasonable and/or unfair in relation to an accused/perpetrator because of failures to complete it within a reasonable time.

### **Understanding Delay and Timeliness**

[36] The International Framework for Court Excellence (‘IFCE’) describes timeliness as ‘a balance between the time required to properly obtain, present, and weigh the evidence, law and arguments, and unreasonable delay due to inefficient processes

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<sup>31</sup> *Gibson* (n 5) at [60].

and insufficient resources.’<sup>32</sup> We would add to and include in the scope of timeliness, the time required to properly deliver a reasoned judgment.

[37] However, as the IFCE also explains:<sup>33</sup>

There is a tendency to measure court performance only in quantitative terms ... One of the classical views on the duration of the litigation process is the principle of “justice delayed is justice denied”. Courts are said to perform poorly only if the proceedings are too lengthy. Speedy litigation processes, on the other hand, are viewed positively. Courts are considered efficient where ... the clearance rates are high.

However, court performance from a quantitative perspective tends to distort the full picture, as in the example of “justice hurried” being in some cases “justice buried”. It is therefore important to take qualitative aspects of the functioning of courts into account as well, since aspects that are not measured are aspects that are rarely fixed.

[38] The Timeliness Project Background Report insists that ‘timeliness is and must be related to other factors’.<sup>34</sup> And it offers the following as part of the definition of timeliness:<sup>35</sup>

The extent to which; ... (b) processes are efficient and avoidable delay has been minimised or eliminated throughout the process on the basis of what is appropriate for that particular category or type of dispute ....

[39] What is immediately apparent is the contextual nature of timeliness, the focus on ‘avoidable delays’, and the relevance of time standards which are associated with timeliness, as legitimate time lapses for the completion of necessary steps in court processes. Time standards are performance standards set by the courts or other institutions, including the legislature, as standards and measures of efficiency and effectiveness for the delivery of justice. They also function as indicators for both

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<sup>32</sup> ‘International Framework for Court Excellence (IFCE)’ (3rd edn, International Consortium for Court Excellence (ICCE), 2020), 7 < <https://www.courtexcellence.com/> > accessed 23 July 2024.

<sup>33</sup> *ibid* 36.

<sup>34</sup> Tania Sourdin, ‘The Timeliness Project: Background Report’ (Australian Centre for Justice Innovation, Monash University, October 2013), Executive Summary, v.

<sup>35</sup> *ibid* vi.

internal and external accountability. In this way, they facilitate transparency in judicial governance.

- [40] The purposes of time standards may be different for different stakeholders. For example, courts use time standards to set aspirational and hopefully achievable benchmarks; lawyers may use them as guidelines for the conduct of their court-related business; the public often use them to inform their expectations; and the executive and legislature may look to them as necessary for maintaining public trust and confidence in the overall administration of justice and in support of a working democracy.
- [41] Constitutionally, delay is not functionally the same as timeliness, though it may be implicated by established time standards. Because time lapses, based on established or reasonable time standards, are a legitimate part of court processes, not every time lapse is a delay. Within the context of timeliness and warranted time lapses, inappropriate, unacceptable, and unwarranted time lapses may occur – and these, strictly speaking, may constitute delay and may inform an assessment of s 18 unfairness and unreasonableness.
- [42] As explained, time lapses in court processes, between certain milestones<sup>36</sup> and events,<sup>37</sup> function purposefully. Time standards seek to set benchmarks for the conduct and completion of both milestones and events in the course of court processes (including the life cycle of a case). Sometimes these can be mandatory and otherwise directory, functioning as guidelines in recognition of contextual and circumstantial variance among cases. There can also be overarching time standards, that seek to establish parameters for the completion of matters (from charge to disposition, and similarly on appeal), usually nuanced based on types of offences – typology (eg murder, sexual offences, drug offences, arms and ammunition

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<sup>36</sup> Things that must occur during the life cycle of a criminal matter and must be completed before one can move to the next step in the proceedings, such as charging an accused, laying an indictment, arraigning an accused, conducting a hearing, and if there is a guilty plea or a conviction, sentencing a perpetrator.

<sup>37</sup> Things that may occur between milestones and during the life cycle of a criminal matter (some may be mandatory and others not), such as mental health evaluations, plea bargaining, a *voir dire*, no case submissions, site visits.

offences etc), and further differentiated by categories (eg complex, standard, simple). Courts are encouraged to establish efficiency in case and caseload management by collaboratively setting reasonable time standards for the movement of cases through the court systems, from filing to final disposition.

[43] Failure to meet these time standards is not presumptively proof of either delay or unconstitutionality, though they may be relevant considerations. Unacceptable delay depends on an assessment of whether the delay in all the circumstances is unwarranted, inappropriate, out of proportion, and/or reasonably avoidable. Delay may be unconstitutional if it is such as to render a hearing or court process unreasonable and/or unfair by failure to complete it within reasonable times.

### **Law is Developmental, Evolving Approaches to Delay**

*'Excessive delay in delivering judgments is a matter of growing concern ...'*<sup>38</sup>

[44] Law evolves to meet changing societal circumstances, expectations and demands. In modern times the legislature often leads the way. However, the role of courts and judicial officers to interpret and apply the law and even develop it, is a part of the common law tradition. Courts therefore play a vital role in this development of the law.<sup>39</sup>

[45] In Barbados, by an amendment to the Constitution in 2019,<sup>40</sup> the executive as national policy maker and the legislature as national law maker promulgated as part of the constitutional provisions for the removal of a judge from office, a time-based performance standard related to the delivery of judgments.

[46] Section 84(3) and (4) of the Constitution now states:

- a. (3)A Judge *may be removed from office* only for inability to discharge the functions of his office (whether arising from inability

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<sup>38</sup> Denys Barrow, 'Judgment Delayed is Justice Denied: Delays in Delivering Judgments in the Eastern Caribbean' (2009) 35 Commw L Bull 429, 429.

<sup>39</sup> *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104; Sir Dennis Byron 'The CCJ and its Integral Role in Development of Caribbean Jurisprudence' ("Eminent Speakers" Lecture of the UWI Law Society., Cave Hill Campus Barbados, 9 November 2011)

<sup>40</sup> See, Constitution of Barbados (n 1) as amended by Act 16 of 2019, ss 84(3)(c), (3A), and (4).

of body or mind or any other cause); for misbehaviour; or *for delay of more than six months in delivering judgements.*

- b. (3A) A Judge shall not be removed from office except in accordance with the provisions of subsection (4).
- c. (4) A Judge *shall be removed from office* by the Governor-General, ... and the Court has advised the Governor-General that the Judge ought to be removed from office for inability, misbehaviour *or delay* as aforesaid.
- d. (Emphasis added.)

[47] This six-month performance standard set by Parliament is relevant to the issue of unconstitutional delay, as it benchmarks the time lapse that the executive and legislature in Barbados deemed appropriate and *prima facie* reasonable for the delivery of judgments, and presumptively also essential for good governance.<sup>41</sup> Functioning as such, it has implications for an assessment of an alleged s 18 fair hearing within a reasonable time determination. The methodological implications will be explored presently.

[48] However, it should also be noted that the Barbados judiciary in a public facing document, its Judicial Code of Conduct, has stated as an ethical performance standard under the principle of Competence and Diligence:<sup>42</sup>

- a. 6.5 A judge shall perform all judicial duties efficiently. These duties extend to the delivery of reserved decisions *fairly and with reasonable promptness*. Save in exceptional cases and for good reasons, a judge shall endeavour to deliver a reserved judgment within 8 months. (Emphasis added.)

