THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HCVSVG2014/0243

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CAP. 486 OF THE REVISED LAWS OF SAINT VINCENT AND THE GRENADINES 2009

- AND -

IN THE MATTER OF THE ESTATE AND SUCCESSION DUTIES ACT CAP. 490 OF THE REVISED LAWS OF SAINT VINCENT AND THE GRENADINES 2009

- AND -

IN THE MATTER OF THE CIVIL PROCEDURE RULES 2000 PARTS 21 & 67

BETWEEN:

MARJORIE BENNETT
of Beachmont, Kingstown, St. Vincent and the Grenadines **CLAIMANT**
Intended Administratrix of the Estate of Charles Michael Bennett
Deceased (by her lawful Attorney of Record Camille Lakhram of Queen‟s
Drive)

-AND-

CIBC FIRST CARIBBEAN INTERNATIONAL BANK
of Upper Halifax Street, Kingstown, St. Vincent and the Grenadines **DEFENDANT**

HCVSVG2014/0244
IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CAP. 486 OF THE REVISED LAWS OF SAINT VINCENT AND THE GRENADINES 2009

- AND -

IN THE MATTER OF THE ESTATE AND SUCCESSION DUTIES ACT CAP. 490 OF THE REVISED LAWS OF SAINT VINCENT AND THE GRENADINES 2009

- AND -

IN THE MATTER OF THE CIVIL PROCEDURE RULES 2000 PARTS 21 & 67

BETWEEN:

STANLEY HINDS (otherwise STANDLY HINDS)
Executor of the will of Kendol (otherwise "Kendal") Franklyn Hinds Deceased **CLAIMANT**

-AND-

CIBC FIRST CARIBBEAN INTERNATIONAL BANK
of Upper Halifax Street, Kingstown, St. Vincent and the Grenadines **DEFENDANT**

Appearances: Mr. Parnel Campbell Q.C. for Claimants/Applicants, Ms Nicole Sylvester for the Defendants.

2015: Feb. 25
Mar. 16

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** This decision arises out of two separate unrelated claims commenced by Mrs Marjorie Bennett, the intended administratrix of the estate of Charles Michael Bennett deceased, on the one hand, and Mr Stanley Hinds executor of the Will of the late Kendol Franklyn Hinds on the other hand. Mrs Bennett and Mr S. Hinds are seeking orders that CIBC FirstCaribbean International Bank ("CIBC") divulge confidential information to them regarding the respective estates of the testator and intestate. They have also applied to be appointed as representatives of the deceased persons" respective estates. They and CIBC have agreed that the claims should be heard together as the subject matter is similar and CIBC is the common defendant. The cases are accordingly dealt with jointly in furtherance of the overriding objective of the Civil Procedure Rules 2000 ("CPR").

[2] In July 1984, Mr Kendol Franklyn Hinds (deceased) made a will in which he appointed Mr Stanley Hinds and Mr Maurice King as executors. He passed away on December 19, 2012. The deceased held a safety deposit box at CIBC‟s premises in Kingstown which Mr Stanley Hinds has sought to access without success since Mr Kendol Hinds‟ passing. CIBC insists on production of grant of Probate or written authorization from the deceased‟s heirs or legal personal representative before it will permit access to the safety deposit box. Mr Stanley Hinds submits that he is unable to extract probate because he does not know what is contained in the safety deposit box or its value. He has brought this action to obtain an order compelling CIBC to grant him access to the safety deposit box and to provide him with any other financial information regarding the deceased‟s affairs.

[3] Mrs Marjorie Bennett is the widow of Mr Charles Michael Bennett deceased and the self-proclaimed intended administratrix of his estate. Mrs Bennett‟s lawful attorney on record, Ms Camille Lakhram initiated this claim on her behalf seeking an order compelling CIBC to disclose to her[i], "*all relevant financial information in its power including details of any balances held in any account or accounts standing or which formerly stood in the name of Charles Michael Bennett at and after 26th June 2009 as may be reasonable necessary or expedient to assist the Claimant in the discharge of her statutory duties as widow and intended Administratix*" of the deceased‟s estate. She is also seeking disclosure from CIBC of details of an insurance policy that the deceased held with ALICO. Ms Lakhram deposes that CIBC has twice refused to provide this information to Mrs Bennett‟s legal practitioner.

[4] Both claims were brought under the Administration of Estates Act[ii], the Estate and Succession Duties Act[iii] and Parts 21 and 67 of the Civil Procedure Rules ("CPR") 2000. In each matter, the request to CIBC was made by the lawyer representing Mrs Bennett and Mr Stanley Hinds. Mr S. Hinds had also previously made a request in person. CIBC filed Applications in both matters seeking orders

that the claims be struck out because they are misconceived and amount to an abuse of the court‟s process. CIBC contends *inter alia* that Mrs Marjorie Bennett and Mr Stanley Hinds do not have the legal right to bring the claims. The court must decide whether Mrs Bennett or Mr Hinds should be appointed as representative of the respective deceased‟s estates and whether the claims should be struck out. In deciding whether the claims should be struck out the court must determine:

(a) whether Mrs Bennett or Mr Hinds had the legal capacity to bring these claims; and

(b) whether CIBC has a duty to release the requested confidential information to the intended administratrix or executor in the absence of a grant of Letters of Administration or Probate.

ISSUES

[5] The issues in this matter can be more conveniently analyzed by first considering the bases for the respective claims to determine whether Mr Hinds and Mrs Bennett possess the necessary *locus standi* in these matters; and whether CIBC owes either of them a statutory duty of disclosure. These consideration are critical to assessing whether the claims should be struck out. The issues are:

I. Whether (a) Mrs Marjorie Bennett; or,
(b) Mr Stanley Hinds
possesses the legal capacity to initiate these respective claims?

II. Whether CIBC had at the material time, or has a statutory duty under section 32 (d)[iv] of the Banking Act or contractual duty to:
(a) grant Stanley Hinds access to the contents of the deceased Kendol Franklyn Hinds‟ safety deposit box; or disclose to Stanley Hinds details pertaining to the contents of the deceased‟s safety deposit box and unspecified financial

information relating generally to the deceased‟s financial affairs; or

(b) disclose to Marjorie Bennett unspecified financial information pertaining to the deceased Charles Michael Bennett‟s bank account and particulars of his insurance policy with Alico;

without production of Probate or Letters of Administration or written authorization from the deceased‟s personal representative?

