

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

**CCJ Application No. BBCV2017/002
BB Civil Appeal No. 14 of 2010**

BETWEEN

KATRINA SMITH

APPELLANT

AND

ALBERT ANTHONY PETER SELBY

RESPONDENT

**Before the Right Honourable
and the Honourables**

**Sir Dennis Byron, President
Mr Justice Wit
Mr Justice Hayton
Mme Justice Rajnauth-Lee
Mr Justice Barrow**

Appearances

Ms. Cicely P. Chase, QC, Mr. Bryan L. Weekes and Ms. Shari-Ann Walker for the Appellant
Mrs. Dawn Shields-Searle and Mr. Tariq Khan for the Respondent

JUDGMENT

of

**The Right Honourable Sir Dennis Byron, President, and the Honourable Justices
Wit, Hayton, Rajnauth-Lee and Barrow**

Delivered by

The Right Honourable Sir Dennis Byron

on the 1st day of September, 2017

Introduction

- [1] The Court is asked to resolve a dispute between Albert Anthony Selby (“Anthony”), the Respondent, a brother of the deceased Albert Michael Selby (“the deceased”), and Katrina Smith (“Katrina”), the Appellant, with whom the deceased had been living as man and wife immediately preceding his death. If Katrina is entitled to be regarded as the spouse of the deceased, she will benefit from section 49 (2) of the Succession Act Chap 249 (“the Act”) as the deceased had no children. Section 49 (2) provides:

“If an intestate dies leaving a spouse and no issue but next-of-kin, the spouse shall take two-thirds of the estate and the remainder shall be distributed in equal shares among the next-of-kin.”

If she is not so entitled, then Anthony representing the deceased’s siblings will benefit from section 51(1) of the Act which provides:

“If an intestate dies leaving neither spouse nor issue nor mother nor father, his estate shall be distributed between his brothers and sisters in equal shares,”

In other words, if Katrina is the spouse she will stand to inherit two thirds of the estate and the siblings one third, but if she is not, the siblings will inherit everything and she will get nothing.

The Background

- [2] Katrina, a single woman, and the deceased had been living together as man and wife since April 2002 when he died suddenly on the 11th day of April 2008 without having made a will. They were not married to each other. He had no children and was pre-deceased by his parents. He was survived by his siblings including Anthony. He had been married, separated from his wife and officially divorced on the 30th April 2004.

Procedural History

- [3] On the 27th March 2017, Katrina applied for special leave to appeal the decision of the Court of Appeal pursuant to section 8 of the Caribbean Court of Justice Act, Chap 117. When the matter came on for hearing on the 25th of July 2017 the parties agreed that the hearing should be treated as the hearing of the appeal and the Court so ordered.

- [4] These proceedings began nine years earlier, on 16th April 2008 and interim orders limited to the burial of the deceased were made on 17th April 2008. On 3rd July 2008, both parties having applied for administration of the estate of the deceased, the trial judge heard the parties on a preliminary point of law to determine whether Katrina could be entitled to a grant of administration as spouse, or if she was not, at the discretion of the court. More than two years later, the trial judge delivered his ruling on 6th August 2010 declaring that Katrina could be regarded as the spouse of the deceased but that she would not otherwise be entitled to a grant of administration. Anthony appealed against the ruling that Katrina could be regarded as the spouse of the deceased. The ruling that she would not otherwise be entitled to a grant of administration has not been challenged. More than five years later, the Court of Appeal heard the appeal on 14th January 2016. Just over one year later, it delivered Judgment on 14th February 2017 reversing the decision that Katrina is the spouse of the deceased.

The Issues for Determination

- [5] The Court must determine whether Katrina is the spouse of the deceased. On the face of it this should be the simple task of giving effect to section 2(3) (a) of the Act which prescribes:

“For the purposes of this Act, reference to a “spouse” includes:

- (a) a single woman who was living together with a single man as his wife for a period of not less than 5 years immediately preceding the date of his death;
- (b) a single man who was living together with a single woman as her husband for a period of not less than 5 years immediately preceding the date of her death.”

