

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 426 of 2022**

**BETWEEN:**

**HUMBERTO NOVELO**

Claimant

and

**ATTORNEY GENERAL OF BELIZE**

Defendant

**Appearances:**

Anthony Sylvestre for the Claimant

Samantha Matute and Alea Gomez for the Defendant

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2023: April 6, 14

September 13  
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**JUDGMENT**

[1] **CHABOT, J.:** The claimant, Humberto Novelo, is charged with the offences of manslaughter by negligence, causing death by careless conduct, driving a motor vehicle without due care and attention, and failure to report an accident. The events giving rise to these charges occurred on 5<sup>th</sup> February 2012 (the “incident”). Mr. Novelo has yet to be tried.

[2] Mr. Novelo filed this claim for constitutional relief on 14<sup>th</sup> July 2022. Mr. Novelo seeks a declaration that his right under section 6(2) of the Belize Constitution to a hearing within a reasonable time has been breached, the entering of a permanent stay of further proceedings in the criminal matter against him, and costs.

[3] The Attorney General contends that Mr. Novelo's conduct largely contributed to the delay. Specifically, the Attorney General argues that non-appearance of defence counsel, the time allotted for Mr. Novelo to seek legal counsel, and Mr. Novelo's requests for adjournments delayed the trial for approximately 21 months. In addition, the restrictions placed in response to the COVID-19 pandemic also contributed to the trial of this matter being delayed.

[4] For the reasons outlined in this judgment, I find no breach of Mr. Novelo's right under section 6(2) of the Belize Constitution to a hearing within a reasonable time. The claim is dismissed.

### **Factual Background**

[5] This matter was heard based on written submissions only at the request of counsel. Four witnesses provided written statements in this matter: Mr. Novelo, as well as Crown counsel Dovini Chell, Javier Chan, and Shanidi Chell-Urbina. As none of the witnesses were cross-examined, the information in the witness statements is uncontested.

[6] Mr. Novelo was arrested and charged with the above-noted offences on 13<sup>th</sup> March 2015. A preliminary inquiry was conducted in 2016 before a Magistrate of the Orange Walk Judicial District. Mr. Novelo was thereafter committed for trial to the (then) Supreme Court. Mr. Novelo was indicted to stand trial in the Supreme Court on or around 25<sup>th</sup> April 2017 (the "Indictment").

[7] On 19<sup>th</sup> June 2017, Mr. Novelo was arraigned. Crown counsel Javier Chan and defence counsel Kareem Musa entered appearances. Mr. Novelo entered a plea of "not guilty" to the charges on the Indictment, and was granted bail. The matter was adjourned to 31<sup>st</sup> July 2017 by agreement of the parties for a case management conference.

[8] Neither Mr. Novelo nor his counsel appeared for the case management conference on 31<sup>st</sup> July 2017. Lord J. issued a Bench Warrant for the detention of Mr. Novelo and Notice to Sureties. The matter was adjourned to the 10<sup>th</sup> October 2017. On 4<sup>th</sup> October 2017, all matters set for 10<sup>th</sup> October 2017 before Lord J. were adjourned to 16<sup>th</sup> October 2017.

[9] The case management conference proceeded on 16<sup>th</sup> October 2017. The defence raised an alibi defence and was given time to provide information on the alibi witnesses. The matter was adjourned to

6<sup>th</sup> December 2017. At the case management hearing on 6<sup>th</sup> December 2017, the trial of the matter was scheduled for 12<sup>th</sup> February 2018.

