In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
2017 No: 21

BETWEEN:

THE QUEEN

And

CHAE FOGGO

RULING

Date of Application:	Wednesday 26 July 2017 (supplemental written submissions filed on Thursday 27 July 2017)
Date of Ruling:	Monday 31 July 2017
Counsel for the Crown:	Javone Rogers / Karen King on behalf of the DPP
Counsel for the Accused:	Charles Richardson of Compass Law Chambers

Application for Dismissal (Section 31 of the Criminal Jurisdiction and Procedure Act 2015)
Statutory Construction of Section 290 of the Criminal Code (Threatening to Murder)
Principles of Statutory Interpretation

RULING of Assistant Justice S. Subair Williams

Introduction / Background:

1. The indictment in this matter contains two counts:
   (i) Count 1- Threatening to murder contrary to section 290 of the Criminal Code; and
   (ii) Count 2- Improper use of public telecommunications service.

2. The trial date for this matter was fixed to commence on Tuesday 25 July 2017. Immediately prior to the start of trial, Crown Counsel made an application for an adjournment of the trial which I readily refused. Having directed that the trial proceed, Counsel for the Accused, Mr. Richardson, requested to be heard on an application under section 31 of the Criminal Justice and Procedure Act 2015 (CJPA) asserting insufficiency of evidence.

3. The application was heard by the Court on the basis that Counsel advised that if the s. 31 application failed, the Accused would enter guilty pleas to both counts on the indictment as the material facts of this case are not disputed.

4. The section 31 application stood to challenge the sufficiency of evidence in respect of Count 1 only. The application turned on the proper construction of section 290 of the Criminal and its true scope.

Summary of the Application before the Court:

5. The central issue for determination before the Court rests on the Court's interpretation of the words "any writing" in section 290 of the of the Criminal Code which reads:

   "*Any person who, knowing the contents thereof, directly or indirectly causes any person to receive <u>any writing</u> threatening to kill any person, is guilty of a felony, and is liable to imprisonment for seven years*."

6. The '*writing*' in this case concerns mobile phone text messages sent by the Accused to the Complainant who is his former girlfriend and mother of his young child. There is no dispute on the facts that the Accused threatened to kill the Complainant via text message.

7. The Defence, however, contends that the words "any writing" found in section 290 does not apply to text messages received via a cellular/mobile phone.

8. It is on this basis that the Defence make an application under section 31 of the CJPA in respect of Count 1.

Stage for making Section 31 CJPA Applications:

9. Mr. Richardson submitted that the Defence is entitled to make a section 31 application at any stage prior to the trial arraignment (which he distinguishes from the first arraignment which ordinarily occurs in the Supreme Court monthly arraignment sessions).

10. Section 31(1) CJPA reads as follows:

> '*A person who is sent for trial under section 23 or 24 on any charge or charges may, at any time-*
> *(a) after he is served with copies of the documents containing the evidence on which the charge or charges are based; and*
> *(b) before he is arraigned (and whether or not an Indictment has been preferred against him) apply orally or in writing to the Supreme Court for the charge, or any of the charges, in the case to be dismissed*'.

11. By Court Circular No. 3 of 2017 issued on Friday 27 January 2017, the Registrar of the Supreme Court issued Guidance Notes and Case Management Forms which apply to all indictable matters sent by the Magistrates' Court to the Supreme Court on or after Monday 30 January 2017. This case falls under this new regime of case management.

12. The modernized scheme calls for both parties to a criminal case to file and serve case management notice forms in compliance with their respective statutory disclosure duties under sections 3, 4 and 5 of the DCR.

13. The Forms are as follows:

(i)	FORM 1 -	The Prosecution Disclosure Notice
(ii)	FORM 2 -	The Defence Pre-arraignment Notice
(iii)	FORM 3 -	The Defence Statement
(iv)	FORM 4 -	The Defence Statement (Trial Timetable)
(v)	FORM 5 -	The Prosecution Statement (Trial Timetable)

14. Notice of section 31 applications are mandatory and filed by the use of FORM 2.

15. Paragraphs 71-73; 78-80 and paragraphs 84-86 of the Registrar's Guidance Notes ("the Guidance Notes") address the subject of the timeframe for FORM 2 section 31 applications as follows:

71. FORM 2 must be filed and served by the Defence within 7 days of the Defence having been served with FORM 1, unless otherwise directed by the Court.

