

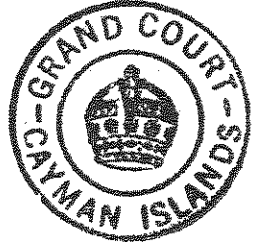
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4
5 **INDICTMENT NO: 0026/2013**
6

7
8 **THE QUEEN**

9
10 **V**

11 **JOSEPH FITZGERALD EBANKS**
12
13
14



15 **Appearances:**

**Mr. Trevor Ward Q.C., Deputy DPP, for
the Crown**

**Mr. Ben Tonner of Samson & McGrath for
the Defendant**

16
17
18
19
20
21 **Before:**

The Hon. Mr. Justice Charles Quin

22 **Submissions heard:**

3rd April 2014

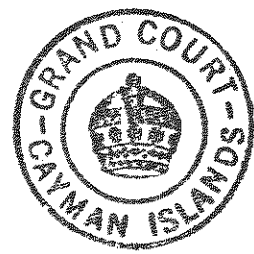
23
24 **SENTENCE RULING**
25

- 26 1. On the 5th July 2013 the Defendant pleaded not guilty to all 17 counts on this
27 Indictment and the parties agreed to a trial date of the 9th June 2014.
- 28 2. On the 24th January 2014 Defence counsel advised the Court that the Defendant
29 wished to be re-arraigned and, on that date, the Defendant pleaded guilty to all 17
30 counts on the Indictment and a Social Inquiry Report (SIR) was ordered.
- 31 3. On the 11th March 2014 Sentencing hearing was adjourned to the 3rd April 2014 to
32 await the SIR.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

4. The 17 counts on this Indictment, to which the Defendant has pleaded guilty are as follows:

- i. Obtaining Property by Deception: Counts 1, 3, 7, 8, 10, 11, 14, 15, 16;
- ii. Obtaining a Money Transfer by Deception: Counts 2 and 12;
- iii. Making a Document without Authority: Counts 4, 5, 6;
- iv. Forgery: Counts 9 and 13;
- v. Transferring Criminal Property: Count 17



CASE FOR THE CROWN

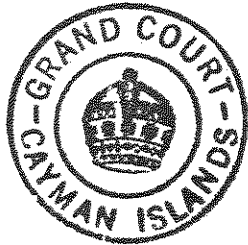
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

5. On the 1st May 2012, the Defendant commenced employment as Managing Director of the Electricity Regulatory Authority (ERA), a statutory body established under the Electricity Regulatory Law. The ERA is governed by a Board of Directors. Within the organizational structure of the ERA the position of Managing Director comes directly below the authority's board of directors. The Managing Director was entrusted with the day to day administration of the ERA to the extent delegated by the Board. He was also responsible for taking the lead role in managing the financial affairs of the Authority.

6. As part of the Board's policies and procedures relating to expenditure by the ERA the Board passed a resolution on the 9th August 2012 by which it was intended that the Defendant should be added to the list of authorized bank signatories. It was also resolved that all payments exceeding CI\$3,500 would require Board approval and a Board member's signature. The Deputy MD, Louis Boucher, was an approved signatory for cheques under \$3,500 without the necessity for Board approval.

7. Notwithstanding the August 9th resolution, the Defendant was never granted signing authority because he failed to submit a letter of reference from his bank which the Board required before it could officially add him as an authorized signatory.

8. The seventeen counts to which he has pleaded guilty arise out of his conduct as Managing Director of the ERA between November 2012 and February 2013. The nature of the offending may broadly be classified as follows:



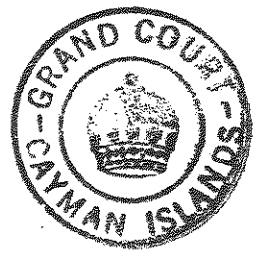
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

- i. Regarding Counts 1 and 2: Obtaining payment from the ERA by falsely claiming money for travel expenses purportedly incurred in the course of official ERA business.

- ii. Regarding Counts 3, 4, 5 6 and 16: Obtaining Apple products from the Cayman Mac Store purportedly for the ERA. In order to do so he signed cheques without authority and presented several cheques for payment at the Cayman Mac Store purporting to be in settlement of the ERA account.

- iii. Regarding Count 17: Transferring at least fourteen of those Apple products to a third party who in turn sold them to another third party. The others are unaccounted for.

- iv. Regarding Counts 7 through to 15: Cashing and forging ERA cheques.



1
2
3
4
5
6
7
8
9
10
11
12

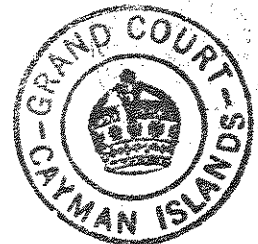
THE FACTS

COUNT 1

9. On 7th November 2012, Mr. Ebanks emailed the Deputy MD seeking US\$2000 as an advance payment towards a trip he needed to take to Edmonton Canada purportedly for meetings with investors relating to a solar leasing programme. He produced a travel itinerary showing a return date of the 23rd November 2012. The cheque was issued together with a further cheque in the sum of KY\$2,118.94 for payment of further travel expenses related to the trip. On 13th November, he again e-mailed the Deputy MD saying that he needed to do some additional entertaining for which he required an additional KY\$1,400. A cheque in this sum was duly issued to him.

