IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION) **CR NO's 308-315/2020**

BETWEEN **PAUL RAUI ALLSWORTH**
Informant

AND **HENRY PUNA**
Defendant

AND **MARK BROWN**
Defendant

Date of Zoom hearing: 7 December 2020

Counsel: Mr N George for Informant/Respondent
Mr K Raftery QC and Mr B Marshall for Defendant/Applicant Mr Henry Puna
Mr K Raftery QC and Mr T Arnold for Defendant/Applicant Mr Mark Brown

Date of Judgment: 23 December 2020

JUDGMENT OF HON. HUGH WILLIAMS, CJ

[0051.dss]

[1]: For the reasons appearing in this judgment, the Defendants' application for permanent stay of the above-listed Informations is dismissed on all the grounds on which it was advanced.

[2]: Consequential matters are to be dealt with as set out on paragraphs [72]and - [73] of the judgment.

Introduction

[1] On 22 July 2020 the abovenamed informant, Mr Allsworth, swore out the above-numbered eight informations against the abovenamed defendants, the Hon. Henry Puna and the Hon. Mark Brown, then respectively Prime Minister of the Cook Islands and Leader of the Cook Islands Party[1] and Deputy Prime Minister and Deputy Leader of the CIP[2].

[2] The eight informations – effectively two quartets – allege that:

(a) Between 14-30 June 2018 they did any act to procure for themselves or the Cook Islands Party the improper payment of public money, $24,886, for the charter of an Air Rarotonga flight to Penryhn to uplift the newly elected Member for that constituency, Mr Robert Tapaitau – elected as an Independent – and his wife and the former Member for that constituency Mr Willie John, and his wife, none of whom were entitled to free transport under the Civil List Order 2009-004 thereby committing an offence under s 64(2)(d)(1) of the Ministry of Finance and Economic Management Act 1996[3].

(b) The second pair of informations also allege offences against the same section of the MFEM Act but between 14 June – 3 July 2018, with the public monies said to be $22,700, to charter an aircraft to Pukapuka to uplift the newly elected CIP Member for the Pukapuka-Nassau constituency, Mr Tingika Elikana, together with his wife and the former Member for that constituency, Mr Tekii Lazaro, and his wife when such persons were not entitled to free travel under the Civil List Order 2009-004.

(c) The third pair of informations alleges breach of s 280 of the Crimes Act 1969 in that between 14-30 June 2018, the defendants are alleged to have conspired with each other to defraud the Crown by deceit or fraudulent means by participating in a scheme whereby Crown money was fraudulently used for private purposes,

---

1 "CIP".

2 Hon. Henry Puna stood down as Prime Minister at the end of September 2020, but remains a Member of Parliament, and Hon. Mark Brown became Prime Minister in his stead.

3 "The MFEM Act".

namely the charter of an aircraft with cash from the Ministry of Health Medivac Scheme under the false pretence of a sick patient evacuation by the Penryhn flight to secure Mr Tapaitau's support for the CIP and the personal benefit of the defendants.

(d) The fourth pair of informations also allege an offence under s 280 of the Crimes Act 1969 in relation to the Pukapuka flight alleging that the charter was paid for under the Civil List Act 2004 with cash to "create political unity and stability in the Cook Islands Party when Mr Elikana needed to be pacified and consoled for missing out on a Cabinet Post".

[3] On 7 August 2020 the defendants applied for a permanent stay of the informations on the grounds, first, that they are an abuse of the Court's processes and, secondly, that the defendants were deemed acquitted in an earlier prosecution, *George v. Puna and Brown*[4]. The particulars said to support those applications read:

> A. The subject matter of the prosecutions is identical in all material particulars to that of prosecutions filed in this Court in the Earlier Prosecutions.
>
> B. The Defendants were committed to trial in respect of the Earlier Prosecutions.
>
> C. Following their committal for trial, at a hearing called at the request of the informant in the Earlier Prosecutions, held in the Judge's chambers at the Avarua Courthouse on Monday, 16 March 2020, counsel for that informant sought to withdraw the charges laid.
>
> D. The Defendants (as defendants in the Earlier Prosecutions), opposed the withdrawal by their respective counsel and instead sought to have the informant offer evidence in the prosecutions with a view to seeking a dismissal and discharge of the Defendants, as defendants in those Earlier Prosecutions.
>
> E. Counsel for the informant, on being given the opportunity to tender evidence, advised both the Court and counsel for the Defendants that the informant did not, in the circumstances of the matter, propose to offer evidence in support of the prosecution
>
> F. The trial judge therefore had a discretion under s 111 of the Criminal Procedure Act 1980-81 to direct that the defendants be discharged.

---

4 CRN 724-727/2019.

G. The trial judge exercised that discretion, in favour of the Defendants, ordering that the charges were dismissed, thereby discharging the Defendants in respect of the Earlier Proceedings.

H. The current informant acts in a manner that, in all the circumstances, is vexatious.

[4] Though correlation is not exact, Mr Allsworth's response to those particulars[5] reads:

a) Correct. No technical faults or defects were disclosed or challenged in all of the original charges.

b) By inference, the Defendants were committed for trial, but there was no application from the defence to challenge whether there was a case to answer, or not, under sections 99 or 111 of the Criminal Procedure Act 1980-81.

c) The decision by Mr Wilkie Rasmussen whose appointment as the new private prosecutor was unlawful and illegitimate, therefore his application to withdraw the charges on 16th March 2020 were malicious and contrary to the public interest and the interests of the CAC group who were collectively responsible for this private prosecution.

d) Mr Rasmussen had ample evidence to rebut the challenge by calling for a special hearing later to have the evidence heard, but as he was determined to ruin and defeat the prosecution, he decided on his ill-considered mission to withdraw the charges.

e) Mr Rasmussen had no instructions from the CAC group[6] not to call evidence, therefore his actions were unauthorised and an attempt to defeat justice.

f) His Honour the Chief Justice had no option but to dismiss the charges as he was misled and deceived by counsel Wilkie Rasmussen, and based on what happened, justice can only be served if this decision to dismiss the charges is set aside.

g) That is correct.

h) Correct.

i) This is absolutely and totally denied; the CAC group was prevented from successfully conducting a legitimate and well-founded private prosecution with evidence to prove it, but for the sudden uninvited appearance of Wilkie Rasmussen and his team, to wreck the whole thing, there is no malice or vexation involved. This is simply restoration of the CAC group's right to have their day in court, as supported by the Cook Islands Constitution.