III. Whether the claim brought by:

(a) Marjorie Bennett; or

(b) Stanley Hinds;

should be struck out?

IV. Whether:

(a) Marjorie Bennett; or

(b) Stanley Hinds;

should be appointed legal personal representative of the respective deceased‟s estate?

ANALYSIS

Issue No. I. Did Mrs Marjorie Bennett or Mr Stanley Hinds possess the legal capacity to initiate the respective claims?

Stanley Hinds

[6] Mr Stanley Hinds commenced the instant proceedings in his capacity as Executor (of the Will of Kendol Franklyn Hinds) by filing a fixed date claim form, pursuant to Parts 21 and 67 of the CPR. Part 21 deals with appointment of representative parties while Part 67 sets out the procedural framework for dealing with administration claims. Mr Hinds avers that his co-executor Mr Maurice King has consented to initiation of these proceedings.[v] He has not provided any written

authorization or confirmation from Mr King to this effect. He has however exhibited a copy of the subject Will,[vi] in which the testator appoints Maurice King and "Standly Hinds" as executors.[vii] Mr Stanley Hinds explains that his name is mis-spelled in the Will and that he is the "Standly Hinds" named in it.[viii] If Stanley Hinds and "Standly Hinds" are one and the same person, there is no dispute that he is one of the executors of Kendol Franklyn Hinds‟ Will. This assertion is not challenged by CIBC.

[7] It is trite law that an executor derives his title as executor from the testator‟s Will and not the grant of probate[ix] and that the testator‟s personal property vests in the executor at the testator‟s death.[x] An executor may be either original or by representation[xi] and he is regarded as the testator‟s legal personal representative in both cases.[xii] While the executor is entitled to commence legal proceedings before applying for probate, he is constrained from receiving judgment without extracting probate, because he cannot establish his title,[xiii] or give a valid discharge or receipt[xiv] without it. In practical terms, this formality protects the "executor" and a third party dealing with him, from claims by another "executor" appointed under a subsequent Will. The CPR authorizes an executor to file a claim for relief or for determination of any question[xv] pertaining to the administration of an estate. The court may also appoint persons to represent others who are interested in or affected by proceedings about a deceased person‟s estate.[xvi] There is therefore no legal impediment which precludes Mr Stanley Hinds from initiating this action for relief in connection with the administration of Mr Kendol Franklyn Hinds‟ estate. In fact, case law and the applicable provisions of the CPR establish that as executor, he is qualified to lodge this claim. He would however need to extract probate before receiving judgment unless an appropriate order is made under the CPR.[xvii] In the premises, I find that Mr Stanley Hinds had the necessary capacity to file the instant claim.

[8] Ms Camille Lakhram purports to bring this action as attorney on record for and on behalf of her mother, Marjorie Bennett. She has not produced the power of

attorney under which she purports to act. In any event, she brought this action by fixed date claim form pursuant to Parts 21 and 67 of the CPR. She asserts that Marjorie Bennett is Charles Michael Bennett‟s widow and she wishes to administer his estate. She claims that Mrs Bennett is hampered in initiating the administration process because the only assets owned by the deceased are the proceeds of a life insurance policy with ALICO and amounts (if any) held in a bank account at CIBC, and that she has no information as to the sums attributable to either. Her attorney‟s requests to CIBC for those details have been refused pending production of grant of Letters of Administration. Ms Lakhram deposes that an application for grant of Letters of Administration can be made only if the applicant provides details about the amounts held in those accounts.

[9] The title of "administratrix" vests in a person only after she has been granted Letters of Administration.[xviii] Likewise, a grant of Letters of Administration constitutes the grantee as the deceased‟s personal representative[xix] in relation to his real and personal property.[xx] A suit brought before such grant is obtained will be deemed a nullity unless the court makes an order authorizing the intended administratrix to lodge the claim.[xxi] While Ms Lakhram purports to initiate this claim pursuant to Part 67, only an executor, administrator or trustee may seek relief or the determination of any question without bringing an administration claim.[xxii] Mrs Bennett is not an executor, administrator or trustee and therefore cannot bring such a claim. Further, the factual matrix as pleaded excludes this claim from falling within the category of administration claims as it is neither a claim for administration of a deceased person‟s estate nor for the execution of a trust.[xxiii]

[10] The CPR empowers the court to appoint a representative to conduct proceedings on behalf of others who are interested in or affected by proceedings concerning a deceased‟s estate.[xxiv] No such order was made appointing Mrs Bennett to represent the deceased Charles Michael Bennett‟s estate. Consequently, when

the instant claim was filed, she did not have the necessary capacity to initiate the claim. I so find.

Issue No. 2 – Did CIBC commit a breach of statutory duty to Stanley Hinds or Mrs Marjorie Bennett by refusing to grant them or their legal practitioner access to requested information?

[11] Mr Stanley Hinds deposes that he has a key to a safety deposit box which his uncle, the late Kendol Franklyn Hinds rented from CIBC. He avers further that he went to CIBC in 2013[xxv], presented his national identification card, the deceased‟s Will and death certificate but was denied access to the safety deposit box. There is no indication that he provided CIBC with written authorization from himself and/or his co-executor or the beneficiaries of the deceased‟s estate. He deposes further that his attorney subsequently wrote[xxvi] to CIBC on his instructions seeking access to the safety deposit box, "so that the Will of the Deceased should be probated." CIBC responded[xxvii] to this letter indicating that access would be granted on presentation of a grant of probate. Mr Hinds contends that unless he is granted access to the safety deposit box, he would be unable to supply the statutorily prescribed list of the deceased‟s property which is a condition precedent to the grant of probate, because he does not know what the safety deposit box contains.[xxviii]

[12] On behalf of Mrs Marjorie Bennett, Mrs Lakhram attests that Charles Michael Bennett held a bank account with CIBC who also held a life insurance policy[xxix] "presumably as assignee" of the deceased.[xxx] She avers further that Mrs Bennett‟s legal practitioner on her instructions wrote to CIBC requesting information regarding the bank account and the insurance policy.[xxxi] The request specifically requested confirmation that the CIBC was holding the policy of insurance and a letter from CIBC "certifying the details" of the bank account and the current balance on it. CIBC responded[xxxii] indicating that its policy "dictates" that it deals only with a personal representative who presents the death certificate and the Letters of

