IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No BBCV2022/001
BB Civil Appeal No 1 of 2020

BETWEEN

OO **APPELLANT**

AND

BK
THE ATTORNEY GENERAL OF BARBADOS **RESPONDENTS**

AND

OPERATION SAFE SPACE MOVEMENT FOR CHANGE (OSS) IN ASSOCIATION WITH INTERNATIONAL CENTER FOR ADVOCATES AGAINST DISCRIMINATION (ICAAD) INC

UN WOMEN, MULTI COUNTRY OFFICE – CARIBBEAN **AMICI CURIAE**

Before: **Mr Justice Saunders, President**
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Jamadar

Date of Reasons: **28 July 2023**

Appearances

Mr Lalu Hanuman for the Appellant

Ms Anika N Jackson and Mr Jared K Richards for the Second Respondent

Ms Anya A A Lorde for Operation Safe Space Movement for Change Inc (OSS), Amicus Curiae

Ms Leah Thompson for UN Women, Multi Country Office – Caribbean, Amicus Curiae

Statute – Interpretation – Meaning of 'former spouse' – Cohabitational relationship – Domestic relationship – Visiting relationship – Application for protection order – Application denied – Magistrate held that appellant was not a former spouse – Magistrate's decision upheld by Court of Appeal – Whether appellant entitled to seek protection under Domestic Violence (Protection Orders) Act – Whether Magistrate correct to rely on opinion of appellant on issue of law – Domestic Violence (Protection Orders) Act, Cap 130A, ss 2, 4.

SUMMARY

Shortly after the hearing of this appeal, this Court gave judgment in favour of the appellant, allowing her appeal and reversing the decision of the Court of Appeal which upheld a Magistrate's dismissal of her application for a protection order. The Court now delivers its Reasons for Decision.

The appellant and first respondent were in a relationship for three years. During that time, they lived together for 21 months and had a son. In November 2019, the relationship ended. In February 2020, their relationship resumed in the form of a visiting intimate relationship, which continued until the end of May 2020. After a violent incident involving the first respondent, the appellant sought a protection order at the Magistrates Court for her and her minor son against the first respondent. At the hearing, the Magistrate focused on whether the appellant had the status of a 'former spouse', this being one of the named categories in the Domestic Violence (Protection Orders) Act, Cap 130A, as amended by Act 2 of 2016 ('the amended Act') which entitled an applicant to obtain an order. The Magistrate explained the meaning of 'cohabitational relationship, 'domestic relationship', 'spouse' and 'visiting relationship' to the appellant. The appellant, in response, informed the Magistrate that she was neither a former spouse nor was she currently in any type of relationship with the first respondent. At that time, she did not reside with the first respondent nor was she in an intimate or sexual relationship with him.

After examining s 2(b) and s 4(1) of the amended Act, the Magistrate concluded that the appellant was not a 'spouse', 'former spouse', or person in a domestic or cohabitational or visiting relationship. The Magistrate reasoned that in light of that circumstance, the

legislation did not apply to the appellant and the Magistrate lacked jurisdiction. The appellant's application for a protection order was therefore dismissed.

The appellant appealed and the majority of the Court of Appeal held that the Magistrate was entitled to decline jurisdiction because, based on the appellant's responses to the Magistrate, she had, by her own words, taken herself out of any of the classes of persons entitled to protection under the amended Act. Further, the Court of Appeal found it difficult to comprehend how a former intimate partner could be eligible to apply for a protection order. The third member of the Court of Appeal disagreed and would have upheld the appellant's appeal.

The appellant appealed to this Court, challenging the majority judgment of the Court of Appeal. She sought a ruling that the phrase 'former spouse' as used in the amended Act was not time limited. To assist in the appeal, the Court decided that it would be prudent to add the Attorney General of Barbados as a respondent. The Court also issued an invitation to interested bodies with significant information to file an application to assist the Court as amici curiae. Two organisations responded to the Court's invitation and applied to assist the Court: Operation Safe Space Movement for Change Inc (OSS) in association with International Center for Advocates Against Discrimination Inc (ICAAD) and the UN Women Multi Country Office – Caribbean. Permission was granted for both organisations to assist the Court.