72. "The aim behind FORM 2 is to prompt the Defence to give early notice of any of the following applications which it may pursue:

- *(i) Application for Dismissal of Charges under section 31 CJPA;*
- *(ii) Motion to Quash Indictment under section 504 CC; and*
- *(iii) Application for finding that the Accused is unfit to plead to the Indictment under section 514 CC…"*

73. FORM 2 stands as the Notice of Application and/or Notice of Motion to be filed for the listing of an application to dismiss or quash the charges. However, Counsel should be made to clearly understand that FORM 2 must be filed whether or not any of the above applications are intended to be made.

…

FORM 2 (DEFENCE PRE-ARRAIGNMENT NOTICE)

TIMELINE TO FILE AND SERVE FORM 2

78. As a necessary component of effective case management, the Court should be put on notice as early as is reasonably practicable where the Defence intends to make any of the applications specified in FORM 2.

79. In any event, FORM 2 must be filed and served by the Defence no later than within 14 days after the Defence has been served with FORM 1, unless otherwise directed by the Court.

80. FORM 2 must be filed whether or not the Defence intends to rely on any of the sections specified therein, namely sections 31 CJPA, 504 CC or 514 CC.

…

84. While it has been argued that a section 31 CJPA application may be made at any stage leading up to the start of a trial, the prevailing and accepted practice has been for the Accused to make the application prior to the first occasion on which the Accused is arraigned.

85. The timeline for making a section 31 CJPA application is expressly contemplated by the Act to be made after the Defence is served with 'copies of the documents containing the evidence on which the charge or charges are based' (ie. under section 3 DCR[1]).

86. *The statutory timeframe for making a section 31 CJPA application therefore accords with the deadline for filing FORM 2 as it is envisaged that the Defence will have been served with disclosure of the Crown's case at this point but not yet have been arraigned.*"

16. In this case, the Court agreed to hear the section 31 application on the day of the trial fixture, notwithstanding Defence Counsel's omission to file FORM 2. This is exceptional and by no means an example of the correct application of the rule or the case management directions issued. In this case, Defence Counsel informed that Court that the material facts are not in dispute and so that a trial would not be forthcoming in any event. Further, Mr. Richardson also explained that he had not previously appreciated the statutory construction argument until the eve of the fixed trial date.

17. For these reasons, the Court listed the section 31 application to be heard *in lieu* of trial.

Scope of Section 290 (Threatening to Murder):

18. Counsel for both sides agreed that there no previous cases in Bermuda wherein a judicial analysis on the construction of section 290 is provided.

19. As Counsel's arguments entirely turn on the correct meaning of the words "*any writing*" from that section, I will narrow my focus to its interpretation.

Defence Counsel's Submissions

20. Mr. Richardson argues that section 290 is archaic and observed that the section has been in force since the inception of the Criminal Code Act 1907 without the benefit of any amendments.

21. Turning his attention to Parliament's intention behind section 290, Mr. Richardson argued that text messages could not have been contemplated in 1907, several decades prior to the invention of text messaging by mobile phone. When tasked by the Court, he disputed that a literal interpretation of the words "any writing" would include text messaging.

[1] Disclosure and Reform Act 2015

22. Mr. Richardson referred me to the Australian Queensland Code version of the now repealed provision on written threats to murder. Section 308, prior to the amendments made in 1997, provided as follows:

"[Rep s 308] *Written threats to murder*
308 Any person who, knowing the contents thereof, directly or indirectly causes any person to receive <u>any writing</u> threatening to kill any person, is guilty of a crime, and is liable to imprisonment for 7 years."

23. Mr. Richardson then invited the Court to cross-reference the repealed section with the 1997 amendment which reads:

"[Rep s 308] *Written threats to murder*
308 Any person who, knowing the contents thereof, directly or indirectly causes any person to receive <u>any document</u> threatening to kill any person, is guilty of a crime, and is liable to imprisonment for 7 years.

Editor's note: The 1997 amendment has widened the scope of the offence to include threats contained in "any document" rather than "any writing". The term "document" is defined in s.1 and by inclusion of the term "record" (also defined in s.1) in that definition, includes the electronic medium."

