

CITATION: *Hudson v The King* [2026]
NTCCA 6

PARTIES: HUDSON, Trent

v

THE KING

TITLE OF COURT: COURT OF CRIMINAL APPEAL
OF THE NORTHERN
TERRITORY

JURISDICTION: CRIMINAL APPEAL from the
SUPREME COURT exercising
Territory jurisdiction

FILE NO: CA 19 of 2025
(22208594 & 22211806)

DELIVERED: 10 April 2026

HEARING DATE: 2 April 2026

JUDGMENT OF: Grant CJ, Southwood &
Brownhill JJ

CATCHWORDS:

SENTENCING – Appeal against sentence – Sentence contrary to law

CRIME – Appeals – Appeal against sentence – Misapplication of principle

Whether sentencing judge erred in not fixing single non-parole period across new sentence and suspended sentence which was restored – Appeal dismissed.

Sentencing Act 1995 (NT), s 53

Arnott v Harland [2025] NTSC 10, *Emitja v The Queen* [2016] NTCCA 4, *Federal Commissioner of Taxation v Munro* (1926) 38 CLR 153, *Hankin v The Queen* (2009) NTLR 110, *Leeson v Grech* [2023] ACTSC 355, *Millar v Brown* [2012] NTSC 23, *Penny v Western Australia* (2006) 33 WAR 48, *The Queen v Cumberland* [2019] NTCCA 13, *The Queen v Haji-Noor* (2007) 21 NTLR 127, referred to.

REPRESENTATION:

Counsel:

Applicant:	SPV Naylor
Respondent:	LJ Auld

Solicitors:

Applicant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Hudson v The King [2026] NTCCA 6
CA 19 of 2025 (22208594 & 22211806)

BETWEEN:

TRENT HUDSON
Applicant

AND:

THE KING
Respondent

CORAM: GRANT CJ, SOUTHWOOD & BROWNHILL JJ

REASONS FOR DECISION
(Delivered 10 April 2026)

THE COURT:

- [1] The sole proposed ground of appeal is that the sentencing judge erred in failing to fix, or consider fixing, a single non-parole period across two new sentences and a restored sentence, as said by the applicant to be required by s 53 of the *Sentencing Act 1995* (NT).

Procedural history

- [2] On 30 November 2023, the applicant was sentenced for one count of supplying a commercial quantity of methamphetamine (Count 1) and one count of supplying a commercial quantity of cannabis (Count 2). Those offences were committed in breach of an order suspending

sentence which had been made by the Supreme Court on 28 November 2019 for the offence of supplying a commercial quantity of methamphetamine. In that earlier sentencing exercise, the applicant was sentenced to five years' imprisonment which was suspended after he had served two years and six months. At the time of the subsequent offending two years and six months' imprisonment remained in suspense.

[3] The orders made by the sentencing judge in 2023 were:

- (a) full restoration of the two years and six months' imprisonment held in suspense commencing on 18 March 2022 and expiring on 17 September 2024 (without the fixing of a non-parole period in respect of the restored sentence);
- (b) in relation to Count 1, imprisonment for five years and three months commencing on 18 September 2023 and expiring on 17 December 2028 (with the consequence that 12 months of that sentence was served concurrently with the restored sentence);
- (c) in relation to Count 2, imprisonment for two years and 10 months commencing on 18 February 2027 and expiring on 17 December 2029 (with the consequence that one year and 10 months of that sentence was served concurrently with the sentence imposed for Count 1); and

(d) the fixing of a non-parole period of four years and five months across the sentences imposed for Counts 1 and 2 commencing on 18 September 2023 and expiring on 17 February 2028.

[4] The total period of imprisonment imposed was seven years and nine months with a non-parole period which operated only in respect of the final six years and three months of that aggregation.

The contentions on appeal

[5] At the time of the sentence on 30 November 2023, s 53 of the *Sentencing Act* relevantly provided:

Fixing of non-parole period by sentencing court

(1) Subject to this section and sections 53A, 54, 55 and 55A, if a court sentences an offender to be imprisoned:

- (a) for life; or
- (b) for 12 months or longer, that is not suspended in whole or part;

it must, as part of the sentence, fix a period during which the offender is not eligible to be released on parole unless it considers that the nature of the offence, the past history of the offender or the circumstances of the particular case make the fixing of such a period inappropriate.