- [10] The trial did not proceed as scheduled on 12<sup>th</sup> February 2018 because defence counsel did not appear in court. The trial was adjourned to 17<sup>th</sup> April 2018, which was the next available date for the court. On 17<sup>th</sup> April 2018, the trial was rescheduled by the court to 4<sup>th</sup> June 2018. However, the court was not in session on 4<sup>th</sup> June 2018, so notice was given to appear on 26<sup>th</sup> September 2018 to proceed with the trial.
- [11] On 26<sup>th</sup> September 2018, Crown counsel appeared in court but defence counsel was absent. A new trial date of 3<sup>rd</sup> December 2018 was given. On 3<sup>rd</sup> December 2018, Crown counsel and Mr. Novelo appeared in court, but defence counsel was absent. A new trial date of 4<sup>th</sup> February 2019 was given. The court was not in session on 4<sup>th</sup> February 2019, so notice was given to appear on 28<sup>th</sup> February 2019.
- [12] On 28<sup>th</sup> February 2019, Crown counsel and Mr. Novelo appeared in court, but defence counsel was absent. A new trial date was set for 25<sup>th</sup> March 2019. On 25<sup>th</sup> March 2019, Crown counsel and Mr. Novelo appeared in court, but defence counsel was absent. The matter was adjourned to 13<sup>th</sup> May 2019. On 13<sup>th</sup> May 2019, the matter was further adjourned to 8<sup>th</sup> July 2019. On 8<sup>th</sup> July 2019, Crown counsel appeared in court but defence counsel was absent. The matter was adjourned to 15<sup>th</sup> October 2019.
- [13] On 15<sup>th</sup> October 2019, both Crown and defence counsel entered appearances. Mr. Novelo was also present in court. It was agreed that the matter would be set for trial on 20<sup>th</sup> November 2019. The court was not in session on 20<sup>th</sup> November 2019, so the parties were asked to return to court the next day. On 21<sup>st</sup> November 2019, the matter was adjourned to 16<sup>th</sup> December 2019 at the request of defence counsel. On 16<sup>th</sup> December 2019, the matter was adjourned to 25<sup>th</sup> February 2020. On 25<sup>th</sup> February, Crown counsel entered an appearance but defence counsel was absent. The matter was adjourned to 22<sup>nd</sup> April 2020.
- [14] In March 2020, the COVID-19 pandemic impacted Belize. In response to the pandemic, the Government of Belize enacted legislation for the purposes of preventing, controlling, containing and suppressing the spread of COVID-19. On 1<sup>st</sup> April 2020, Statutory Instrument 46 of 2020 Belize

Constitution (Emergency Powers) Regulations was passed which imposed a curfew and a restriction on the operation of government offices, including the judiciary offices. Additionally, the Regulations imposed social distancing protocols and restricted the number of persons who were permitted to be in an establishment at any one time.

- [15] On 20<sup>th</sup> March 2020, the Judiciary of Belize suspended all jury trials with immediate effect from that date. The restrictions imposed as a result of the COVID-19 pandemic continued for the remainder of 2020 and 2021. The Northern District remained closed until January 2022. The Attorney General notes that prior to the enactment of the Indictable Procedure (Amendment) Act, 2022 on 22<sup>nd</sup> March 2022, the offences which Mr. Novelo is charged with were tried before a judge and jury.
- [16] On 18<sup>th</sup> January 2022, the matter was adjourned to 8<sup>th</sup> March 2022. On 8<sup>th</sup> March 2022, Crown counsel entered an appearance, but neither Mr. Novelo nor his counsel appeared in court. Lord J. issued a Bench Warrant and a Notice to Sureties. The matter was adjourned to 10<sup>th</sup> March 2022. On 10<sup>th</sup> March 2022, Mr. Novelo and his counsel were again absent in court. Lord J. directed that the Bench Warrant and Notice to Sureties be executed. However, upon presentation of a medical note showing that Mr. Novelo had tested positive for COVID-19, the Bench Warrant was cancelled. The matter remained adjourned until 7<sup>th</sup> April 2022.
- [17] On 7<sup>th</sup> April 2022, Crown counsel appeared in court, but defence counsel was absent as he had been appointed a Minister of Government. The matter was adjourned to 13<sup>th</sup> June 2022 for Mr. Novelo to indicate to the court who would be representing him in the case. On 13<sup>th</sup> June 2022, the matter was set for trial on 4<sup>th</sup> October 2022.
- [18] On 4<sup>th</sup> October 2022, Crown counsel appeared in court but no counsel appeared for the defence. The court indicated that it had not received a Change of Counsel Notice, and would grant an adjournment to 28<sup>th</sup> November 2022 for Mr. Novelo to retain counsel. The court further indicated it would proceed with trial on the said date.
- [19] On 28<sup>th</sup> November 2022, both Crown counsel and Mr. Novelo appeared in court. Mr. Novelo informed the court that Mr. Anthony Sylvestre would be representing him. However, the court had not received any written notice from Mr. Sylvestre, and Mr. Sylvestre had not yet presented himself before the court

in the matter. The court directed Mr. Novelo to inform his counsel that a notice had to be sent to the court. The matter was adjourned to the 1<sup>st</sup> February 2023 for trial.