24. Mr. Richardson directed my attention to section 1 of the Queensland Code for the legal definition of "document" which reads:

*"**document** includes-*
(a) anything on which there is writing; and
(b) anything on which there are marks, figures, symbols, codes ,perforations or anything else having a meaning for a person qualified to interpret them; and
(c) a record"

25. The legal definition of "record" is also found in the same interpretation section of the Queensland Code. It provides:

*"**record** means any thing or process-*
(a) on or by which information is recorded or stored; or
(b) by means of which sounds, images, writings, messages or anything else having meaning can be conveyed in any way in a visible or recoverable form;
even if the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning."

26. According to the Defence, the substitution of the words "any writing" for "any document" supports the argument that the former does not include messages conveyed by electronic devices ie. text messages.

27. Mr. Richardson pointed to an example of amendments to Bermuda legislation to make the same point. The Court was provided with a copy of section 8A of our Human Rights Act 1981 ("HRA") prior to its amendment in 2017. The repealed section reads as follows:

"*Publication of racial material and racial incitement prohibited*

8A(1) No person shall, with intent to excite or promote ill will or hostility against any section of the public distinguished by colour, race or ethnic or national origins-

(a) publish or display before the public, or cause to be published or displayed before the public, ***written matter*** *which is threatening, abusive or insulting; or*

(b) use in any public place or at any public meeting words which are threatening, abusive or insulting,

being matter or words *likely to excite or promote ill will or hostility against that section on grounds of colour, race, or ethnic or national origins.*

(2) No person shall, with intent to incite another to commit a breach of the peace, or having reason to believe that a breach of the peace is likely to ensue, do any act calculated to excite or promote ill will or hostility against any section of the public distinguished by colour, race or ethnic or national origins.

(3) In this section-

(a) the expressions "public meeting" and "public place" respectively have the same meaning as in the Public Order Act 1963

(b) *the expression "****written matter****" includes any writing, sign or visible representation*."

28. Section 8A as amended by the Human Rights Amendment Act 2013 provides:

"*Publication of ~~racial material and racial incitement prohibited~~ <u>discriminatory notices, etc</u>*
8A(1) No person shall, with intent to ~~excite~~ incite or promote ill will or hostility against any section of the public distinguished by colour, <u>disability,</u> ~~race~~ ~~or~~ ethnic or national origins,

family status, marital status, place of origin, race, or religion or beliefs or political opinions, sex or sexual orientation-

(a) publish or display before the public, or cause to be published or displayed before the public, ***written matter*** *which is threatening, abusive or insulting; or*

(b) use in any public place or at any public meeting words which are threatening, abusive or insulting,

being ***matter or words*** *likely to ~~excite~~ incite or promote ill will or hostility against that section on grounds of colour, disability, ~~race~~ ~~or~~ ethnic or national origins, family status, marital status, place of origin, race, or religion or beliefs or political opinions, sex or sexual orientation.*

(2) No person shall, with intent to incite another to commit a breach of the peace, or having reason to believe that a breach of the peace is likely to ensue, do any act calculated to ~~excite~~ incite or promote ill will or hostility against any section of the public distinguished by colour, disability, ~~race~~ ~~or~~ ethnic or national origins, family status, marital status, place of origin, race, or religion or beliefs or political opinions, sex or sexual orientation.

(3) In this section-

(a) the expressions ~~"public meeting" and "public place" respectively~~ shall have the same meaning as in the Public Order Act 1963

(aa) the expression "public place" shall have the same meaning as in section 3 of the Criminal Code Act 1907;

(b) *the expression "****written matter****" includes any writing, sign or visible representation~~.~~ and*

(c) *the expression "publish or display" includes publishing or displaying by way of recorded telephone discussions, internet, e-mails recorded in print or recorded on the internet, radio, television or any other electronic medium or communication device.* "

29. Mr. Richardson hangs his hat on the newly inserted section 3(c) which specifies various forms of electronic-type communications. He argues that these modes of communication must be expressly specified in order to come within the scope of the legal definition of "*any writing*".

