

ACCESS TO JUSTICE: TECHNOLOGY AND EVIDENCE.

The new Civil Procedure Rules 2002 became effective on January 1, 2003. A technology neutral and robust approach was taken in the drafting of the rules. Of particular interest to lawyers who are technologically savvy is that portion of the rules which provide for evidence to be taken by video-link or other means.¹ The general rule previously is that the parties' presence was required in the Court Room in order to give oral evidence at a trial. There was also an allowance for the evidence to be given by affidavit evidence on such terms as the Judge deems just.

Notwithstanding these provisions the idea that evidence could be given at a trial by video-link was somewhat heresy until 1999. At that time the Supreme Court declined to exercise its jurisdiction for evidence to be admitted by way of video link. The Attorneys for the applicant in that matter appealed to the Court of Appeal.² The Court of Appeal reversed the ruling of the trial judge and held "that the combined effect of s. 368A(1) of the Judicature (Civil Procedure Code) Law (read together with ss 31B and 31E (1) of the Evidence Act) conferred jurisdiction on the court to allow an application for the admission of evidence by way of video conference or video link."³ At the time of writing it was not ascertained if the video linking was actually done as contemplated in the application. The fact is though, that until the Civil Procedure Rules 2002 no single rule of procedure could be relied on as authorizing the taking of evidence by video link.

⁰ M. Georgia Gibson-Henlin, Attorney-at-Law.

¹ Civil Procedure Rules 2002 – rule 29.3

² Wallace & Anor. v. Ramsay and Anor. (1999) 59 WIR 345.

³ *Ibid*

This is especially important since Sections 31B and 31E of the Evidence Act were at that time recent amendments.⁴

The new Civil Procedure Rules in this context is *evidence* of how legislation can influence minds and attitudes. Who would have thought that for two days the Department of Corrections would have allowed civilians (technicians) and attorneys onto any of its secured facilities to attend *Court*? Well it happened on July 17, and 18 2003. The firm of Nunes Scholefield Deleon & Co., organized and participated in the first, *until otherwise advised*, hearing by video-link and the first to have taken place from a secured facility. The hearing took place in Chambers in England.⁵ It was no different from a live and in person hearing except for the few moments when persons failed to extend their voices sufficiently.

As a practical matter there are two lessons that were learnt from the whole process. Trials can be conducted from:

1. secured facilities when issues of security arise;
2. Other places within and outside of Jamaica including when witnesses have a difficulty travelling to Court due to illness or the kinds of events that often make it impossible for Jamaicans to travel across the island to Court.

What then are the basic requirements for setting up a video link?

1. Information on the points of termination and origination is required. The rest is for the video link provider to handle but will be referred to in bare outline.
2. Generally the access type is dial –up lines. The video link requires a connection that enables the transmission of data so that Integrated Services Digital Network

⁴ The Evidence Act was amended in 1995.

⁵ The proceedings are *in camera proceedings* and so no details of the facts or the facility will be disclosed.

(ISDN) access lines are required. This is between the video link service provider equipment and the telecommunications network provider (from the local telephone company).

3. Connection to the termination point may be via various wide area network (WAN) technologies such as frame relay or Asynchronous Transfer Mode (ATM).

As our judicial system continues to take bold strides in the utilisation of available technology, it is incumbent on us to be aware of the technology that exists and to make full use of it where appropriate. In England, there is a dedicated facility at the Court for that purpose equipped with a *diary* clerk to make the necessary scheduling. Can we set up a dedicated facility at the Supreme Court in the way that they have done in England to facilitate *access to justice* by video link on a more sustainable basis? Can we begin to think about *Justice via Video Link* as an alternative means of providing access to Justice? This could occur in cases where witnesses needed to be re-located for security reasons or simply to minimise the difficulties caused by the geographical location of the Supreme Court. Should this initiative come from the government or from the bar or can it be a joint enterprise? The writer favours the latter. It is a thing worth pondering.

Video-linkling services are available through the Lewis Group, 1 Holborn Road, Kinston 10, J. W. I. Telephone 876 – 968 – 2184. Email: <lewisgrpja@lewisgrp.com>.