[20] It is my understanding that the proceedings in the criminal court have been stayed pending the determination of this constitutional challenge.

### **Issues for determination**

[21] The following issues must be determined:

- a. Whether there has been unreasonable delay in the trial process of *The King v Humberto Novelo*;
- b. Whether Mr. Novelo has contributed to the delay;
- c. Whether the COVID-19 pandemic and the restrictions imposed in response to the pandemic amount to exceptional circumstances;
- d. Whether there has been a breach of Mr. Novelo's right under section 6(2) of the Belize Constitution; and
- e. Whether Mr. Novelo is entitled to a permanent stay of proceedings in the matter of *The King v Humberto Novelo*.

### **Legal Framework**

[22] Section 6(2) of the Belize Constitution guarantees a right to be tried within a reasonable time. Section 6(2) reads as follows:

6(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

[23] The constitutional right to be tried within a reasonable time is a cornerstone of our criminal justice system. It protects both the accused and the public from the harm caused by judicial delays. In the words of Jamadar, JCCJ, "delay denies justice".<sup>1</sup> In **Frank Errol Gibson v The Attorney General**,<sup>2</sup> the CCJ noted that delays create backlogs which tarnish the image of the criminal justice system. As time passes, memories fade and witnesses may become unavailable, thus making it more difficult to convict a guilty person. Delays also have social and financial costs. Accused persons released on bail

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<sup>1</sup> Solomon Marin Jr. v The Queen, [2021] CCJ 6 at para. 1.

<sup>2</sup> [2010] CCJ 3 ("Gibson").

while they await trial may commit crimes. Those remanded in custody increase the prison population and cost taxpayers money. Delays deprive innocent persons of an early opportunity to clear their names and move on with their lives, and increase the trauma they and their families suffer from the criminal process itself.

[24] Determining whether the constitutional right to be tried within a reasonable time has been breached does not call for a one-size-fits-all approach. Contrary to other jurisdictions such as Canada, for example, which has adopted a time “ceiling” (18 or 30 months, depending on the level of court) above which the delay is presumed to violate the *Canadian Charter of Rights and Freedoms*,<sup>3</sup> Caribbean law adopts a nuanced, case-by-case approach which the CCJ explained in **Gibson** as follows:

[58] A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although the mere lapse of an inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a reasonable time. One must not lose sight of the fact, however, that it is the responsibility of the State to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee.<sup>4</sup>

[25] The first step in the analysis is to consider the overall delay. The period of time that must be considered includes the appellate process.<sup>5</sup> The lapse of an inordinate amount of time in bringing an accused to trial will raise a presumption that the delay was undue. Where the court is satisfied that the presumption of undue delay applies, the burden shifts to the State to rebut that presumption by presenting evidence that the delay was not of its making. Circumstances attendant to the particular case, such as its complexity, as well as the conduct of the accused are but some of the factors that form part of the case-by-case analysis. This matter also raises the exceptional circumstances brought about by the COVID-19 pandemic in Belize and the resulting closure of the courts and suspension of jury trials.

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<sup>3</sup> R. v Jordan, [2016] 1 SCR 631 (“Jordan”).

<sup>4</sup> Gibson at para. 58. See also Vishnu Bridgelall v Hardat Hariprashad, [2017] CCJ 8 at para. 38 (“Bridgelall”).

<sup>5</sup> R v Henry, [2018] CCJ 21 at para. 37 (“Henry”).

[26] Where a breach of section 6(2) of the Belize Constitution has been found, the court, in selecting the appropriate remedy, “must weigh the competing interests of the public and those of the accused and apply principles of proportionality”.<sup>6</sup> The court must consider the stage of the proceedings at which the breach occurred and the steps taken by the accused to complain about the delay.<sup>7</sup> The range of remedies available is broad and calls for a careful consideration and balancing of the interests involved.

## Analysis

*Whether there has been unreasonable delay in the trial process of The King v Humberto Novelo*

[27] I find that the presumption that there has been undue delay in trying the criminal matter against Mr. Novelo applies in this case.