---

5 Filed 21 August 2020.
6 See fn 8.

and a more detailed response in the same document reads:

1. If the appointment of counsel acting for the informant Mr Teokotai Noo George, Mr Wilkie Rasmussen was legitimate, legal and properly made, then the application to withdraw all of the charges was conducted in accordance with the law, followed by a failure to put forward a case to answer, would have prevented fresh charges from being laid, as all the same charges were dismissed by His Honour the Chief Justice on 16 March 2020.

a) It is conceded that in the normal course of proceedings of this kind, it will be an abuse of process if after the charges were dismissed, someone else decides to relay the charges.

b) It is submitted that this prosecution is different, extraordinary and unusual in that a private prosecution by a group of 7 private citizens was interrupted and wrenched away in the form of a forced takeover by a unscrupulous lawyer with no connection with the case, hiring an Auckland Barrister and Solicitor without consulting the CITIZENS AGAINST CORRUPTION (CAC) group, paying the Barrister's airfare himself and forcing their way to take over this private prosecution.

c) It is submitted that Mr Rasmussen applied undue influence by threatening Mr Noo George with facing huge costs if he did not agree to drop the charges to replace counsel Norman George with himself.

d) The CAC group was completely taken by surprise, counsel Norman George was advised of his removal and replacement by Mr Rasmussen at 7.20pm on Friday evening the 13th March 2020.

e) The moves were so swift and sudden that the CAC group were completely left in the dark when the decision to withdraw the charges were made, and the charges dismissed on Monday 16th March 2020 by the Chief Justice.

f) As far as the CAC group is concerned as Mr Rasmussen had no locus standi to appear before the court on their behalf, or to withdraw the charges, Mr Teokotai Noo George had no right to remove Mr Norman George as CAC counsel prosecuting or have the informed awareness and ability to instruct Mr Rasmussen to withdraw the charges.

g) It is submitted that Mr Rasmussen acted improperly right throughout his intervention, he misled the court, which resulted in His Honour the Chief Justice to dismiss all the charges.

…

i) Mr Rasmussen's actions in our view amounted to obstruction of justice by preventing the CAC group's case from being prosecuted, a situation which amounts to a miscarriage of justice.

j) We submit that because His Honour was misled into applying his discretionary powers to dismiss the charges, the only recourse available is for the dismissed decision to be set aside and for the proceedings to be allowed to continue.

2. If the above response is accepted by the court, then it is submitted that the two defendants were only acquitted by mistake and not in accordance with the law and therefore the acquittals should be set aside as well.

[5] This judgment deals with the defendants' stay application and the applicant's response.

George v. Puna and Brown

[6] On 6 December 2019 the four informations[7] mentioned were sworn out by Mr T N George[8]. They, too, alleged offending under the MFEM Act and s 280. There were differences in wording between CRN 724-727/19 and the form in which their replacements[9] in that prosecution were phrased – mainly in substituting "cash" in the s 280 informations – but since it was common ground that CRN 724-727/19 and CRN 136-139/20 were effectively identical it is unnecessary to explore the minor differences in wording between them.

Background

[7] The brief background to the laying of the informations is that, following the last General Election in the Cook Islands, held on 14 June 2018, a number of persons, including some unsuccessful candidates,[10] became concerned at what they saw as the possibility of corruption on the part of the CIP in its efforts to secure a majority of Parliament's 24 MPs, in addition to its 10 elected members, so as to be able to form a government. It was in that context, so Mr T N George and Mr Allsworth both allege, that the Penryhn and Pukapuka flights occurred.

[8] Following investigation, Mr Allsworth lodged a complaint with the Police and then, following what he saw as Police disinclination to prosecute, instigated Mr T N George's private

---

7 CRN 724-727/19.

8 Though signed for him by Mr Norman George presumably under the extended definitions of "informant" and "prosecutor" para (d) in s 2(1) of the Criminal Procedure Act 1980-1 (the "Act"): all statutory references in this judgment are to the Criminal Procedure Act 1980-1 unless otherwise specified.

9 CRN 136-139/20.

10 Mr T N George stood unsuccessfully against the Hon. Mark Brown in the General Election.

prosecution. In so doing, Messrs Allsworth and T N George acted in collaboration with several other persons and gave themselves the informal title Citizens Against Corruption[11].

[9] Mr T N George said[12]:

> "After the election, I was approached by several people asking if I was interested in becoming the informant in a case being prepared against the Prime Minister of the Cook Islands, Henry Puna, and the Deputy Prime Minister, Mark Brown. I believe that Mr Norman George was the organizer of this group. When I was approached, I was told that preparation for a private prosecution had already been started."

[10] After initial reluctance, Mr T N George agreed to be the informant and went to the Courthouse with Mr N George to sign the relevant documents. However, the Deputy Registrar said it was Mr N George who had to sign the informations and accordingly the execution already noted took place[13]. After a number of other meetings of the group, Mr T N George accepts that it was he who signed the final informations.

[11] The importance of the case being obvious, commencing on 17 December 2019 a number of telephone conferences were convened between the Chief Justice and counsel involved. As little hangs on those matters until Minute (No.7) of 16 March 2020, it is unnecessary to recount the detail of the directions given to ready the case for hearing, save to note two matters.

[12] The first is that Mr N George issued applications for information concerning the facts of the matter directed to a number of government agencies including the Ministry of Health, MFEM, Parliament and the Office of the Prime Minister and Cabinet Services and, when those requests were not complied with as the applicant wished, followed up with applications for search warrants.

[13] Advice was sought from Crown Law by the government agencies and Ms Bell, the Deputy Solicitor General, treating the requests as being made under the Official Information Act 2008, mediated the requests between the applicant and the agencies and was instrumental

---

11 "CAC".

12 Undated affidavit in *George v. Puna and Brown*, probably sworn November 2020, at [11]. Affidavit sworn 9 November 2020 in *Allsworth v. Puna and Brown*, at [2].It was agreed that the evidence in either case was admissible in both.

13 Undated affidavit, at [15]. Affidavit of 9 November 2020, at [6].

in the latter providing a significant amount of information from 27 January 2020 onwards[14]. However, the matter could not be settled by negotiations between those parties. That resulted in Doherty J, after a hearing, issuing seven search warrants on 20 March 2020, compliance with which was still in progress at the time of the teleconference on 16 March 2020.

[14] The second matter is that the maximum penalty, following conviction, on an offence under s 64(2)(d)(i) of the MFEM Act is a maximum fine of $3,000,[15] It is accordingly triable by one Justice of the Peace[16].