COUNT 2

10. On the 23rd November 2012, one day after he was scheduled to return from Edmonton, per the itinerary he had supplied, Mr. Ebanks emailed the Deputy MD saying he needed USD\$1,957 wired to him urgently as the airline was not covering his delayed stay. He further sent a text message in which he said the Edmonton to Houston flight had been delayed. He promised to reimburse the ERA when he returned to Cayman on the Monday. He has never reimbursed the ERA or provided documentation regarding the flight delays and expenses.



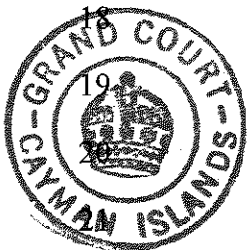
1 *COUNTS 3, 4, 5, 6, AND 16 – THE CAYMAN MAC STORE APPLE PRODUCTS*

2 11. Counts 3-6 & 16 relate to offending relating to his dealings with the Cayman Mac
3 Store. The material facts on which they are grounded are as follows.

4 12. The ERA held an account with the Cayman Mac Store, a supplier of Apple
5 products. The Store would extend credit to the ERA which would then settle its
6 account monthly by cheque. Between November 2012 and February, 2013, the
7 Defendant conducted 34 transactions at the Mac Store obtaining a total of 69
8 iPhones and 47 iPads from the Mac Store. He purported to pay for these items by
9 presenting ERA cheques totalling \$67, 950 to the Cayman Mac Store. These items
10 were for his personal use and were never turned over to the ERA although ERA
11 funds were used to pay for them. This offending is reflected in **Count 3**.

12 13. On occasions, and in order to obtain the Apple products, the Defendant presented
13 and/or signed ERA cheques for varying amounts made out to the Cayman Mac
14 Store knowing that he had no authority so to do. These activities are the subject of
15 **counts 4, 5 and 6:**

16 i. **(Count 4)** 1st occasion was on or about the 29th January 2013 when he
17 presented cheque #1626 for \$22,240.00. According to the CFO of the Cayman
18 Mac store this cheque had been presented on 29th January by Mr. Ebanks for
19 payment on the ERA account. It was deposited into the store's account.
20 However, on 31st January 2013 the Deputy MD of the ERA, Mr. Boucher,
21 received a call from its bank which pointed out that the said cheque contained
22 only one signature (which appeared to be that of Mr Herland). He advised the
23 bank not to honour it and the cheque was later returned to the store.

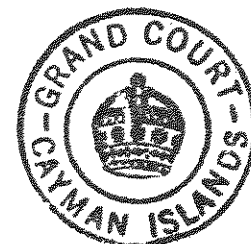


1 ii. **(Count 5)** On 22nd February 2013 the Deputy MD received a message from the
2 Defendant saying that Mr. Herland would be coming to collect three signed
3 cheques. Mr Boucher handed over three blank cheques, among them cheque
4 numbers 1637 and 1638. Cheque No. 1637 was made out in the sum of
5 KYD\$24,441.00 payable to the Cayman Mac Store. It was signed by Mr.
6 Herland.

7 iii. **(Count 6)** Cheque No. 1638 was made out for KYD\$5,655.00 payable to the
8 Cayman Mac Store. It was signed by Mr Herland.

9 14. It appears that these cheques were initially presented with one signature; that of Mr.
10 Herland. However, because of the previous issue with cheque #1626, when
11 cheques 1637 and 1638 were presented the store noticed both cheques had only one
12 signature on them. The store emailed Mr. Ebanks on February 25th saying that a
13 second signature was required. On 26th February the Defendant went to the
14 Cayman Mac Store and, in front of the CFO, signed cheques #1626, #1637 and
15 #1638 himself, in order to supply a second signature,, knowing fully that he had no
16 such signing authority. The CFO states that knowing that the Defendant was
17 Managing Director of the ERA he assumed that he had proper authority to transact
18 business with the store on the ERA's behalf in the manner he did.

19 15. The CFO had the cheques deposited and they were cleared the same day. However,
20 because Mr. Ebanks was not an authorized signatory, the cheques were returned on
21 4th March. The store remains significantly out of pocket on the ERA account, due
22 to the combined effect of some of the account never being paid along with the value
23 of the three returned cheques (KY\$52,340.00).



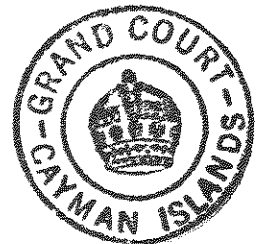
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

COUNT 17

16. Count 17 touches on and concerns the Apple products.

17. As stated earlier, some 69 iPhones and 47 iPads were obtained through his deception. Although some of the Cayman Mac Store invoices refer to some of the products as being “on order” it is apparent that Mr. Ebanks received them as several of these “on order” items turned up at a local second dealer.