[28] According to Mr. Novelo’s calculations, up to the filing of this constitutional claim on 14<sup>th</sup> July 2022, 3812 days, or 10 years, 5 months, and 9 days have elapsed since the incident occurred. Mr. Novelo has yet to be tried. Any appeal of an eventual verdict against Mr. Novelo would take at least a year or two to complete (and perhaps much more, as illustrated by the case of **Solomon Marin Jr. v The Queen**,<sup>8</sup> which languished at the Court of Appeal for nine years), thus potentially bringing the total time between the incident and final judgment as to Mr. Novelo’s culpability to more than twelve years. There can be no doubt that this time period is inordinate. In **Suraj Singh D/CPL. 18041 v Sichan Harrychan**,<sup>9</sup> the CCJ qualified a delay of nine years between the alleged offence and the proceedings before the CCJ as “entirely unacceptable”.

[29] I reject the Attorney General’s invitation to only consider the delay in bringing Mr. Novelo to trial from the time of the charges, not from the time of the incident. In this case, the delay between the incident and the charges is approximately three years. The Attorney General relies on the Canadian case of **Jordan** in support of its position. In **Jordan**, the time between the offences and the charges was not expressly considered by the Supreme Court of Canada. A reading of the lower court’s decision explains why: the offences were committed between 6<sup>th</sup> May and 10<sup>th</sup> December 2008, and the accused were charged on 18<sup>th</sup> December 2008, only 8 days after the commission of the last offence (drug

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<sup>6</sup> Gibson at para. 60.

<sup>7</sup> Gibson at para. 61.

<sup>8</sup> [2021] CCJ 6.

<sup>9</sup> [2016] CCJ 12 (“Harrychan”).

trafficking).<sup>10</sup> By contract, the CCJ in **Harrychan** considered the overall time elapsed since the incident giving rise to the charge to calculate the delay. Similarly, in **The King v Zita Shol**,<sup>11</sup> a case relied on by the Attorney General, the Court of Appeal used the date of the incident as the starting point for the calculation of the delay. I adopt the same approach.

[30] A delay of ten and a half years raises a presumption of undue delay. The burden shifts to the Crown to explain and justify the delay.

*Whether Mr. Novelo has contributed to the delay*

[31] It is clear from the witness statements provided by Crown counsel Chell, Chan, and Chell-Urbina that the conduct of the defence counsel throughout the years has contributed to the delay. Several of the adjournments between the Indictment on 25<sup>th</sup> April 2017 and the onset of the COVID-19 pandemic in March 2020, and between the resumption of jury trials in January 2022 and the filing of this claim, were solely a result of the defence counsel's absence.

[32] Curiously, Mr. Novelo's written submissions completely skirts the issue. Nowhere in the submissions is the conduct of the defence counsel explained or justified, or even mentioned. It is not sufficient to simply look at the overall amount of time that has elapsed, as Mr. Novelo's counsel does in his submissions, to conclude that the delay violated the Belize Constitution. The conduct of Mr. Novelo and his counsel in the criminal proceedings must form a part of the analysis.<sup>12</sup> It is regrettable that Mr. Novelo's counsel chose not to address the issue, which has deprived the court of much-needed evidence and submissions which would have assisted in determining how to weigh the conduct of Mr. Novelo and his counsel against the several competing interests. The court can only infer from this silence that these absences were not justified.

[33] As noted by the CCJ in **Gibson**, "delay is not an uncommon defence tactic".<sup>13</sup> The defence counsel failed to appear for several hearings without justification over a period of three years. There is no evidence that Mr. Novelo himself did anything about the situation, such as seeking new counsel or complain about these absences and the resulting delays in prosecuting his case. Like the Court of

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<sup>10</sup> R. v. Jordan, 2012 BCSC 1735.

<sup>11</sup> Criminal Application No. 2 of 2018 ("Shol").

<sup>12</sup> Gibson at para. 58; Dyer (Procurator Fiscal, Linlithgow) v Watson and another; K v Lord Advocate, [2002] UKPC D1 at para. 54 ("Dyer").

<sup>13</sup> Gibson at para. 61.

Appeal of the Eastern Caribbean Supreme Court in **Urban St. Brice v The Attorney General**,<sup>14</sup> I do not look at the delays caused by the defence counsel with any “sympathy” in the circumstances:

In a case where the applicant’s contribution to the delay is attributable to his or her pursuit of relief before the trial judge or before another court or tribunal, the court may be minded to view the delay with some sympathy notwithstanding the applicant’s contribution. Where, as in this case, the appellant’s contribution to the delay is significant and some of the delay was brought about by unsatisfactory reasons such as his counsel not showing up for scheduled court hearings, the court will be less likely to find that even a long delay breaches the applicant’s constitutional rights.