[15] However, all parties wished all the charges to be heard together, with all of them being tried in the High Court by Judge alone. While it was described as having an "element of contrivance"[17] it was suggested that a means of accommodating all parties' wishes was for all counts – including those under the MFEM Act – to be called in a Justices of the Peace Court and the presiding JP be invited to act pursuant to s 105(1)(3) of the Act which reads:

> 105. Removal of trial on question of law arising – (1) If a question of law arises on a trial before the Court presided over by a Justice or Justices of any person for any offence, the Court, whether on the application of the prosecutor or the defendant or of its own motion, may refuse to continue the trial and may adjourn it for retrial before a Judge.
>
> …
>
> (3) The retrial of that person for that offence shall thereupon commence and proceed before a Judge as if no steps, other than those saved in accordance with subsection (2) of this section, had been taken.

[16] That occurred on 2 March 2020 in both CR 136-139/20 and CR 71-78/2020[18], the minute of which said that both defendants pleaded not guilty through counsel to all charges with the matter being adjourned for trial.

---

14 Bell Affidavit in *George v. Puna and Brown*, sworn 23 April 2020.
15 S 66(2)(a).
16 Judicature Act 1980-81, s 19(a)(1).
17 Minute (No.3) in *George v. Puna and Brown*, 15 January 2020, at [8]-[10].
18 It may have occurred on 7 February 2020 in respect of the earlier informations.

14 – 23 March 2020

[17] By 14 March 2020, preparation by both sides for trial was continuing with the 4-5 day trial then having a Judge alone fixture set to commence on Monday 23 March 2020. There were, as mentioned, still outstanding issues concerning complete compliance with the search warrants, some witness statements were incomplete, the necessary statement of the overt acts said to constitute the conspiracy alleged had only recently been given and there were other outstanding matters, but the parties were readying for trial[19].

[18] All the events of this period must also be seen in the context of the urgency brought about by the burgeoning threat of Covid19 to the health of the world and the various lockdowns, border closures, lessened flights and movement restrictions which were already in place in New Zealand, the Cook Islands and elsewhere as nearly all nations prepared to combat the threatening coronavirus pandemic. In New Zealand, in addition to the restrictions already operating, on Saturday 21 March the country was told it would be in the highest level of lockdown from 23 March, The Cook Islands followed suit almost immediately.

[19] Against that context, Mr T N George become "very, very anxious about my position"[20] because he said, although he attended meetings of the CAC group, he felt that he was "left out in the cold by Mr Norman George. I was not being kept informed about the implications of this case to me personally, to my financial interests and to my businesses." As a consequence he "started to feel that I was being used to enable this prosecution to occur, because that was what Mr Norman George and some others wanted to happen."[21]

[20] As a result, in early March 2020 Mr T N George sought legal advice from Mr Rasmussen who had the case assessed by an Auckland barrister experienced in criminal matters, Mr Pyke, After their advice, Mr T N George "decided to withdraw the case"[22], revoke Mr N George's appointment as his solicitor and appoint Mr Rasmussen in his place.

---

19 See Minute (No.6) of 10 March 2020 concerning conference call of 9 March 2020.
20 Undated affidavit in *George v. Puna and Brown*, at [26].
21 *Ibid*, at [21], [23].
22 *Ibid*, at [29].

[21] Mr Rasmussen's first move as Mr T N George's new solicitor was, on Friday 13 March 2020,[23] to file an application for adjournment of the trial date and recusal of the Chief Justice as trial Judge, the former on the basis that compliance with the search warrants was incomplete. In an accompanying memorandum Mr Rasmussen said "I am now the solicitor acting for the informant. Mr [N] George is no longer briefed as counsel in the proceeding." Counsel for the defendants was advised as was, late that evening, Mr N George.

[22] On the same day, at 2.20pm, Mr T N George signed a document saying:

> "I now revoke any earlier instructions I gave. I now instruct Wilkie Rasmussen to be my solicitor for the case and for him to be instructing solicitor to Mr Warren Pyke and Sharyn Green of New Zealand. Mr Pyke is to be principal counsel for me and Ms Green to be his assistance [sic]."

[23] Ms Green and Mr Pyke travelled to Rarotonga on 13 March 2020 and, over the ensuing weekend, examined the available documents and considered the applicable law. They discussed the matter with Mr T N George. Mr Rasmussen said "from these discussions we had clear and unequivocal instructions from our client Mr Teokotai George to abandon the prosecution without delay."[24]

[24] Mr T N George said Mr Pyke's advice "did not give me the good news or comfort that I wanted", especially when he was advised he might be facing a significant order for costs: It was "one of the scariest things that I've heard for a long time"[25]. He said:

> 17. What I can tell the court is that I went to Wilkie to *put an end to this* in whatever way he could; I asked him to do this and he agreed. That is the best way I can describe it. I didn't care how he did it, because by that time I was focused on just one thing; I was very worried – I am still very worried – about the responsibility I may have to pay legal costs.
>
> 18. I trusted Wilkie then; I trust him now. I had full confidence he would go to Court that day to do the best for me, personally. I have heard nothing from anyone, since March, that makes me think Wilkie did not act as I wanted him to nor have I had any regret about what he did on that day. I was happy for Wilkie to do whatever he had to do to end the case and stop the costs rising any further. Looking back on this, he has done exactly what I wanted him to do.

---

23 Dated 14 March 2020 but date-stamped by the Registry 13 March 2020.
24 Rasmussen affidavit in *Allsworth v. Puna and Brown*, sworn 7 August 2020, at 5.
25 T N George affidavit of 9 November 2020 in *Allsworth v. Puna and Brown*, at 13, 14 and 20.

[25] As a result of Mr T N George's instructions, on Monday 16 March 2020[26] Mr Rasmussen filed a memorandum saying:

> "The informant applies for leave to withdraw all informations filed in this Court in this proceeding and to vacate the trial of this proceeding set down for 23 March 2020.
>
> The informant abandons all applications pending in this proceeding. For the avoidance of doubt, the informant no longer raises any issue of recusal."

[26] Mr T N George said that, after learning of his legal position, "I decided of my own free will to withdraw the case, which has stopped substantial further costs being incurred by the defendants"[27].

[27] A teleconference concerning those developments was convened on 16 March 2020 with Messrs Rasmussen, Marshall and Arnold and Ms Bell attending.