(1A) ...

(2) Where a court sentences an offender to be imprisoned in respect of more than one offence, a period fixed under subsection (1) is in respect of the aggregate period of imprisonment that the offender is liable to serve under all the sentences then imposed.

[6] The applicant's contentions on appeal may be summarised as follows. First, ss 53(1) and (2) of the *Sentencing Act* both impose requirements on a sentencing court rather than conferring only discretions or powers.

Second, *The Queen v Haji-Noor*¹ is authority for the proposition that the requirement in s 53(1) of the *Sentencing Act* to fix a non-parole period unless inappropriate to do so has application to the restoration of a suspended sentence where the period restored is 12 months or longer. Third, the requirement in s 53(2) of the *Sentencing Act* to fix a single non-parole period across the ‘aggregate period of imprisonment ... under all the sentences then imposed’ extends to include any period of imprisonment which has been restored. Fourth, the inference properly drawn is that the sentencing judge proceeded on the basis either that he did not have power to fix a non-parole period over the restored sentence or that the process of restoration did not involve the fixing of a non-parole period. Fifth, even if the sentencing judge is taken to have determined that it was inappropriate to fix a non-parole period in respect of the restored period of imprisonment, there remained a statutory obligation to fix a single non-parole period for the ‘aggregate period of imprisonment’.

- [7] The respondent’s argument may be summarised as follows. First, it is clear in context that the sentencing judge determined that it was appropriate to fix a non-parole period over only the sentences imposed for Counts 1 and 2, and inappropriate to fix a non-parole period for the restored period of imprisonment. Second, s 53(2) of the *Sentencing Act*

¹ *The Queen v Haji-Noor* (2007) NTCCA 7; (2007) 21 NTLR 127.

contemplates a single non-parole period only for sentences that the sentencing court determines appropriate.

The decision in *Haji-Noor*

[8] The decision in *Haji-Noor* was delivered by the Court of Criminal Appeal constituted by five Judges. That constitution was to resolve an inconsistency between the earlier decisions in *Walker v The Queen*² and *The Queen v Inkamala*³. *Walker* was a decision of the Full Court constituted by three Judges on a reference pursuant to s 21 of the *Supreme Court Act 1979* (NT). In that matter, the Full Court held that a sentencing judge has power pursuant to s 53(1) of the *Sentencing Act* to fix a non-parole period with respect to a restored sentence of 12 months or longer. *Inkamala* was a decision of the Court of Criminal Appeal, also constituted by three Judges, which held it was not possible to fix a non-parole period for a restored sentence. The Court in *Inkamala* was not referred to the decision in *Walker*.

[9] In *Haji-Noor*, Angel J (dissenting on this point) considered that a sentencing court had no power to fix a non-parole period with respect to a restored sentence. That conclusion was reached largely on the basis that the operation of s 53(1) of the *Sentencing Act* was limited to circumstances in which a court sentences an offender to be imprisoned in respect of an offence, and the restoration of a sentence is not a

² *Walker v The Queen* [2001] NTSC 69.

³ *The Queen v Inkamala* [2006] NTCCA 11.

sentence ‘in respect of [an] offence’ within the meaning of s 53(2) of the *Sentencing Act*. Rather, it is a sentence with respect to a breach of a suspended sentence which has previously been imposed.

[10] Justice Mildren determined that the proper construction to be given to s 43(5)(c) of the *Sentencing Act*, which provides for the restoration of a suspended sentence in the event of a breach or further offending, is that when the court restores a sentence held in suspense and orders the offender to serve it, the court ‘sentences an offender to be imprisoned’ within the meaning of s 53, s 54, s 55 and s 55A of the *Sentencing Act*. That interpretation was informed by the fact that the power to make a parole order in s 53 of the *Sentencing Act* is a remedial provision which should be given a beneficial construction.

[11] Justice Thomas determined that a person sentenced to a restored term of imprisonment for 12 months or longer is entitled to have consideration given to the fixing of a non-parole period in the absence of a clear legislative statement to the contrary.