Administration appointing her as Administratrix of the estate. They concluded that there are no exceptions to the policy and this is a safeguard in the event that there is a later will, codicil and/or testamentary disposition. Mrs Bennett"s legal practitioner again wrote to CIBC[xxxiii] to the effect that Mrs Bennett will be unable to apply for Letters of Administration unless she receives the requested information. CIBC once again refused to disclose the information requested.[xxxiv] Mrs Bennett claims that she is unable to apply for Letters of Administration unless CIBC provides her with the requested information.[xxxv]

[13] Mr Hinds and Mrs Bennett submit that as executor and intended applicant for grant of probate and letters of administration respectively, they may apply for grant in respect of a small estate, if the value of the respective deceased"s assets did not exceed two hundred and forty dollars.[xxxvi] In such a case, they would not be required to post a bond, value the estate, pay court or registration fees, stamp duties or estate and succession duties.[xxxvii] Alternatively, they explain that they may apply for grant in respect of a larger estate if the value is more.[xxxviii] This would require that they file accounts specifying all property in the deceased estate which attracts estate duty.[xxxix] They emphasize that these are statutory obligations[xl] which they cannot fulfill without being provided with the requested information from CIBC.[xli]

[14] Mr Hinds and Mrs Bennett submit respectively that CIBC has a statutory responsibility in the first case, to grant his legal practitioner access to the safety deposit box;[xlii] and in the second case to disclose the requested confidential information to her legal practitioner.[xliii] This duty they assert, flows from that of a *bona fide* legal personal representative to disclose financial information to the court when making an application for a grant of probate which creates a duty on the financial institution to disclose the information to a *bona fide* intended legal representative.[xliv] They argue that where that information can be obtained only from CIBC, CIBC must disclose the information in accordance with section 32 (d)

of the Banking Act.[xlv] Implicit in this submission is the notion that a legal personal representative‟s duty of disclosure to the Commissioner,[xlvi] is transferred to a financial institution who has relevant financial information regarding the estate. The further implication is that such financial institution owes a statutory duty to disclose that confidential information to the executor or intended administratrix before he/she can apply for the grant.

[15] The Banking Act[xlvii] prohibits servants and agents of financial institutions from disclosing confidential banking information about a customer or depositor, to anyone except in four circumstances. They may do so only:

(1) with the depositor or customer‟s written consent or with his/her heirs‟ or **legal personal representatives' written permission**;

(2) as required for the performance of his duties as the financial institution‟s employee or agent;

(3) pursuant to a court order; or

(4) **under the provisions of any law**.[xlviii] (bold mine for emphasis).

[16] Accordingly, CIBC would be in breach of its statutory duty under this provision to Mr Hinds or Mrs Bennett respectively, if it failed or refused to divulge the requested information:

(a) In the case of Stanley Hinds:- after being presented with written authorization to do so, from either the late Kendol Franklyn Hinds or his heirs or executor(s);

(b) In the case of Marjorie Bennett:- after being presented with written authorization to do so, from either the late Charles Michael Bennett or his heirs or administratrix;

and in both or either case if:-

(c) its servant or agent failed or refused to do so although such disclosure was necessarily required in the performance of his duties under the Banking Act;

(d) pursuant to a court order for such disclosure; or

(e) the disclosure was a requirement or duty imposed by any law.

[17] There is no evidence before the court which could conceivably lead to a conclusion that CIBC failed to obey a court order for disclosure or that its servants or agents failed or refused to so disclose in the performance of their duties. CIBC is accordingly not in breach of any statutory duty to either Stanley Hinds or Marjorie Bennett under section 32 (b) or (c) of the Banking Act and I so find.

[18] A determination regarding whether disclosure was imposed as a requirement or duty by any law, requires an examination of the applicable provisions of the Estate and Succession Duties Act,[xlix] the Administration of Estates Act and the Banking Act. The Administration of Estates Act outlines among other things, the statutory regime governing the powers of executors and administrators and the grant and revocation of probate and letters of administration. The Banking Act governs the regulation of licensed financial institutions including their duty of secrecy.

[19] The Estate and Succession Duties Act stipulates that an executor or intended administratrix who is applying for a grant of probate or letters of administration must provide details of all of the decedent‟s property which attracts estate duty.[l] That applicant must include particulars regarding the value of such property. Where he or she does not have that information, the Commissioner may defer the timeline for submitting those details until after probate or letters of administration is obtained.[li] Nowhere in the Estate and Succession Duties Act is provision made transferring to a financial institution the executor‟s or intended administratrix‟ duty of disclosure to the Commissioner, even where the financial institution has refused to disclose relevant information concerning the estate. No express provision is made in that Act mandating a bank to disclose a customer‟s or a depositor‟s confidential information, to an executor, an administratrix or his or her

lawyer for the purpose of facilitating the application for probate or letters of administration.

[20] Mr Hinds and Mrs Bennett contend that CIBC owes them a statutory duty under the Banking, the Administration of Estates and the Estate and Succession Duties Acts to divulge the requested information to them and their attorney, even before they apply respectively for a grant of probate or letters of administration.[lii] They also argue that the two Acts are in conflict as the former requires confidentiality while the latter non-disclosure. They submit further that where a taxing statute requires an applicant for probate or letters of administration to supply information in support of the grant, and the bank has that information, disclosure by the bank is a condition precedent to the grant of probate. They contend that under similar factual circumstances the CIBC Barbados branch released confidential information to Mr MaCauley Peters, co-executor of his late aunt‟s estate.[liii] While the response from the bank was exhibited to that affidavit, the letter which elicited that response was not exhibited nor was the Barbados law provided. In any event, what obtains in Barbados without more is not applicable in the instant matters.