18. Police enquiries at that establishment revealed that, beginning in November 2012 an individual had, at various times, taken in and pawned some 14 of the iPhones and iPads which were brand new and in original packaging. Using the devices’ unique serial numbers, these have been matched to Apple products purchased by the Defendant from the Cayman Mac Store on the ERA’s account. Police searched the residence of that said individual on 6th March 2013. They found two iPads, one iPhone, some receipts, and three Cayman Mac Store plastic bags. He was arrested on suspicion of handling stolen property. He identified the Defendant as the person who brought Apple products to him together with their receipts. He said he bought them thinking it was a good deal.



MISCELLANEOUS OFFENDING

COUNTS 7-15

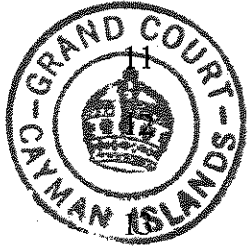
19. These counts involved the Defendant forging and cashing ERA cheques for his personal use and the facts giving rise to these counts are as follows.

20. The ERA would normally pay its LIME bills on line. Despite this, on 20th December 2012 the Defendant emailed the Deputy Managing Director of the ERA, Mr. Boucher, requesting a cheque to pay LIME along with three additional blank cheques. Mr. Boucher made out one cheque to LIME in the sum due and handed over three blank cheques, being #1596, #1597, and #1598 to Mr. Ebanks. These cheques were dealt with as follows:

- i. #1597: On the 20th December 2012 the defendant made out that cheque to himself in the sum of KYD\$2,000.00.(Count 7)
- ii. #1598: On the 21st December 2012 the Defendant made out that cheque to himself in the sum of KYD\$1,200. (Count 8).

21. The facts relating to this Count are that teh ERA’s Deputy MD Mr Boucher was off-Island from 23rd December 2012 to 2nd January 2013. On his return to office on 3rd January 2013, he discovered that cheque numbers #1600, #1601 and #1602 were missing. The cheques were used as follows:

- i. #1600: On 1 Jan 2013 this cheque was made out for KYD\$77.10 to “On the Run” gas station purporting to be signed by Mr. Boucher. This signature was forged by the Defendant. (Count 9)



1 ii. #1602: On 4 Jan 2013 this cheque was made payable to the defendant in the
2 sum of KYD\$1,025.00 and was signed by the defendant and Mr Herland. It was
3 cashed on 6 Jan 2013. It appears that the defendant had first tried to cash the
4 cheque with just his signature on it but was told that the bank did not have him
5 as an authorised signatory. He then had an authorised signature added. (Count
6 **10**)

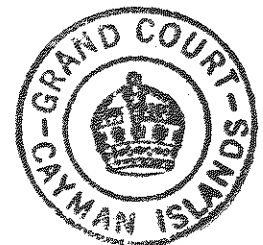
7 iii. #1601: On 4 Jan 2013 for KYD\$375.00 made out to JE signed only by Mr
8 Herland and cashed on 7 Jan 2013. (Count **11**)

9 22. As it relates to **Count 12**, the facts are that on 18th January 2013 Mr. Boucher
10 received a text from the defendant informing him about some “pro-bono consulting
11 work” that he was undertaking in Jamaica. The defendant also requested that
12 USD\$1200 be wired to him purportedly for official ERA business. The money was
13 wired as requested.

14 23. As it relates to **Counts 13 & 14**: On 31st January 2013 Mr. Boucher discovered
15 cheques’ #1624 and #1625 were missing. They had been used as follows:

16 i. #1624: On 28 Jan 2013 this cheque was made out for KYD\$5,000.00 in favour
17 of the defendant and purported to be signed by Mr. Herland and Mr. Boucher.
18 Mr. Boucher’s signature was forged by the defendant who cashed the cheque
19 on 29 Jan 2013 (**Counts 13 & 14**).

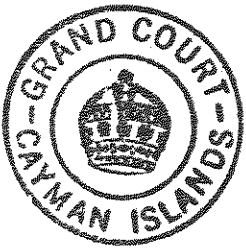
20
21



1 24. On 22nd February 2013 Mr. Boucher received a message from JE saying that Mr.
2 Herland would be coming to collect three signed cheques. Mr Boucher handed over
3 blank cheque numbers #1637, #1638 and #1639 to Mr Herland. Cheque # 1639 was
4 made out to Mr. Ebanks for KYD\$2500.00 signed only by Mr Herland. It was
5 cashed on 22 Feb. **(Count 15).**

6 25. All of the foregoing irregularities were discovered when the ERA's accounts were
7 audited in February 2013. On being presented with the findings, the ERA made an
8 official complaint to the Financial Crimes Unit of the RCIPS which launched an
9 investigation, culminating in the arrest of the Defendant in March 2013. Charges
10 were filed against him in April 2013.

11 26. On the 5th July 2013 the Defendant pleaded not guilty to all counts and the trial was
12 set to commence on the 9th June 2013 to last two (2) weeks. On the 24th January
13 2014 Defence counsel advised the Court that the Defendant requested to be re-
14 arraigned and, the Defendant then pleaded guilty to all counts on the indictment,
15 thereby causing the trial date to be vacated.