- [6] The controversy has centred on the issue of whether the deceased was a single man. The trial judge, influenced by his perception that the purpose of the statute was to correct the problem faced by the survivor of a non-marital relationship where there was no will, concluded that the word “single” included a married man who was separated from his wife. The Court of Appeal, while endorsing the purposive approach, found that the trial judge erred by distorting the ordinary and natural meaning of the word “single” to give effect to his perception of the objective of

Parliament. In an alternate rationale, the trial judge concluded that the term “single” was descriptive of the status the parties had at the time of the death of the deceased. The Court of Appeal overturned this decision as well and concluded that the word single reflected the status of the parties throughout the five-year period of statutory cohabitation.

Principles of Statutory Interpretation

- [7] The controversy in this case is derived from the view that there is a rigid distinction between literal and purposive approaches to the interpretation of statutes. Both approaches aim at giving effect to the intention of Parliament which is the primary role of the courts in the interpretation of statutes. They are both tools which work to achieve the same goal. In most cases, either approach would produce the same result. But there are some cases where it is perceived that the language of the statute is capable of two or more meanings. It is in such cases that the judge should find the right balance between the two approaches. It should be recalled that neither approach is the objective of the court. The court should give each approach its relative weight in the balancing act of assessing the intention of Parliament. In 1999, Laws LJ noted in *Oliver Ashworth (Holdings) Ltd v Ballard (Kent) Ltd*¹ that:

“Where there is a potential clash, the conventional English approach has been to give at least very great and often decisive weight to the literal meaning of the enacting words. This is a tradition which I think is weakening, in face of the more purposive approach enjoined for the interpretation of legislative measures of the European Union and in light of the House of Lords' decision in *Pepper (Inspector of Taxes) v Hart* [1993] 1 All ER 42, [1993] AC 593”.

- [8] The Court of Appeal placed reliance on Lord Bingham in *R (Quintavalle) v Secretary of State for Health*² at paragraph 8. We also think this approach makes sense and should be adopted and applied.

“The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal

¹ [1999] 2 All E.R. 791, 805, CA

² [2003] 2 W.L.R. 692, HL

interpretation given to the particular provisions which give rise to difficulty. ... undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So, the controversial provisions should be read in the context of the entire statute, and the statute should be read in the historical context of the situation which led to its enactment."

- [9] The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, coupled with the restraint to avoid imposing changes to conform with the judge's view of what is just and expedient. The courts must give effect to the intention of Parliament. The extensive review of the case law by the Court of Appeal commenced with principles of "ancient vintage" derived from *Heydon's Case*³ in 1584 -- nearly 500 years ago. Still relevant today, they point out that it is the duty of the court to consider the mischief and intended remedies which made it necessary to pass the legislation, and to add force to the intended cure, according to the intent of Parliament, for the benefit of the public.
- [10] The social and historical context can be decisive in ensuring that the words are interpreted to give effect to the meaning and purpose of the Act. But that does not extend to distorting the language used by Parliament. It must be remembered that the court's responsibility is to give effect to the intention of Parliament not to correct legislation to ensure that it is just and expedient. If the court considers that there is a variance between the language used and its understanding of the special purpose of the Act it should be left to Parliament to amend the legislation⁴. Where the words of the statute are not ambiguous there could be no justification for interpreting them in a manner that would alter their meaning, unless it may be necessary to resolve an inconsistency within the statute itself⁵. So, the conjecture that Parliament may have

³ 3 Co. Rep. 7a

⁴ *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487, 510 (Scarman LJ)

⁵ See: *Court of Appeal of Jamaica In Independent Commissions of Investigations v Digicel Jamaica Limited* JM 2015 CA 57 (Brookes JA)

intended a meaning that is different to the words used is not a sufficient reason for departing from their ordinary and natural meaning⁶.

- [11] In giving effect to these principles the court, when interpreting any part of a statute, should review other parts of the Act which throw light upon the intention of the legislature and may show how the provision ought to be construed⁷. The underlying principle is that the courts must use the available material to discover and give effect to the intention of Parliament. There can be no doubt that consideration of the purpose of an enactment is always a legitimate part of the process of interpretation.⁸ In *R (on the application of West Minster City Council) v. National Asylum Support Service* [2002] 1 WLR 2956, Lord Steyn said at page 2958:

“The starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used. It follows that the context must always be identified and considered before the process of construction or during it. It is therefore wrong to say that the court may only resort to evidence of the contextual scene when an ambiguity has arisen....in *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896, 912-913 Lord Hoffmann made it crystal clear that an ambiguity need not be established before the surrounding circumstances may be taken into account. the same applies to statutory construction”.