[21] Mr Hinds and Mrs Bennett also contend that CIBC‟s reliance on the statutory prohibition[liv] against disclosure of confidential information, to deny them access to the safety deposit box is:

(1) misplaced as it rests on an interpretation which creates an absurdity;[lv]

(2) contrary to the established presumptions against-

(a) absurdity,[lvi]

(b) unworkable and impracticable result,[lvii]

(c) inconvenient result,[lviii]

(d) anomalous or illogical result,[lix] or

(e) futile or pointless result,[lx]

in statutory interpretation.

[22] CIBC counters that those presumptions are not applicable to the instant cases as there is no consistency or anomaly in the impugned provisions of the Banking Act, Administration of Estates Act or the Estate and Succession Duties Act.[lxi] CIBC maintains that it is authorized to grant disclosure to Mr Hinds and Mrs Bennett only if the respective heirs or legal personal representatives of Kendol Franklyn Hinds and Charles Michael Bennett give written permission. In this regard, they submit that a request from the executor"s and intended administratrix" lawyer would not suffice.[lxii] CIBC submits further that there is no law under which the requested information can be divulged in either case.[lxiii]

[23] It has long been accepted that when the court interprets any statute, it is pursuing its constitutional role "to seek to interpret that law „according to the intent of them that made it".[lxiv] In doing so, it must be careful to ensure that it does not usurp the function of Parliament by creating legislation.[lxv] In this regard, the court employs the definitions provided in the statute under consideration and in the Interpretation Act,[lxvi] established rules of statutory interpretation including presumptions and internal and external aids.[lxvii] Some of the presumptions which the court would take into account when interpreting legislation which appears to create an absurdity have been referenced by Mr Hinds and Mrs Bennett.

[24] The first rule of statutory interpretation[lxviii] requires the court to give effect to the natural and ordinary dictionary meaning of the words used.[lxix] Where the words used in the legislation are clear and unambiguous the courts must give effect to them.[lxx] If application of the literal rule would lead to an absurdity, the courts may apply the golden rule of interpretation by giving the words a secondary meaning[lxxi] in order to "eliminate the error by interpretation".[lxxii] However, "mere „manifest absurdity" is not enough: It must be an error (of commission or omission) **which in its context** defeats the intention of the Act."[lxxiii] (bold mine).

[25] The Banking Act[lxxiv] is a uniform piece of legislation enacted by all countries within the Eastern Caribbean Currency Union ("ECCU"). It seeks to provide for the regulation of the domestic commercial banking business specifically and for matters connected with or incidental to that general purpose.[lxxv] Section 32 codifies the common law concept of confidentiality between a bank and its customers and captures two of the common law exceptions for deviation from this contractual duty of confidentiality.

[26] The UK Court of Appeal in the landmark case of **Tournier v National Provincial and Union Bank of England**[lxxvi] identified those common law exceptions and held that the bank‟s contract with its client contained an implied confidentiality term which if breached could result in the bank being held liable to the client in damages if loss flowed from that breach. It held further that a bank is not bound to protect its client‟s confidential information where it is compelled by:

(1) law;
(2) public duty,
(3) it‟s own interest; or
(4) the client‟s express or implied consent;

to disclose that information. It is worth noting that before the Banking Act was operational, those common law principles governed disclosure of confidential information by licensed financial institutions. The common law position has been replaced by the Banking Act which has retained two of those common law exceptions: client‟s consent and obligation imposed by law. The common law is accordingly not applicable to the instant cases. It is against this background and taking into account the principles of statutory interpretation outlined above, that the instant cases will be considered and determined.

[27] Mr Hinds and Mrs Bennett have not identified which provisions of the Administration of Estates Act they consider to be an absurdity. The court will not speculate about this. Their contention that section 32 (d) of the Banking Act and

section 25 of the Estate and Succession Duties Act create absurdities necessitates an examination of the words in those provisions. The impugned provisions provide respectively:

> "*32. No person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any financial institution, … shall disclose to any person … the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution except-*
>
> *(a) with the written authorization of the depositor or customer, or of his heirs or legal personal representatives;*
>
> *(b) …;*
>
> *(c) …; or*
>
> *(d) under the provisions of any law of Saint Vincent and the Grenadines or agreement among the Participating Governments, …". (Banking Act)*
>
> "*25 (1) Every person applying to the Court for a grant of probate or letters of administration, … shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the estate duty affidavit to be delivered to the Commissioner … all the property in respect of which estate duty is payable upon the death of the deceased.*
>
> *(2) The estate duty affidavit shall extend to the verification of the accounts annexed thereto…*
>
> *(3) The accounts annexed to the estate duty affidavit shall include all income accrued or accruing upon the property included therein down to any outstanding at the date of the death of the deceased.*" (*Estate and Succession Duties Act)*

[28] Section 32 of the Banking Act on a literal application achieves two objectives. It imposes a statutory duty of confidentiality on a bank licensed under the Banking Act, its servants and agents towards its clients. It also authorizes the release of confidential information in four limited circumstances as described in paragraph 15 of this decision. The duty of confidentiality created by this provision is in addition to any express or implied contractual duty embodied in the bank/customer agreement

between the parties. When the normal dictionary meanings are applied to the words in section 32, no injustice results and no ambiguity or anomalies are created. The words of the Act are clear and require no further analysis or elucidation. I find therefore that they do not create any absurdity and must be construed without application of the presumptions referenced by Mr Hinds and Mrs Bennett.

[29] Section 25 of the Estate and Succession Duties Act is a taxing provision aimed at ensuring that estate and succession duties are calculated and applied to property which passes to heirs and devisees. In this regard, a legal personal representative is obliged to provide all relevant details of subject properties to the Commissioner before probate is processed and extracted. Estate duties payable under that Act are declared to be a first charge on all of the decedent‟s property and[lxxvii] are payable within 6 months of the death.[lxxviii] This section makes no reference to disclosure of confidential information by a bank to the Commissioner, an executor, administratrix or his/her lawyer or to anyone else. It seeks for the purpose of taxation, solely to obtain a full and proper accounting from the person applying for grant of probate or letters of administration. It is clear that the duty to account is the executor‟s or administratrix‟ and not a third party such as a bank. It is also obvious that it does not impose a duty on a bank or other third party to disclose confidential information to an executor or intended administratrix without more.