[34] To be fair, the numerous adjournments between 2017 and 2020, and since the reopening of the court in January 2022 were not all of Mr. Novelo and his counsel’s making. The court must also look at “the manner in which the case has been dealt with by the administrative and judicial authorities”.<sup>15</sup> The court itself adjourned several hearings over the years. It is, therefore, necessary to take a closer look at this particular time period to fairly attribute responsibility for the delays in trying Mr. Novelo.

[35] The following delays result from defence counsel’s failure to appear or requests for time:

- a. 31<sup>st</sup> July to 10<sup>th</sup> October 2017: 2.5 months
- b. 16<sup>th</sup> October to 6<sup>th</sup> December 2017: 1.5 month
- c. 12<sup>th</sup> February to 17<sup>th</sup> April 2018: 2 months
- d. 26<sup>th</sup> September 2018 to 15<sup>th</sup> October 2019: 1 year and 1 month
- e. 21<sup>st</sup> November to 16<sup>th</sup> December 2019: 1 month
- f. 25<sup>th</sup> February 2020 to March 2020 (when the courts closed as a result of the COVID-19 pandemic): 1 month.
- g. 8<sup>th</sup> March to 13<sup>th</sup> June 2022: 3 months

[36] Overall, the conduct of Mr. Novelo and his counsel contributed to two years of the delay.

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<sup>14</sup> SLUHCVAP2012/0027 at para. 34.

<sup>15</sup> Dyer at para. 55.

[37] The following delays result from court adjournments:

- a. 10<sup>th</sup> October to 16<sup>th</sup> October 2017: 6 days
- b. 17<sup>th</sup> April to 26<sup>th</sup> September 2018: 5 months
- c. 4<sup>th</sup> February to 28<sup>th</sup> February 2019: 3 weeks
- d. 16<sup>th</sup> December 2019 to 25<sup>th</sup> February 2020: 2 months
- e. 8<sup>th</sup> January to 8<sup>th</sup> March 2022: 2 months

[38] During the relevant time period, court adjournments contributed to approximately ten months of the delay.

[39] Mr. Novelo is directly responsible for two out of the ten-and-a-half year delay he complains about. This delay represents 20% of the overall delay. We now turn to the impact of the COVID-19 pandemic in this matter.

*Whether the COVID-19 pandemic and the restrictions imposed in response to the pandemic amount to exceptional circumstances*

[40] The COVID-19 pandemic had an impact on judicial systems around the world. In the Caribbean region, many countries were forced to shut down the courts and suspend trials for months until measures could be put in place to ensure the health and safety of all participants. In Belize, all jury trials were suspended as of 20<sup>th</sup> March 2020. The Northern District, where Mr. Novelo's trial is to take place, remained closed until January 2022.

[41] The Attorney General argues that the COVID-19 pandemic and the restrictions imposed in response to the pandemic amount to exceptional circumstances justifying some of the delays in prosecuting the criminal matter against Mr. Novelo. The Attorney General relies on **Jordan**, which recognizes that exceptional circumstances may be considered in determining a claim for a breach of the right to be tried within a reasonable time:

[69] Exceptional circumstances lie *outside the Crown's control* in the sense that (1) they are reasonably unforeseen or reasonably unavoidable, and (2) Crown counsel cannot reasonably remedy the delays emanating from those circumstances once they arise. So long

as they meet this definition, they will be considered exceptional. They need not meet a further hurdle of being rare or entirely uncommon.

[...]

[71] It is obviously impossible to identify in advance all circumstances that may qualify as “exceptional” for the purposes of adjudicating a s. 11(b) [of the *Canadian Charter of Rights and Freedoms*] application. Ultimately, the determination of whether circumstances are “exceptional” will depend on the trial judge’s good sense and experience. The list is not closed. However, in general, exceptional circumstances fall under two categories: discrete events and particularly complex cases [emphasis in the original].