16
17
18
19
20
21
22

DEFENCE CASE

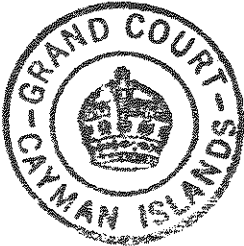
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

27. Mr. Tonner on behalf of the Defendant described his plea and mitigation as one of the most straightforward he has been asked to present. Defence counsel states that he has been explicitly instructed by the Defendant not to sugarcoat or excuse the Defendant’s behaviour in any way. Defence states that the Defendant has reached this point as a result of his own decisions and his own choices and the Defendant has instructed his counsel that this is his fault and nobody else’s.

28. As is confirmed in the SIR, the Defendant admits that he is a “thief, liar and drug addict”. He is quite prepared to take full responsibility for what he has done and he is no longer afraid to tell the truth to this Court or to anyone else.

29. The Defendant’s mother is 82 years of age. However, it is with some hurt and regret that his relationship with his father was forced to end at a very young age due to Cayman society’s alienation of, and demonstrable hate for, his father – because his father was Jamaican, and because the relationship between his father and mother was an illegitimate one.

30. The Defendant attended Northside Primary and Cayman Prep and High Schools and, he excelled academically and was able to acquire tertiary-level qualifications from the ICCI namely, a BSc in Business Administration in 2005 and a Masters in Business Administration in 2006.



EMPLOYMENT HISTORY

EMPLOYER	POSITION/DUTIES	TENURE
Cayman Islands Savings Bank	Clerical Officer	1982-1985
Royal Bank of Canada	Proof Department	1982-1985
Royal Cayman Islands Police Service	RCIPS officer	1985-1990 ¹
Caribbean Utilities Company (CUC)	Technical Clerk	1990-1994
Sports Headquarters	Owner/Manager	1994-2000
CUC	Manager	2001-2007
Cayman Turtle Farm	Chief Operating Officer	2007-2009
CUC	Manager	2009-2012
Electrical Regulatory Authority	Managing Director	2012-2013

2

3 31. Both the Defendant and the Defendant's wife state in the SIR that the Defendant
 4 excelled professionally and he held several top executive positions. The
 5 remuneration from these posts enabled the Defendant to, as stated in the report,
 6 *"afford his family with a lavish lifestyle."*

7 32. The Defendant reports that he spent all his ill-gotten financial gains on drugs – an
 8 addiction that began approximately 25 years ago when he was still working with the
 9 RCIPS. The Defendant explained that his substance abuse started with alcohol, as
 10 he would drink a bottle of rum a day. The Defendant explained further that, over the
 11 last 2 ½ decades he became a *"chronic user of crack cocaine and would spend up to*
 12 *\$1000.00 daily to support his habit."*

13 The Defendant has pointed out that, though his friendships were with persons at the
 14 highest levels of society, his use of, and addiction to, cocaine, was previously
 15 undisclosed and, therefore, the only persons who knew of his demise were persons
 16 he would occasionally supply with the contraband, and these persons were not his
 17 friends.

¹ Defendant states that he has used cocaine – the source of his increased need for money – for approximately 25 years, which puts that time at 1989 when he was employed with the RCIPS.

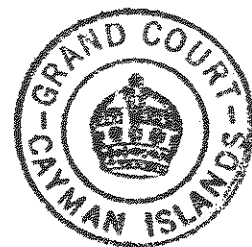
1 33. The Defendant states that, as result of funding his cocaine habit his mortgage is
2 now in arrears; his house is currently the subject of foreclosure proceedings and his
3 family is now in search of alternative housing; and, he is bankrupt, with his
4 indebtedness estimated to stand at half a million dollars. The Defendant states that
5 his wife, who is employed in the banking sector, is now the sole breadwinner of the
6 household.

7 34. The Defendant has been married for 30 years to Mrs. Yolanda Ebanks and their
8 union produced 4 children. The Defendant shares an excellent relationship with his
9 immediate family. He states that despite his current circumstances his wife has
10 stuck by him – even though he confirms that there is now “*a strained relationship*
11 *with two of his children*” since his public declaration of his guilt to the charges on
12 this Indictment as well as to drug use.

13 35. Based on his antecedents record – updated the 10th February 2014 – the Defendant
14 has no previous convictions, but he has recently pleaded guilty in the Summary
15 Court to drug-related offences.

16 36. The Rev. Dwayne Jeffery has confirmed that the Defendant is now a born-again
17 Christian and he has been attending church at least three times weekly. Rev. Jeffery
18 states that the Defendant has quit smoking and drinking and is determined to lead a
19 completely different lifestyle.

20 37. The impact of the Defendant’s confession of guilt to these charges has been
21 devastating, but his family is sticking by him as he has been a good husband and
22 father.



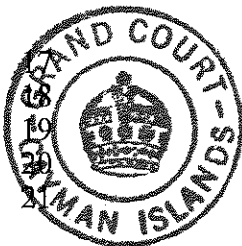
1 38. It is clear from the SIR that the Defendant has a chronic cocaine and alcohol
2 problem. He appears to be finally taking significant steps to amend his criminal and
3 ultimately self destructive conduct. The probation officer states that the Defendant
4 must disassociate himself from undesirable acquaintances and associates of
5 negative influence.

