

- [3] The applicant then pleaded guilty to one of the three counts. The court, at the request of the prosecution, ordered that the two other charges should remain on the file. It was made clear that the applicant intended to appeal the ruling of the judge and the judge was requested and agreed to issue a certificate under section 21 (1)(b) of the Court of Appeal Act that it was a fit case for appeal against conviction. He added that he issued it subject to the Court of Appeal finding the jurisdiction to hear such an appeal following a plea of guilty.
- [4] An application was then made for bail pending appeal. The transcript of the proceedings is not clear but it appears that Mr Raza, appearing for the applicant, understood counsel for the respondent, Mr Raftery, had given an undertaking not to oppose bail. Mr Raftery's responded that any such undertaking had to depend on the likely time the appeal would be heard by this Court.
- [5] The learned judge concluded, "I heard Mr Raza's application because I wanted to know if there was opposition and secondly if the application was straightforward. It turns out the application is opposed and it is not straightforward. Accordingly the oral application is rejected."
- [6] Application is now made to this Court. When it was first heard, Mr Raza filed an affidavit referring to the suggested undertaking. By that time, leading counsel for the State had returned to New Zealand and the hearing was adjourned to allow the respondent to clarify the position.
- [7] Mr Goundar, who now appears for the State, confirms that counsel's reservation had arisen from doubts about the likely date the appeal would be heard. If it is to be heard in the November session of the Court, then bail would be opposed but, if it cannot be heard in that session, there would be no opposition.
- [8] This is an appeal against conviction on a number of grounds relating to the appellant's rights under sections 26, 28(1)(c) and (e) and 37 of the Constitution. They raise issues in the context of covert recordings which have not been

considered before in the Fiji courts. Clearly such an appeal cannot be ready for hearing before the end of the present session of the Court. It will have to be heard in March 2007 and so Mr Goundar does not raise any opposition to the grant of bail pending appeal.

- [9] Whether or not there is opposition, any decision regarding bail is entirely in the court's direction. Where the application is by an unconvicted person, the presumption under section 3 (1) of the Bail Act is in favour of granting bail. Section 3(3) allows a person opposing bail to seek to rebut the presumption and, in most criminal cases, any opposition is likely to be raised by the prosecution. If the prosecution indicates that it does not oppose the grant of bail, the court, in most cases, will have no reason to refuse bail and the presumption will prevail.
- [10] Where the person seeking bail has been convicted and is seeking bail pending an appeal, as is the case in this application, the presumption is displaced; section 3(4). In considering such an application, the court must take into account the three matters set out in section 17(3), namely the likelihood of success in the appeal, the likely time before it will be heard and the proportion of the sentence which will have been served by the time it is heard.
- [11] The present applicant was sentenced to 12 months imprisonment. Counsel point out that, by the time the appeal is heard, the applicant will have served a minimum of four and a maximum of five months imprisonment depending on when in the March session the appeal is concluded. With the normal remission, that makes it inevitable that he will have served more than half the effective sentence.
- [12] I accept it is unlikely that the applicant will fail to appear. He is a lawyer and he clearly must realise the consequences of an unsuccessful appeal will be that the sentence of imprisonment will have to be served. His counsel accepts that, even if his appeal is successful, the most likely result will be a retrial in the High Court.

- [13] It is not for the court to determine the appeal at this stage but it will not grant bail pending appeal unless there is every chance of success or the court otherwise finds exceptional circumstances which make it unjust to refuse bail. In this case, the appeal raises novel and important questions for Fiji but it is not possible to say there is a every chance of success.
- [14] Counsel for the respondent accepts that the other two matters the court must consider under section 17(3) are in favour of the grant of bail and it would appear that is much of the basis for the lack of opposition.
- [15] In all those circumstances, I am satisfied there are exceptional circumstances sufficient to allow the grant of bail.
- [16] The applicant shall be released on bail in his own recognisance of \$5000 and two sureties each in a similar figure. The names of the sureties shall be supplied to the respondent before they enter into their recognisance. In the event of any dispute as to the suitability of the sureties, application may be made to this Court to resolve it. The applicant's passport, if not already with the Court, shall be surrendered to the Court and he shall not leave the jurisdiction without leave of this Court. He shall surrender to his bail at this Court on the first day of the next session namely, the 26 February 2007.
- [17] However, there is one further matter.
- [18] Section 23 of the Bail Act places restrictions on the imposition of bail conditions and subsection (2) provides:
- “(2) Conditions must only be imposed-
- (a) to protect the welfare of the community;
 - (b) to protect the welfare of any specially affected person; or
 - (c) in the interests of the accused person,
- and may only be imposed if required by the circumstances of the accused person.”

- [19] The applicant is a practicing lawyer but is now convicted of an offence with serious professional implications. This Court must consider whether or not any bail condition should be imposed in respect of his practice as a lawyer whilst on bail pending appeal. The Legal Practitioners Act places responsibility for control of professional conduct of lawyers on the Fiji Law Society. Part of the Society's responsibility is to maintain the standards of conduct of the legal profession and to protect the public in all matters touching the practice of law.
- [20] I shall adjourn this application to Friday 3 November at 3.0pm to allow the Law Society to make any representations on the question of the applicant continuing to practice pending the determination of his appeal. However, I do not consider that should delay his release on bail. He is to be released as soon as the recognisances have been entered and his passport has been surrendered but there will be an added condition that he shall not practice as a lawyer until further order of this Court.
- [21] A copy of this ruling shall be served on the Fiji Law Society forthwith.



Gordon Ward

[Gordon Ward]
PRESIDENT