[42] According to the Attorney General, prior to the enactment of the Indictable Procedure (Amendment) Act, 2022 on 22<sup>nd</sup> March 2022, the offences Mr. Novelo is charged with were tried before a judge and jury. Mr. Novelo’s criminal trial could not lawfully proceed while jury trials were suspended. The COVID-19 pandemic and the measures taken by the Government of Belize and the Judiciary in response to the pandemic were reasonably unforeseen and unavoidable. In addition, it would not have been reasonable for Crown counsel to remedy the delays emanating from these circumstances because they were out of their control. The Attorney General submits that the period of delay between March 2020 and January 2022 is justified and reasonable in the circumstances.

[43] Mr. Novelo’s submissions again fail to address the issue. As noted above, Mr. Novelo’s counsel simply relies on the overall amount of time that has elapsed since the incident to ground this claim for constitutional relief, without addressing the specific circumstances of the matter. That is not the proper approach. It is clear that the COVID-19 pandemic significantly impacted the criminal proceedings against Mr. Novelo. I would have expected this to be addressed, or at the very least acknowledged, in submissions.

[44] I agree with the Attorney General that the COVID-19 pandemic and the restrictions put in place in response to the pandemic, especially the suspension of all jury trials in Belize, amounted to exceptional circumstances which lay outside of the Crown’s control. Canadian courts have recognized that the COVID-19 pandemic constituted “exceptional circumstances” for the purpose of adjudicating claims for a breach of the right to be tried within a reasonable time.<sup>16</sup> In **Shol**, the Belize Court of Appeal

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<sup>16</sup> R. v Agpoon, 2023 ONCA 449.

acknowledged the pandemic as a justification for some of the delay in prosecuting the matter against Ms. Shol.

[45] From March 2020 to January 2022, the Northern District was completely shut down. Mr. Novelo's trial could not take place. There is no suggestion that Crown counsel had any control over this delay. I, therefore, find that the period of delay between March 2020 and January 2022 is justified and reasonable in the circumstances.

*Whether there has been a breach of Mr. Novelo's right under section 6(2) of the Belize Constitution*

[46] While there is no doubt that the trial of the criminal matter against Mr. Novelo has been delayed, I find that, in the circumstances of this case, the delay did not breach Mr. Novelo's right to a hearing within a reasonable time under section 6(2) of the Belize Constitution.

[47] Mr. Novelo is charged with manslaughter by negligence, causing death by careless conduct, driving a motor vehicle without due care and attention, and failure to report an accident. While the delay of three years between the incident and the charges appears lengthy and has not been explained, that the matter involves multiple serious offences may reasonably explain some of the delay in investigating and charging Mr. Novelo with these offences. In any event, that period of three years must be considered not in isolation but in light of the overall time period that has elapsed in this matter.

[48] By all accounts, the matter proceeded normally between the charges and the Indictment. Mr. Novelo was charged on 13<sup>th</sup> March 2015. The preliminary inquiry was conducted in 2016 (the specific dates have not been provided to the court), and Mr. Novelo was indicted to stand trial in the Supreme Court on or around 25<sup>th</sup> April 2017.

[49] The matter was case managed from 25<sup>th</sup> April to 6<sup>th</sup> December 2017, at which time it was scheduled for trial on 12<sup>th</sup> February 2018. As the court and Crown counsel stood ready to proceed with the trial on that date, defence counsel failed to appear and the trial had to be adjourned. This first adjournment had a cascading effect. Trial dates were set on at least four subsequent occasions, but defence counsel failed to appear for all of them. By the time the COVID-19 pandemic hit Belize, two years had elapsed since the first trial date had been set. Had the trial proceeded in February 2018 as scheduled, it would have been completed within approximately six to seven years from the incident.

[50] In his affidavit in support of the fixed date claim form, Mr. Novelo provides a list of ten matters that were tried in Belize between 2006 and 2016. The list includes a timeline for the completion of each matter, from the date of the incident to the end of the appellate process. The list is broken down by event (date of incident; conclusion of evidence/argument; date of conviction; date of sentence; court of appeal and CCJ decision; total time in judicial system). From this list it can be observed that in Belize, the trial process, from the date of the offence to the date of the sentence, takes on average between four and seven years to complete (this excludes any appeals).<sup>17</sup> Had the trial of the criminal matter against Mr. Novelo proceeded at the earliest opportunity, it would likely have been completed near the upper limit of that range. The delay between the incident and the first scheduled date of trial does not appear unduly lengthy when regard is had to the Belizean context.