[49] Note that the time standard is set at eight months and that it is only in exceptional circumstances and for good reasons that this time should be exceeded. The public

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<sup>41</sup> See Constitution of Barbados (n 1), s 48(1) 'Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Barbados.'; and the Oath of Office, Prime Minister and Ministers, Constitution of Barbados, First Schedule.

<sup>42</sup> Barbados Judicial System, 'Judicial Code of Conduct' (Barbados Judicial Council, 6 June 2006) <<https://www.barbadoslawcourts.gov.bb/judicial-system/judicial-code-of-conduct>> accessed 12 August 2024.

is therefore led to assume and expect that if the eight-month period is exceeded the judiciary will offer an explanation.

[50] The CCJ, as the Apex court for Barbados and other Caribbean states, has also addressed the issue of delay in court proceedings. This developing jurisprudence is likewise relevant to the disposition of this appeal.

[51] The first case to reach the CCJ in its appellate jurisdiction was *Barbados Rediffusion Service Ltd v Mirchandani (No 1)*.<sup>43</sup> In October 2005, de la Bastide P delivered the unanimous judgment of the fledgling Court. Delay in the conduct of court proceedings and in the delivery of the judgments of the High Court and Court of Appeal were a feature, and were addressed quite forcefully as follows:<sup>44</sup>

- a. We are very conscious of the enormous delay which has occurred in this case and about which both sides have complained. The parties themselves have contributed to some extent to the delay. ... But these delays are dwarfed by the delays of Husbands J and the Court of Appeal in giving their respective judgments. The periods for which these judgments remained undelivered total more than seven years. We would be failing in our duty if we did not express our strong disapproval of judicial delays of that order. They deny parties the access to justice to which they are entitled and undermine public confidence in the administration of justice. We would like to think that such delays are now a thing of the past in Barbados.

[52] In September 2008, in an appeal from Guyana, *Gibson v Attorney General of Guyana*,<sup>45</sup> the CCJ again had cause to address the issue of delay in the conduct of court proceedings in another unanimous judgment, delivered jointly by Saunders and Bernard JJ. The Court stated:<sup>46</sup>

- a. Before concluding this judgment, we feel obliged to comment on the fact that this case was originally filed in July 1989. The High Court proceedings were not concluded until November 2004, more than 15 years after the case was filed. Undoubtedly there must have been

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<sup>43</sup> [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35.

<sup>44</sup> *ibid* at [45].

<sup>45</sup> [2008] CCJ 7 (AJ) (GY), (2008) 73 WIR 265.

<sup>46</sup> *ibid* at [8].



reasons for this, but we can think of none that could justify a delay of that order. If such delays are not eliminated, public confidence in the justice system in Guyana will surely be eroded.

[53] In both cases, the Court was clear that lengthy and unwarranted delays in the completion of court proceedings and in the delivery of judgments, undermined public trust and confidence in the administration of justice and denied litigants effective access to justice. Simply put, such egregious delay is anathema to justice. In *Barbados Rediffusion* the judgments took collectively over 7 years to be delivered, and in *Gibson*'s case the High Court proceedings took about 15 years to be completed.

[54] Then in November 2008, in *Reid v Reid*,<sup>47</sup> another appeal from Barbados and in a unanimous judgment delivered by Saunders J, the Court found it necessary and proceeded to establish general performance standards for the delivery of judgments:<sup>48</sup>

- a. *Before addressing the arguments of counsel made to us, it would be remiss of this court not to advert to the length of time taken by the Court of Appeal to deliver its judgment in this case. This was an astonishing period of almost five years. In the first appeal we heard from Barbados, Barbados Rediffusion Service Ltd v Asha Mirchandani (No 1)*<sup>49</sup>, de la Bastide, P expressed this Court's strong disapproval of judicial delays. Such delays, the President stated, 'deny parties the access to justice to which they are entitled and undermine public confidence in the administration of justice'. The effectiveness of a judiciary is seriously compromised if it fails to monitor itself in respect of the time taken to deliver judgments and to arrest promptly any tendency to lapse in this aspect of its performance. This is the second time we have had occasion to call attention to inordinate delay in the delivery of judgments in Barbados. We trust that effective remedial action, if not already taken, will now be taken to ensure that judgments are delivered within a reasonable time as required by the Constitution of Barbados.<sup>50</sup> *What is a reasonable time? In our view, as a general rule no judgment should be outstanding for more than six months*

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<sup>47</sup> [2008] CCJ 8 (AJ) (BB), (2008) 73 WIR 56.

<sup>48</sup> *ibid* at [22].

<sup>49</sup> Citing *Barbados Rediffusion Service Ltd* (n 43) at 50.

<sup>50</sup> Citing Constitution of Barbados (n 1), s 18(8).

*and unless a case is one of unusual difficulty or complexity, judgment should normally be delivered within three months at most (emphasis added).*

- [55] This standard, properly understood, establishes a benchmark of three months for the delivery of all judgments, unless the ‘case is one of unusual difficulty or complexity’, in which event six months is an appropriate and reasonable time period and as a general rule no judgment should exceed that period of time. This time standard was established in the context of a judgment that was outstanding for ‘an astonishing period of almost five years.’
- [56] In 2016, in *Singh v Harrychan*,<sup>51</sup> the CCJ would once more lament the deleterious effects of delay on the administration of justice in the Caribbean (in this instance an over seven-year delay between the triggering incident, conviction, and judicial notification of preparedness to proceed with an appeal):
- [57] From the standpoints of fairness and due process, the excessive judicial delay that has characterised this matter from its inception is of grave concern. It cannot be an acceptable situation in any modern justice system that appeals of this nature should be subjected to delays of this magnitude. As this court has had occasion to remark, inordinate delay denies parties ‘the access to justice to which they are entitled and undermine[s] public confidence in the administration of justice’: *Barbados Rediffusion Service Limited v Mirchandani (No 1)*. In order to maintain that entitlement and public confidence the judiciary has the responsibility to ensure that cases which come before it are dealt with in as timely and expeditious a manner as possible (footnote omitted).
- [58] The CCJs 2017 observation in *Smith v Selby*,<sup>52</sup> also a case from Barbados (in which it took almost nine years from filing to the determination by the Court of Appeal on a preliminary point, a period which included cumulatively just over three years

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<sup>51</sup> *Singh v Harrychan* [2016] CCJ 12 (AJ) (GY), (2016) 88 WIR 362 at [28]. And see [5] – [6] for a detailed explanation of the delay.

<sup>52</sup> [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70.

to deliver two judgments),<sup>53</sup> adds further context to the 2019 intervention by the executive and legislature in Barbados to effect reform. The Court remarked: ‘We also say, with the intention to promote reform, that a more expeditious appeal process would have mitigated the distress suffered by the litigants.’<sup>54</sup>

[59] Thus, in 2019, when the executive piloted and the legislature in Barbados amended the Constitution to include a performance standard of six months for the delivery of judgments, it was following the lead and abiding the guidance of the CCJ in *Reid v Reid*. As of 2019, the executive, legislature and judiciary (the CCJ as the Apex court) agreed that as a policy, judgments should be delivered within a six-month time frame. Six months is therefore the benchmark set as generally appropriate and reasonable in Barbados.

[60] Indeed, as Barrow J would opine in 2009, and justifiably so:<sup>55</sup>

The current focus by political leaders to do something about unreasonable delays is no doubt a response to demands for action by individual lawyers, bar associations and members of the general public who are denied justice so long as the adjudication for which they went to court is unreasonably delayed.

[61] Fast forwarding to 2024, and to the Guyanese case of *Gaskin v Minister of Natural Resources*,<sup>56</sup> the CCJ has most recently expressed its views on delays in court proceedings and in the delivery of judgments (at least in relation to Guyana).