- [12] In *Rambarran v The Queen*⁹, we noted that when a court is called on to interpret legislation it is not engaged in an academic exercise. Interpretation involves applying the legislation in an effective manner for the well-being of the community. Giving words their natural and ordinary meaning does not necessarily produce a different result than would be produced if a purposive approach was taken in the process of interpretation. Both principles assist the court in performing its primary task of giving effect to the intention of the legislature. Parliament’s intention is discerned by understanding the objective of the legislation; what is the change that it is aimed to produce; what is its purpose. This often requires consideration of the social and historical context and a review of the legislation as a whole. But its intentions are

⁶ See: *Lumsden v IRC* [1914] AC 877, 892, (Haldane LC)

⁷ See: *James Ifill v The Attorney General and the Chief Personnel Officer* Civil Appeal No. 3 of 2013 quoting the English House of Lords case of *Colquhoun v Brooks* (1889) 14 App. Cas. 493 at 506 (HC) (Herschell LJ)

⁸ See: *Fothergill v Monarch Airlines* [1981] A.C. 251, 271, HL (Wilberforce LJ)

⁹ [2016] 2 AJ [36]

also discerned from the words it uses. The underlying principle is that the court has a different function from Parliament. The court is ensuring that the legislative intent is properly and effectively applied. It is not correcting the legislative intent nor substituting its own views on what is a just and expedient application of the legislation.

The Statutory Objective

[13] No evidence was adduced about the historical context of the relevant provisions of the Act. But the matter has attracted comment from academics.¹⁰ Both the trial judge and the Court of Appeal were agreed that the Act was social legislation to address one of the realities of Caribbean society that had not been reflected in the common law or statute law inherited or adopted from England. Persons living together as man and wife but who were not married to each other and their children had not been recognized in the colonial legal and juridical regime, with unfair results.

[14] Up to the passage of the Act in 1975, the law in Barbados did not provide inheritance or other rights for the surviving partner in such a relationship. Persons who were living together as man and wife but were not married to each other at the date of the death of one of them did not inherit anything in the absence of a will. Nor did they have any rights to obtain support for their continued existence from the estate of the deceased. At the date of the death of their partner, the survivor became a legal non-entity regarding the estate that was left. That person was vulnerable to relatives of the deceased and could be debarred from having anything to do with the estate. On the other hand, a person who was married to the deceased at the date of the death was entitled to inherit. Both the duration and the quality of the marriage were totally irrelevant. Marital partners who did not cohabit as man and wife, or who were in another committed but unmarried relationship, were entitled to move in on the estate and inherit.

[15] The law therefore afforded rights of inheritance based on the marital status of the parties at the date of the death of the deceased. Review of the statute as a whole indicates that a new regime was prescribed giving statutory rights to that class of person in sections 2(3) and (4), section 102(4) and sections 57 and 58 of the Act.

¹⁰ See: Norma Monica Forde's article "Family Inheritance Provisions in the Barbados Succession Act – Redefining "the Family"; Nunez-Tesheira, *Commonwealth Caribbean Family Law Husband Wife and Cohabitant* (Routledge 2012) 65-68.

Collectively, they indicate the intention of Parliament with regard to this issue. The law itself reveals its social purpose and the changes it intended to make for the public good.

[16] The main change was effected by section 2(3) which changed the definition of spouse for the purposes of inheritance under the Act. Prior to the introduction of that provision, the term “spouse” would ordinarily refer to a person who was married to the deceased at the date of death. The new and statutory meaning of the term allowed it to include a person who was not married to the deceased at the date of death. The section demonstrates that a single person who is not married to, and has cohabited with, the deceased for the statutory period of five years immediately preceding death has the right to inherit as spouse from a deceased who is not married to someone else. The section, therefore, granted inheritance rights to an unmarried cohabiting partner of the deceased.

[17] On the other hand, the Act disqualified a married but non-cohabiting partner from inheritance. Section 102 (4) of the Act prescribes:

“Where a husband and wife have ceased to cohabit with each other and have been living apart continuously for a period of 5 years or more immediately preceding the date of the death of either of them, the survivor shall be precluded from taking any share in the estate of the deceased as a legal right or on intestacy”.

This demonstrates that a person who is married, but has not cohabited with the marital partner for the statutory period immediately preceding death is excluded from inheriting from the deceased marital partner as a spouse.