[30] The facts on which Mr Hinds relies, point almost definitively to the existence of some tangible property of either economic or sentimental value being in the safety deposit box. The key was allegedly delivered to the deceased‟s sister. It does not appear that the decedent gave her any indication about its contents, but in my opinion, it would not be presumptuous or speculative to conclude that he trusted his sister and nephew with the key to the safety deposit box and its contents. If it contained nothing, why continue to retain the box? Logic and reasoning suggest very strongly that the testator for good reason, intended Mr Hinds to have the key

to access the safety deposit box at some point in the future. The fact that he was appointed executor under the will creates the reasonable inference that the testator‟s arrangement for him to have access to the safety deposit box was somehow connected to his future role as executor.

[31] Likewise, Mrs Bennett has been informed by CIBC that her late husband maintained a savings account with it and that it holds a life insurance policy in his name. Mrs Bennett claims to have no details about either. It is a notorious fact that banks including CIBC invariably require their clients to maintain a minimum balance in any savings account. The court takes judicial notice of this fact. In addition, an insurance company that has issued a life insurance policy, is obliged to notify the Commissioner as soon as it has been advised of the insured‟s demise.[lxxix] The insurer must provide the Commissioner with full particulars of the policy and is prohibited from paying any policy monies to anyone unless the Commissioner certifies that estate or succession duties chargeable and payable have been satisfied. These facts suggest that the deceased‟s savings account has at least the minimum balance and also that CIBC did not realize the proceeds of the life insurance policy. The insurer‟s duty of disclosure to he Commissioner creates a clear statutory process through which he will be able to ascertain all relevant details regarding the life insurance policy for purposes of calculating estate and/or succession duties.

[32] In any event, the court is not required to determine whether the safety deposit box contains anything, whether the savings account has a balance or how much or whether the insurance policy was redeemed. The court is only concerned with deciding whether CIBC owed Mr Hinds or Mrs Bennett a duty of disclosure. Mr Hinds‟ and Mrs Bennett‟s contention that section 25[lxxx] imposes a mandatory duty on the bank to disclose confidential financial information to them or their lawyer[lxxxi] is not supported by either the letter or spirit of the impugned provision. In fact, it is readily discernible that the law-makers recognized that an executor or

administratrix may not have all required information when applying for probate or letters of administration. Parliament accordingly made allowance in such cases for the Commissioner to defer the deadline for submission of those particulars until after probate is granted.[lxxxii] While section 20[lxxxiii] speaks expressly about property which the executor[lxxxiv] knows to "exist", it would not be straining the meaning to extend it to cover property which the executor has good reason to believe exists as is apparent in both cases.

[33] Based on a literal interpretation of section 25 of the Estate and Succession Duties Act and section 32 (d) of the Banking Act, I find that no absurdity arises under either provision, nor do they conflict with each other. There is no need to apply the presumptions as contended by Mr Hinds and Mrs Bennett. Agreement with those submissions would by extension lead to the necessary conclusion that a bank is required to disclose confidential information not only to an original executor and administratrix but also to any person purporting to be their agent and to any of the categories of persons entitled to share in a deceased"s estate on intestacy without producing the grant of letters of administration. This is wholly untenable. I conclude therefore that disclosure by CIBC of the confidential information is not a condition precedent to either Mr Hinds" or Mrs Bennett"s respective application for probate and letters of administration. I hold that CIBC did and does not owe Mr Hinds or his legal representative a duty of disclosure under section 32 (d) of the Banking Act and/or section 25 of the Estate and Succession Duties Act and/or the Administration of Estates Act. I hold also that CIBC did and does not owe Mrs Bennett or her lawyer a duty of disclosure under section 32 (d) of the Banking Act and/or section 25 of the Estate and Succession Duties Act and/or the Administration of Estates Act.

Disclosure under section 32 (a)

[34] Neither Mr Hinds nor Mrs Bennett sought to rely on section 32 (a) of the Banking Act in their submissions or affidavits. CIBC raised this issue and it is considered for the sake of completeness and to enable resolution of CIBC‟s application to strike out. If either Mr Hinds or Mrs Bennett qualify as “heir” or “legal personal representative”, CIBC would owe him or her a duty of disclosure under section 32 (a) of the Banking Act on receipt of the appropriate written authorization. An original executor or an executor by representation falls within the definition of legal personal representative.[lxxxv] Mr Hinds having not extracted probate is an original executor. It follows therefore that CIBC would owe a duty of disclosure to give him access to the safety deposit box if as original executor he submits written authorization for such access.

[35] Based on Mr Hinds‟ assertions, no such written authorization was given by him when he made his personal request in 2013 or when his legal practitioner wrote on his behalf in 2014. A letter from his lawyer does not fall within the clear and unambiguous words of paragraph (a) of section 32. Mr Hinds made no request at any time for disclosure of other undefined financial information to which he now seeks access by order of the court. In view of these undisputed facts, CIBC owed him no duty of disclosure under section 32 (a) of the Banking Act.

[36] It appears that Mrs Bennett‟s late husband did not make a will. She is neither an executor nor an administratrix and therefore does not fit within the definition of personal representative. She is however the wife of the deceased and is accordingly entitled, as one of his heirs, to share in his estate.[lxxxvi] As an heir, Mrs Bennett would be entitled to obtain disclosure of her late husband‟s confidential information from CIBC under section 32 (a). She simply had to provide written authorization for them to release the information. She did not do so. Her attorney‟s

letter does not constitute such written authorization. Therefore, CIBC did not owe her a duty of disclosure under section 32 (a) of the Banking Act.

Issue No. 3 - Should the claim brought by Stanley Hinds and/or Marjorie Bennett should be struck out?

[37] CIBC has applied[lxxxvii] for the claims of Stanley Hinds and Marjorie Bennett to be struck out on the ground that they amount to an abuse of the court‟s process. CIBC contends that: [lxxxviii]

(a) neither claim comes within the ambit of section 32 (a) of the Banking Act;

(b) no grant of probate or letters of administration have been extracted in the respective estates; and

(c) Mr Hinds and Mrs Bennett have no *locus standi* to institute these proceedings.