[62] The relevant facts were as follows. The matter was filed in 2018 and went to the Court of Appeal on a procedural point, and the Court of Appeal remitted the matter to be heard afresh, deeming it urgent. Then, from the close of submissions to delivery of judgment the High Court took over 12 months. A notice of appeal was filed within two weeks in February 2020. The Court of Appeal heard the appeal in

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<sup>53</sup> The trial judge took over two years to deliver the judgment and the Court of Appeal just over one year.

<sup>54</sup> *Smith* (n 52) at [35].

<sup>55</sup> *Barrow* (n 38) at 432.

<sup>56</sup> [2024] CCJ 14 (AJ) GY.

June - July 2022 (two years and five months later) and delivered its judgment about five months thereafter, in December 2022.<sup>57</sup>

[63] The Appellant Gaskin claimed a declaration of unlawfulness, brought about by the trial judge taking more than one year to deliver judgment contrary to the Time Limit for Judicial Decisions Act 2009, by which Parliament set time-based performance standards for the delivery of civil judgments (an outer limit of 120 days from the conclusion of the hearing).<sup>58</sup>

[64] Again, Saunders P stated the Court's views, which I quote *in extenso*, because they reflect an evolving, developmental, and nuanced jurisprudential understanding of the meaning of and approach to delay in the delivery of judgments, in relation to claims of constitutional breaches and for relief:<sup>59</sup>

This Court has on previous occasions commented on lengthy delays in the rendering of judgment. See for example, the Barbadian case of *Reid v Reid*. Over the years there has been significant improvement in Guyana, but the problem of delay is still prevalent in several States in the Caribbean. This has impelled some Legislatures, with good motives, to enact legislation in an attempt to address the issue. Guyana's Time Limit for Judicial Decisions Act, passed in 2009, is one such example. That Act at s 4(1) specifies that in civil cases a judge must render judgment "as soon as possible after the conclusion of the hearing but not later than one hundred and twenty days from the date of conclusion of the hearing." Provision is made, in exceptional circumstances, for the judge to seek an extension of time from the Chancellor.

In the Court of Appeal, *the Chancellor considered that the provisions of that Act must be construed as being of a directory and not mandatory nature* and that, in any event, in light of the hallowed Separation of Powers principle, there are unresolved questions surrounding the constitutionality of the legislation. *I agree with the Chancellor*. The obvious point is that the Constitution creates three co-equal Branches of Government. *Each branch must be entitled to establish for itself reasonable performance standards and measures for the despatch of its business* and not have these imposed by a sister branch. *Court performance standards must take into account a variety of factors which the judicial branch is best able to weigh and balance*. The resources and level of technology available to the courts, the

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<sup>57</sup> *ibid* at [129].

<sup>58</sup> Time Limit for Judicial Decisions Act, Cap 3:13, s 4(1).

<sup>59</sup> *Gaskin* (n 56) at [130] - [133], with which Anderson J agreed, at [41].

number of judges and courtrooms available, the facilities and technology on hand, and of course the support staff available, all have an impact on performance standards. So too, it must be said, do processing and administrative inefficiencies for which the judicial branch is solely responsible, and sub-optimal time management on the part of individual judges.

In lieu of imposing by statute arbitrary time limits on a sister branch of Government, Parliaments and Governments that are understandably concerned about delays in the administration of justice may have to resort to more effective measures to grapple with an undoubtedly serious problem. ... *It is also important that the judiciary itself should establish its own reasonable performance standards and faithfully monitor and enforce them.*

A formal complaint that a judge has taken an excessive period to produce a judgment is *sometimes better addressed in an administrative proceeding within the judicial branch with the judge against whom the complaint is made being afforded an ample opportunity to respond* to the complaint. It is true, however, that some delays in the handing down of judgment are so egregious as to be, without more, entirely inexcusable on their face. This is not such a case. *No one should condone a one-year delay in giving judgment after the close of oral submissions but here we have no way of knowing what objective difficulties faced the court, if any.* In all the circumstances, the court below was right to deny the Declaration that was claimed (emphasis added).

- [65] What emerges in 2024 is the CCJs recognition that the issue of delay is a complex matter and that each case must be considered in context and on a case-by-case basis. The following core principles may be conservatively extracted and surmised from this dicta in Gaskin's case: (i) time standards for the general conduct of judicial proceedings including the delivery of judgments, are guidelines and if set by the legislature are at best directory (and not mandatory); (ii) performance standards for the general conduct of judicial proceedings including the delivery of judgments are best established by the judicial arm of state; (iii) once a judiciary establishes time standards, these must be faithfully monitored and enforced; (iv) due process also requires that the judicial arm of state be given an opportunity to explain any delays in the general conduct of judicial proceedings including the delivery of judgments where these are challenged constitutionally; (v) a 12 month delay in the delivery of a judgment is *prima facie* cause for serious concern (at least in Guyana).

[66] There may be some challenges reconciling the general corpus of jurisprudence generated by the CCJ on this issue of delay in the conduct of court proceedings and in the delivery of judgments. However, for Barbados, it would appear uncontroversial that a six month general outer limit for the delivery of judgments, from the close of proceedings, has the *imprimatur* of the executive, legislature, and its Apex court, the CCJ (led by the CCJ's 2008 pronouncements in *Reid*). Certainly, per the CCJ jurisprudence in *Gaskin* and as the Apex court in Barbados, the judiciary has been able to 'establish for itself reasonable performance standards and measures for the despatch of its business' in so far as the delivery of judgments is concerned. Thus, even if this time standard is considered directory, because it is deemed also constitutionally both fair and reasonable, the question that arises is how does one treat 'faithfully' with cases in which this warranted six-month time lapse is exceeded (as in the instant matter in relation to the Court of Appeal)?

#### **Gibson, the CCJ's In-Depth Interrogation of S 18 Delay**

[67] In 2010, in an appeal from Barbados, *Gibson v Attorney General of Barbados*,<sup>60</sup>, the CCJ considered frontally s 18 of the Constitution and the protection of the law guarantee of a right to a fair hearing within a reasonable time. The period of alleged delay before the trial judge was 29 months from the charge (murder) to the commencement of the preliminary inquiry, and before the CCJ it included the delay in the prosecution of the appeal to the Court of Appeal (a notice of appeal was filed by the Attorney General in May 2007 and over a year later no record of appeal had been filed, and the appeal only commenced in February 2009).<sup>61</sup> During this period the applicant was in custody. In *Gibson*, both the High Court and the Court of Appeal held that the 29-month period before the commencement of the preliminary inquiry constituted unreasonable delay.<sup>62</sup>

[68] The CCJ explained several critical aspects of the issue,<sup>63</sup> including:

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<sup>60</sup>*Gibson* (n 5).

<sup>61</sup> *ibid* at [11], [20], [22], and [46].

<sup>62</sup> *ibid* at [59].

<sup>63</sup> *ibid* (Saunders and Wit JJ).

- i. Where an unreasonable delay challenge is raised, the adjudicating court must take into consideration all periods of delay up to the hearing and determination of the complaint: ‘A person in custody who alleges a breach of the reasonable time guarantee effectively is complaining not about an event or some particular act. He is complaining about his situation. That situation lasts until he has been released or his complaint is otherwise appropriately addressed by a competent court.’<sup>64</sup>
- ii. In this connection unreasonable delay must be taken to include any undue lapse of time throughout the proceedings for which any of the emanations of the state, including a court, is responsible and ... the duration of the proceedings runs from the arrest of the accused to the exhaustion of all appellate processes.<sup>65</sup>
- iii. There are societal and public interest considerations that impact public trust and confidence, the capacity to effectively and fairly prosecute an accused, and in the case of persons in custody the aggravation of ‘the evils associated with overcrowded jails.’<sup>66</sup>
- iv. The prioritisation and focus of the analysis: ‘Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee.’<sup>67</sup>
- v. The appropriate constitutional orientation: ‘By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood.’<sup>68</sup>
- vi. That implementation of ameliorating measures to reduce delay is a relevant consideration in a s 18 assessment.<sup>69</sup>
- vii. The reach of s 18 rights and responsibilities: ‘Section 18(1) gives three different and free-standing rights to any person who is charged with a criminal offence. These rights correspond to separate obligations imposed by the Constitution on the state. For every accused person whose charge has not been withdrawn the state is obliged to afford a hearing that is: (a) fair; (b) before an independent

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<sup>64</sup> *ibid* at [46].