30. Mr. Richardson also placed the 2013 HRC[2] Annual Report before the Court. On page 11 of that report under the sub-headings 'Legislative Developments' and 'The Human Rights Amendment Act 2013', it reads in its most pertinent part:

"*The forms of communication through which a complaint can be made have been updated to include recorded telephone discussions, e-mails recorded in print or recorded on the Internet, radio, television or any other electronic medium or communication device*."

31. Consistent with his reputation for thorough presentations on the law, Mr. Richardson also referred the Court to the Offences Against the Person Act 1861 in UK:

Section 16 Offences Against the Person Act 1861 (pre-amendment):

"*Whosoever shall maliciously send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding ten years and not less than three years- or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping*."

32. The amended section now reads:

"*A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years*."

33. Here, Counsel advanced the general proposition that the Bermuda s. 290 offence of threatening to murder is outdated when you compare it to the UK offence of threatening to kill. Mr. Richardson placed emphasis on the words in the UK provision: "*intending that that other would fear it would be carried out…".* The Defence say that this illustrates the dire need for an amendment to s.290 which imports no such requirement that the offender would intend for the Complainant to fear the realization of the threat.

34. To bolster this view, Mr. Richardson remarked that even section 12 of the Summary Offences Act 1926 (SOA) ("*Use of threatening words or gestures*") affords better protection of an Accused person. Section 12 reads:

[2] Human Rights Commission

"*Any person who utters any threatening words, in writing or otherwise, or who, by gestures or otherwise, behaves in any threatening manner, commits an offence against this Act:*

Provided that no person shall be convicted under this section unless the threat is to commit an unlawful act and the person threatened believes on reasonable grounds that the threat will be carried out."

35. To my mind, the application before me does not call for me to make any findings on Parliament's decision to exclude from section 290 of the Criminal Code a proviso similar to that of s. 12 of the SOA. My task is to simply interpret the true meaning of section 290 and to decide whether there is sufficient evidence available to support the charges on the Indictment before me.

36. Counsel skillfully padded his arguments by reference to the general principles of construction against ambiguity, particularly in penal provisions. Mr. Richardson relied on judicial remarks made by Martin J.A. in the Canadian Court of Appeal case, *R v Goulis 33 O.R. (2d) 55; [1981] O.J. No. 637; 125 D.L.R. (3d) 137* (p. 3 of 4):

"*… The Court has on many occasions applied the well-known rule of statutory construction that if a penal provision is reasonably capable of two interpretations, that interpretation which is the more favourable to the accused must be adopted…I do not think, however, that this principle always requires a word which has two accepted meanings to be given the more restrictive meaning. Where a word used in a statute has two accepted meanings, then either or both meanings may apply. The Court is first required to endeavor to determine the sense in which Parliament used the word from the context in which it appears. It is only in the case of an ambiguity which still exists after the full context is considered, where it is uncertain in which sense Parliament used the word, that the above rule of statutory construction requires the interpretation which is the more favourable to the defendant to be adopted. This is merely another way of stating the principle that the conduct alleged against the accused must be clearly brought within the proscription…*"

37. Mr. Richardson, in search of a pre-emptive strike against the Prosecutor's pending submissions, referred to the Bermuda Interpretation Act 1951 ("the 1951 Act") where the legal definition of "writing" reads: "*"writing" includes any method of producing words in visible form; and cognate expressions shall be construed accordingly*."

38. Mr. Richardson argued that any attempt to cure the defects in the wording of section 290 by assigning the broad definition of "writing" from the Interpretation Act would not do. He emphatically argued that Bermuda must follow the course taken by the other jurisdictions

who have modernized their legislative framework to expressly specify the inclusion of various forms of communication via electronic devices.

Crown Counsel's Submissions

39. Mr. Rogers insisted that the legal definition of "writing" taken from section 8 of the 1951 Act stood as the silver bullet which not even Mr. Richardson could dodge. He submitted that section 1 of the 1951 Act confirmed the applicability of the "writing" definition to section 290 of the Criminal Code as follows:

"*1(1) Subject to this section, this Act shall have effect in relation to the interpretation and construction of every Act of the Legislature of Bermuda, whether enacted before or after 19 July 1951, and of every statutory instrument made, given or issued in Bermuda, whether made, given or issued before or after 19 July 1951-*

(a) so as to assign any expression used in any such Act or in any such statutory instrument the meaning assigned to that expression by this Act; and

(b) *so as to apply in respect of any such Act or statutory instrument the rules of construction declared in this Act*."