[51] As noted above, the COVID-19 pandemic led to a suspension of all jury trials from 20<sup>th</sup> March 2020 to January 2022. This delay was outside the control of the Crown. This matter was called up by Lord J. as soon as the Northern District reopened in January 2022. The matter was adjourned to 8<sup>th</sup> March 2022, but had to be further adjourned for medical reasons. Since then, no defence counsel has appeared on behalf of Mr. Novelo before Lord J. at any of the scheduled hearings. A new trial date was set for 4<sup>th</sup> October 2022, but again had to be adjourned on account of defence counsel's absence. The criminal proceedings were subsequently stayed pending the determination of this constitutional challenge.

[52] In concluding that the delay in this matter has not breached Mr. Novelo's right to a hearing within a reasonable time under section 6(2) of the Belize Constitution, I carefully balanced the interests at play, including the possibility for Mr. Novelo to still have a fair trial. While the memory of the witnesses will have faded over time, the Crown has not suggested that it would not be in a position to present the evidence needed to prove its case. On the other hand, Mr. Novelo's argument that he may not be able to secure the testimony of his alibi witness is hypothetical. The witness is a Justice of the Peace who likely understands his duty to the court, and he can be subpoenaed if needed. The offences Mr. Novelo is charged with are serious. A man is dead. The family of the victim, and the public at large, have a

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<sup>17</sup> It is assumed that those cases were specifically selected by Mr. Novelo's counsel to support his point that this matter took a comparatively inordinate amount of time to reach the trial stage. It is likely that other cases have languished before the trial courts for a much longer period of time. For example, on 5<sup>th</sup> October 2022 Cumberbatch J. rendered judgment in the matter of *The Queen v Jose Luis Moreno*, Indictment No. C21 of 2015. The accused was tried for an offence that had allegedly been committed on 17<sup>th</sup> June 2012, 10 years prior to the judgment.

strong interest in having Mr. Novelo brought to trial. The Crown has been diligent and ready to proceed at every turn. While the COVID-19 pandemic prevented the trial from taking place for a period of two years, the matter would have been dealt with months, if not years before the pandemic started had defence counsel been diligent and appeared in court when required.

[53] I find support for my decision in the following passage from the recent decision of the Belize Court of Appeal in **Shol**, in which arguments similar to those in this matter were raised:

[42] In this case, the time it has taken to complete the trial or for the appeal to be heard cannot be described as inordinately delayed, and the total period of 7 years which has elapsed since the crime was committed is considerably less than what has occurred in other cases where a breach of this right has been found. Even if on its own this period may be seen as somewhat lengthy, it is certainly not inordinate given that the State has diligently prosecuted the matter at every stage and any delays have been due to factors wholly outside its control. As the Director submitted, a once-in-a-lifetime pandemic prevented any hearing for most of 2020, and when sittings of this court resumed it was the respondent herself who delayed by almost one year in filing her submissions. At earlier stages, the prosecution did not rush to trial purely because it sought to accommodate the efforts of the accused persons to secure counsel. Given these circumstances, there is no justification for finding a violation of the guarantee of a speedy trial under s. 6(2), and in fact it would be perverse to do so when the respondent herself contributed to part of that delay by her unexplained failure in filing documents in time. Accordingly, the respondent's submission that to sentence her at this stage would be a violation of s. 6(2)'s guarantee of trial within a reasonable time is rejected.

[54] Similarly, the circumstances of this case do not justify a finding of a breach of section 6(2) of the Belize Constitution. The claim is dismissed.

### **Costs**

[55] I do not see it fit to award costs to the Attorney General in the circumstances of this matter. Mr. Novelo is 63 years of age and is unemployed. While he is out on bail while awaiting trial, he has had to live with the stress and stigma which accompany exposure to criminal proceedings. He must now face those proceedings and secure new defence counsel to assist him. Despite not meeting his burden to prove a breach of section 6(2) of the Belize Constitution, Mr. Novelo's claim is not frivolous. The delay in prosecuting his criminal matter has been lengthy for reasons that were not all within his control. I do note that Mr. Novelo spared the State significant costs by agreeing to a hearing of this matter by written submissions only. I find that ordering costs against Mr. Novelo would be punitive in the circumstances and I decline to make such an order. Each party shall therefore bear their own costs.

**IT IS HEREBY ORDERED THAT**

- (1) The claim is dismissed.
- (2) Each party shall bear their own costs.

**Geneviève Chabot**  
High Court Judge