<sup>65</sup> *ibid* at [46].

<sup>66</sup> *ibid* at [48].

<sup>67</sup> *ibid* at [49].

<sup>68</sup> *ibid* at [49].

<sup>69</sup> *ibid* at [52].

and impartial tribunal established by law, and (c) held within a reasonable time.’<sup>70</sup>

- viii. That in relation to fairness and a properly constituted court: ‘The fulfillment by the state of each of these obligations is fundamental to the criminal justice system and the obligations referred to at (a) and (b) are irreducible. Thus, if a trial is not likely to be or has not been fair, then, as stated earlier, the breach vitiates the trial process. Similarly, a court will not sanction a trial before a tribunal whose characteristics threaten to or actually fall short of basic requirements of independence and impartiality. Redress for an infringement of either of these rights cannot be limited by any overriding public interest ...’.<sup>71</sup>
- ix. That in relation to timeliness and delay the position is more nuanced, because one cannot undo delay and ‘breach of the reasonable time guarantee does not necessarily prevent a valid trial being held.’<sup>72</sup>
- x. That a finding of delay must be done contextually on a case-by-case basis, and the assessment involves a weighting and balancing of both public interests as well as those of an accused/perpetrator.<sup>73</sup>

## **A Way Forward**

### **General Principles**

[69] Time based reasonableness cannot be irrevocably tied to fixed time standards. The ultimate test is that delay may be unconstitutional if it is such as to render a hearing or proceedings unreasonable and/or unfair by failures to complete it within a reasonable time.<sup>74</sup> Thus, in relation to reserved judgments and given that six months has been set as an appropriate and reasonable general time standard for the delivery of judgments in Barbados, the following approach is apt for processing cases in which delay by the court in the delivery of a judgment is the basis of a constitutional review and challenge.

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<sup>70</sup> *ibid* at [54] (footnote omitted).

<sup>71</sup> *ibid* at [55].

<sup>72</sup> *ibid* at [56] and [57].

<sup>73</sup> *ibid* at [58] – [61].

<sup>74</sup> See comparatively, *Bond v Dunster Properties Ltd* [2011] EWCA Civ 455 at [84]-[89], [104] and [121].



[70] A time lapse of six months itself is *prima facie* warranted, and barring special circumstances that period is not to be reckoned for the purposes of unconstitutional delay. It is *prima facie*, because the constitutional standard cannot be tied to any fixed time limits – it being always a judicial evaluation of fairness and reasonableness. Thus, there may be instances in which the failure to render a judgment within six months may constitute unconstitutional delay. *It all depends on the circumstances.* Equally, there may be instances when a judgment is given outside the six-month time standard, and it is constitutionally *vires* to do so (emphasis added).

[71] Therefore, in the former case (judgment delivered within six months), the burden and onus are on an applicant to prove the special circumstances that establish unconstitutional delay. In the latter (judgment delivered after six months), that burden is discharged, *prima facie*, with the elapse of six months and provided there is some credible evidence of unfairness and/or unreasonableness, and the evidential burden shifts to the defaulting party, in the instance of an outstanding judgment, the judicial arm of state, to explain and justify the reasonableness of any alleged delay and to negate any alleged unfairness and/or unreasonableness. This approach provides a consistent, fair, and accountable method for resolving these constitutional challenges based on delay in the conduct of court proceedings.<sup>75</sup>

[72] In cases where the alleged delay occurs otherwise than in relation to the delivery of judgments, the following also applies (as it does to cases involving reserved judgments). Ultimately the standards of unfairness and unreasonableness must be judged in the round with a special focus on the rights of an accused/ perpetrator. One aspect, maybe the initial threshold step, involves a determination of whether there is unacceptable delay, which in turn depends on an assessment of whether the delay in all the circumstances is unwarranted, inappropriate, out of proportion,

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<sup>75</sup> See Barrow (n 38) 430, where in the context of the Eastern Caribbean Supreme Court and where a three-month ethical time standard is for the delivery of reserved judgments: ‘Although the time limit is not absolute, it is clear that, if the time limit is exceeded, a justification should exist. On a literal view, therefore, delay that exceeds three months is excessive delay...’.

and/or reasonably avoidable. This is largely fact specific, and both applicant and respondent are entitled to adduce evidence in this regard.

[73] Another aspect, certainly in criminal proceedings, is to consider and balance all competing interests. Clearly the interests of an accused/perpetrator are important, and remain the focus of the constitutional challenge, but not disproportionately so. Thus, in terms of the actual court proceedings, has the delay been actually prejudicial, and what has been, and is, the impact of this delay on an accused/perpetrator? Any prejudice must be linked to fairness and/or reasonableness, and it must be shown that the impact of the alleged prejudice led to constitutional unfairness and/or unreasonableness (that is, unfairness and/or unreasonableness of the judicial process in relation to the accused/perpetrator). Also, what, if any, responsibility does the accused/perpetrator have for the delays incurred? In this instance, rights are linked to responsibilities. An accused/perpetrator also has a duty to cooperate in ensuring that the criminal process runs efficiently and effectively. Undermining the system and pleading delay is neither fair nor reasonable.

[74] *Public interest considerations*, that justice must serve the interests of the public, are relevant. This includes having those who have committed crimes tried and convicted and having those guilty of criminal behaviour take responsibility and be held accountable for their actions. The interests of victims and their families, friends, and communities are also relevant, and their entitlement to justice must also be considered. There is also a public interest to have a criminal justice system that is efficient, effective, and fair. This assessment therefore involves balancing considerations of proportionality and impact, individual and societal, which include the nature and prevalence of the offence, and the fairness and reasonableness of any sentence imposed (emphasis added).

[75] Another important interest, which one may term *ideological considerations*, is upholding the rule of law in its case specific and overarching dimensions. Here the

balancing involves weighing considerations such as due process and the protection of the law for the accused/perpetrator as well as for the alleged defaulting party – the judicial arm of state, say, in instances of delays in the delivery of judgments or in the conduct of court proceedings. These rights are no less for judicial officers who are accused of constitutional breaches. They, as well as the institution of the judiciary, are entitled to natural justice, an opportunity to be heard in explanation and defence of alleged default or wrongdoing. This is part of the protection of the law, guaranteed to all.<sup>76</sup> How that is achieved is a matter for the parties and adjudicating tribunal in each case to work out. But, without that opportunity justice cannot readily be said or seen to be done (accepting that there may be such egregious and exceptional instances of substantial judicial delay that the events speak for themselves, which in any event may simply raise a rebuttable presumption of unconstitutionality). This is an approach grounded in the principle of proportionality that considers and balances all relevant factors.

[76] Finally, and as a general rule, whenever there is judicial delay in court proceedings or in the delivery of judgments, there is a constitutional, ethical, and moral duty on the court and judicial officers to transparently, candidly, and openly (on the record) explain the circumstances that have caused the delay. Neither the judiciary, nor any judicial officers, are above the law. All are subject to the rule of law. Fairness, reasonableness, and the duty to be accountable to parties and society demand the highest standards of judicial propriety and integrity.<sup>77</sup> Failure to explain *prima facie* delay ought to no longer occur. Going forward, such failure entitles a reviewing court to draw adverse inferences.