[12] Justice Riley determined, consistently with what had been said by the Victorian Court of Appeal in *R v Hatch*,⁴ that in restoring a period of imprisonment held in suspense the court is sentencing the offender to be imprisoned within the meaning of s 53(1) of the *Sentencing Act*. Accordingly, in circumstances where the period restored is 12 months

4 *R v Hatch* (1998) 3 VR 693.

or longer the sentencing court is required to fix a non-parole period unless the circumstances ‘make the fixing of such a period inappropriate’. Any uncertainty arising from the words in s 53 of the *Sentencing Act* ‘if a court sentences an offender to be imprisoned’ is properly resolved to accord a sentencing court the power to determine whether a non-parole period should be fixed in the interests of both the offender and the community.

[13] Justice Southwood determined that an order restoring a suspended sentence of imprisonment under s 43(5) of the *Sentencing Act* was a sentence to imprisonment for the purposes of s 53(1) of the *Sentencing Act*. That determination was based largely on the fact that the language of s 113 of the *Sentencing Act* characterised an order following breach as a sentence and the beneficial purpose of the parole regime.

[14] The decision in *Haji-Noor* does not address or resolve the issue in this appeal. On proper analysis, the *ratio decidendi* in *Haji-Noor* is that a sentencing court which wholly restores a period of imprisonment held in suspense has power to fix a non-parole period for the restored sentence. It is not that a sentencing court must fix a non-parole period in those circumstances. Although the resentencing exercise conducted by the Court of Criminal Appeal fixed a non-parole period across the aggregate period of imprisonment, the *ratio* of the decision is also not that there must be a single non-parole period fixed across the period of imprisonment which is restored and any fresh sentences imposed in the

sentencing exercise. There was an assumption that the sentencing judge would have fixed a single non-parole period across the aggregate period of imprisonment if he considered he had power to do so, and that assumption was given effect by the appellate court without any consideration of the issue which presents in this appeal.

Single non-parole period over ‘aggregate period of imprisonment’

[15] The applicant’s ‘fallback’ position in this appeal is that even if the sentencing judge is taken to have determined that it was inappropriate to fix a non-parole period for the restored period of imprisonment, there remained a statutory obligation to fix a single non-parole period for the ‘aggregate period of imprisonment’. That contention cannot be accepted.

[16] The first reason why that contention must be rejected is that the applicant conceded that the terms and operation of s 53(1) of the *Sentencing Act* permit a court which is sentencing an offender for more than one offence to fix a non-parole period for some of those offences but to determine that it is inappropriate to fix a non-parole period for the other offences. In other words, a sentencing court is not required to approach a sentencing exercise involving multiple offences on the basis that the determination of whether to fix a non-parole period must be conducted as a compendious exercise. Separate consideration may be given to each individual offence. So much follows from the fact that different offences may attract different minimum non-parole periods

and the consequences of that which are described in *The Queen v Cumberland*.⁵ Further, the timing, nature and circumstances of each offence may give rise to necessarily different considerations concerning the appropriateness of fixing a non-parole period. That result is accommodated by the machinery provision in s 59 of the *Sentencing Act*, which contemplates a mix of fixed terms of imprisonment and terms of imprisonment subject to non-parole periods, and creates an order for the service of those sentences.⁶

- [17] Once that operation of s 53(1) of the *Sentencing Act* is accepted, the only rational approach to the construction of s 53(2) is that the ‘aggregate period of imprisonment’ over which a single non-parole period is fixed includes only the sentences for which a non-parole period has been fixed.⁷ Were that not so, a sentencing court would be forced to adopt the artificial and nonsensical approach of fixing a notional non-parole period to extend across the sentences for those offences for which it has already determined that the fixing of a non-parole period is inappropriate. The artificiality of that approach is illustrated by the applicant’s position in the present matter. The submission is that even on the assumption that the sentencing judge properly determined that the fixing of a non-parole period over the

5 *The Queen v Cumberland* [2019] NTCCA 13.

6 See *Hankin v The Queen* (2009) NTLR 110 at [12], [74]-[77].; *Penny v Western Australia* (2006) 33 WAR 48 at [10]-[11].

7 The decision in *Arnott v Harland* [2025] NTSC 10 at [18], [36] should not be followed to the extent that it suggests that s 53(2) of the *Sentencing Act* has a different operation.

restored sentence was inappropriate, and that a non-parole period of four years and five months across the sentences imposed for Counts 1 and 2 commencing on 18 September 2023 was properly fixed, it was incumbent on the sentencing judge to fix a notional non-parole period of five years and 11 months from the commencement of the service of the restored sentence on 18 March 2022. On the applicant's submission, to do otherwise was in breach of the obligation imposed by s 53(2) of the *Sentencing Act* and in error.

