Spencer v Loadman & Trenerry [1999] NTSC 48

PARTIES:	GEORGE MUSA SPENCER v DAVID GEORGE LOADMAN Stipendiary Magistrate (sitting as the Court of Summary Jurisdiction) AND: ROBIN LAURENCE TRENERRY
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory Jurisdiction
FILE NO:	29/99 (9905489)
DELIVERED:	5 May 1999
HEARING DATES:	30 March 1999
JUDGMENT OF:	THOMAS J

CATCHWORDS:

Criminal law and procedure – application for stay of proceedings – abuse of process – whether unreasonable delay – unfairness to the accused

Jago v The District Court of New South Wales and Others (1989) 168 CLR 23, followed.
Aitchison v DPP (1996) 90 A Crim R 448, referred to.
Lillico v McKenna & Others (1995) 77 A Crim R 396, referred to.
Boehm & Anor v Director of Public Prosecutions [1990] VR 475, referred to.
Breedon v The Queen (1995) 124 FLR 328, applied.
Rogers v The Queen (1994) 181 CLR 251, considered.
Walton v Gardiner (1993) 177 CLR 378, referred to.
Connelly v Director of Public Prosecutions [1964] AC 1254, referred to.
Supreme Court Rules 1987 (NT), O 23.01(1)(c).

Criminal law and procedure – relief sought in nature of prohibition – whether unreasonable delay – unfairness to the accused.

Supreme Court Rules 1987 (NT), O 56.01

REPRESENTATION:

Counsel:

Plaintiff:	D. Conidi
1st Defendant:	M. Hunter
2nd Defendant:	I. Rowbottam

Solicitors:

Plaintiff:	Northern Territory Legal Aid Commission
1st Defendant:	Northern Territory Attorney-Generals Dept.
2nd Defendant:	Office of the Director of Public Prosecutions

Judgment category classification:	C
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IN SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Spencer v Loadman & Trenerry [1999] NTSC 48
No. 29/99 (9905489)

BETWEEN:

GEORGE MUSA SPENCER
Plaintiff

AND:

DAVID GEORGE LOADMAN
Stipendiary Magistrate (sitting as the Court of Summary Jurisdiction
First Defendant

and:

ROBIN LAURENCE TRENERRY
Second Defendant

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 5 May 1999)

[1] This is an application for:

(1) a permanent stay of proceedings on information before the first defendant pursuant to Order 23.01(1)(c) of the Supreme Court Rules which states as follows:

> "(1) Where a proceeding generally or a claim in a proceeding –
>
> (c) is an abuse of the process of the Court,

the Court may stay the proceeding generally or in relation to a claim or give judgment in the proceeding generally or in relation to a claim."

(2) Prohibition pursuant to Order 56.01 of the Rules of the Supreme Court which states as follows:

> "(1) Subject to any Act, the jurisdiction of the Court to grant relief or a remedy in the nature of *certiorari*, mandamus, prohibition or *quo warranto* shall be exercised only by way of judgment or order (including interlocutory order) and in a proceeding commenced in accordance with this Chapter.
>
> (2) The proceeding shall be commenced by originating motion."

[2] At the commencement of the application Mr Hunter appeared on behalf of the first defendant to advise the Court that the first defendant submitted to the jurisdiction of the Court and did not seek to be heard on the application. With the leave of the Court, Mr Hunter then withdrew from the proceedings.

[3] The application is supported by affidavit of Russell Goldflam sworn 25 March 1999 and Domenico Conidi sworn 26 March 1999. These affidavits set out the background of the matter as follows.

[4] On 15 October 1997, the plaintiff was charged on information on Court of Summary Jurisdiction file 9722670 with aggravated unlawful entry, stealing and trespass. These offences were alleged to have occurred on 6 October 1997.

[5] With respect to these offences, the plaintiff appeared in the Court of Summary Jurisdiction represented by Mr Goldflam of the Northern Territory

Legal Aid Commission on 4 December 1997 before his Worship Mr Gillies. Mr Gillies SM adjourned the matters to 12 January 1998 and stated that he would mark the file "no further adjournments".

[6] Nine days earlier on 25 November 1997, the plaintiff had been arrested and interviewed in relation to other offences.