[18] One effect of the combination of these provisions is that neither the cohabiting nor the marital partner may be entitled to inherit as a spouse in certain circumstances. Take for example the case of a woman who had been living with a married man for the statutory period and he died without obtaining a divorce: she may not qualify as a spouse. At the same time, the wife who had been living apart from the deceased for the statutory period would be disqualified from inheriting as a spouse.

[19] However, other provisions of the Act show that Parliament did make provision for the cohabiting partner who did not qualify as a spouse, whether for that reason or because the period of cohabitation was not long enough. These provisions would be relevant to Katrina if she was not the spouse of the deceased. Surprisingly, no mention was made in the courts below nor in the submissions before us of sections 57 and 58 of the Act¹¹, which make provision for dependants including, a cohabiting partner who was not a spouse. If Katrina was not a spouse, as the Court of Appeal ruled, these sections may provide her protection if she had been maintained by the deceased. Section 57 provides:

“For the purposes of this Part “dependant” in relation to a person who dies intestate means

- (a) any woman (other than his spouse) living together with a man as his wife immediately preceding the date of his death and wholly or mainly maintained by him at that time; and
- (b) any man (other than her spouse) living together with a woman as her husband immediately preceding the date of her death and wholly or mainly maintained by her at that time; or ...”

[20] It should be noted that the word “single” does not appear in this section. So, dependency is not affected by marital status. Relief is provided for the survivor of cohabiting partners who was not entitled to inherit as a spouse. Such a survivor who was wholly or mainly maintained by the deceased, would be regarded and treated as a dependant and could obtain an order for maintenance to be paid out of the estate. It is interesting to note that no provision is made for such a cohabiting partner who was not being maintained by the deceased prior to the date of death. But where cohabitation and maintenance are proved, a surviving partner could receive benefits as a dependant from the estate of a person married to someone else. Section 58 of the Act specifies that a person claiming as a dependant must give notice to the personal representatives of the intestate implying that such a person would not normally be entitled to a grant of administration.

¹¹ See: Part VII of the Act

[21] Section 58 (3) provides that the Court may, in considering the application, where appropriate, direct enquiries to be made as to the quality and duration of the relationship, the income of the survivor and other factors to enable the court to understand all relevant circumstances. Consideration of the adequacy of potential awards to dependants is not relevant to these proceedings. However, it is safe to conclude that the court is given power to fashion appropriate awards to suit the circumstances of each case. These sections also imply that Parliament intended to provide protection for the survivor of a cohabiting relationship regardless of the marital status of the parties.

[22] The purpose of the Act, the mischief it was intending to remedy and the solution it prescribed seem clear. The right of the survivor of a non-marital union to benefit from the estate of the deceased partner does not depend on the status of marriage, but on the duration of cohabitation with the deceased immediately preceding death. The statutory period is five years, immediately preceding death. This means that a period of cohabitation for five years immediately before the death of the deceased is determinative of the right to inherit as a spouse. That is the period which the legislature, and therefore presumably society, determined is a credible indicator of a commitment to a true union comparable to formal marriage. Sections 57 and 58 establish the rights that would arise from cohabitation for a shorter period, or where one of the parties was married to someone else. That legislative intention is confirmed in section 102(4) which prescribes that non-cohabitation between marital partners for the statutory period equally evidences the absence of such a commitment to a true union and therefore excludes and disqualifies the marital partner from inheritance rights. Thus, inheritance as spouse is based on cohabitation for five years not the status of being married.

[23] Section 2(3) of the Act includes an important provision which could be interpreted as a barrier. The deceased must not be married to someone else. The barrier operates to prevent a single person from being regarded as the spouse of a married person under the Act. But the barrier does not operate if the deceased is single immediately preceding death. It can make no difference whether the deceased had been divorced or widowed for more or less than five years. Let us take a hypothetical situation. A single woman and a married man lived together for more than the statutory period of five years before deciding to marry each other. The man became divorced and died

the day before the marriage was to take place. Take a variation of the same scenario, and say the man died the day after they got married. If one accepts that the purpose of the law was to make cohabitation instead of marital status the basis for inheritance, the sole relevance of the status of the deceased as a divorcee, or widower or never-been-married is to remove a bar that would otherwise exist to the law treating a single person in union with an un-divorced person as a spouse. This results in a straightforward proposition: if a couple has lived together as spouses for more than five years the law will treat the one, upon the death of the other, as the surviving spouse for the purposes of succession, absent the disqualification of a subsisting marriage at the time of death.