40. Mr. Rogers targeted Mr. Richardson's submissions on the significance of the 1997 amendments to section 308 of the Queensland Code. Crown Counsel persuasively submitted that the replacement of the words "*any writing*" with "*any document*" did not have the effect of redefining the legal definition of "any writing". It simply broadened the category of material which would stand as a medium for receiving threats to murder. As the legal definition of 'document' includes a 'record', such material is no longer restricted to writing or words but would now include, *inter alia*, photographic images, audio recordings and videos under the amended section 308.

41. Turning to section 8A of the Human Rights Act 1981 prior to its amendment in 2013, Mr. Rogers highlighted that no amendments were needed or even made to the legal definition of "*written matter*". The only material change to section 8A, apart from broadening the sections of the public to whom it applies, was to expand the methods by which a notice can be published or displayed so to include recorded telephone discussions; internet; e-mails recorded in print or recorded on the internet; radio; television or any other electronic medium or communication device.

42. Mr. Rogers correctly observed that the definition of "written matter" was untouched by the 2013 amendments. Pre-amendment and post-amendment, s. 8A of the HRA reads as follows: "*the expression "**written matter**" includes any writing, sign or visible representation*…"

43. The Crown says this mutes Mr. Richardson's argument that the amendments illustrate a need to redefine the words "any writing" in order to include text messages by cell phone. Mr. Rogers argued that the legal definition of "any writing" is already sufficient so to include words/writing sent by text message.

Leave to file supplemental submissions

44. Counsel were afforded the opportunity to file supplemental written arguments by close of business Thursday 27 July 2017 on the following presumptions of statutory construction outlined in Butterworths Lexis Nexis' *Bennion on Statutory Interpretation*.
    (i) *Presumption for enactment to be given a purposive construction* (See Parts XX (Sections 303-311);
    (ii) *Construction Against 'Absurdity'* (See Parts XXI: Section 334);
    (iii) *Construction Against Evasion* (See Parts XXII: Sections 319-326);
    (iv) *Presumption that rules of criminal law apply* (See Parts XXIII: Section 334);

45. Additionally, I drew Counsel's attention to the possible applicability of *Lambert v Cox [2009] Bda L.R. 21* where the Court of Appeal, in interpreting sections 4A and 4B of the Traffic Offences (Penalties) Act 1976, observed that a literal interpretation of the provisions would produce a bizarre result such that it rendered it doubtful that this was intended by the legislature. In that case, it was accepted by the Crown that the provisions of section 4B were difficult to construe.

46. The Crown filed written submissions, which I have carefully considered. The Defence, however, did not file supplemental submissions.

Analysis:

47. As a starting point, the Court must determine whether the words "any writing" in section 290 of the Criminal Code have a legal meaning, which is not necessarily the same as a grammatical meaning. Of course, more often than not, the legal meaning corresponds with the grammatical meaning (See Section 2 of Bennion on Statutory Interpretation (6th edn): *Interpreter's duty to arrive at legal meaning*).

48. I find that section 8 of the Interpretation Act 1951 clearly states the legal definition of "writing":

"*In every Act and in every statutory instrument-*
"writing" includes any method of producing words in visible form; and cognate expressions shall be construed accordingly."

49. In my view the printed words shown in a text message, such as in this case, plainly come within the legal definition of "any writing". I find that this is in no way inconsistent with the grammatical meaning of 'writing' which is defined as follows in the Oxford Dictionary: "*a sequence of letters, words or symbols marked on a surface*".

50. I do not accept Mr. Richardson's proposition that the terminology "any writing" is confined to a printed document with writing on it. Mr. Richardson argued that in common parlance, the average person would not consider a text message to be in 'writing'. I do not agree. I further reject Mr. Richardson's submission that the definition of 'writing' is ambiguous. I think it is clear and I find that it includes text on an electronic device.

51. In my view, the examples of legislative modernization placed before me are just that. The 1997 amendments to the Queensland Code were aimed and effectively had the impact of expanding the modes in which a threat to murder may be received. It is obvious that the legislator did not wish to confine a mode of threat to 'writing'. The effect of the Queensland amendments now goes beyond the use of 'writing' as a vehicle for the communication of a threat of murder. The 1997 amendments recognize that threats may also be received through images, video and audio recordings and other displays which fall under the definition of 'record'.