[7] The charge sheet, copy of which is annexure "B" to the affidavit of Russell Goldflam, sworn 25 March 1999, states he was charged with the following offences:

> "Stealing
> Enter dwelling at night to commit crime
> Unlawfully possess property
> Unlawfully possess property
> Possess/use firearm unlicensed
> Possess a dangerous drug (Cannabis)
> Administer a dangerous drug to self"

[8] The plaintiff, Mr Spencer, was bailed to appear at the Court of Summary Jurisdiction on 4 December 1997 with respect to these charges.

[9] On 4 December 1997 the plaintiff appeared at the Darwin Magistrates Court. The offences for which he was charged on 15 October 1997 were on Court of Summary Jurisdiction file 9722670. The offences for which he was arrested on 25 November 1997 were on Court of Summary Jurisdiction file 9726253.

[10] With respect to the matters on file 9726253, Sergeant Hales advised the Court on 4 December 1997 that these matters were not in a fit state to

proceed and that the plaintiff may receive a summons at a later date. The learned stipendiary magistrate discharged the plaintiff from his bail obligations on file 9726253.

[11] On 8 December 1997, Mr Goldflam on behalf of the plaintiff wrote to the officer in charge of Police Prosecutions, which letter, omitting formal parts, reads as follows:

> "On 4 December 1997 I appeared for the defendant before Mr Gillies SM. In relation to file 9722670 an indication of guilty pleas was made to the charges. Sgt Hales, the Police Prosecutor on that occasion, notified the court that file number 9726253 was not in a fit state to proceed, and that the defendant may be summonsed at a future date in relation to the matters involved in that file.
>
> I have been instructed that those matters include possible property offences. I have advised my client that he should take whatever steps are available to ensure that any property offences with which he is charged are disposed of on the same day by a court. That advice is based on the state of the law as set out in the recent Supreme Court matter of *Schluter*.
>
> File number 9722670 has been adjourned to 12 January 1998 for plea or mention, and Mr Gillies SM indicated that no further adjournments would be granted. I request that a decision whether or not to proceed with charges involving property offences on file 9726253 be made prior to that date, to enable the defendant to have all of his outstanding matters resolved on the same day. I note that on my instructions, Mr Spencer did not commit any property offences in relation to the fishing gear and air rifle, which he had swapped for some other goods with some people at Mandorah in July. I am instructed that he said as much to police."

[12] In his affidavit sworn 25 March 1999, Mr Goldflam deposes to the fact that he did not receive any response to this letter nor did he recall discussing the matter again with Sergeant Hales. I think it relevant to note that it appears Mr Goldflam did not follow up on this letter or advise the Officer in Charge

of Police Prosecutions that he would seek a further adjournment on 12 January 1998 if he had not received a reply by that date.

[13] On 12 January 1998, Mr Goldflam appeared for the plaintiff in the Court of Summary Jurisdiction at Darwin before his Worship, Mr Trigg. I am aware that Mr Gillies SM had advised he would mark the file "no further adjournments". However, this was not binding upon Mr Trigg SM. The failure by the Officer in Charge of Police Prosecutions to reply to Mr Goldflam's letter dated 8 December 1997, could have been the basis of an application for a further adjournment. No such application was made and it appears the plaintiff, after receiving legal advice about his position, made an informed decision to proceed with a plea of guilty to matters on file 9722670 on 12 January 1998. The plaintiff entered a plea of guilty to the charges of aggravated unlawful entry and stealing being offences committed on 6 October 1997 for which he was charged on information dated 15 October 1997 in the Court of Summary Jurisdiction. The charge of trespass was withdrawn. These were all the matters on Court of Summary Jurisdiction file 9722670. Mr Spencer was convicted and sentenced to 26 days imprisonment.

[14] In his supporting affidavit Mr Goldflam states that he advised the plaintiff that on the basis of his instructions he had a defence to the property charges on file 9726253, namely, enter a dwelling at night to commit a crime and stealing. Mr Goldflam indicated by property offence he meant offences

which at that time were offences to which s 78A of the *Sentencing Act* (1996) then applied.

[15] Mr Goldflam further deposed to the fact that he advised the plaintiff before he entered his pleas of guilty on 12 January 1998, that if he was found guilty on a subsequent occasion of a property offence he would face a minimum mandatory period of imprisonment of three months, and that the plaintiff understood this advice. I note that at the time, the offence of receiving, contrary to s 229 of the *Sentencing Act*, was a property offence for the purpose of s 78A of the *Sentencing Act*. However, at that time Mr Spencer had not been charged with an offence of receiving.