[24] A consequence of the legislation is that where the couple has lived together for more than five years, and the man was married at the date of death, the woman could not take as spouse. The language of section 2(3) is not ambiguous in this regard. It cannot have any other meaning. Yet this is the problem which the trial judge tried to address, by finessing the meaning of “single”. Reading the relevant provisions collectively, there is no room for the assumption that Parliament intended that a person should inherit as the spouse of someone who was married to someone else at the date of death. The judiciary should not usurp the parliamentary power by giving words a meaning that Parliament did not intend. Even if one considers that Parliament did not give full effect to the social policy deduced from the statute, then that is an area for Parliament itself to address. In any event, it must be considered that Parliament may have intended to make a social statement about the importance and sanctity of marriage. This is an issue of social policy which falls within the ambit of Parliament.

[25] A similar situation was addressed in Trinidad and Tobago. It would be reasonable to suggest that the social realities of cohabitation between unmarried couples are similar in the two countries. The issue of the rights of inheritance between cohabiting couples where one was married at the time of death was addressed in the case of *Narine v Chune et al*¹². Jamadar JA traced the legislative evolution of the rights of the survivor of a non-married cohabitation relationship to inherit on an intestacy, and showed that in the year 2000, Parliament removed the requirement that the cohabitants must have been single for the survivor to be entitled to succeed. The legislation gave succession rights to cohabitants living together for over five years

¹² TT 2012 CA 19

in a *bona fide* domestic relationship. It removed altogether the requirement that the deceased must have been single (whether divorced or widowed). The Respondent cited this case to support an argument that a similar legislative provision would be needed in Barbados to allow the period of statutory cohabitation to include periods prior to the time the deceased became single. With respect, we think that the legislative amendment would only be required where at the time of death the deceased was still married to another person.

Meaning of the Word “Single”

[26] The Court of Appeal rejected the finding of the trial judge that the concept of singleness for the purposes of the Act included a married man who was separated from his wife. We agree with the Court of Appeal. In our view, the learned Trial Judge misapplied the principles of interpretation. He allowed his perception of the purpose of the legislation to change the ordinary meaning of the word “single” to include a “married man who was separated.” Like the Court of Appeal, we approve the rationale of Sykes J in *Murray v Neita* ¹³ at paragraphs 24 to 25:

“24. ...Single is an ordinary word which usually means unmarried. The word single restricts the class of men and women who can live together and be regarded as spouses under the Act. Had it been intended that spouse includes any man and woman living together then single would not have been included in the definition.

25. I am confirmed in my view by section 2(2). This section is what I would call a ‘removal of doubt provision’, that is, a provision that is not strictly necessary but is nonetheless desirable in order to put doubts to rest. What is crucial and ultimately determinative in my view is that Parliament did not extend section 2(2) to include a person who is lawfully married but separated from his or her spouse and living with some other person as if he or she were a single person. The case of the separated married person who might be living with someone else is so obvious that if there were the intention to include such a person within the definition of spouse the ideal place to have made this clear would be section 2(2). The fact of its omission

¹³ JM 2006 SC 82

is a powerful and determinative argument in favour of the conclusion that such a person was not intended to be a single man or single woman for the purpose of the legislation.”

[27] We can safely conclude that “married but separated” is not the natural and ordinary meaning of “single” and that if Parliament intended to classify such a person as “single”, section 2(4) which purported to define single would have said so. We get the same result when we apply a purposive approach. Our review indicates that Parliament did not intend that a single woman could inherit from the estate of a man who was married to someone else at the date of death. We conclude that when Katrina and Selby began to cohabit she was a single woman and he was a married man, who became single when his divorce was granted in 2004.

The Duration of Cohabitation as a Single Man

[28] Although the parties had not argued the point, the trial judge concluded that in section 2(3)(a) of the Act, the adjective “single” which qualifies the terms “man” and “woman” is descriptive of a quality which the parties must have possessed immediately before the death of the deceased and not a state which must have endured for the five-year period. The Court of Appeal did not agree with him. Instead, it found that the deceased had to be single for the statutory period of five years preceding death for Katrina to be considered a spouse. This finding was consistent with the view expressed by Williams J in *Kinch v Clarke*¹⁴. Although the Court of Appeal was not bound by it, and the comments were obiter because the proceedings before the judge related to the Family Act and not the Succession Act, the Court of Appeal approved Williams J’s opinion.