[38] CIBC argues that a letter from the solicitor for the intended personal representative is insufficient.[lxxxix] The bank maintains that it has a legal duty to keep secret, information divulged by its customers.[xc] CIBC submits further that Mrs Bennett is not the legal personal representative of her late husband‟s estate.[xci] CIBC contends also that the claims are misconceived because Mr Hinds and Mrs Bennett have not satisfied the statutory requirement to produce written authorization from the heirs or legal representative for disclosure. The Affidavits in support of the Applications repeat these statements. The claimants Stanley Hinds and Marjorie Bennett did not rebut these submissions other than through presentation of their respective claims.

[39] The court may strike out a party‟s statement of case if it does not disclose any reasonable ground for bringing the claim or if it is an abuse of the process of the court.[xcii] The court exercises this power sparingly and only in the most obvious cases where it is clear that the claim has no chance of success.[xciii] Having already

examined the central issue in this case, it is beyond doubt that based on the undisputed facts there is no legal or factual basis on which Mr Hinds and Mrs Bennett could conceivably succeed in their claims against CIBC. In those circumstances, I have no choice but to find that the statements of case in both matters disclose no reasonable ground for bringing the actions and must be struck out. I accordingly order that Mr Stanley Hinds‟ claim against CIBC be struck out. I also order that Mrs Marjorie Bennett‟s claim against CIBC be struck out. This determination renders consideration of the fourth issue unnecessary.

ORDER

[40] It is accordingly ordered that:

1. Claim SVGHCV2014/0243 is hereby struck out and the claimant Marjorie Bennett shall pay CIBC First Caribbean International Bank agreed costs of $5000.00.

2. Claim SVGHCV2014/0244 is hereby struck out and the claimant Stanley Hinds shall pay CIBC First Caribbean International Bank agreed costs of $5000.00.

……

Esco L. Henry

HIGH COURT JUDGE (Ag.)

[i] i.e. Mrs Marjorie Bennett.

[ii] Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines 2009.

[iii] Cap. 490 of the Revised Laws of Saint Vincent and the Grenadines 2009.

[iv] Both parties referred throughout their pleadings and submissions to section 31 of the Banking Act Cap. 87 of the Revised Laws of Saint Vincent and the Grenadines 2009; the provisions however are contained in section 32. This inaccuracy has been noted and is replaced by the relevant section in this decision.

[v] See paragraph 1 of Stanley Hinds" affidavit filed on 29/12/2014.

[vi] Ibid. at paragraph 1, exhibited as "**S.H.1**".

[vii] See clause 1 of Will exhibited as "**S.H.1**".

[viii] Supra. Paragraph 3 of Stanley Hinds" affidavit filed on 29/12/2014.

[ix] **Tristam and Cootes Probate Practice,Thirtieth Edition, para. 4.01** which states:

> "An executor derives his title and authority from the will of his testator and not from any grant of probate. The property of the deceased, including any right of action, vests in him on his testator"s death, and he can institute an action, as executor, before he proves the will."

[x] Ibid. at para. 4.01 which states:

> "He cannot obtain a judgment before probate, not because his title depends on probate, but because production of the probate is the only way that he is allowed to prove his title."

See also **Pryse's case [1904] P. 301**

[xi] See section 2 (1) of the Administration of Estates Act which defines "representation":

> ""representation" means the probate of a will and administration; and „taking out administration" refers to the obtaining of the probate of a will or of the grant of administration."

[xii] See section 2 (1) of the Administration of Estates Act which defines "personal representative" as follows:

> ""personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person,…".

[xiii] **Meyappa Chetty v. Supramanian Chetty [1916] 1 A.C. 603 at 608**; and **Ingall v. Moran [1944] 1 All E.R. 97.**

[xiv] **Tarn v. Commercial Banking Co. (1884) 12 Q.B.D. 294**. See also **Pryse's case** supra.

[xv] Rules 67.2 (1)(a) and 67.4 (1) and (2) (a) provide:

> "67.2 (1) An administration claim or a claim under rule 67.4 may be brought by any-
> (a) executor or administrator of the relevant estate.

67.4 (1) An executor, administrator or trustee may issue a claim for –

(a) any relief; or

(b) the determination of any question;

without bringing an administration claim.

(2) The **"determination of any question"** includes any question –

(a) arising in the administration of the estate of a deceased person;"

[xvi] CPR 21.4 provides:

"21.4 (1) This rule applies only to proceedings about-

(a) the construction of a written instrument;

(b) the estate of someone who is deceased;

(c) …

(2) The court may appoint one or more persons to represent any person or class of persons … who is or may be interested in or affected by the proceedings … where-

(a) the person, or the class or some member of it, cannot be ascertained or cannot be readily ascertained;

(b) the person … cannot be found; or

(c) it is expedient to do so for any other reason.

(3) An application for an order to appoint a representative party under this rule may be made by any-

(a) party; or

(b) person who wishes to be appointed as a representative party.

(4) A representative appointed under this rule may be either a claimant or a defendant.

(5) A decision of the court binds everyone whom a representative claimant or representative defendant represents."

[xvii] Ibid at Part 21.4 (5).

[xviii] Supra. **Ingall v. Moran at page 172, Per Goddard L.J.** where he said: "Once letters have been obtained, the title relates back so that the administrator may sue in respect of matters which have arisen between the date of death and the date of the grant."

[xix] See section 2 (1) of the Administration of Estates Act Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines which defines "administrator" thus:

""administrator" means a person to whom administration is granted."

[xx] Ibid. at section 4 (3) which provides: "The personal representatives shall be the representatives of the deceased in regard to his real estate … as well as in regard to his personal estate."

[xxi] See **Finnegan v. Cementation Co. [1953] 1 Q.B. 688**. See also CPR Part 21.4 (2). CPR 21.4 provides:

> "21.4 (1) This rule applies only to proceedings about-
> (a) the construction of a written instrument;
> (b) the estate of someone who is deceased;
> (c) …
>
> (2) The court may appoint one or more persons to represent any person or class of persons … who is or may be interested in or affected by the proceedings … where-
> (a) the person, or the class or some member of it, cannot be ascertained or cannot be readily ascertained;
> (b) the person … cannot be found; or
> (c) it is expedient to do so for any other reason.
>
> (3) An application for an order to appoint a representative party under this rule may be made by any-
> (a) party; or
> (b) person who wishes to be appointed as a representative party.
>
> (4) A representative appointed under this rule may be either a claimant or a defendant.
>
> (5) A decision of the court binds everyone whom a representative claimant or representative defendant represents."