[16] Mr Goldflam asserted that he believed the plaintiff instructed him on 12 January 1998 that he wished to enter pleas on file 9722670 in reliance on the advice he had received from Mr Goldflam that he was unlikely to be found guilty of a property offence on file 9726253.

[17] Mr Goldflam took no further part in the proceedings.

[18] On 9 June 1998, Mr Domenico Conidi, solicitor with the Northern Territory Legal Aid Commission, took over the care and conduct of this matter on behalf of the plaintiff.

[19] On 3 March 1998, the plaintiff was charged on information with an offence of unlawful entry, namely, 5/27 Rosewood Crescent, a charge of stealing

property valued at $1331.95 and a charge of unlawfully possessing cannabis plant material. These are charges number 1, 2 and 3.

[20] On 3 March 1998, the plaintiff was charged on complaint with unlawful possession of property, possess an unregistered firearm, possess unlicensed firearm and administer a dangerous drug. These are charges number 4, 5, 6 and 7.

[21] On this information and complaint, the plaintiff was summonsed to appear at the Darwin Court of Summary Jurisdiction on 18 May 1998.

[22] After two mentions in this matter before the Court of Summary Jurisdiction, the plaintiff appeared on 13 July and had the matter listed for an oral committal on 9 December 1998.

[23] On an information for an indictable offence dated 24 November 1998, the plaintiff was charged with receiving stolen goods, namely fishing equipment, mobile phone, camera, a CD, wallet and cash to the value of $1331.95. This is charge number 8. This was laid as an alternate charge to charge number 2 on information sworn 3 March 1998.

[24] On the 24 November 1998 a notice pursuant to s 105A of the *Justices Act*, was received at the Office of the Northern Territory Legal Aid Commission. The notice was addressed to the plaintiff, care of the NT Legal Aid Commission.

[25] Attached to the notice referred to in par 6 was the following:

(a) Copy of Information (Annexure A B & C)

(b) List of Witnesses

(c) Copy of Witnesses Statements

(i) Tammy Irene Fletcher (Declared 24 November 1997)

(ii) David Alan Keirs (Declared 9 January 1998)

(iii) D.S.C Alan Hodge (Declared 17 August 1998)

(iv) D.S.C Lauren Hill (Declared 10 August 1998)

(v) D.S.C Wayne Jenkinson (18 September 1998)

(vi) Kathleen Louise Poel (Declared 23 September 1998)

(vii) Copy of Transcript of Record of Interview.

A further two statements were served on the plaintiff's solicitors on 7 December 1998. They are:

(viii) Naomi Skye Hockey (Declared 26 November 1998)

(ix) Marisa Monique Wicks (Declared 3 December 1998)

[26] On 9 December 1998, the matter was adjourned for an Oral Committal on 27 January 1999.

[27] On an information for an indictable offence sworn 25 January 1999, the plaintiff was charged with receiving stolen goods, namely an air rifle and supply a dangerous drug (cannabis). These are numbered charges 9 and 10.

[28] Discussions took place between Mr Conidi, for the plaintiff, and Mr Rowbottam from the Office of the Director of Public Prosecutions. It was agreed that only four charges would proceed. They are:

(a) Charge 3: On 25 November 1997 unlawfully possessed cannabis plant material.

(b) Charge 5: On 25 November 1997 possessed an unregistered firearm.

(c) Charge 6: On 25 November 1997 possess an unlicensed firearm.

(d) Charge 8: On 21 July 1997 received fishing equipment which had been obtained by means of a crime, namely stealing, knowing it to have been so obtained.

[29] Letter from Mr Rowbottam dated 13 February 1999, omitting formal parts, confirms this conversation and states as follows:

> "Further to my E-Mail to you today, I confirm our conversation and our conversation of 27 January 1999 (and my fax) regarding this matter at the Court of Summary Jurisdiction. Spencer presently faces 10 counts.
>
> As I informed you, the prosecution intend to withdraw counts 1, 2, 4, 7, 9 and 10 in full satisfaction of the matter should guilty pleas be entered in relation to counts 3, 5, 6 and 8. This is on the basis of the draft "Agreed Facts" that I intend (with your consent) to present to the court. They are attached again and were attached to the E-Mail.
>
> As you are aware I am presently involved in a trial. If any point is taken with the proposed Agreed Facts please raise the matter well in advance."