[29] It should be clear from our assessment of the purpose of the relevant sections that we have come to a different conclusion. This conclusion is based on the natural and ordinary meaning of the words of section 2(3)(a) of the Act in their statutory and historical context. The section demonstrates that a single woman who has cohabited for the statutory period of five years immediately preceding the death of her cohabitant partner has the right to inherit from him on his death, provided he is a single man. On the other hand, section 102 (4) of the Act demonstrates that a person

¹⁴ BB 1985 HC 17

who is married, but has not cohabited with the marital partner for the statutory period immediately preceding death is excluded from inheriting from the deceased marital partner.

- [30] The most important consideration to determine who is entitled to inherit as spouse is the period of cohabitation immediately preceding death. The law clearly prescribes that cohabitation for five years is the statutory period which gives inheritance rights. It also prescribes that the court cannot declare a single woman to be the spouse of a married man. We have concluded that the assessment of marital status for the purpose of rights under the Act is made immediately preceding the death of the deceased. We therefore conclude that Katrina, being a single woman who was living together with the deceased as his wife for a period of not less than five years immediately preceding the date of his death, the deceased, then being a single man who had been divorced from his wife, is entitled to the benefit of inheritance as his spouse.

Costs

- [31] The parties did not agree on costs, although they could have as they both submitted that the orders for costs in the courts below be set aside and that a composite figure be ordered for the costs of the entire proceeding within the range of \$20,000 to \$30,000 Barbadian Dollars. Significantly, Anthony submitted that the costs of the losing party should not be ordered against the estate. We have decided to accept the consensual area of the submissions and made orders setting the costs orders aside in the courts below. This was an interlocutory proceeding and the parties will have to go back to the High Court to address the appointment of a personal representative for the estate. We do not think that the circumstances warrant costs to be based on an indemnity basis. In all the circumstances, we would order that Anthony pay costs at the lower end in the sum of \$20,000.

Disposal

- [32] The appeal is allowed and the decision of the Court of Appeal set aside. We declare the Appellant is entitled to benefit as the spouse of Selby under the Succession Act. We set aside all orders for costs in the courts below and order that the costs of the proceedings in all courts be paid by the Respondent in the sum of Twenty Thousand Barbadian Dollars (\$BD 20,000).

Post Script

[33] More than nine years have passed since the death of the deceased. The full details and value of the estate have not been disclosed in evidence, but it included shares in businesses he ran, interests in a commercial fishing boat, which is stated to be currently in the possession of Anthony, interests in a dwelling house which is stated to be currently occupied by Katrina, and some cash in the bank. We were informed by counsel that the application for administration has been treated as though it were stayed. No one has been appointed to act as a personal representative. This must undoubtedly have adversely impacted those involved and impacted the value and management of the estate.

[34] The ruling on the preliminary matter was made in 2010. The question whether to proceed with the application for administration pending the hearing of the interlocutory appeal should have been considered, at that time, to give effect to the overriding objective to obtain a just resolution expeditiously. The starting point, as counsel for both parties agreed, is that an appeal does not operate as an automatic stay of proceedings. In effect, the proceedings were stayed without a formal order from the court.

[35] It is at least arguable that it was open to the court to make an interim grant of administration, on terms that would protect the relevant parties if the decision was overturned on appeal. It is not necessary to decide whether a stay should have been granted. The point being made is that in circumstances such as these the court should consider whether that is the appropriate order to make. The principles to be applied are all well established and do not require rehearsal in this decision. The court should consider and rule on the question of whether to proceed or to stay the proceedings pending the outcome of the appeal. This issue also arose recently in *JJ v Child Care Board & SW*¹⁵, and *Commissioner of Police Darwin Dottin v. Governor General & Police Service Commission*¹⁶ suggesting that it is a practice for matters to be stayed. It is in this context that we make these remarks to encourage discontinuance of this practice except where a stay is necessary after a full consideration of the relevant

¹⁵ [2017] CCJ 6 (AJ)

¹⁶ [2017] CCJ 9 (AJ)

factors. We also say, with the intention to promote reform, that a more expeditious appeal process would have mitigated the distress suffered by the litigants.

/s/ CMD Byron

The Rt. Hon Sir Dennis Byron (President)

/s/ J Wit

The Hon Mr Justice J Wit

/s/ D Hayton

The Hon Mr Justice D Hayton

/s/ M Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D Barrow

The Hon Mr Justice D Barrow