## **A Framework**

[77] A framework for assessing delay and determining whether it is unconstitutional could be as follows. First, consider the time periods that have elapsed and determine

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<sup>76</sup> *Maya Leaders Alliance* (n 30) at [38] et seq.

<sup>77</sup> See the United Nations Office on Drugs and Crime (UNODC), ‘Bangalore Principles of Judicial Conduct’ (2018) < <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf> > accessed 25 July 2024); and ‘Judicial Code of Conduct’ (n 42). See also Robinson, Bulkan and Saunders (n 28) para 6-020, Equal accountability before the law.

whether they are indicative of unreasonable delay. In Barbados, and for reasons given above, in the case of delay in delivering judgments there is a six-month benchmark. For overall delay in the conduct of court proceedings, judicial opinion supports an evaluation of whether the total time elapsed, making allowances for warranted time lapses, without more, gives grounds for a real concern about fairness and/or reasonableness.<sup>78</sup>

- [78] Second, if there are grounds for a real concern about fairness and/or reasonableness, then the next stage is to conduct a detailed examination of all relevant facts and circumstances, with a focus on undue lapses of time. Within this stage there are shifting evidential burdens, both in relation to delay in delivering judgments and overall delay. In the former situation the approach is as explained above. In relation to overall delay, relevant time standards are considered (where these exist), and where they do not, reasonable time lapses to efficiently and effectively complete all stages of the proceedings are considered, and an opportunity given for the defaulting party to justify any excessive time lapses.
- [79] In summary, in both delay in delivering judgments and overall delay, case specific aspects, the conduct of an accused/perpetrator, judicial and administrative resource issues, and wider environmental matters (including uncontrollable external circumstances), as well as any actual prejudice to an accused/perpetrator caused by the delays, are to be considered. That assessment is filtered through the lenses of proportionality and reasonableness.
- [80] The final layer, as it were, is to consider everything through the lenses of fairness and/or reasonableness. It is at this stage that broader policy considerations, such as societal interests, perspectives of the arms of state and the DPP, and rule of law demands, may feature. Ultimately, the constitutional value-standard of a fair hearing within a reasonable time before a proper court<sup>79</sup> is determinative.

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<sup>78</sup> *Dyer v Watson* [2004] 1 AC 379 at 403 (Lord Bingham). See also *Bridgelall v Hariprashad* [2017] CCJ 8 (AJ) (GY), (2017) 90 WIR 300.

<sup>79</sup> Constitution of Barbados (n 1) s 18(1): ‘... by an independent and impartial court established by law.’

## **This Case, at this Time, in Barbados**

*'The law's delays have been the subject of complaint from litigants for many centuries, and it behoves all courts to make proper efforts to ensure that the quality of justice is not adversely affected by delay in dealing with the cases which are brought before them, whether in bringing them on for hearing or in issuing decisions when they have been heard.'*<sup>80</sup>

[81] A good starting point for regional comparative purposes (though somewhat counterintuitive), may be to consider the jurisprudence on delay in Trinidad and Tobago, which does not have a reasonable time requirement expressly stated in its Constitution. Despite this, and in light of adjudication based only on common law notions of delay, the Court of Appeal, in 2010, in *Peters v The State*,<sup>81</sup> determined that excessive time lapses between charge and trial could amount to presumptive delay but not necessarily constitutional unfairness.<sup>82</sup>

In concluding on this issue, we find that considering this case in the round, the appellant's right to a fair trial has not been breached. *While we do conclude that the delay of twelve years and one month suggests presumptive prejudice, we do not find that the period can be said to have raised a presumption of unfairness* (emphasis added).

[82] Recently, in July 2024, the Court of Appeal in Trinidad and Tobago revisited the issue though in very different circumstances.<sup>83</sup> The court ultimately found that there was no Constitutional right to a speedy trial or to a trial within a reasonable time in Trinidad and Tobago,<sup>84</sup> and that there was no breach of due process or the protection of the law. However, in recognition of the complexity and multi-perspectival dimensions of the issue of delay, it opined:<sup>85</sup>

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<sup>80</sup> *Boodhoo v A-G* [2004] UKPC 17, (2004) 64 WIR 370 (TT) at [1] (Lord Carswell).

<sup>81</sup> TT 2010 CA 5 (CARILAW), (26 February 2010). A delay of 24 years and 8 months between the date the appellant was charged and the trial (for 12 years of which the appellant was out of the jurisdiction and so contributed to the delay).

<sup>82</sup> *ibid* at [41].

<sup>83</sup> *A-G of Trinidad and Tobago v FR* (TT CA, 22 July 2024). The issue was whether the state had breached the right to due process and the protection of the law of a victim of sexual violence (which occurred in 2017 when she was 16), in delaying the prosecution of the accused. The accused was charged seven months after the event. About four years later, in 2021, the victim commenced constitutional proceedings seeking several declarations that the state had failed to prosecute the accused in a timely way. At the time of filing, the committal proceedings – preliminary inquiry, had not yet been completed. This issue was determined by considering, among other things, whether there was a constitutional right to a speedy trial or to a trial within a reasonable time.

<sup>84</sup> *ibid* at [76], [92], [101], [103] and [111] - [112].

<sup>85</sup> *ibid* at [4].

Notwithstanding the conclusions above, it must be said that the situation of victims of crime needs to be recognized and addressed in a sensitive, practical, and meaningful way. There are in many cases obvious physical, psychological, and financial consequences. ... However, these are matters which have political, administrative, legislative, and financial implications which cannot properly be addressed by a Court's reading into the Constitution a right which neither its language, structure, nor precedent permit.

[83] Preceding these two decisions, the Court of Appeal of Trinidad and Tobago had unanimously adopted a contextual approach to a reasonable time standard for the delivery of reserved judgments in Trinidad and Tobago, one that aligns with the CCJs jurisprudence on this point. The Chief Justice would state:<sup>86</sup>

I have in the past suggested that in the context of our conditions *six months should be regarded as the maximum time which parties should reasonably be expected to wait for a judgment from the High Court or the Court of Appeal*. I do not think, however, that because the delay in giving judgment has gone past that marker it should immediately and automatically be regarded as an infringement of the litigant's constitutional rights. I think it is necessary to set the bar a good deal higher before that stage is reached, bearing in mind that our Constitution does not provide any right to trial within a reasonable time either in criminal or in civil cases (emphasis added).

[84] Looking elsewhere in the Caribbean and to the Eastern Caribbean Supreme Court, the Privy Council in *Citco Banking Corp NV v Pusser's Ltd*,<sup>87</sup> described a five-year delay by a judge in delivering judgment as 'completely unacceptable'.<sup>88</sup> In the Board's opinion, and taking a contextual approach to delays:<sup>89</sup>

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<sup>86</sup> See *Boodhoo v A-G* TT 2001 CA 71 (CARILAW), (14 December 2001) in the context of a 14-month delay in the delivery of judgment (de la Bastide CJ). Approved by the Privy Council, in *Boodhoo* (n 80) at [9], [11]. The courts at all levels agreed that a delay of 14 months by the Court of Appeal was not unreasonable in the particular circumstances and because of the unusual feature of the Trinidad and Tobago Constitution in not providing any right to trial within a reasonable time. However, the Privy Council also agreed with the Court of Appeal that in Trinidad and Tobago, the right to the protection of the law was properly invoked where there is a constitutional complaint of delay in the delivery of a judgment. But note *Boodhoo* (n 80) at [12]: 'In the Board's opinion delay in producing a judgment would be capable of depriving an individual of his right to the protection of the law, as provided for in s 4(b) of the Constitution of Trinidad and Tobago, but only in circumstances where by reason thereof the judge could no longer produce a proper judgment or the parties were unable to obtain from the decision the benefit which they should.' And at [13]: 'The Board consider that no finite period can be prescribed and that the only applicable principle is that which the Board have enunciated.'