[18] The second reason why the applicant's contention in relation to the operation of s 53(2) of the *Sentencing Act* must be rejected is that the provision is not in terms which impose an obligation on a sentencing court of the type asserted by the applicant. It provides only that where an offender is imprisoned in respect of more than one offence the non-parole period fixed in accordance with s 53(1) of the *Sentencing Act* 'is in respect of the aggregate period of imprisonment'. That language stands in obvious contrast with the provision in s 53(1) that the sentencing court 'must ... fix a period during which the offender is not eligible to be released on parole'.

[19] Leaving that distinction in statutory language aside, the relevant question is not whether s 53(2) of the *Sentencing Act* is cast in obligatory or discretionary terms. The text does not have a clear and unambiguous meaning and operation. That being so, the task of the court involves 'ascertaining the intention of the legislature from the

words it has used in the circumstances, on the occasion and in the collocation it has used them’.⁸ The relevant question is whether, as a matter of proper construction when reading the legislative scheme as a whole, including the juxtaposition with s 53(1), s 53(2) of the *Sentencing Act* mandates the fixing of the non-parole period across the whole aggregate period of imprisonment regardless of whether a non-parole period was determined to be inappropriate for part of that aggregation. That mandatory construction should not be adopted because it would give rise to the absurd result already described above.

[20] To put the matter in stark terms, s 53 of the *Sentencing Act* cannot be construed to require the fixing of a non-parole period across a sentence for which the fixing of a non-parole period is inappropriate. Rather, s 53(2) is a provision having application only to the ‘aggregate period of imprisonment’ for those sentences for which a non-parole period is fixed. For the purposes of clarity and administrative convenience, its operation is to prevent the fixing under s 53(1) of multiple non-parole periods over two or more sentences.⁹ It is obligatory only in the sense that a single non-parole period will have application to those sentences. That operation is best seen as a matter of statutory implication. To the extent that approach is thought to require words to be read into the text of s 53(2), that is preferable to the alternative result, which would

⁸ *Federal Commissioner of Taxation v Munro* (1926) 38 CLR 153 at 180.

⁹ See, for example, *Leeson v Grech* [2023] ACTSC 355 at [13].

require reading in the words ‘including those sentences for which the fixing of a non-parole period has been determined inappropriate’.

Failure to fix a non-parole period over the restored sentence

[21] The applicant’s primary contention on appeal is that the sentencing judge erred by failing to fix a non-parole period over the sentence which was restored. The applicant says that the inference properly drawn is that the sentencing judge proceeded on the basis either that he did not have power to fix a non-parole period over the restored sentence or that the process of restoration did not involve the fixing of a non-parole period.

[22] At the commencement of the sentencing remarks, after describing the offences to which the applicant had pleaded guilty, the sentencing judge noted that the commission of those offences constituted a breach of the order suspending the sentence:

In addition, you admit that you breached the terms of a Suspended Sentence Order which was imposed in this court on 28 November 2019.

On 28 November 2019 you were sentenced in this Court to 5 years’ imprisonment to be suspended after serving 2 years and 6 months on conditions and with an operative period of 3 years from release. One of the conditions of the order was that once your period of supervision was completed, you were to immediately leave the Territory and not return during the operational period. Your supervision concluded in August 2021 and you left the Territory for Queensland at that time.

[23] The sentencing judge then went on to describe the subsequent offences. By way of summary, the supply of the commercial quantity of

methamphetamine took place three months after the applicant had been released from prison on the order suspending sentence. The applicant sourced 224 grams of methamphetamine in Brisbane and arranged for a female courier to transport the drugs to Darwin. The quantity of methamphetamine was almost six times greater than the threshold for a commercial quantity. Although the female courier was arrested, the applicant remained at large. The supply of the commercial quantity of cannabis took place four months after the commission of the first offence. The applicant flew to Adelaide, procured 6.8 kilograms of cannabis, divided the cannabis into 15 packages each containing one pound of cannabis in the old Imperial measure, packed the cannabis into two suitcases and brought the suitcases as checked luggage on a commercial flight from Adelaide to Darwin. A police drug detection dog gave a conditioned response to the suitcases at the Darwin Airport, and the applicant was arrested. The quantity of cannabis in his possession was approximately 14 times greater than the threshold for a commercial quantity.