[28] Mr Rasmussen's recollection of events is that:

> " …called, as it was, at very short notice, the applications and submissions made were entirely oral and there was neither a formal written application to withdraw from the informant, nor a formal written application from the Defendants. I have a very clear recollection of what was said at that teleconference by all who were present.
>
> 8. My application was for the matter to be withdrawn. I practise regularly in the criminal division of the High Court, and this seemed to me an appropriate course of action. However, I was not surprised when Mr Marshall, supported by Mr Arnold, objected to the informations being withdrawn, ostensibly under section 46 of the Criminal Procedure Act 1980-81, raising concerns that this would permit the charges set out in the informations to be re-laid against the Defendants. Mr Marshall instead indicated that his client and Mr Arnold's would, instead, look to have the charges dismissed with prejudice to avoid the possibility of the charges being re-laid. Mr Arnold, when he spoke, conformed that was his client's position.
>
> 9. I understood their concern well; in my criminal law practice, whenever the Police seek to withdraw, I see it as my job to make sure that is an end to the case, and seek instead to have the prosecution dismissed and the defendant discharged.

---

[26] Memorandum dated 17 March 2020 but date-stamped by Registry 16 March 2020.
[27] Undated affidavit in *George v. Puna and Brown*, at 34.

10. I listened to Mr Marshall developing his argument and, in particular, his submission to the Chief Justice that the appropriate course was to put the informant to the test as to whether the informant proposed to offer any evidence against the Defendants.

11. When the Chief Justice enquired as to my position on that, I affirmed that it was not the informant's intention to offer any evidence. I alluded to being satisfied that the charges should never have been laid; …"

13. My clear recollection is that, against this background of my own knowledge and experience, when pressed on this by Mr Marshall and Mr Arnold, I confirmed to the Court that the Informant Teokotai George did not offer any evidence against either Defendant. I remain of the view that this was the appropriate course of action.

14. Mr Marshall and Mr Arnold argued that this would justify a dismissal under section 111 of the Criminal Procedure Act 1980-81. I remember, candidly, indicating that in our opinion – that is to say the three lawyers who had reviewed all the materials – the charges should never have been laid in the first place and that the informant had, in effect, been hoodwinked into bringing the prosecutions. I expressed my opinion that my client had been led astray by Mr Norman George.

15. I recall that in answer to the concerns raised by Mr Marshall and Mr Arnold, that the charges would simply be re-laid, the Chief Justice observed that must be a remote possibility. However I am sure that he, like myself, appreciated that from their submissions that Mr Marshall and Mr Arnold wanted that issue put beyond all doubt.

[29] Ms Bell said that after receiving an 8.56am email from Mr N George on 13 March 2020 saying he would "now be assisted by new lead counsel," something he had ascertained in the afternoon of 11 March, and a 6.59pm email of the same date from Mr Rasmussen containing his applications, she received Mr Rasmussen's memorandum seeking leave to withdraw the informations on Monday 16 March. She recalls the events at the teleconference in the following way:

a. Mr Rasmussen, on behalf of the informant sought leave to withdraw the information;

b. Mr Marshall (representing the defendant PUNA) sought a dismissal of the charges;

c. The Chief Justice made a comment that it would be highly unlikely that the charges would be re-laid and the defence could have some confidence about that (or words to that effect). Defence counsel indicated that they would prefer

a dismissal (or words to that effect) and the Chief Justice then invited submissions from defence.

d. Mr Marshall made submissions in support of a dismissal of charges;

e. Mr Arnold (representing the defendant BROWN) supported the submissions of Mr Marshall;

f. After the defence submissions, I indicated to the Court that a dismissal should only occur after there had been some consideration of the evidence in the case;

g. Mr Rasmussen then offered no evidence in respect of the charges;

h. The Chief Justice then indicated he would issue a minute (he did not make any comment at that time about whether the charges were withdrawn or dismissed);

[30] The relevant portions of Minute (No.7)[28] read:

> [1] A minute concerning the informant's applications for adjournment of the trial of this private prosecution from its scheduled date of 23 March 2020, an associated application for the Chief Justice to recuse himself from presiding at the trial, and the fixing of a date and time for dealing with those applications had just been concluded when a memorandum filed on 16 March 2020 was received from Mr Rasmussen, replacement solicitor for the informant, seeking leave to withdraw all the informations filed in Court relating to the trial and to vacate the fixture for the same. The memorandum said that "the informant abandons all applications pending in this proceeding" and expressly included the recusal application. The withdrawal was on the basis that the informant wished to be heard should any application be made for costs.
>
> [2] The application to withdraw all the informations against the defendants in relation to this matter is granted, they are dismissed and the fixture for the trial scheduled to commence on 23 March 2020 is vacated.
>
> [3] During a conference call convened later on 16 March 2020, Messrs Marshall and Arnold, counsel for the defendants, expressed concern at what they submitted was the possibility of the informations being re-laid. To make that aspect clear, the dismissal of the informations is intended to bar the informant from laying any further informations based on the facts pleaded in the dismissed informations alleging criminal conduct by the defendants, whether charges under s 280 of the Crimes Act 1980-1 and s 64(2)(d)(ii) of the Ministry of Finance and Economic Management Act 1995-6 or otherwise.

---

[28] Issued 16 March 2020.

16 March 2020: Minute (No.7)

[31] As propounded by Mr Raftery QC, senior counsel for the defendants in support of their stay application, the first question is to decide whether, on 16 March 2020, the then extant informations were withdrawn under s 46 of the Act or were dismissed under s 111.

[32] Section 46 reads:

> 46. Withdrawal of information by informant – (1) Any information may by leave of the Court or Registrar be withdrawn by the informant at any time before the defendant has been convicted or the information has been dismissed or, in any case where the defendant has pleaded guilty, before he has been sentenced or otherwise dealt with.
>
> …
>
> (3) The withdrawal of an information shall not operate as a bar to any further or other proceedings against the defendant in respect of the same offence.

and s 111 relevantly reads:

> 111. Power to discharge defendant after committal for trial – Where any person is committed for trial under section 99 of this Act, -
>
> (a) The Judge may in his discretion, after a perusal of the written statements tendered for the trial, direct that the defendant shall not be arraigned on the information laid and direct that the defendant shall be discharged:
>
> (b) The Judge may in his discretion, at any stage of the trial, whether before or after his verdict, direct that the defendant be discharged.
>
> (2) A discharge under this section shall be deemed to be an acquittal.

[33] The consequential questions are:

(a) if the charges were withdrawn under s 46, whether relaying the charges in identical terms without new evidence is an abuse of the Court's process;

(b) if the charges were dismissed under s 111 the question becomes: are the defendants entitled to plead *autrefois acquit*?