6 39. Mr. Tonner relies upon the UK cases of *Clark*² and *Barrick*³ which have been
7 accepted by both the Cayman Islands Court of Appeal (CICA) and the Grand Court.

8 40. The sum peculated by the Defendant amounts to CI\$140,000.00 which equates to
9 approximately £102,000.00.

10 41. Mr. Tonner submits that, if one takes into account the rate of inflation since 1997,
11 the value of £102,000.00 today would be equivalent to £66,000.00 in 1997.
12 Accordingly, Mr. Tonner submits that this comes into the *Clark* band of a theft
13 between £17,500.00 up to £100,000.00 – which places the sentence into the 2-3
14 year bracket after trial.

15 42. In the CICA case of [*Scott and] Fyne v R*⁴, the learned Justices of Appeal set out
16 the nine factors to which the Court must apply its mind and stated:



"The terms suggested are appropriate where the case is contested. In any case where a plea of guilty is entered however the Court should give the appropriate discount. It will not usually be appropriate in cases of serious breach of trust to suspend any part of the sentence. As already indicated, the circumstances of cases will vary almost infinitely."

22

² *R v. Clark* [1998] 2 Cr.App.R.(S.)142 B6-12003 which updated the guidance issued in *R v. Barrick* [1985] 7 Cr.App.R.(S.)142 B6 - immediate imprisonment is inevitable in breach of trust cases unless there are exceptional circumstances or the amount of money involved is very small.

³ *R v. Barrick* 81 Cr. App R. 78 CA

⁴ *Fyne v. R* [2007] CILR 176

1 *“The following are some of the matters to which the court will no doubt wish*
2 *to pay regard in determining what the proper level of sentence should be: (i)*
3 *the quality and degree of trust reposed in the offender including his rank; (ii)*
4 *the period over which the fraud or the thefts have been perpetrated; (iii) the use*
5 *to which the money or property dishonestly taken was put; (iv) the effect upon*
6 *the victim; (v) the impact of the offences on the public and public confidence;*
7 *(vi) the effect on fellow-employees or partners; (vii) the effect on the offender*
8 *himself; (viii) his own history; (ix) those matters of mitigation special to himself*
9 *such as illness; being placed under great strain by excessive responsibility or*
10 *the like; where, as sometimes happens, there has been a long delay, say over*
11 *two years, between his being confronted with his dishonesty by his professional*
12 *body or the police and the start of his trial; finally, any help given by him to the*
13 *police.”*

14

15 43. The Defence accepts that Mr. Ebanks was in a position of some responsibility but,
16 when compared with cases like *Schultz*⁵ and *Glasgow*⁶, Mr. Ebanks’ offence is not
17 the most egregious of crimes.

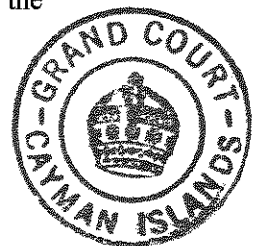
18 44. The Defendant dissipated all his money on a drug habit. It is clear from the SIR and
19 from enquiries made that the Defendant is bankrupt and, as Mr. Tonner submits,
20 even though the Defendant has indicated a desire to repay the funds, the offer is
21 there but his financial circumstances do not permit him to make such an offer.

22 45. The Defence submits that the sincerity of the Defendant’s remorse cannot be
23 doubted. Defence counsel submits further that the Defendant is a proud Caymanian
24 who loves his country and the level of the Defendant’s involvement in community
25 affairs gives testimony to this.

26 46. Defence counsel submits that the Defendant apologises to the community, he has
27 apologized to his family and he apologises to this Court – asking the Court to pass a
28 sentence which will suit the level of his offending, but, bear in mind the
29 Defendant’s potential and be as lenient as possible in all the circumstances.

⁵ *Schultz v. R* Criminal Appeal Number 27/2012 and Ind. 43/12

⁶ *R v. Patricia Glasgow* Ind. No. 21/2013



1 **THE PRINCIPLES OF SENTENCING**

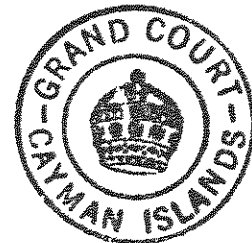
2 47. I am grateful to both the Deputy DPP and Mr. Tonner for their helpful review of the
3 relevant case law and I adopt many of their submissions.

4 48. The starting point for sentencing for offences of dishonesty involving a breach of
5 trust is the Chief Justice's *Guidelines*⁷.

6 *"For offences of theft or related offences, depending on the value of the*
7 *property stolen and any other aggravating factors, particularly where there is a*
8 *breach of trust in the context of a relationship of employment, an immediate*
9 *term of imprisonment ranging from 1 to 4 years for a first offence, and an order*
10 *of repayment, will likely be imposed. The tariff could be higher still depending*
11 *on the seriousness of the offence."*

12
13 49. In addition to these *Guidelines*, the CICA, in *Schultz* and others, has endorsed the
14 English Cases of *Barrick* and *R. v. Clark* (revising the bands in *Barrick*) as
15 providing useful guidelines for sentencing for offences of theft involving breach of
16 trust. In *Fyne v. R* the Court stated:

17 *"This court reaffirms its adoption of the guidelines on sentencing in Barrick,*
18 *and the cases which followed Barrick, in cases of theft involving a breach of*
19 *trust. Even for a first offence, the appropriate sentence is one of immediate*
20 *imprisonment unless exceptional circumstances are shown. The length of*
21 *imprisonment will vary in each case depending on the mitigating and*
22 *aggravating factors. In light of the economy of the Cayman Islands, the*
23 *sentence imposed by the court in cases of theft involving breach of trust should*
24 *be one which would act as an effective deterrent."*
25

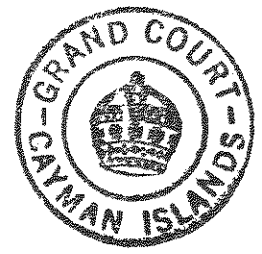


⁷ *Statement on Tariffs and Guidelines for Sentencing for Certain Offences* dated the 16th January 2002

1 50. Because *Barrick* and *Clark* promulgated sentence ranges based on monetary bands
 2 which were denominated in pounds sterling, the CICA has more recently (24th
 3 April, 2013) in *Schultz* addressed the issue of the extent to which those bands
 4 should be updated to take account of inflation and how, if at all, they should be
 5 converted to Cayman currency.

6
 7 51. The CICA recently reviewed *Barrick* and *Clark* in *Schultz* and set out the revised
 8 bands in paragraph 4 of their judgment.

AMOUNT STOLEN £	TERM OF IMPRISONMENT
'not small' up to £17,500.00	Very short up to 18 months
£17,500.00 - £100,000.00	2 – 3 years
£100,000.00 - £250,000.00	3 – 4 years
£250,000.00 - £ 1 million	5 – 9 years
£ 1 million or more	10 years or more



9
 10
 11 52. In this case, over the course of three months, the Defendant defrauded the ERA and
 12 the Mac Store to the tune of **KYD\$140,117.34**. The break down being:

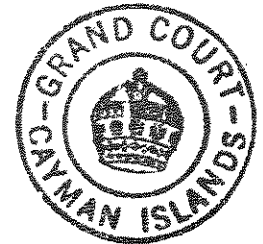
- 13 (i) Payment to Mac Store = KYD\$ 67, 950.00
- 14 (ii) Amt. owed to Mac Store =KYD\$ 52,340.00
- 15 (iii) False Claims & cashed ERA Cheques =KYD\$ 19,827.34
- 16 (iv) **TOTAL** =**KYD\$ 140,117.34**

17
 18
 19 53. Bearing in mind the *Clark* bands adopted by the CICA in *Schultz*, it is submitted
 20 that an appropriate starting point in this case would be in the range of three years.⁸

21
⁸ Derrick Thomas SP 2½-3 years CI\$99,000 –S: 27 months. Robert Schulz: SP 3-4 years for \$289,000. S:4 years

1 54. While the sum of money involved provides a useful guide, there are other important
2 factors to be considered in determining the appropriate level of sentence. Other
3 important factors for consideration include, *inter alia*, the following matters:

- 4
5 (i) The quality and degree of trust reposed in the defendant including his
6 position as Managing Director;
- 7 (ii) The period over which the fraud or thefts have been perpetrated;
- 8 (iii) The use to which the property or money taken was put;
- 9 (iv) The effect upon the victim;
- 10 (v) The impact of the offences on the public and public confidence;
- 11 (vi) The effect on fellow employees;
- 12 (vii) The effect on the offender himself;
- 13 (viii) His own history;
- 14 (ix) Matters of mitigation special to the defendant;
- 15 (x) Time between charge and trial.
- 16



17 55. Analysing the features of this case under the aforementioned headings, the
18 Crown's position may be summarised thus:

- 19
- 20 i. The defendant was in an important position of trust having responsibility for
21 the management of the Authority's finances in his capacity as Managing
22 Director. There can be no doubt that the breach of trust involved was a serious
23 one as contemplated by the local tariff statement. Acts of dishonesty on this
24 scale and from one holding such an important position of trust has the potential
25 to impact negatively on the island's reputation. Shortly after taking the reins at
26 the ERA, he embarked on a persistent and sustained course of conduct over the

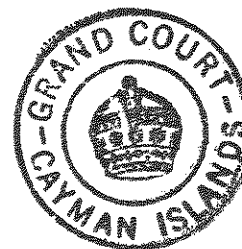
1 course of 4 months whereby he defrauded the ERA of a large sum of money by
2 various schemes and devises from making false claims for expenses
3 purportedly incurred on official ERA business; to forging or causing cheques to
4 be written up which were later drawn on the ERA's account by him; and using
5 ERA funds to obtain Apple products.

6
7 **MITIGATING FACTORS**

8
9 56. The SIR speaks of the many good qualities of the defendant. The defendant has
10 changed his plea to guilty. For this, he may expect some discount even though he
11 maintained a not guilty plea for almost 6 months.

12
13 57. The SIR states that the Defendant has accepted full responsibility and sincerely
14 apologises for the period of theft. The Defendant has stated that he accepts that he
15 has been a liar and a thief.