[24] Later in the sentencing remarks, the sentencing judge returned to the circumstances of the offending for which the order suspending the sentence had previously been made:

Before I consider your subjective circumstances, I will outline the circumstances of the offence of supplying a commercial quantity of methamphetamine for which you were sentenced in this Court on 28 November 2019. On or about 28 November 2018 you provided a person identified by the initials KB with an ounce of

methamphetamine to on-supply to members of the Darwin and Palmerston communities. KB sold that methamphetamine for about \$7000 or \$7500 and gave you the money in exchange for methamphetamine for her own use. On 27 December 2018 you exchanged text messages with KB relating to the supply and sale of methamphetamine. At about 2:30 pm that day you met KB and she drove you to her home on the rural outskirts of Darwin. Police were watching you at that time. Police stopped the car which was being driven by KB and in which you were a passenger and found a small clip seal bag of methamphetamine in a glasses case in the passenger footwell and a large quantity of methamphetamine in a package hidden in your underwear. The total amount of methamphetamine was 212.95 grams.

You were sentenced to a term of 5 years' imprisonment commencing on 27 December 2018. As I have already said, that sentence was suspended after you served 2 years and 6 months' imprisonment with conditions, amongst others, that you attend residential rehabilitation and immediately leave the Northern Territory once your period of supervision by Probation and Parole was completed and not to return during the operational period.

[25] The sentencing judge then went on to consider the applicant's

subjective circumstances at some length before making the following remarks in relation to the structure of the sentence:

You have a criminal history which disentitles you to leniency in sentencing for the present offences. In fact, the chronology of events suggests that any sentences which I impose must have a strong personal deterrent element to deter you from committing offences involving the supply of drugs.

...

There can be no doubt that you were well aware of the serious nature of these offences at the time that you committed them. Kelly J spent some time explaining to you in 2019 the serious nature of the offence of supplying methamphetamine. Both methamphetamine and cannabis use in this community are the source of considerable misery and social evil. Those who engage in serial offences of supplying drugs should expect heavy punishment. This flows from the maximum penalties that have been prescribed for the offences, the expectation of the community that its members will be protected from drug-fuelled crime, and

the need to deter people from engaging in drug trafficking in the hope of making large profits.

The starting point with regard to the breach of the Suspended Sentence Order is that the remaining part of the sentence should be reimposed unless it would be unjust to do so. Your Counsel submitted that it would be unjust to fully restore the balance of the sentence imposed by Kelly J because to do so would hamper your rehabilitation and, it was submitted, further institutionalise you. I do not accept those propositions. There is no evidence that you have been institutionalised by your incarceration, and whether you make and maintain a commitment to rehabilitation is something that is entirely up to you. Rehabilitation cannot be imposed by any court or support service. It is ultimately a matter for an offender to make a commitment to rehabilitation. In any event, your current prospects for rehabilitation are not such that rehabilitation as a sentencing consideration should be given greater significance than punishment and deterrence.

I restore the suspended period of 2 years and 6 months commencing on 18 March 2022 and expiring on 17 September 2024.

On Count 1 I record a conviction and you are sentenced to 5 years and 3 months' imprisonment commencing on 18 September 2023 and expiring on 17 December 2028. I have reduced this from 7 years because of your plea of guilty.

On Count 2 I record a conviction and you are sentenced to 2 years and 10 months' imprisonment commencing on 18 February 2027 and expiring on 17 December 2029. I have reduced this from 3 years and 6 months because of your plea of guilty.

The sentences I have imposed on Counts 1 and 2 total 6 years and 3 months. I set a non-parole period of 4 years and 5 months commencing on 18 September 2023 and expiring on 17 February 2028.

- [26] The applicant does not seek to impugn this sentence on the grounds of denial of procedural fairness or inadequacy of reasons. The applicant's assertion is that because the sentencing judge did not make an express finding or determination that it would be 'inappropriate' to fix a non-parole period over the restored sentence, the terms of s 53(1) of the *Sentencing Act* required the fixing of a non-parole period over the term

restored and in failing to do so the sentencing discretion miscarried.