[34] Mr Raftery dealt with the facts of the matter and submitted that on 16 March 2020 two possible means of concluding the prosecution – withdrawal or dismissal – were before the Court, and the Court chose the latter. In support, Mr Raftery relied on the first sentence of para 2 of Minute (No.7) which, on its face, can be read as conflating the two issues.

[35] Mr Raftery then relied on Mr Rasmussen, on it being put to him, offering no evidence on the informant's behalf against either defendant. That, he submitted, amounted to a dismissal under s 111 to achieve the defendants' intention of barring any possibility of future prosecution, with the orders amounting to a deemed acquittal under s 111(2), particularly having regard to the extensive disclosure of evidence, documents and written statements, coupled with the fact that the trial had, technically, commenced, in order that the JP's s 105 orders of 2 March 2020 could be made, at least in respect of the MFEM charges.

[36] As regards the challenge to s 280, it was submitted that, in the event and abbreviated circumstances relating to the earlier prosecution, the defendants had effectively been committed for trial under s 99 of the Act, particularly s 99(1)(f)(ii).

[37] The nub of the submissions on Mr Allsworth's behalf presented by Mr N George – who was, of course, absent from the teleconference on 16 March 2020 – have already been recounted. Mr George elaborated on those submissions in the informant's response[29] and the numerous attached documents concluding:

> "This is the first time a case of this kind has occurred in the Cook Islands. This is an embarrassment to the legal profession and likely to bring ridicule on our judicial system. To allow this prosecution to be permanently stayed is a miscarriage of justice. We ask the Court upon the grounds and reasons stated above, to set aside the dismissal of all the charges and the acquittal of the defendants to allow this prosecution to continue."

[38] That approach was continued in Mr George's submissions[30] and led to the issue of Minute (No.7)[31].

---

29 of 21 August 2020.
30 Dated 16 November 2020.
31 Dated 18 November 2020.

[39] In light of the minute Mr George redirected his submissions with a further set[32] suggesting it was he who called the teleconference on 16 March 2020 as a callover to ensure all arrangements were in place for the 23 March 2020 commencement. He submitted that Mr T N George "did not give an informed consent to the two lawyers to withdraw the charges, he was completely ignorant of legal procedures and was taken advantage of by the two Counsels." That led to the 16 March 2020 conference being "switched into a procedural application to withdraw the charges" and that Mr Rasmussen "caved in easily and surrendered by advising the Court that he was not calling evidence or that he had no evidence to call". That then led Mr N George to submit that, no evidence being placed before the Court, there could not be a dismissal or acquittal based on it under s 55(b) or s 46(3) of the Act.

[40] As to the possibility of deemed acquittal in the earlier prosecution, Mr George made further submissions along the lines of the Response earlier recited and concluded:

> "We submit that this private prosecution is a group action by CAC and the informant Teokotai Noo George is one of 6 others at the time the charges in the earlier prosecution was laid [and] in doing what they did they abused and removed the right of the CAC group to conduct their private prosecution against the defendants [and] both counsels had no locus standi to appear in Court on behalf of the CAC group."

[41] Mr N George's conclusions suggested:

> b) There is no abuse, unfairness or vexatious actions by the CAC in the relaying of the criminal charges against the two Defendants.
>
> c) The CAC group conducted the private prosecution in the public interest, because of Police failure to investigate and prosecute after Mr Allsworth had filed a complaint.
>
> d) The CAC group and in particular Mr Allsworth is not bound by the actions of Teokotai Noo George and his lawyers Mr Rasmussen and Mr Pyke in withdrawing the charges and offering not to call or produce evidence, thus exposing the charges to dismissal for want of prosecution (failing to prosecute) under section 55(b) of the Criminal Procedure Act 1980-81.
>
> e) The dismissal of the earlier charges cannot be classed as *"autrefois acquit"* as no evidence were ever called or produced at the hearing on 16 March 2020.
>
> f) The CAC group is therefore at liberty to relay the same charges word for word as they have never been used in any Court hearing or put forward as evidence at the March 16 hearing."

---

[32] 27 November 2020.

Discussion and Decision

[42] When all that material is analysed, the conclusion is that the orders made on 16 March 2020, and recorded in Minute (No.7), amounted, in law, to the granting of leave under s 46(1) for Mr T N George to withdraw the then extant informations.

[43] As Minute (No.7) said, arrangements were being put in place to deal with the then current recusal and adjournment applications, and the necessity for the urgent convening of the telephone conference arose out of the filing, earlier that day, of the memorandum saying Mr T N George wished to withdraw all the informations and vacate the trial fixture.

[44] In accordance with its wording, s 46(1) requires the leave for withdrawal of informations to occur "at any time before … the information has been dismissed." All recollections of the sequence of events at the conference concur that the first item dealt with was Mr Rasmussen's application for leave to withdraw Mr T N George's informations. No debate or inquiry preceded the granting of leave and the making of the order, and it was only after leave had been given that Messrs Marshall and Arnold made the submissions which the Minute records. All of that confirms the above reading of the sequence of the events of 16 March 2020.

[45] Of the thesaurus of ways to describe the completion, cessation, finalisation or termination of criminal proceedings under the Act, the addition of dismissal in [2] of Minute (No.7) may have anticipated compliance with s 46(1), but the section makes clear that if leave is to be granted to withdraw informations, that action must occur prior to dismissal.

[46] Messrs Marshall and Arnold were, naturally, keen to proof, as far as they were able, their clients against "further or other proceedings against the defendant in respect of the same offence" under s 46(3) and accordingly, following Ms Bell's helpful suggestion that dismissal should only be contemplated following consideration of the evidence, that proposition was put to Mr Rasmussen who then advised that the informant would offer no evidence against either defendant so that dismissal might follow. However, leave having already been granted to the informant to withdraw the informations, that action was otiose[33]. Leave had already been granted. Withdrawal had occurred. Nothing remained alive to dismiss. Put the other way

---

[33] See also Minute (No.3), 24 September 2020, at [6]-[10].

round, had dismissal occurred first, leave to withdraw could not have been granted as there would then have been no existing informations to withdraw, but all the evidence makes the point that withdrawal in fact occurred, so it must follow that leave and immediate and consequential withdrawal preceded the submission concerning dismissal.

[47] In deference to the defendants' submissions, it is acknowledged that, had the wording of s 46(1) not required to be complied with, and having regard to the procedure adopted in the latter part of the teleconference on 16 May 2020, it could have been held that s 111(1) had been complied with and the defendants were therefore deemed to have been acquitted under s 111(2), but that observation is made for completeness, not by way of derogation from the above findings as to the sequence and nature of the orders made on 16 March 2020.