[30] The Agreed Facts referred to in this letter are as follows:

> "At about 5.20 am on Monday 21 July 1997 the owner of 5/27 Rosewood Crescent returned home to find his unit had been entered and property stolen.
>
> On Tuesday 25 November a search warrant was executed at the defendant address at 143 Trower Road where some of the property, namely fishing reels and rods to the value of $368.00 was recovered.
>
> Also located in the defendant's room was a quantity of cannabis leaf – 27.5 grams and a Norcia Air Rifle, Serial No. M30482.
>
> The rifle was not registered and the defendant does not hold a shooter's licence.
>
> As a result the defendant attended at the Berrimah Police Station that afternoon and took part in an electronically recorded record of interview.
>
> The defendant stated that he came by the fishing reels and rods at Mandorah from unknown juveniles, knowing them to be stolen."

[31] The plaintiff, through his solicitors, indicated a plea of guilty to these offences.

[32] On 17 February 1999, the matters were adjourned to 22 February 1999. On 22 February 1999, a further adjournment was granted so that the plaintiff could bring his present application to the Supreme Court.

[33] Mr Conidi on behalf of the plaintiff submits that it is unfair and an abuse of process that on pleading guilty to offence number (8), the offence of receiving, contrary to s 229 of the *Criminal Code*, his client the plaintiff in these proceedings, will incur the mandatory penalty of 90 days imprisonment provided under s 78A of the *Sentencing Act.*

[34] The relevant provision of s 78A of the *Sentencing Act* provides as follows:

> "(2) Where a court finds an offender guilty of a property offence and the offender has once before been found guilty of a property offence, the court shall record a conviction and order the offender to serve a term of imprisonment of not less than 90 days."

[35] Mr Conidi complains as to the delay by the prosecution between November 1997 and March 1998 and subsequently which has resulted in prejudice to the plaintiff.

[36] Mr Conidi submits that from the notice pursuant to s 105A of the *Justices Act* (Exhibit 2) it is clear that the prosecution had in their possession in November 1997 certain important statements being:

(a) Statement of Tammy Irene Fletcher dated 24 November 1997.

(b) Information provided by Naomi Hockey as referred to in a statement by Wayne Jenkinson dated 18 September 1998 and statement of Naomi Hockey dated 26 November 1998.

(c) The plaintiff's record of interview.

[37] As at 12 January 1998 the prosecution were in possession of a statement from David Kiers who made a statutory declaration sworn 9 January 1998 included in (Exhibit 2).

[38] Mr Conidi argues that as at 12 January 1998, none of these statements were made available to the defence despite the letter dated 8 December 1997 from Mr Goldflam to Sergeant Hales. An information and complaint alleging certain charges was sworn 3 March 1998. Mr Spencer was summonsed to

appear at the Court of Summary Jurisdiction to answer these charges on 18 May 1998, however, the remaining statements were not obtained until between August and December 1998. On 24 November 1998 the plaintiff was charged with Count 8, that is the charge of receiving stolen goods, contrary to s 229 of the *Criminal Code*. This offence was alleged to have occurred on 21 July 1997.

[39] It is the submission on behalf of the defence that the decision to enter a plea of guilty on 12 January 1998 to the offences which occurred in October 1997, was the correct decision based on the instructions received from the plaintiff.

[40] However, the submission is that the delay in obtaining further statements or providing information available to the prosecution with respect to the offences which occurred in July and November 1997 prohibited the plaintiff from being able to properly assess the case against him in December 1997 and 12 January 1998 when the decision to plead to the offences committed in October 1997 had to be made. The consequence on the argument advanced for the plaintiff is that the plaintiff has been denied the opportunity of avoiding the onerous effect of s 78A(2) of the *Sentencing Act*. The evidentiary material relating to the offences committed in July and November 1997 was not served on the plaintiff until 24 November 1998 and further statements were received on 7 December 1998.

[41] Mr Conidi submits on behalf of the plaintiff, that the delay by the prosecution, with respect to the offences for which his client was arrested on 25 November 1997, meant that his client lost the opportunity to have all the outstanding charges dealt with at the one time and thus to avoid a further mandatory gaol sentence of 90 days.