While it may be accepted that a sentencing court which is restoring a suspended term of imprisonment in excess of 12 months must consider whether to fix a non-parole period in respect of that term,¹⁰ it does not follow that there was any relevant failure in this case. As this Court observed in *Emitja v The Queen*:

... in determining that the fixing of a non-parole period would be inappropriate a sentencing judge is exercising a sentencing discretion with the consequence that the ordinary principles governing sentencing appeals will have application; that is, it is necessary for the appellant to show that the exercise of the discretion miscarried to such an extent that it did not constitute a valid exercise.¹¹

[27] That determination requires a consideration of the very same factors which inform fixing the head sentence, including the offender's antecedents, the criminality of the conduct, the sentencing purposes of punishment and deterrence, and the question of whether the fixing of a non-parole period might be expected to be productive of reformation. It was of crucial importance in this case that the applicant's subsequent offending was of the very same type for which the suspended sentence had been imposed; that the applicant reoffended within a very short time of his release on the order suspending sentence; and that the subsequent offending involved a brazen re-entry into the Northern Territory while in possession of a commercial quantity of a dangerous

¹⁰ See, for example, *Millar v Brown* [2012] NTSC 23 at [12]-[13].

¹¹ *Emitja v The Queen* [2016] NTCCA 4 at [57].

drug in breach not only of the criminal law but also of the specific order compelling the applicant to remain outside the Northern Territory during the currency of the order suspending sentence. That last condition was no doubt imposed to prevent further supply activity in the Northern Territory.

[28] Contrary to the applicant's submissions, the transcript of the sentencing proceedings does not disclose any understanding or assumption on the part of either the prosecutor or defence counsel that a non-parole period would necessarily be fixed in relation to the term which was restored. Defence counsel's submissions in relation to the question of restoration were that there should be a partial restoration only. That submission was unrealistic in the circumstances and did not engage with the length of the restored term or assert that a non-parole period should be fixed in relation to the restored term. Defence counsel's submissions in relation to the structure of the sentence generally were that the applicant be allowed to 'serve the balance of his sentence in the community by way of either a Suspended Sentence or as a condition of a grant of Parole'.¹² Those submissions also did not engage directly with the fixing of a non-parole period in relation to the restored term. Similarly, while it is no doubt true to say that the prosecutor expressed the view that 'the final release date needs to be

12 Appeal Book 119.

set at some time in the future by the Parole Board’,¹³ that in no way indicated an understanding or concession that there would be a non-parole period fixed in relation to the restored term. Of course, under the sentence which was imposed by the sentencing judge the release date was required to be set by the Parole Board.

[29] All the factors relevant to determining whether a non-parole period should be fixed over the restored term were adequately traversed during the sentencing remarks. The adequacy of that consideration is not diminished because those factors were relevant both to the fixing of the head sentence and to whether a non-parole period should be fixed and across what terms of imprisonment. There was no obligation on the sentencing judge make an express determination that it would be inappropriate to fix a non-parole period in respect of the restored sentence. Nor is it to be assumed in the circumstances of this case that the sentencing judge failed to consider that question or overlooked a relevant sentencing principle.¹⁴ That is particularly so given that the sentencing orders which were made did have regard to issues of parole, and where the principle enunciated in *Haji-Noor* is a basic element of sentencing law in this jurisdiction. While the decision not to fix a non-parole period is properly subject to scrutiny, it cannot be said that the exercise of the discretion miscarried in this case. That conclusion is not

¹³ Appeal Book 24.

¹⁴ See, for example, *Millar v Brown* [2012] NTSC 23 at [15], [18]-[19].

displaced even accepting the applicant's contention that the fixing of a non-parole period is the 'default' position or the 'starting point'.

[30] Even if some failure to take into account a relevant consideration or misapplication of principle could be discerned in this case, s 411(4) of the *Criminal Code 1983* (NT) provides that a sentence may only be quashed on appeal if this Court is of the opinion that a less severe sentence is warranted and should have been passed. Having regard to the circumstances of this offending in its totality we do not hold that opinion.

Disposition

[31] We make the following orders:

1. An extension of time within which to make application for leave to appeal is allowed.
2. Leave to appeal is granted.
3. The appeal is dismissed.