In the lead judgment of the Court, Rajnauth-Lee J examined the statutory framework for domestic violence legislation in Barbados, noting the aim of the amendment in 2016, which was to define domestic violence and to make greater provision for the safety of victims of domestic violence and the accountability of perpetrators of such violence. As part of the amendment, definitions for 'cohabitational relationship', 'domestic relationship', and 'visiting relationship' were included in the legislation and the definition of 'spouse' was amended to 'a party to a marriage or cohabitational relationship', explicitly recognising those in cohabitational relationships as 'spouses'. Referring extensively to the submissions of the amici, Rajnauth-Lee J additionally examined the prevalence of domestic violence, in particular, post-separation violence in Barbados, the Caribbean and internationally and the

historical evolution of the domestic violence legislation in the Caribbean and its impact on Barbados' legislation.

With respect to whether the appellant was entitled to seek protection under the amended Act, Rajnauth-Lee J, using the natural and ordinary meaning approach, held that the appellant was a 'former spouse' within the meaning of the amended Act and was therefore entitled to seek a protection order by virtue of ss 2 and 4(1) of the amended Act. Rajnauth-Lee J stated that to impose a time limit on an applicant's capacity or status to make an application for a protection order after the breakdown of a cohabitational relationship, would run counter to the clear purpose and policy objectives of the amended Act. Additionally, to construe 'former spouse' as limited by time without any specific provision to that effect contained in the legislation would give rise to an absurdity. Legislation should be interpreted not only to achieve the objectives of the legislation and the intention of Parliament but to achieve alignment with (1) fundamental human rights and core constitutional values and principles contained in Commonwealth Caribbean Constitutions, and (2) international treaty obligations and commitments of these States. When interpreting the amended Act in light of Barbados' constitutional values and international obligations, a conclusion that the appellant was not a 'former spouse' within s 2 of the amended Act was wholly incorrect.

As to the issue of whether the Magistrate was correct to rely on the appellant's opinion on an issue of law, Rajnauth-Lee J held that the Magistrate and the Court of Appeal did not appreciate that the issue before the Magistrate was a matter of statutory interpretation as it related to the status of the appellant to apply for a protection order. It was therefore a question of law, and not one that could be determined by the opinion of the appellant. It was for the appellant to state the facts relating to her relationship with the first respondent, and thereafter for the Magistrate to decide the question of law as to the status of the appellant.

In his concurring opinion, Saunders P addressed the eligibility of current and former intimate partners to seek protection under the amended Act and the general approach that must be taken to interpretation of the amended Act and the treatment and hearing of applications for protection orders. In the opinion of Saunders P, the appellant's answers as to whether she was a 'spouse' or 'former spouse' or was or was not at the time in a visiting

relationship, or was or was not entitled to apply for a protection order were all legal conclusions to be drawn from primary facts and the Magistrate was required to take due note of and form an independent assessment from the primary facts. Saunders P concluded that the appellant was eligible for a protection order because she was deemed by the amended Act to be a 'former spouse' (and a former cohabitant) because she lived 'as man and wife' with the first respondent in the same house for almost two years; the amended Act unambiguously includes, in the definition of 'spouse', the cohabitant of an intimate partner; and she was also a former partner in a visiting relationship. In closing, Saunders P noted that the appellant was a mother bringing proceedings against her child's father. Without more, such a woman automatically is presumed to fall into one of the categories of persons eligible to seek a protection order.

In a separate opinion, Anderson J agreed that in applying the literal and purposive rules of interpretation to the evidence presented, it was virtually impossible to comprehend how it could be held that the appellant was not a 'former spouse' and thereby fully entitled to make the application for the protection order. In seeking to elicit and then to adopt a legal assessment of status from a layperson untrained in the law, the Magistrate fell into grievous error, as did the majority of the Court of Appeal. Anderson J emphasised that there was a strong and clear relationship between the Constitution and the interpretation of statutes. The Constitution is the supreme law. Statutes which have emerged from the separate process of statutory interpretation and are found to be inconsistent with the Constitution must be struck down to the extent of the inconsistency. Where statutory provisions are genuinely ambiguous, so that the will of Parliament is not clear, courts will tend to choose the interpretation which renders the statute constitutional, and which upholds constitutional rights and principles. In performing the distinct and separate task of interpreting the statute, albeit through the lens of the Constitution, a court must be astute not to re-write or re-draft what Parliament intended. A court cannot usurp the functions of Parliament by construing the Act to say something that Parliament did not mean or intend, simply because of constitutional preferences. As to the issue of whether conventions, other international instruments, and comparable legislation in an increasing number of countries may properly influence the interpretation of Barbadian statutes on domestic violence, the starting point was the basic rule that international legal instruments require incorporation by legislation to