[42] Mr Conidi submits that the harsh regime that has been set by s 78A of the *Sentencing Act*, imposes a responsibility on those involved in the criminal justice system to ensure that the injustices that flow from that scheme are not multiplied, as occurred in this case.

[43] Mr Conidi makes the point that the offence the plaintiff must face in the Magistrates Court if this application fails, namely charge 8, the charge of receiving stolen fishing equipment is less serious than the offence to which he pleaded guilty in January 1998. Yet because he is caught by the provisions of the *Sentencing Act* s 78A(2), the mandatory minimum sentence is 90 days imprisonment.

[44] The plaintiff submits the implications are as follows:

(i) The plaintiff is prejudiced in that the delay in laying the information prevents the plaintiff from taking advantage of the totality principle in sentencing recognised by the *Sentencing Act* in s 5(2)(m), s 5(2)(n) and s 5(2)(p).

(ii) The plaintiff will serve what is essentially a cumulative prison sentence and is thereby denied the opportunity to argue concurrency or partial currency had the matters been dealt with at the same time.

(iii) The plaintiff is prejudiced in that he cannot rely on the evidence of his rehabilitation since his release from jail or since the commission of the October offences to mitigate sentence.

[45] Mr Rowbottam for the Crown, argues that there has been no undue delay in this matter. Mr Spencer was arrested for the offence of receiving on 25 November 1997. He was interviewed in respect of the allegations on 25 November 1997. He was bailed to appear at the Court of Summary Jurisdiction on 4 December 1997. An information and complaint in respect of these offences was sworn on 3 March 1998. He was summonsed to appear on these charges on 18 May 1998. The offences with which he was charged were alleged to have occurred in July and November 1997. Count 8, the charge of receiving which was on information sworn 24 November 1998, was an alternative to Count 2 which was on information sworn 3 March 1998. Mr Spencer was charged on 24 November 1998 with receiving stolen goods (Count 8).

[46] The High Court considered the issue of whether undue delay amounts to an abuse of process in *Jago v The District Court of New South Wales and Others* (1989) 168 CLR 23. Deane J at 60 – 61 listed five main heads of relevant circumstances:

(i) "the length of the delay;

(ii) reasons given by the prosecution to explain or justify the delay;

(iii) the accused's responsibility for and past attitude to the delay; and,

(iv) proven or likely prejudice to the accused. The fifth is the public interest in the disposition of charges of serious offences and in the conviction of those guilty of crime …"

[47] The issue in *Jago v The District Court of New South Wales and Others* (supra) was stated by Mason J at 25 ".. whether in this case the plaintiff's right to a fair trial has been prejudiced by virtue of undue delay amounting to an abuse of process." At p 34 Mason J said, "To justify a permanent stay of criminal proceedings, there must be a fundamental defect which goes to the root of the trial."

[48] The issue in the case before this Court is whether any delay which occurred will result in the plaintiff receiving an unfair sentence which is quite a separate issue to whether he can receive a fair trial.

[49] Other authorities to which I have been referred also go to the issue of whether delay precludes the accused from having a fair trial (*Aitchison v DPP* (1996) 90 A Crim R 448, *Lillico v McKenna & Others* (1995) 77 A Crim R 396, *Boehm & Anor v Director of Public Prosecutions* [1990] VR 475, *Breedon v The Queen* (1995) 124 FLR 328).

[50] In *Rogers v The Queen* (1994) 181 CLR 251, the High Court allowed an appeal on the grounds that the tender of records of interview would be a

direct challenge to an earlier determination and in the circumstances would be an abuse of process. I accept Mr Conidi's submission that the categories of abuse of process are not closed. Mason J at 255 stated:

> "The circumstances in which abuse of process may arise are extremely varied and it would be unwise to limit those circumstances to fixed categories. Likewise, it would be a mistake to treat the discussion in judgments of particular circumstances as necessarily confining to concept of abuse of process."