[48] Section 46(3) provides that the withdrawal of informations does not bar further proceedings against the defendants for the same offence, so the remaining question on this aspect of the stay application is whether, in the face of the clear wording of s 46(3), the relaying of effectively identical informations, based on the same evidence, against the same defendants not by the former informant, Mr T N George, but by another member of the CAC group, amounts to an abuse of the Court's process as defined by the recognized authorities.

[49] Though, because it arises so seldom, there was at one stage doubt whether a Court could stay a prosecution on the ground that its continuation was an abuse of the Court's process, it is now settled that the Court has that jurisdiction.[34] It is therefore sufficient to cite and adopt the relevant principles as enunciated in the New Zealand Court of Appeal decisions in *Moevao v. Department of Labour*[35] and *Fox v. Attorney-General*[36].

[50] The facts in *Moevao* are of no present relevance but, in relying on the House of Lords decisions in *Connolly v. Director of Public Prosecutions*[37], *R v. Humphrys*[38] and the decision of the Supreme Court of Canada in *Rourke v. The Queen*[39], Richardson J held:

> "…The more one studies the reported decisions in various Commonwealth and American jurisdictions on the abuse of process doctrine the greater the difficulty

---

34 *Cook Islands Police v. Arioka* [2006] CKCA 6; *Timoti v. Crown* [2016] CKHC 8.
35 [1980] 1NZLR 464.
36 [2002] 3NZLR 62.
37 [1964] AC 1254.
38 [1977] AC 1.
39 (1977) 35 CCC (2d) 129.

> there is in determining the ambit of an inherent jurisdiction in the Courts to stay criminal proceedings which are on their face perfectly regular. This difficulty is inherent in the subject-matter for it involves consideration of the nature and limits of the role of the Judge in the administration of criminal justice and, in particular, in relation to the control of prosecutorial discretion in bringing and pursuing the case before the Court. In a sense they are legal issues. But they also raise questions of considerable constitutional significance concerning the relationship between the three branches of government.
>
> It now seems settled law, at least in England and New Zealand, that a superior Court has the power to take such steps as it considers necessary in a particular case to protect its processes from abuse. Such a power is necessary to enable the Court to act effectively within its jurisdiction and is inherent in the exercise of its criminal jurisdiction."[40]

and, citing an excerpt from the speech of Lord Morris of Borth-y-Gest in *Connolly*:

> "I consider that if a charge is preferred which is contained in a perfectly valid indictment which is drawn so as to accord with what the court has stated to be correct practice and which is presented to a court clothed with jurisdiction to deal with it and if there is no plea in bar which can be upheld the court cannot direct that the prosecution must not proceed."

[51] That led Richardson J to hold[41]:

> "It is not the purpose of the criminal law to punish the guilty at all costs. It is not that that end may justify whatever means may have been adopted. There are two related aspects of the public interest which bear on this. The first is that the public interest in the due administration of justice necessarily extends to ensuring that the Court's processes are used fairly by State and citizen alike. And the due administration of justice is a continuous process, not confined to the determination of the particular case. It follows that in exercising its inherent jurisdiction the Court is protecting its ability to function as a Court of law in the future as in the case before it. This leads on to the second aspect of the public interest which is in the maintenance of public confidence in the administration of justice. It is contrary to the public interest to allow that confidence to be eroded by a concern that the Court's processes may lend themselves to oppression and injustice."
>
> …
>
> "…The concern is with conduct on the part of a litigant in relation to the case which unchecked would strike at the public confidence in the Court's processes and so diminish the Court's ability to fulfil its function as a Court of law. As it was put by Frankfurter J in *Sherman v. United States* 356 US 369, 380 (1958):
>
> > "Public confidence in the fair and honourable administration of justice, upon which ultimately depends the rule of law, is the transcending value at stake".

---

40 At 478-9.

41 At 481-2.

> The justification for staying a prosecution is that the Court is obliged to take that extreme step in order to protect its own processes from abuse. It does so in order to prevent the criminal processes from being used for purposes alien to the administration of criminal justice under law. It may intervene in this way if it concludes from the conduct of the prosecutor in relation to the prosecution that the Court processes are being employed for ulterior purposes or in such a way (for example, through multiple or successive proceedings) as to cause improper vexation and oppression. The yardstick is not simply fairness to the particular accused. It is not whether the initiation and continuation of the particular process seems in the circumstances to be unfair to him. That may be an important consideration. But the focus is on the misuse of the Court process by those responsible for law enforcement. It is whether the continuation of the prosecution is inconsistent with the recognised purposes of the administration of criminal justice and so constitutes an abuse of the process of the Court.

[52] The facts in *Fox* are again of no present relevance but the decision deals with s 36 of the now-repealed Summary Proceedings Act 1957 (NZ) which is in terms identical to s 46(3). After citing New Zealand Prosecution Guidelines to the effect that the public interest requires consideration of "whether, given that an evidential basis for the prosecution exists, the public interest requires the prosecution to proceed"[42] the judgment proceeded to consider the abuse of process jurisdiction and went on to rely on the speech of Lord Lowry in *R v. Horseferry Road Magistrates Court, ex parte Bennett*[43] where the following appears[44]:

> "…I consider that a court has a discretion to stay any criminal proceedings on the ground that to try those proceedings will amount to an abuse of its own process either (1) because it will be impossible (usually by reason of delay) to give the accused a fair trial or (2) because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of a particular case. I agree that prima facie it is the duty of a court to try a person who is charged before it with an offence which the court has power to try and therefore that the jurisdiction to stay must be exercised carefully and sparingly and only for very compelling reasons. The discretion to stay is not a disciplinary jurisdiction and ought not to be exercised in order to express the court's disapproval of official conduct."

and held[45]:

> "[37] These principles set a threshold test in relation to the nature of a prosecutor's conduct which warrants a decision to end a prosecution, prior to trial, as an abuse of process. Conduct amounting to abuse of process is not confined to that which

---

42 Para 3.3.1, cited at 69 [30].
43 [1994], 1 AC 42, 74.
44 Cited *Fox*, at 71 [36].
45 71 at [37].

> will preclude a fair trial. Outside of that category it will however, be of a kind that is so inconsistent with the purposes of criminal justice that for a Court to proceed with the prosecution on its merits would tarnish the Court's own integrity or offend the Court's sense of justice and propriety. The power of stay is not available for disciplinary purposes nor to reflect a Court's view that a prosecution should not have been brought. The hallmarks of official conduct that warrant a stay will often be bad faith or some improper motive for initiating or continuing to bring a prosecution but may also be simply a change of course by the prosecution having a prejudicial impact on an accused. Finally, to stay a prosecution, and thereby preclude the determination of the charge on its merits, is an extreme step which is to be taken only in the clearest of cases.