<sup>87</sup> [2007] UKPC 13, (2007) 69 WIR 308 (VG).

<sup>88</sup> *ibid* at [21]: 'Benjamin J heard evidence and argument over five days towards the end of June 1998 and reserved his judgment, saying he would give it before the end of July. In fact he gave it on 7 April 2003, nearly five years later. The judgment as delivered offers the parties no explanation for the delay ... But their lordships feel bound to observe that such delays are completely unacceptable.'

<sup>89</sup> *ibid* at [21].

- a. Besides being a violation of the constitutional right of the parties to a determination of their dispute within a reasonable time, they are likely to be detrimental to the interests of the British Virgin Islands as a financial centre which can offer investors efficient and impartial justice.

[85] Against this comparative regional backdrop, and turning to Barbados, the emerging jurisprudence reveals an evolving and nuanced sensitivity to the issue of delay. These insights are critical, as deference ought to be afforded to local courts' understandings of the content and meaning (the substance) of constitutional rights. It is the judges and judicial officers in Barbados who live and move and dwell in and amongst the peoples and regions there and who have a grounded felt sense of socio-legal realities, expectations, and aspirations.

[86] The Barbados judiciary has addressed its mind to the issue of delay in several matters and at times has ordered reductions in sentence as a result of 'unreasonable' delay. In *Howard v R*,<sup>90</sup> the Court of Appeal of Barbados considered the long delay in bringing the matter to trial among other factors for reducing the sentence from six years to four years. In *Prescod v R*,<sup>91</sup> the Court of Appeal of Barbados considered the systemic failure of a four-and-a-half-year delay in that case arriving at the Court of Appeal and reduced the sentence from 12 years to 10 years.

[87] In *Weekes v The State*,<sup>92</sup> the Court of Appeal considered the extensive delay caused by the State in bringing the appellant to trial (nine years excluding the delay caused by the Appellant) unacceptable having regard to s 18 of the Constitution and awarded a five-year reduction in sentence. In *Fields v R*,<sup>93</sup> the Barbados Court of Appeal granted a two-year reduction in sentence for a delay of some six and a half years, noting however, that '...there is no formula to be applied in every case. Each case must rest on its particular facts.'

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<sup>90</sup> BB 2004 CA 2 (CARILAW), (16 January 2004) at [26] (incident occurred in 1998, sentenced in 2003 at HC, and by the CA in 2004).

<sup>91</sup> BB 2006 CA 7 (CARILAW), (6 March 2006) at [24].

<sup>92</sup> (BB CA, 27 July 2023) at [77] (currently on appeal to the CCJ).

<sup>93</sup> *Fields* (n 4).

[88] In *R v Waithe*,<sup>94</sup> the case was heard 18 years after the alleged offence and 8 years after being indicted. The Court considered the *Fields*' case and *Howard's* case, and reduced the sentence imposed by two years to account for the delay in bringing the matter to trial. In *Parris v Attorney General*,<sup>95</sup> where the first stage of the accused's criminal proceedings was yet to commence, the Court discussed the breach of s 18(1) right to a reasonable trial with reliance on *Gibson*, and determined that the delay of three years and six months was unreasonable, ordering that the Preliminary Inquiry be held within four months failing which the charge is liable to be permanently stayed.

[89] In *Ince v R*,<sup>96</sup> there was a delay of one year and nine months between the indictment and the trial, and a further delay of eight months between the verdict and the sentencing. The Court of Appeal noted that neither side sought to explain or apportion any blame for the delay but that '... While it may well be that the appellant may have contributed in some way to the delay, in our view it is ultimately the responsibility of the State to bring him to his trial within a reasonable time in accordance with its obligations under section 18(1) of the Constitution.'<sup>97</sup> The Court of Appeal determined that the delay between the charges being laid and the indictment being preferred was inordinate and awarded a discount of one year from sentence.

[90] From the forgoing one can see that the Barbadian judiciary, since *Howard* in 2004, has been inclined to order a reduction in sentence where there has been unreasonable or inordinate delay in criminal matters. The Barbadian judiciary is well placed to understand the overall dynamics and nature of their society and the way in which the courts should interpret and apply laws to most accurately reflect this. Reductions in sentence for unreasonable or inordinate delay is not a new concept and has been

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<sup>94</sup> BB 2022 HC 67 (CARILAW), (18 November 2022) at [22].

<sup>95</sup> BB 2022 HC 26 (CARILAW), (7 July 2022) at [9].

<sup>96</sup> BB 2022 CA 1 (CARILAW), (2 November 2022) at [96].

<sup>97</sup> *ibid* at [96].



applied in numerous jurisdictions such as Canada, Australia and by the CCJ as a potential remedy for unreasonable delay.

[91] Turning to the matter at hand, in considering whether there is a breach of the reasonable time guarantee, it is appropriate to first consider whether the overall period of time elapsed is of such length as to evoke in the objective and reasonable judicial conscience a real concern about fairness and/or reasonableness.<sup>98</sup> As discussed above, from charge to the disposition of the appeals, a total of nine years and three months elapsed. As evidenced by the aforementioned cases, the overall period is *prima facie* and arguably such to warrant real concern about fairness and/or reasonableness. Therefore, it is appropriate to interrogate all the relevant facts and circumstances with a view to determining whether the State has provided a satisfactory explanation or justification for any lapses of time which appear to be unwarranted, inappropriate, out of proportion, and/or reasonably avoidable.

[92] *From charge to indictment*, a period of about two years, two months and two weeks. The Appellants indicated that this time period was due to the State taking (i) an excess of 15 months to prepare the ‘police file’ and (ii) an additional 12 months to lodge the indictment. There has been no reasonable explanation from the Respondent regarding this period. Accepting that the investigation and preparation of a case may take varying times depending on various factors, does not absolve the State from taking the initiative to ensure that criminal proceedings are dealt with expeditiously having regard to the constitutional right to a fair trial within a reasonable time, and to provide a reasonable explanation for circumstances contributing to any unwarranted or undue delay. It is the State’s responsibility to ensure procedural efficacy.

[93] The State’s contention that this period was not inordinately long does not accord with the developing jurisprudence in the local courts and may thus be considered *prima facie* borderline. It is certainly arguable that this pre-indictment period, in the

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<sup>98</sup> See *Gibson* (n 5), and *Dyer v Watson* [2004] 1 AC 379.

absence of cogent explanations, is unwarranted, inappropriate, and reasonably avoidable.

[94] *From indictment to arraignment*, a period of about four years and just under two months; and *from arraignment (guilty plea entered) to sentence*, a period of just under five months. Thus, from *indictment to sentence* a period of about four years and seven months had elapsed. And *from charge to sentence* a period of about six years and nine months had elapsed. On the face of it these time lapses appear undue. However, on closer examination and taking into consideration the explanations offered, the period included systemic/institutional delay due to the conduct (fault) of the parties which occurred between 31 August 2016 and 25 March 2021 (four years and eight months). In fact, the time lapse between 2017 and 2021 was heavily due to numerous adjournments, non-appearance of the Appellants' attorneys, and negotiations, coupled with the environmental issues in the Barbadian Supreme Court as well as the constraints of the COVID-19 pandemic.

[95] These are justifiable reasons for the delays during this period. Any prejudice to the Appellants is effectively negated by the fact that they have agreed to partial responsibility for the delay. Furthermore, the uncontrollable external circumstances such as the COVID-19 pandemic and the environmental issues plaguing the Court, negate any assessment of inappropriate or reasonably avoidable delay during this period.