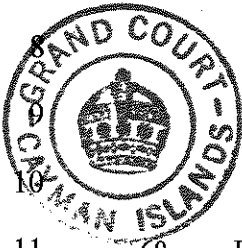
16
17 58. Although the SIR correctly states that the disposition of this matter remains the
18 prerogative of the Court, I note that the SIR recommends a suspended sentence and
19 or a Community Service Order. As I indicated at the last hearing, this is a serious
20 breach of trust case and, consequently, it must attract an immediate custodial
21 sentence.



1 **COMPENSATION**

2
3 59. Section 33 of the Penal Code provides for the court to order a convicted person to
4 make compensation as part of the sentencing process. Such compensation may be in
5 addition to or in substitution for any other punishment. Being part of the
6 punishment the Court must view the exercise holistically and consider:

- 7 (i) The likelihood that the defendant can and will pay it; and
(ii) How the imposition of a term of imprisonment in default will skew the
sentencing process.⁹



11 60. Based on the SIR and submissions from Defence counsel it seems unrealistic that
12 the defendant can afford to pay compensation. To impose a compensation order
13 with a default term of imprisonment (to be served consecutively) in circumstances
14 where the defendant cannot pay will have the effect of distorting the sentencing
15 process. In the Privy Council case of *R. v. Randall*¹⁰ the Lord Justices of Appeal
16 held:

17 *"Where a consecutive sentence is imposed in default of payment, it is*
18 *intrinsically unfair to make an order which may result in imprisonment of [an]*
19 *offender when he lacks the means to avoid that consequence."*
20

21 61. Mr. Tonner has submitted that in light of the evidence of the Defendant's current
22 bankrupt state he is not in a position to pay any compensation.

23 62. Accordingly, and because of the Defendant's bankruptcy, I make no order for
24 compensation.

⁹ See *R v Helen Moirca Ebanks* Ind. 5/2012 Judgment of Henderson J. dated the 21.02.13
¹⁰ [2002] CILR 254

1 **CONCLUSION**

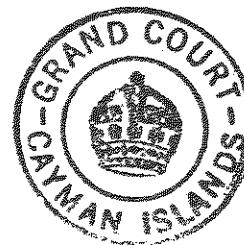
2 63. A leading case relating to breach of trust theft cases in the Cayman Islands is the
3 **Schultz** appeal where the appellant appealed against a five-year sentence for the
4 theft of US\$289,660.00 when he was Administrator of the Pension Scheme of the
5 Cayman Islands Chamber of Commerce. In attempting to arrive at the appropriate
6 sentence in this case both the Crown and the Defence have cited **Schultz**. It has to
7 be remembered that this Court is bound by CICA decisions.

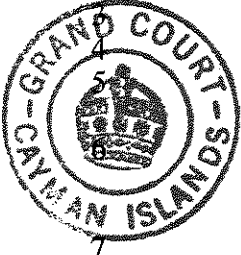
8 64. In **Schultz** the CICA reviewed and applied the guidelines set down by **Barrick** and
9 revised by **Clark** in the English Court of Appeal and stated:

10 *“9.We do understand and accept that a precise currency conversion*
11 *may not be a very helpful exercise in such cases, but some sort of conversion*
12 *process has to be undertaken in order to apply the **Barrick** and **Clark***
13 *guidelines. We have not had the benefit of evidence or detailed argument as to*
14 *what that broad approach should be and so we are not going to venture a rate.*
15 *We simply observe that the disparity in the cost of living between Cayman and*
16 *the United Kingdom argues against parity because the CI dollar does not have*
17 *anything like the same buying power in Cayman as the pound sterling does in*
18 *the United Kingdom. Similarly a straightforward exchange rate conversion is*
19 *not going to give a true picture for these purposes where what matters is the*
20 *value of what has been stolen in real everyday terms.”*

21
22 65. In **Schultz** the CICA found that the Grand Court had erred in principle by placing
23 the offence in the higher and therefore wrong bracket and added at paragraph 10 of
24 their judgment:

25 *“In the circumstances of this case, that led to a sentence which, in our view,*
26 *was manifestly excessive.”*





1 66. In the final paragraph of their judgment the CICA stated:

2 *“We think therefore starting in the 3 to 4-year range, allowing a twenty-five percent discount for the guilty plea, but taking into account the seriousness of the breach of trust and the sustained nature of the Appellant’s conduct, that a sentence of four years’ imprisonment is appropriate in this case.”*

7 Accordingly the CICA quashed the sentence of 5 years and substituted it with a
8 sentence of 4 years’ imprisonment.

9 67. There are certain other similarities between this case and the *Schultz* case. Both
10 Defendants had significant and important senior positions and both Defendants
11 committed serious breaches of trust in their respective positions.

12 68. Both Schultz and this Defendant stole in order to support a cocaine addiction, and
13 the evidence is that both men spent all their ill-gotten gains on their cocaine habit,
14 leaving them bankrupt. Consequently, neither Schultz nor the Defendant, Ebanks,
15 are in a position to pay any compensation to their victims.