[53] Specifically relating to New Zealand equivalent of s 46(3), the Court of Appeal held[46]:

> "A feature of the circumstances regarded as important by the District Court Judge in the present case was that the leave of the Court under s 36 of the Summary Proceedings Act had been sought by the police, and given by the Court, to withdraw two charges. The power of the Court to permit an informant to withdraw an information is of course a discretionary power which we accept is exercised as part of the judicial function and in accordance with judicial principles. We agree however with Smellie J that, in general, a police application prior to trial to withdraw a charge need occasion little inquiry. It is unnecessary in this case to discuss the position where application is made at a later stage which was the situation addressed in *Morgan v. Ministry of Transport*. We also agree with Smellie J that because under s 63(3) of the Act withdrawal of an information is "not to operate as a bar to any other proceedings in the same matter" to lay the same information afresh after earlier withdrawal, is a procedure that is generally permitted by the Act."

[54] Applying those principles to the present case, the technical position is that the defendants' trial had begun, but only to enable the presiding JP to make the s 105 orders and so the defendants could be committed for trial under the provisions of s 99(1)(f)(ii). But, on 16 March 2020, no consideration had been given to the evidence, either in the JPs' or this Court, partly because it was then incomplete and partly because, when given the opportunity to adduce the evidence, Mr Rasmussen proffered none in relation to any of the charges the defendants faced.

[55] The informations – both those filed by Mr T N George and by Mr Allsworth – contained valid charges drawn in accordance with the Court's requirements, but in light of the strong dicta in the authorities reviewed, absent bad faith or improper motive – neither asserted in this

---

[46] 73 at [43].

case – stay of the new informations prior to trial must be considered an unusual course, an "extreme step," to be exercised "carefully and sparingly and only for very compelling reasons". While Lord Morris may, perhaps, have been going a touch too far to say that, in the circumstances he described, "the Court *cannot* [47] direct that the prosecution must not proceed", it is nonetheless very clear that, to be successful, the stay application must reach the standard that continuation of the prosecution will "offend the Court's sense of justice and propriety" or "tarnish the Court's integrity[48]"or similar before that result could be justified.

[56] In addition, Courts have duty to try cases and there is a public interest in the due administration of justice. That "necessarily extends to ensuring that the Court's processes are used fairly by State and citizen alike". In all the circumstances, staying the informations issued by Mr Allsworth, whatever their merits or demerits may turn out to be, may, given the personalities and matters at stake, possibly erode the vital public confidence in the administration of justice. Whatever the motives of the CAC group and Mr Allsworth may be, it could not be concluded that, at this stage at least, the latest set of informations have been issued for ulterior purposes or to "cause improper vexation and oppression" as in *Moevao* so that the Court is unable to conclude that:

> … the continuation of the prosecution is inconsistent with a recognised purpose of the administration of criminal justice and so constitutes an abuse of the process of the Court[49].

[57] A point that only rarely arises in applications like the present because of the Crown's near-monopoly on criminal prosecutions, but is of some importance in this instance, is that, although both are, or were, members of the CAC group, the informants differ. Section 46(3) makes no distinction as to who may bring the "further or other proceedings against the defendant in respect of the same offence" but, as a matter of principle, applications for stay of successive prosecutions by the same informant are more likely to succeed than those brought against prosecutions brought by different informants. Not too much reliance can be rested on the difference in this case given the commonality of the informants' membership of the CAC group, but it is an aspect that, to a degree, tells against the granting of the stay sought.

---

47 Emphasis added.
48 *Fox v. A-G* [2002] 3 NZLR 62,72 [37].
49 *Moevao*, at 482.

[58] Overall, on this aspect of the case, therefore, having regard to the clear enabling provisions of s 46(3), the conclusion is that the applicants have not shown that the filing by Mr Allsworth of the latest set of informations amounts, in the circumstances and in light of the authorities, to an abuse of the process of the Court. Accordingly their application for permanent stay of the same is dismissed.

Deemed acquittal?

[59] Minute (No.7) recorded the submissions of counsel for the defendants to secure the advantage for their clients of a dismissal of Mr T N George's informations under s 111 and accordingly the deemed acquittal of the defendants under s 111(2) on 16 March 2020.

[60] The defendants pleaded *autrefois acquit* in the JP's Court to the Allsworth informations and, as an additional ground of alleged abuse of process in support of their stay application, sought to rely on what counsel submitted was their deemed acquittal.

[61] Mr Raftery submitted the defendants' position was supported by the decision of the New Zealand Court of Appeal in *R v. Taylor*[50]. Details of the facts are complex and of no present concern but, in relevant summary, three counts of aggravated wounding were initially laid against Mr Taylor. At trial, the Crown offered no evidence on them and invited the Judge to discharge the accused. The Judge did so but, amongst other charges Mr Taylor faced were three of kidnapping. He pleaded previous acquittal to those on the basis of deemed acquittal under the New Zealand equivalent of s 111(2). Chambers J first observed[51]:

> "Nearly always there will need to be a "trial" as to whether the plea of previous acquittal (or previous conviction, as the case may be) can be pleaded because that question will be in dispute. After all, the Crown would not be bringing the fresh charge if it thought the accused was entitled to plead a special plea. This "special pleas trial", as I shall call it, is to be conducted "by the Judge, without a jury" (see s 357(3)). The Act envisages that evidence will be called as to what happened at the former trial which is said to have resulted in the relevant acquittal or conviction, including the evidence given at that trial (see s 360))."

---

50 [2009] 1 NZLR 654.
51 658 at [27].

but held[52] there was no "formal trial", something that only commences at arraignment or when jurors start to be empanelled, by which stage Mr Taylor's discharge had occurred so he was never in jeopardy of conviction on the aggravated wounding because the "formal trial" must have progressed "at least to the point where it can be said that the accused was in jeopardy of conviction,"[53] (though that interpretation posed difficulties having regard to the wording of the Crimes Act 1961(NZ)).