[xxii] See CPR Part 67.4 (1) which states:

> "67.4 (1) An executor, administrator or trustee may issue a claim for –
> (a) any relief; or
> (b) the determination of any question;
> without bringing an administration claim."

[xxiii] See CPR Part 67.1 (3) which defines "administration claim""

> "67.1 (3) In this Part-
> **"administration claims"** mean claims for-
> (a) the administration of the estate of a deceased person; and
> (b) the execution of a trust under the direction of the court."

[xxiv] Ibid. at CPR 21.4 (1) (b), (2) (c), (3) (b), (4) & (5).

[xxv] In the month of January. See paragraph 9 of his affidavit filed on December 29, 2014.

[xxvi] By letter dated October 24, 2013. Ibid. at paragraph 10 of Hinds" affidavit.

[xxvii] By letter dated December 3, 2013. Ibid. see letter exhibited as "**S.H. 4**" to paragraph 11 of Hinds" affidavit.

[xxviii] Ibid. See paragraph 12 of Hinds" affidavit.

[xxix] Policy number 359514 with ALICO.

[xxx] See paragraph 5 of the Affidavit of Camille Lakhram filed on 29/12/14.

[xxxi] Ibid. At paragraph 9; letter to CIBC dated 23 January, 2012 exhibited as "C.L.4".

[xxxii]Ibid. At paragraph 10; letter dated 14 February, 2012 exhibited as "C.L.5".

[xxxiii] Ibid. at paragraph 11; letter dated 23 February, 2012 exhibited as "C.L.6".

[xxxiv] Ibid. at paragraph 12; letter dated 27 February, 2012 exhibited as "C.L.7".

[xxxv] Ibid. at paragraph 13.

[xxxvi] Supra. at para. 2 of Claimants" Submissions.

[xxxvii] Ibid at para. 3.

[xxxviii] Ibid. at para. 8.

[xxxix] Ibid. at paras. 8 and 9.

[xl] Pursuant the Administration of Estates Act and section 25 of the Estates and Succession Duties Act.

[xli] Supra. at para. 9 of Claimants" submissions.

[xlii] See paragraph 15 of the Claimant Hinds" submissions filed on February 12, 2015.

[xliii] See paragraph 15 of the Claimant Bennett"s submissions filed on February 12, 2015.

[xliv] See paragraphs 4 and 6 of the Claimants" Submissions in Reply filed on February 23, 2015.

[xlv] Ibid.

[xlvi] When applying for a grant of probate or letters of administration.

[xlvii] Section 32, which states:

> "32. No person who has acquired knowledge in his capacity as director, manager,
>
> secretary, officer, employee or agent of any financial institution, … shall disclose to any person … the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution except-
>
> (a) with the written authorization of the depositor or customer, or of his heirs or legal personal representatives;
>
> (b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act;
>
> (c) when lawfully required to make disclosure by any court of competent jurisdiction…; or

(d) under the provisions of any law of Saint Vincent and the Grenadines or agreement

among the Participating Governments …".

[xlviii] Or agreement among participating ECCU member countries.

[xlix] Supra.

[l] Section 25 (1), (2) & (3) which provide:

"25 (1) Every person applying to the Court for a grant of probate or letters of administration, … shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the estate duty affidavit to be delivered to the Commissioner … all the property in respect of which estate duty is payable upon the death of the deceased.

(2) The estate duty affidavit shall extend to the verification of the accounts annexed thereto…

(3) The accounts annexed to the estate duty affidavit shall include all income accrued or accruing upon the property included therein down to any outstanding at the date of the death of the deceased."

[li] See section 20 of the Estate and Succession Duties Act which states:

"20 (2) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the estate duty affidavit that such property exists but that he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable in respect of the other property mentioned in the affidavit."

[lii] Supra. At paras. 3 and 4 of Claimants" Submissions in Reply.

[liii] See paras. 2, 3, 4 and 5 of Affidavit of MaCaulay St. C. Peters filed on February 24, 2015.

[liv] Contained in section 32 of the Banking Act.

[lv] Ibid. At paragraphs 13, 14 and 15 of the claimants" written submissions and paragraphs 6 and 7 of the claimants" written submissions in reply.

[lvi] Ibid. At paragraphs 13 and 14 of the written submissions and paragraphs 6 and 7 of the written submissions in reply.See also Halsbury"s Laws of England, Fourth Edition, (1995) Vol. 44 (1), para. 1477 which states:

"**1477. Nature of Presumption against absurdity**. It is presumed that Parliament intends that the court, when considering in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a

construction which produces an absurd result, since this is unlikely to have been intended by Parliament. Here „absurd" means contrary to sense and reason, so in this context the term „absurd" is used to include a result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of disproportionate counter-mischief."

[lvii] Ibid. At paragraphs 13 and 14 written submissions and paragraphs 6 and 7 of the written submissions in reply. Also at para.1478 Halsbury's Laws of England which states:

"**1478. Presumption against unworkable or impracticable result**. It is presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing construction of an enactment corresponds to its legal meaning, should find against a construction which produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament."

[lviii] Ibid. At paragraphs 13 and 14 written submissions and paragraphs 6 and 7 written submissions in reply. Also at para.1479 Halsbury's Laws of England which states:

"**1479. Presumption against inconvenient result**. It is presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction that causes unjustifiable inconvenience to persons who are subject to the enactment, since such inconvenience is unlikely to have been intended by Parliament. The presumption against inconvenience will in particular be applied to avoid unnecessary technicality, business inconvenience, inconvenience to taxpayers or inconvenience in legal proceedings. Where each of the constructions contended for involve some measure of inconvenience then, in so far as the court uses inconvenience as a test, it has to balance the effect of each construction and determine which inconvenience is greater."