[96] *Lastly, the period before the Court of Appeal, from the lodging of appeals to hearing them* 15 months; and *from the hearing of the appeals to the delivery of judgment* a further fifteen months. That is a total of 30 months, about 2 years and 6 months, elapsed from the filing of appeals to their final disposition. As alluded to above, there has been no reasonable opportunity given to or evidence elicited from the Judiciary or the judges of the Court of Appeal as to the reasons for delay at the appellate level. Criticising the Court of Appeal without giving them a fair

opportunity to explain the reasonableness of the circumstances surrounding this delay would be inappropriate and unfair.

[97] In any event, the DPP has advised this Court, and it has not been refuted, that during the period from the filing of the appeals, the effects of the COVID-19 pandemic were still impacting the Judiciary and the Court of Appeal in Barbados, and as well that the Court of Appeal was not fully constituted operating with only three justices of appeal. However, it is worth reiterating that there is a duty on the court and judicial officers to transparently, candidly, and openly (on the record) explain the circumstances that have caused or contributed to delay. It would have been appropriate in this case, for the Court of Appeal to have at least explained the 15-month time lapse for the delivery of its judgment; especially given the judicial pronouncements in support of the existing time standard of 6 months for the delivery of reserved judgments.

[98] Accordingly, any prejudice to or impact on the Appellants as a result of the time lapses in this matter have not been demonstrated to render their court proceedings constitutionally unfair or the timeliness of the conduct and disposition of these court proceedings constitutionally unreasonable. This assessment takes into consideration the analysis above, as well as a weighting and balancing of the public interest and ideological factors averred. In particular, this matter involves murder<sup>99</sup> and the sentences imposed by the High Court and affirmed on appeal, are fair, just and proportionate.

[99] In Barbados at this time, given prevalence and consequential considerations, it cannot be concluded on an assessment of all circumstances that the Appellants were denied their rights to a fair hearing within a reasonable time. That said, the judiciary needs to urgently establish differentiated time standards for the stages of criminal proceedings which accommodate relevant milestones and events (based on typology and category). These time standards need to be made public, measured and

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<sup>99</sup> The Appellants were indicted for murder but pleaded guilty to non-capital murder.

monitored on a continuous basis. In this way, the judiciary establishes a consistent, sustainable, and accountable system, that can reassure public trust and confidence around timeliness in the delivery of criminal justice.

### **Conclusion, Reform is Achievable**

*‘Court excellence is not a state that some courts achieve. It is rather the practice of continuous evaluation and improvement in the quality of court services.’<sup>100</sup>*

[100] In practical terms, how can unwarranted delays in the criminal justice system in Barbados be mitigated by the judiciary in relation to what it has power and control over? Without intending to be paternalistic and intending to be constructive, there are several steps that can be taken and resources (regional and international) that are available for reference and guidance. Some are very concrete and can be deployed and utilised in part or in whole immediately, incrementally, and over the medium and long term, and others are more conceptual and aspirational.

[101] What is clear is that the pervasive problem of delay in Caribbean court proceedings needs to be addressed and that resolution will take intelligent and strategic planning, dedicated and sustained effort, and the wise and skilful deployment of necessary resources, and it will take time.

[102] Some of the readily available and concrete resources include:

- (i) The Criminal Bench Book for Barbados, Belize and Guyana, produced and published by the Caribbean Association of Judicial Officers (‘CAJO’) in February 2023.<sup>101</sup> This publication is based, among other things, on research done in Barbados (country specific), and includes a specific chapter on Criminal Case Management (ch 24), which contains information on performance

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<sup>100</sup> Sir Dennis Byron, President of the Caribbean Court of Justice, ‘Case Management for the African Court on Human and Peoples’ Rights’ (Judicial Education and Training Programme for Judges of the African Court of Human and Peoples’ Rights, Arusha, Tanzania, 5-7 March 2014) 1.

<sup>101</sup> Available as an open resource, and accessible electronically: Caribbean Association of Judicial Officers (CAJO), *Criminal Bench Book for Barbados, Belize, Guyana* (2023) < <https://thecajo.org/newcajo/wp-content/uploads/2023/09/FINAL-e-book-Crim-BB-for-Barbados-Belize-and-Guyana.pdf> > accessed 29 July 2024.

standards, best practices, and a Model Checklist for Case Management and Preparation of Decisions (tried, tested and approved by regional judicial officers). There are also chapters on Procedural Fairness (ch 26) and on Therapeutic Jurisprudence (ch 27), both of which add qualitative performance standards and the latter which if mainstreamed, would facilitate a more 360-degree approach to criminal justice adjudication.

- (ii) The *Disability and Awareness Guidelines for Judiciaries and Judicial Officers*, produced and published by the Caribbean Association of Judicial Officers (‘CAJO’) in February 2023.<sup>102</sup> This publication, provides a practical tool for developing and implementing, on a resource available and incremental basis, practices and procedures to promote and secure the rights of persons with disabilities.
- (iii) The *Proceeding Fairly Report* and its companion publication *Procedural Fairness A Manual*, produced and published by the Judicial Education Institute of Trinidad and Tobago in 2018, is a vital Caribbean source of relevant information and practical guidance on how procedural fairness performance standards can be incorporated, monitored and measured throughout all court-controlled justice processes, proceedings, and systems (including criminal proceedings).<sup>103</sup>
- (iv) The International Framework for Court Excellence (‘IFCE’), which is a whole-system quality management system developed internationally by judiciaries for judiciaries and designed to help courts improve their performance.<sup>104</sup> This framework and its accompanying publication the *Global Measures of Court Performance*,<sup>105</sup> have informed developments in and been interrogated and integrated into Caribbean judicial approaches to setting and sustaining court-based performance standards by the CCJ and the judiciary of Jamaica with measurable and documented success. Notable among the resources of the International

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<sup>102</sup> Available as an open resource, and accessible electronically: Caribbean Association of Judicial Officers (CAJO), *Disability and Awareness Guidelines for Judiciaries and Judicial Officers* (2023) < <https://thecajo.org/newcajo/wp-content/uploads/2023/03/Consolidated-Disability-and-Inclusion-Awareness-Guidelines.pdf> > accessed 29 July 2024. See also the Judicial Reform and Institutional Strengthening (JURIST) Project, *Final Research Report Disability and Inclusion Awareness* (2022) < <https://thecajo.org/newcajo/wp-content/uploads/2023/03/JURIST-Research-Report-Finalv2.pdf> > accessed 29 July 2024.

<sup>103</sup> Both are available as open resources, and accessible electronically: Peter Jamadar and Elron Elahie, *Proceeding Fairly: A Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Republic of Trinidad and Tobago* (Judicial Education Institute of Trinidad and Tobago 2018) < [https://www.ttlawcourts.org/jeibooks/books/Proceeding\\_Fairly\\_Report.pdf](https://www.ttlawcourts.org/jeibooks/books/Proceeding_Fairly_Report.pdf) > accessed 29 July 2024. ; and Judicial Education Institute of Trinidad and Tobago, *Procedural Fairness a Manual: a Guide to the Implementation of Procedural Fairness in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago* (2018) < [https://www.ttlawcourts.org/jeibooks/books/Procedural\\_Fairness\\_A\\_Manual.pdf](https://www.ttlawcourts.org/jeibooks/books/Procedural_Fairness_A_Manual.pdf) > accessed 29 July 2024.

<sup>104</sup> Available as an open resource, and accessible electronically: International Framework for Court Excellence (n 32).