[51] In *Walton v Gardiner* (1993) 177 CLR 378, Mason CJ, Deane and Dawson JJ stated at 392 – 393:

> "The inherent jurisdiction of a superior court to stay its proceedings on grounds of abuse of process extends to all those categories of cases in which the processes and procedures of the court, which exist to administer justice with fairness and impartiality, may be converted into instruments of injustice or unfairness. …."

and in *Breedon v The Queen* (1995) 124 FLR 328 Angel J stated at 333:

> "The power to grant a permanent stay of criminal proceedings is one to be exercised only in the most exceptional circumstances: *Barton* (at 95, 16); *Jago* (at 31, 34); *Williams v Spautz* (1992) 174 CLR 509 at 529. An applicant for a permanent stay must demonstrate more than a subjective sense of unfairness; he must show the prosecution is brought for a predominant ulterior or improper purpose: *Williams v Spautz* (at 529), or delay such that he can not receive a fair trial, that is, that any trial would necessarily be unfair: *Jago* (at 34, 49-50, 78), or that the continuation of the proceedings would be so unfairly and unjustifiably oppressive as to constitute an abuse of process: *Walton v Gardiner* (at 392, 395). In short, the applicant must demonstrate one of the statutory grounds set out in s 339 of the *Criminal Code* or an abuse of the court's procedure by reason of the institution of the criminal proceedings or the taking of a procedural step in the proceedings."

[52] There has been no authority put forward to support the submission that it is appropriate to stay the proceedings on the grounds of the sentence an accused will receive. The authorities address the unfairness of proceeding to trial at all, not its consequences according to law.

[53] In the matter before this Court there is no evidence to support a finding of undue delay or that such delay as did occur amounts to an abuse of process.

[54] The offences occurred in July and November 1997. Mr Spencer was arrested on 25 November 1997. He was bailed to 4 December 1997 and was discharged from his bail obligations. On 12 January 1998 the plaintiff elected, after receiving advice from his lawyer, to enter a plea of guilty to certain charges, being offences he committed in October, in the full knowledge that the further charges could attract the provisions of s 78A of the *Sentencing Act*.

[55] He was released from bail on 4 December 1997 in respect of the July and November 1997 charges and informed he would be summonsed. On 3 March some seven weeks later a summons issued for him to appear on 18 May 1998. This summons was based on an information and complaint sworn 3 March 1998 alleging Counts (1) to (7) inclusive arising from offences alleged to have occurred in July and November 1997. On 24 November 1998 an information was laid on the charge of receiving (Count 8). This was an alternative to Count 2 on information sworn 3 March 1998. The plaintiff was charged with Counts 9 and 10 on information sworn on 25

January 1999. It is obvious from the letter dated 13 February 1999 (set out at p 9 of this decision) that over this period of time, discussions took place between counsel for the defence and the representative of the Director of Public Prosecutions resulting in the Crown not proceeding with six of the ten charges. A set of agreed facts were prepared in respect of the remaining four charges to which the plaintiff had indicated he would enter a plea of guilty. After two mentions before the Court the matters were fixed for oral committal on 27 January 1999 and on that date adjourned to 22 February 1999. The matters were further adjourned so that this application to the Supreme Court could be heard.

[56] The prosecution obtained statements over a number of months before laying an information and complaint. In this process there was no undue delay or any evidence that the prosecution were delaying the proceedings or withholding statements or information for the purpose of deceiving or prejudicing the accused or for some other "predominant ulterior or improper purpose" *Williams v Spautz* (supra) at 529.

[57] Courts have been loathe to step into the arena and interfere with a prosecutorial discretion to proceed with a charge (*Jago v District Court of NSW* (supra)). I am not persuaded that the decision to prosecute Mr Spencer for these offences "creates abuse and injustice" *(Connelly v Director of Public Prosecutions* [1964] AC 1254 at 1347); see also *Jago v District Court of NSW* (supra) Mason J at 28:

> "…. The question is not whether the prosecution should have been brought, but whether the court, whose function is to dispense justice with impartiality and fairness both to the parties and to the community which it serves, should permit its processes to be employed in a manner which gives rise to unfairness. …."

[58] Essentially, Mr Spencer seeks orders which will enable him to avoid the effects of the mandatory sentencing provisions in the *Sentencing Act* which he perceives to be unfair. However, I have concluded that the application of the law under the provisions of *Sentencing Act* cannot, in the circumstances of this case, be regarded as a prosecution which creates abuse and injustice for the purpose of an application for a permanent stay of the proceedings pursuant to Order 23.01(1)(c) of the *Supreme Court Rules* or an order for prohibition pursuant to Order 56 of the Rules of the Supreme Court.

[59] Accordingly, the application is dismissed.

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