[lix] Ibid. At paragraphs 13 and 14 of the written submissions and paragraphs 6 and 7 of the written submissions in reply. Also at para.1480 Halsbury's Laws of England which states:

"**1480. Presumption against anomalous or illogical result**. It is presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction that creates an anomaly or otherwise produces an irrational or illogical result. The presumption may be applicable where on one construction a benefit is not available in like cases, or a detriment is not imposed in like cases, or the decision would turn on an immaterial distinction or an anomaly would be created in legal doctrine. Where each of the constructions contended for involves some anomaly then, in so far as the courts uses anomaly as a test, it has to balance the effect of each construction and determine which anomaly is greater. It may be possible to avoid the anomaly by the exercise of a discretion. It may be, however that the anomaly is clearly intended, when effect must be given to the intention. Te court will pay little attention to a proclaimed anomaly if it is purely hypothetical, and unlikely to arise in practice."

[lx] Ibid. At paragraphs 13 and 14 of the written submissions and paragraphs 6 and 7 of the written submissions in reply. Also at para.1481 Halsbury"s Laws of England which states:

> "**1481. Presumption against futile or pointless result**. It is presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction that produces a futile or pointless result, since this is unlikely to have been intended by Parliament. A construction may be futile because it imposes an unnecessary legal duty, duplicates an existing legal duty, imposes a detriment that is easily avoidable or requires or allows pointless legal proceedings."

[lxi] See para. 10 of Defendant Hinds" and para. 9 of Defendant Bennett"s Response to Claimant"s Submissions in Reply both filed on February 24, 2015.

[lxii] See Grounds 2, 4 and 5 of the Notice of Application filed by CIBC on February 17, 2015.

[lxiii] See paragraph 7 of the Defendant"s Response to Claimant"s submissions in Reply filed on February 24, 2015.

[lxiv] Per Viscount Dilhorne in **Stock v Frank Jones (Tipton) Ltd. [1978] 1 WLR 231 HL.** See also the pronouncement of Lord Nicholls of Birkenhead in **R v Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd. [2001] 2 AC 349** where he said:

> "The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the „intention of Parliament" is an objective concept, not subjective."

[lxv] See **Inco Europe Ltd. and Others v First Choice Distribution (a firm) and Others [2001] 1 WLR 586** per Lord Nichols of Birkenstead where he stated:

> "The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation."

See also **Attorney General's Reference SLUHCVAP2012/0018** in which this case was considered and applied.

[lxvi] Cap. 14 of the revised Laws of Saint Vincent and the Grenadines.

[lxvii] Supra. Per Lord Nicholls of Birkenhead in **R v Secretary of State ex Parte Spath**. He said *inter alia*:

> "The principles of interpretation include … certain presumptions. …Additionally, the courts employ other recognized aids. They may be internal aids. Other provisions in the same statute may shed light on the meaning of the words under consideration. Or the aids may be external to the statute, such as its background setting and its legislative history. This extraneous materials includes … a statute"s legislative antecedents. To the extent that extraneous material assists in identifying the purpose of the legislation, it is a useful tool."

[lxviii] Known as "the Literal Rule".

[lxix] See **Whitely and Chapel (1868) LR 4 QB 147** and **Fisher and Bell [1961] 1 QB 394**.

[lxx] Supra. Per Lord Nicholls of Birkenhead in **R v Secretary of State ex Parte Spath**, where he explained it thus:

> "If the meaning of those words is clear and unambiguous and does not lead to a result that is manifestly absurd or unreasonable, it would be a confidence trick by Parliament and destructive of all legal certainty if the private citizen could not rely upon that meaning but was required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything found from which it could be inferred that Parliament"s real intention had not been accurately expressed by the actual words that Parliament had adopted to communicate it to those affected by the legislation."

[lxxi] See **River Wear Commissioners v. Adamson (1876-77) L.R. 2 App. Cas 743** and **Adler v George [1964] 2 QB 7**. See also Ibid. **Whitely v Chapel (Ibid.)** at page 239 per Lord Scarman where he said:

> "If the words used by Parliament are plain, there is no room for the „anomalies" test unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words „have been inadvertently used," it is legitimate for the court to substitute what is apt to avoid the intention of the legislature being defeated. Per MacKinnon L.J. in **Sutherland Publishing Co. Ltd. v Caxton Publishing Co. Ltd. [1938] Ch. 174, 201**. Considered and applied in **Attorney General's Reference**, Ibid.

[lxxii] Ibid.

[l] Ibid.

[lxxiv] Supra.

[lxxv] See head note to the Act.

[lxxvi] [1924] 1 KB 461

[lxxvii] Ibid. At section 19.

[lxxviii] Ibid. At section 23.

[lxxix] Ibid. at section 42 (2) of the Estate and Succession Duties Act.

[lxxx] Of the Estate and Succession Duties Act.

[lxxxi] By implication and cross-reference to section 32(d) of the Banking Act and application to the facts of this case.

[lxxxii]Supra. at section 20 of the Estate and Succession Duties Act.

[lxxxiii] Of the Estate and Succession Duties Act.

[lxxxiv] The term "executor" includes "administrator". Section 2 of the Act defines executor as follows:

> ""executor" means the executor or administrator of deceased person."

[lxxxv] Supra. At section 2 (1) of Administration of Estates Act.

[lxxxvi] See section 62 (b) of the Administration of Estates Act which provides:

" 62. Succession to estate on intestacy

"The following persons shall be beneficially entitled to the estate of an intestate … in the manner following, namely-

(a) …

(b) If the intestate leaves a husband or wife and issue, the surviving husband or wife shall be entitled to one-third thereof and the issue shall take the other two-thirds in equal shares;"

[lxxxvii] By Notices of Application filed on February 17, 2015, supported by Affidavit of Shantel Cruikshank filed on the same date.

[lxxxviii] Ibid. See grounds 1), 2), 3) and 8) in the Notices of Application.

[lxxxix] Ibid. at ground 2).

[xc] Ibid. at ground 6).

[xci] See para. [12] of Defendant's Submissions on Striking out Application filed on February 23, 2015.

[xcii] Civil Procedure Rules 2000, Part 26. 3 (1) (b) and (c) which provide:

"26.3(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that-

(b)The statement of case or the part to be struck out does not disclose any reasonable grounds for bringing or defending a claim;

(c) The statement of case or the part to be struck out is an abuse of the process of the court…".

[xciii] **Julian Prevost v. Rayburn Blackmore et al DOMHCV2005/0177**.