<sup>105</sup> Available as an open resource, and accessible electronically: ‘Global Measures of Court Performance’ (3rd edn, International Consortium for Court Excellence, 2020) < [https://www.courtexcellence.com/\\_data/assets/pdf\\_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf](https://www.courtexcellence.com/_data/assets/pdf_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf) > accessed 29 July 2024.

Consortium for Court Excellence is its Self-assessment Checklist, which enables any judiciary, at any time, to access its current standards of court excellence, and is an immediately deployable and useful evaluative/diagnostic and remedial tool.<sup>106</sup>

- (v) The CourTools performance measures developed by the National Centre for State Courts in the USA, are another set of very practical and easily applicable system-wide practices and evaluative methodologies and tools that Caribbean judiciaries have drawn on to improve the efficiency and effectiveness of their court systems.<sup>107</sup>
- (vi) The Revised Guidelines for Sexual Offence Cases in the Caribbean Region, developed under the JURIST Project.
- (vii) The Criminal Bench Book for Magistrates and Parish Court Judges, also developed under the JURIST Project.

[103] Specific to Barbados are other documents and reports that are more inward facing and developmental and that can also assist in improving criminal justice court performance standards in the area of systemic delay. One very hopeful and commendable development is the imminent promulgation of Barbados Criminal Procedure Rules (2024), a draft of which is in very advanced stages. These rules will provide clear and measurable milestones and performance standards (including time-based standards) and can go a long way to advancing timeliness in the delivery of criminal justice in Barbados.<sup>108</sup> Another resource, which is not open source, is the JURIST Project's Statistical Report for the Barbados High Court (2017- 2021). This comprehensive report includes an entire section (44 p) on case management which lays out in detail a theory and process (theoretical underpinnings, methodologies, and templates) for efficient and effective case and case-flow management that is tailored for Barbados.

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<sup>106</sup> See 'Self-assessment Checklist' (International Consortium for Court Excellence) < [https://www.courtexcellence.com/\\_data/assets/pdf\\_file/0026/66608/Self-Assessment-Checklist.pdf](https://www.courtexcellence.com/_data/assets/pdf_file/0026/66608/Self-Assessment-Checklist.pdf) > accessed 29 July 2024. Sir Dennis Byron would comment on the IFCE as follows: 'This methodology assist the court to develop a culture embracing innovation, collaboration and measurement as the process of continually reviewing and refining the court's approach ensures steady progress toward court excellence.' See Byron, 'Case Management for the African Court on Human and Peoples' Rights' (n 100) 4.

<sup>107</sup> See National Centre for State Courts (NCSC), 'CourTools' (2023) < <https://www.ncsc.org/courtools> > accessed 29 July 2024.

<sup>108</sup> As is to be expected, for example, the overriding objective will mandate that dealing with cases justly includes 'dealing with a case efficiently and expeditiously', thereby incorporating timeliness as a concrete performance standard.

[104] These two resources are mentioned because they have been in the works for some time and evidence the commitment of the Barbados judiciary to address the concerns of systemic delay. A commitment which is acknowledged and supported. Indeed, there are ongoing judicial education interventions being undertaken to address these concerns, which ought to also be acknowledged, as successful judicial reform is unattainable and unsustainable without supportive and continuous judicial education.

[105] A more aspirational policy resource that has widespread regional acceptance, is the Needham's Point Declaration, agreed to in October 2023 by a wide cross-section of regional criminal justice actors and stakeholders, including representatives of arms of state (executive, legislature, judiciary), and key office holders (Attorneys General, Ministers of Justice, DPPs, Commissioners of Police and Prisons, lawyers), and key members of civil society.<sup>109</sup> One of the specific recognitions noted is 'that there are intolerable delays in the administration of criminal justice including unreasonably long periods spent on remand.' The policy recommendations are all-encompassing and may be considered an essential guide to improving the delivery of criminal justice throughout the region. Caribbean jurisdictions are encouraged to embrace and take action on the principles articulated in the Needham's Point Declaration.

[106] There are also other Caribbean reflections and resources which address both causes of delays and suggestions for solutions. Barrow J in 'Justice delayed is Justice Denied', an address delivered at the Caribbean Association of Judicial Officers' 2017 Conference in Curacao,<sup>110</sup> has explained some of these causes:<sup>111</sup>

Among the causes are inadequate financial resources, too few judges/overburdened judges, ineffective records management, voluminous

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<sup>109</sup> 'Needham's Point Declaration on Criminal Justice Reform in the Caribbean: Achieving A Modern Criminal Justice System' (CCJ Academy for Law Seventh Biennial Conference, Bridgetown Barbados, 20 October 2023) < <https://ccj.org/wp-content/uploads/2023/10/NEEDHAMS-POINT-DECLARATION.pdf> > accessed 29 July 2024.

<sup>110</sup> See Denys Barrow, Judge of the Caribbean Court of Justice, 'Judgment Delayed is Justice Denied' (Caribbean Association of Judicial Officers Biennial Conference, Willemstad Curacao, 28 September 2017) < [https://ccj.org/wp-content/uploads/2021/03/Keynote-Address-at-the-Caribbean-Association-of-Judicial-Officers\\_Justice-Denys-Barrow\\_20170928.pdf](https://ccj.org/wp-content/uploads/2021/03/Keynote-Address-at-the-Caribbean-Association-of-Judicial-Officers_Justice-Denys-Barrow_20170928.pdf) > accessed 4 August 2024.

<sup>111</sup> *ibid* para 10.

documents filed by attorneys, complexity of cases, attorney delay, lack of specific time allocated for judges to write judgments, absence of judicial codes to provide guidance to judges on roles and duties, failure to discipline or remove judges, and judicial attitudes.

[107] He has also very helpfully placed these causes into three categories: ‘This summary of the causes of delay enables their separation into three types; the resources problems (financial, personnel and time), the systemic problems (how lawyers practice), and the performance problems (judges’ delays).’<sup>112</sup> All of which adds texture to the contextual nature of delay in the administration of justice. And which also very helpfully provides lenses for analysis, measurement, and reform. It also assists in how courts can deal with constitutional challenges based on delay, both procedurally and substantively. For example, identifying the sources and causes of delay allows a court to manage a case to ensure relevant parties and evidence are included and considered.

[108] On the matter of solutions, Barrow J also offers invaluable research-based suggestions.<sup>113</sup> Two are striking. First, the encouragement of a judicial attitude of expediency, efficiency, and the importance of timely delivery of reserved judgments, which are all linked to effective judicial leadership and supervision.<sup>114</sup> Second, data driven analysis, measurement, and reform.<sup>115</sup> These two may be summarised further under the caption: a personal, professional, systemic and institutional commitment to judicial excellence.

[109] Addressing delay is a collaborative undertaking, in which all three arms of state, as well as the bar and all stakeholders need to be invested, included, and involved. Barbados has already demonstrated measurable improvements in timeliness in both court proceedings and the delivery of judgments. Recent public pronouncements suggest that this trajectory will continue. Indeed, in August 2024 the judiciary brought together a wide cross-section of its officers for two and one-half days to

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<sup>112</sup> *ibid* para 11.

<sup>113</sup> *ibid* paras 13 – 30.

<sup>114</sup> *ibid* paras 13 – 14, 27.

<sup>115</sup> *ibid* para 19.



consider strategies and skills to address, among other things, process delays in the administration of justice and improvement of case and case-flow management. This is all very encouraging.

[110] **Orders**

The following are the orders of the Court:

- a. The appeal is dismissed.
- b. No order as to costs.

/s/ W Anderson

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**Mr Justice Anderson**

/s/ M Rajnauth-Lee

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**Mme Justice Rajnauth-Lee**

/s/ D Barrow

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**Mr Justice Barrow**

/s/ A Burgess

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**Mr Justice Burgess**

/s/ P Jamadar

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**Mr Justice Jamadar**