52. In any event, even if I am wrong about the legal meaning (which I find to be plainly clear and applicable), I find that the principles of statutory interpretation would have led me directly to the inclusion of mobile text messages into the definition of "any writing", notwithstanding.

53. The Defence say that one must look to Parliament's intention, which of course is a starting point when interpreting a statutory provision. However, Mr. Richardson's argument is that in 1907 when the Criminal Code was enacted, Parliament could not have contemplated text messages. He submits that this means that Parliament could not have intended what they did not contemplate. In my opinion, this is wholly incorrect.

54. There is a known principle of statutory interpretation called the Commonsense construction rule:

"*It is a rule of law (in this Code referred to as the commonsense construction rule) that when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, the court should presume that the legislator intended common sense to be used in construing the enactment*." (See Section 197 of Bennion of Statutory Interpretation)

55. In my view, it is a matter of common sense that in current parlance, "*writing*" includes all electronic text and handwriting, irrespective of the surface on which it is found. Here, I dare employ the cliché and intended pun: '*the writing is on the wall'*.

56. I think it is telling that neither the 1997 Queensland amendments nor the 2013 amendments to the Human Rights Act 1981 interfered with the definition of the word "writing". I find that as a matter of construction and use 'writing' is the umbrella definition which covers, *inter alia*, handwriting; braille; electronic text; symbols and any other compilation of letters in the alphabet of any language, regardless of the style (print, cursive, uppercase, lowercase etc) colour or font. This, in my view, is a matter of common sense.

57. Further, I am not aware of any rule of statutory construction that prohibits an interpretation from naturally developing alongside the modernization of the use of the word(s) itself. For example, the words "hand-held device" used in section 44 of the Motor Car (Construction, Equipment and Use) Regulations 1952 are given a generic definition ("*can perform an interactive communication function by transmitting or receiving data, other than a two-way radio*"). Parliament did not specify in its definition all of the varying items which would be included in the definition of "hand-held device". To do so would be problematic as the list of items would continually grow with the advancement of technology. This, in my view, illustrates the importance of broad definitions for words and terms which are broad and continually expanding in scope. Otherwise, the need for such frequent amendments would become untenable.

58. I find that Mr. Richardson's argument is flawed as it merely targets the physical surface of the 'writing' received by the Complainant. Had the exact image of the threatening text received by the Complainant been received instead on a paper surface rather than on a mobile screen, Mr. Richardson's complaint would fall away. This, in my view, cannot be correct. The surface on which the writing appears does not alter or detract from the writing itself. 'Writing', whether handwritten or typed; carved in stone; tattooed; fingered in sand; stamped with rubber and ink; made on a chalkboard, blackboard or whiteboard; embroidered on clothing; squiggled on a cake; marked on a vehicle or appliance; or typed on a computer screen or that of a handheld device, is still 'writing'.

Conclusion

59. I find that there is sufficient evidence upon which the Accused is to be arraigned under both counts of the Indictment. Accordingly the Defence application made under section 31 is refused.

60. While I have refused the section 31 application, Mr. Richardson has brought to light the need for an amendment to section 290 of the Criminal Code to broaden the categories of communication for a threat of murder. Section 12 of the Summary Offences Act 1926 creates an offences for the utterance of threatening words "*in writing or otherwise or… by gestures or otherwise*". It seems to me that the more serious offence of threatening to murder should capture an equally broad range of classes of unlawful communication of the threat beyond 'any writing' so to include images, video and audio recordings etc.

61. Further, a review of the mode of this offence (indictable only) would be appropriate in my view. Section 290 of the Criminal Code was not included amongst the list of offences for which the Magistrates' Court was assigned increased sentencing powers under the Criminal Code Amendment Act 2006. For some of those offences, the increased sentencing powers on summary conviction go up to 10 years imprisonment. The maximum term of imprisonment punishable under section 290 is 7 years. In my opinion, consideration should be given to making the offence of threatening to murder under s.290 an either-way offence.

Dated this 31st day of July 2017

_____

SHADE SUBAIR WILLIAMS
ASSISTANT JUSTICE OF THE SUPREME COURT