alter the rights and obligations of persons under Barbadian domestic law. There was an equally venerable and established rule that Parliament was presumed to legislate in conformity with and not in defiance of the State's treaty obligations, so that ambiguous legislation may be interpreted as being treaty-consistent. Ultimately, however, the Court's constitutional mandate is to interpret what the Legislature has enacted, and not to subordinate this for what the Executive has agreed to internationally. Where the legislation cannot be harmonised with the treaty obligations of the state, effect must be given to the legislation, regardless. Where the pattern of international conventions and state practice in the form of legislation etc indicated the emergence of international customary law, the latter may be applied as part of the common law unless inconsistent with an Act of Parliament or a decision of the apex court.

In his concurring opinion and in specific agreement with Rajnauth-Lee J and Saunders P, Jamadar J addressed the intersection of three voices in the process of law-making and legal interpretation. As to the first voice (the voices of society, voices of trauma, fear, and suffering – phenomenological and social context perspectives), Jamadar J explained that the intention and meaning of the provisions in the amended Act were to be informed and discovered by also having regard to the relevant social context, which is now indisputably a critical consideration in understanding and applying the law. The phenomenological and social context of legislation is a salient interpretative lens, as it provides the relevant context from which intention and purpose can be discerned. What was clear was that the amended Act comprehensively described and included the variety of sociological domestic relationships that exist in Barbados (and in the Caribbean) due to the incidence and impact of domestic violence in Barbados, and the intention was to, among other things, protect victim-survivors from perpetrators of domestic violence. With respect to the second voice (the voices of the law – philosophical/policy and jurisprudential perspectives), courts in Barbados have a continuing responsibility to ensure that statutes adhere to and are consistent with, so far as is appropriate, the core values, principles, and commitments contained in both the Constitution and in ratified treaties. These philosophical/policy and jurisprudential perspectives are voices of the law that must never be brushed aside, but rather honoured in their application. In constitutional democratic states such as Barbados, these approaches to

statutory interpretation are not peripheral, but are rather central and paramount. Lastly, regarding the third voice (the voices of peace, healing, and reconciliation – therapeutic and restorative perspectives), Jamadar J highlighted the unique feature of the legislation which was its therapeutic and restorative objectives. Whether it is in the context of marriage, cohabitational or visiting relationships, or otherwise as described in the legislation, the amended Act was Barbados' response to the occurrence or threat of violence in domestic relationships. Because the underlying context is domesticity, peace, healing, and reconciliation were also primary objectives (alongside prevention, protection, and punishment). It was therefore apparent that there were twin intentions to both prevent/protect and heal/reconcile in the context of domestic violence cases. These therapeutic and restorative approaches sought to address the whole situation – victim-survivor, perpetrator, and community. They were indicative of an understanding that domestic violence is a societal issue, and a holistic approach was necessary to address the problems that it causes.

Cases referred to:

A-G of Guyana v Richardson [2018] CCJ 17 (AJ), (2018) 92 WIR 416; *A-G of Guyana v Thomas* [2022] CCJ 15 (AJ) GY, [2023] 2 LRC 298; *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104; *Ali v David* [2020] CCJ 10 (AJ) GY, (2020) 99 WIR 363; *A-G of Belize v Zuniga* [2014] CCJ 2 (AJ) (BZ), (2014) 84 WIR 101; *Attorney-General's Reference* (No 5 of 2002) [2004] UKHL 40, [2005] 1 AC 167; *Belize International Services Ltd v A-G of Belize* [2020] CCJ 9 (AJ) BZ, [2021] 1 LRC 36; *Bisram v DPP* [2022] CCJ 7 (AJ) (GY), [2022] 5 LRC 1; *Chung Chi Chung v R* [1939] AC 160; *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590; *Da Penha v Brazil*, Case 12.051, Inter-American Commission on Human Rights, Report No 54/01, OEA/Ser L/V/II/111 doc 20 rev (2000); *Francois v A-G of Saint Lucia* LC 2001 HC 16 (CARILAW), (24 May 2001); *Grant v Grant* LC 2002 HC 30 (CARILAW), (17 December 2002); *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) (GY), [2022] 2 LRC 491; *Guyana Sugar Corp Inc v Dhanessar* [2015] CCJ 4 (AJ) (GY), GY 2015 CCJ 1 (CARILAW); *Hinds v R* [1977] AC 195; *Kazemi Estate v Islamic Republic of Iran* [2014] 3 SCR 176; *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW); *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332; *Moge v Moge* [1992] 3 SCR 813; *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178; *Observer Publications Ltd v Matthew* [2001] UKPC 11, (2001) 58 WIR 188 (AG); *Office of the Children's Lawyer v Balev* [2018] 4 LRC 241; *Opuz v Turkey* (2009) 48 ILM 909; *Persaud v Nizamudin* [2020] CCJ 4 (AJ) (GY), GY 2020 CCJ 1 (CARILAW); *Public Service Appeal*

Board v Maraj [2010] UKPC 29, (2010) 78 WIR 461 (TT); *R (Friends of the Earth Ltd) v Secretary of State for Transport* [2020] UKSC 52, [2021] 2 All ER 967; *R v Flowers* [2020] CCJ 16 (AJ) BZ, [2020] 5 LRC 628; *R v Lavallee* [1990] 1 SCR 852; *R v Parks* (1993) 15 OR (3d) 324 (CA); *R v RDS* [1997] 3 SCR 484; *R (Chester) v Secretary of State for Justice* [2013] 3 WLR 1076; *Sabapathee v State* [1999] 4 LRC 403; *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70; *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association* [2022] 4 LRC 518; *Stockhausen v Willis* JM 2008 SC 83 (CARILAW), (16 July 2008); *Titan International Securities Inc v A-G of Belize* [2018] CCJ 28 (AJ) (BZ), (2019) 94 WIR 96; *Tomlinson v State of Belize* [2016] CCJ 1 (OJ), (2016) 88 WIR 273; *Triquet v Bath* (1764) 3 Burr 1478, 97 ER 936; *Trust Co (Guyana) Ltd v Guyana Securities Council* [2021] CCJ 11 (AJ) GY, (2021) 99 WIR 422; *Velasquez-Rodriguez v Honduras* (1989) 28 ILM 294.

Legislation referred to:

Anguilla - Domestic Violence Act 2015; **Antigua and Barbuda -** Domestic Violence (Summary Proceedings) Act 1999, Domestic Violence Act 2015; **The Bahamas -** Domestic Violence (Protection Orders) Act 2007, Sexual Offences Act 1991; **Barbados -** Domestic Violence (Protection Orders) Act, Cap 130A, Domestic Violence (Protection Orders) (Amendment) Act 2016, Family Law Act 1981, Interpretation Act, Cap 1, Preamble to the Constitution of Barbados 1966; **Belize -** Domestic Violence Act, Cap 178; **Grenada -** Domestic Violence Act, Cap 84; **Guyana -** Constitution of the Co-operative Republic of Guyana, Cap 1:01; **New Zealand -** Domestic Violence Act 1995; **Saint Christopher and Nevis -** Domestic Violence Act 2014; **Saint Vincent and the Grenadines -** Domestic Violence (Summary Proceedings) Act 1995, Domestic Violence Act 2015; **Saint Kitts and Nevis -** Domestic Violence Act 2000, Domestic Violence Act 2022; **Saint Lucia -** Domestic Violence (Summary Proceedings) Act 1995, Domestic Violence Act 2022; **Trinidad and Tobago -** Domestic Violence Act 1991, Domestic Violence Act 1999, Domestic Violence (Amendment) Act 2020; **United Kingdom** - Domestic Abuse Act 2021; **United States** - An Act Concerning the Definition of Domestic Violence, Revising Statutes Concerning Domestic Violence, Child Custody, Family Relations Matter Filings and Bigotry or Bias Crimes and Creating a Program to Provide Legal Counsel to Indigents in Restraining Order Cases, Public Acts 2021, No 21-78.