16 69. The CICA stated at paragraph 13 of the *Schultz* judgment:

17 *“Schultz’s failure to repay any of the money is not an aggravating factor, but*
18 *an absence of mitigation.”*

19
20 Furthermore, the CICA stated at paragraph 14:

21 *“The fact that the appellant committed these offences to support his cocaine*
22 *addiction... may be an explanation for his conduct, but it does not mitigate the*
23 *penalty.”*

24
25 These two comments could be written for the Defendant, Mr. Ebanks.

1 70. The Defence has argued, with some force, that the Defendant's conduct is not as
2 egregious as the conduct of Schultz. I also note that unlike Schultz, this Defendant
3 has not tried to avoid his court hearing by attempting to abscond.

4 71. There are also the aggravating features that Schultz stole considerably more than
5 this Defendant and over a much longer period of time. Schultz stole the sum of
6 US\$289,660.00 from the 17th April 2009 to the 25th June 2011 – a period of over
7 two years. This Defendant defrauded ERA and the Mac Store in the sum of
8 CI\$140,117.34 from the 1st September 2012 to the 31st March 2013 – a period of
9 just over six (6) months.

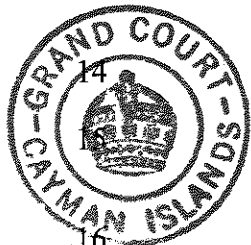
10 72. Before handing down this sentence I am compelled to state this Court is impressed
11 by what can only be described as a full and frank public confession which has come
12 from this Defendant. I can do no better than repeat the earlier words of Defence
13 counsel who stated that the Defendant's instructions to him were:

14 *“not to sugarcoat or excuse the ... behaviour in any way” and he has “reached
15 this point as a result of his own decisions and his own choices.”*

16 The Defendant has also instructed his counsel to state in Open Court that these
17 offences are:

18 *“his fault and nobody else's.”*

19 The Defendant's public and unequivocal confession is noted especially against the
20 background that this Defendant was, when making his confessions, well aware of
21 his own very public image through his involvement in the political life of these
22 islands.



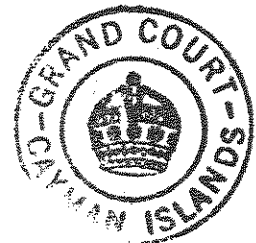
1 73. As Defence counsel has stated, the Defendant has fully admitted his responsibility
2 for these offences. The Defendant has pleaded guilty – saving considerable cost and
3 expense and all that is involved with a large number of prosecution witnesses
4 having to give evidence in trial. I find that in light of the CICA *Schultz* decision,
5 and the circumstances of this case the appropriate sentence for Mr. Ebanks is three
6 (3) years' imprisonment.

7 74. Under our case law, the Defendant is entitled to a discount of 25% for the guilty
8 plea and therefore, the term of imprisonment is 2 years and 3 months. Time spent in
9 custody is to be deducted from this term.

10 75. The fact that this Defendant has revealed that he has been a user of cocaine for the
11 past twenty-five (25) years, since being employed with the RCIPS, is of very grave
12 concern to this Court. Therefore, it is my hope that, during imprisonment, the
13 Defendant's rehabilitation will involve serious work in relation to curing his drug
14 addiction.

15 76. If the Defendant stays away from illegal drugs and those who deal in illegal drugs it
16 is likely that he will never be before this Court again. He is, after all, a man who has
17 reached the age of 50 with no previous convictions. On the other hand, if he returns
18 to the world of illegal drugs he will inevitably come before the Court for further
19 criminal offences, with the inevitable consequences of further prison time.

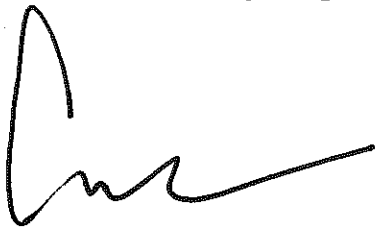
20 77. Accordingly, the Defendant is sentenced as follows:



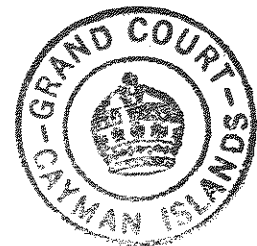
21
22

- 1 i. For Obtaining Property by Deception: Counts 1, 3, 7, 8, 10, 11, 14, 15, 16:
- 2 (i) - 2 years and 3 months' imprisonment on each count, to run concurrent
- 3 to each other;
- 4 ii. For Obtaining a Money Transfer by Deception: Counts 2 and 12:
- 5 (i) 2 years and 3 months' imprisonment on each count, to run concurrent
- 6 to each other AND concurrent to the sentences for the 9 counts above;
- 7 iii. Making a Document without Authority: Counts 4, 5, 6:
- 8 (i) 12 months' imprisonment on each count to run concurrent to each other
- 9 AND concurrent to the sentences for the 11 counts above;
- 10 iv. Forgery: Counts 9 and 13:
- 11 (i) 12 months' imprisonment on each count to run concurrent to each other
- 12 AND concurrent to the sentences for the 14 counts above;
- 13 v. Transferring Criminal Property: Count 17
- 14 (i) 12 months' imprisonment to run concurrent to the sentences for the 16
- 15 counts above.

16 **Dated this the 29th day of April 2014**

17 

18



19 **Honourable Mr. Justice Charles Quin**
20 **Judge of the Grand Court**