[62] Chambers J concluded[54]:

> "…I think there are other mechanisms by which the Court could restrain improper re-litigation of a failed indictment. In these circumstances, I am satisfied that the Court could, if the Crown sought to lay an identical or near-identical charge after a s 347(1) discharge, stay the later prosecution. The situation is well summarised in Robertson (ed), *Adams on Criminal Law* (looseleaf), ch 4.3.06:
>
> > "It is well established that in certain circumstances it may be an abuse of the process of the Court to re-litigate issues which are substantially the same as those which have already been litigated in previous proceedings, even though the circumstances may not fall strictly within the principles of *autrefois acquit* or *autrefois convict*. An attempt to challenge an earlier decision 'by a side-wind' is often referred to as a 'collateral attack'.

and, citing *R v. Dabhade*[55]:

> "…For the principle of [previous acquittal or previous conviction] to apply, the defendant must have been put in jeopardy. Quite apart from all other requirements, he must demonstrate that the earlier proceedings that he relies upon must have been commenced – that is, by plea in summary proceedings, or by his being put in charge of the jury in a trial on indictment."

[63] Panckhurst J, concurring, summarised the issue in the following way[56]:

> "I consider that there are three prerequisites to a valid plea of previous acquittal. These are:
>
> (i) a sufficient degree of similarity between the original charge giving rise to the acquittal (or conviction) and the further charge to which the plea is entered;

---

52 660 at [36].
53 *Ibid*, citing Professor Mahoney "*Previous acquittal in previous conviction in New Zealand: Another kick at the Cheshire cat*" (1989), 7 OLR 222, at 253.
54 662, at [50].
55 [1993] QB 329, 663 at [53].
56 671, at [116].

> (ii) prior jeopardy of conviction at a former trial; and
> (iii) a final determination of the original charge.
>
> In arriving at this division of the elements, and in other respects, I acknowledge the assistance I have derived from Professor Mahoney's article (see above at para [28])."

holding that "the point in the trial process at which an accused is in jeopardy is upon arraignment … or perhaps more exactly when the accused is put in charge of the jury"[57].

[64] Applying those dicta to the present case, the conclusion must be that the plea of *autrefois acquit* has not been shown to be soundly based.

[65] Importantly, examination of the sequence of events at the conference on 16 March 2020 has shown that counsels' efforts to have the defendants discharged under s 111 was otiose and therefore rendered nugatory. Though the defendants' trial had, technically, commenced on 2 March 2020 with the pleas and the s 105 orders that was a contrivance to satisfy all parties' wish that all charges should be tried together in the High Court. Beyond that, it was not a decision reached through the usual Court processes, certainly not on such evidence as was then available, but was employed because a specific decision on a question of law was required and the JP's Court felt obliged to refer that question and the trial itself to the High Court in consequence. Of the three prerequisites to a valid plea of *autrefois acquit* listed by Panckhurst J, while there is sufficient degree of similarity between Mr T N George's informations and those filed by Mr Allsworth, the defendants were not put in jeopardy of convictions on Mr T N George's informations as defendants are not put in jeopardy of conviction by being charged with an offence, exercising their right to plead "not guilty" and relying on their constitutional right to the presumption of innocence. There was therefore no trial in the normal sense for the reasons discussed in this judgment and there was no final determination of those informations as no evidence in support was adduced and they were withdrawn.

[66] In those circumstances, the appropriate conclusion is that the defendants have failed to make out their case that they were earlier acquitted on Mr T N George's informations. Accordingly that ground on which they seek permanent stay is also dismissed.

---

[57] 672, at [118].

Other matters

[67] Mr N George submitted that Mr Rasmussen was not properly instructed in the earlier prosecution and thus had no standing either to seek leave to withdraw Mr T N George's informations or offer no evidence against the defendants because Mr T N George was acting on his own, did not consult the CAC group and was not acting in accordance with their decisions.

[68] As the narrative in this judgment shows, Mr T N George, while initially participating in the CAC group's meetings, became disillusioned with the role he was deputed to play and was deeply perturbed once third parties had warned him of his possibility liability for costs in the event his prosecution was unsuccessful. It was that which led him to consult Mr Rasmussen.

[69] While the group no doubt believes it would have been desirable for Mr T N George to discuss his concerns and intentions with it before changing solicitors, like any other litigant, he was under no obligation to warn them or his existing solicitor of his intention to change legal representation. He was the nominee of the CAC group as their informant and in that nominated role it put him in the position where he was personally exposed to the adverse circumstances if the litigation came out badly for him, but retained the capacity to do what he could in his own interests to limit his possible exposure. The CAC group was unincorporated and consisted of a small number of persons with a common dissatisfaction so it had no rules or constitution which obliged Mr T N George to act other than in his own interests if he felt that necessary.

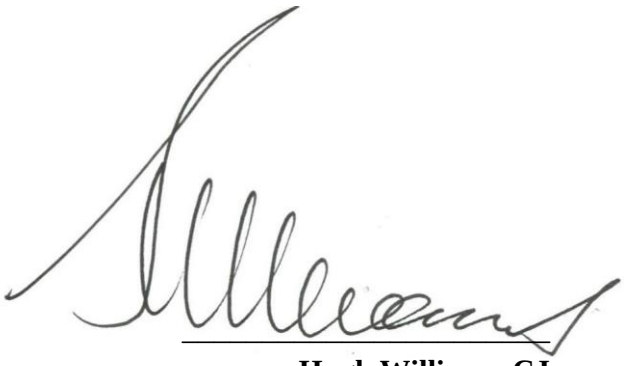
[70] In changing solicitors, Mr T N George fulfilled the normal requirements for clients terminating the retention of one solicitor and instructing another. He did this formally and accordingly Mr Rasmussen had the right to take instructions from Mr T N George and the obligation to act in accordance with those instructions. He did that and it cannot be argued that Mr Rasmussen had no standing to act in the manner he did from 13 March 2020 onwards.

Conclusion

[71] All grounds of the defendants' application for permanent stay of the informations issued against them by Mr Allsworth having failed, their case reverts to the criminal callover list for allocation of a fixture.

[72] Pursuant to the previous directions (but having regard to the time of year) counsel are to collaborate on the question of whether there is any reason why the normal publication of this judgment should not occur. Memoranda, – separate or joint – on that topic are to be filed before Friday 15 January 2021.

[73] Until further order of the Court, in addition to counsel appearing, copies of this judgment can be made available to the parties (which, at this stage, includes only the defendants' families and individual members of the CAC Group) and to Ms Bell and Crown counsel as Crown Law may need to be further involved in relation to compliance with the search warrants in *George v. Puna & Brown* (if they are regarded as applying to *Allsworth v. Puna & Brown).* Messrs Pyke and Rasmussen are also to receive copies. Leave is granted to apply to widen that circle of distribution but, pending any further order, there is to be no distribution of the judgment beyond that limited group, and no public statement, announcement or publication is to be made concerning either prosecution.



Hugh Williams, CJ