Treaties and International Materials referred to:

Beijing Declaration and Platform for Action, Fourth World Conference on Women (adopted 15 September 1995) A/CONF 177/20 and A/CONF 177/20/Add.1; Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem do Para) (adopted 9 June 1994, entered into force 5 March 1995) (1994) 33 ILM 1534; International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171; Optional

Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83; UN Committee for the Elimination of All Forms of Discrimination against Women (CEDAW), 'Concluding Observations on the combined fifth to eighth periodic reports of Barbados' (24 July 2017) CEDAW/C/BRB/CO/5-8; UN Gender Equality Observatory for Latin America and the Caribbean, 'Countries that have signed and ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (UN ECLAC Division for Gender Affairs) < https://oig.cepal.org/en/indicators/countries-have-signed-and-ratified-optional-protocol-convention-elimination-all-forms > accessed 7 June 2023; United Nations Human Rights Council (UNHRC), 'Report of the Working Group on the Universal Periodic Review: Barbados' (12 March 2013) UN Doc A/HRC/23/11.

Other Sources referred to:

Antoine R-M B, *Commonwealth Caribbean Law and Legal Systems* (Routledge 2008); Austin S, 'A Hybrid Family Court In The Making', *Barbados Government Information Service* (St Michael, 19 November 2018) < https://gisbarbados.gov.bb/blog/a-hybrid-family-court-in-the-making/ > accessed 21 June 2023; Bailey D and Norbury L, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed, LexisNexis 2020); Barbados, *Hansard*, House of Assembly, 1st Session 1991-1996 (12 March 1991); Barbados, *Hansard*, House of Assembly, 1st Session 2013-2018 (2 February 2016); Bennion F A R, *Bennion on Statutory Interpretation* (5th edn, LexisNexis 2008); Bernard D, 'Employing Strategies to Combat Violence Against Women' (Ministry of Community Development, Culture and Gender Affairs Distinguished Lecture and Workshop Series, Port of Spain, Trinidad, 26 September 2005); Bernard D, *Reflections and Opinions* (Hansib Publications 2018); 'Bringing an End to Violence against Women and Girls and Femicide or Feminicide: A Key Challenge for Building a Care Society' (UN Economic Commission for Latin America and the Caribbean (ECLAC) 2022); Caribbean Association of Judicial Officers (CAJO), *Criminal Bench Book for Barbados, Belize, Guyana* (2023); Caribbean Development Research Services Inc (CADRES), 'Domestic Violence in Barbados: Report on a National Study Designed to Determine the Prevalence and Characteristics of Domestic Violence in Barbados' (2009); Domestic Violence Law Reform Working Committee, *Report on the Consultation on Domestic Violence Legislation* (Ministry of Family, Culture, Sports and Youth - Bureau of Gender Affairs, 20 July 2012); 'Family Court coming, says AG', *Barbados Today*, (Bridgetown, 12 March 2023) <https://barbadostoday.bb/2023/03/12/family-court-coming-says-ag/ > accessed 7 June 2023; Greaves T and Evanson H, 'Hunt for killer' *Nation News* (St Michael, 15 April 2018) <https://www.nationnews.com/2018/04/15/hunt-for-killer/ > accessed 7 June 2023; Haarr R, 'Research Brief - Intimate Partner Violence in Five CARICOM Countries: Findings from National Prevalence Surveys on Violence Against Women' (Caribbean Development Bank and UN Women, 2020) <https://caribbean.unwomen.org/en/materials/publications/2021/7/research-brief---

intimate-partner-violence-in-five-caricom-countries#view> accessed 7 June 2023; Hinds M, 'Cap130 A - the Domestic Violence Protection Orders Act: An Advocate's Perspective' (OSS, January 2023); Hornby A S, *Oxford Advanced Learner's Dictionary of Current English* (7th edn, Oxford University Press 2005); Joseph E, 'COP Reports Drop in Major Offences in 2021' *Barbados Today* (Bridgetown, 7 January 2022) <https://barbadostoday.bb/2022/01/07/cop-reports-drop-in-major-offences-in-2021/> accessed 7 June 2023; Judicial Reform and Institutional Strengthening (JURIST) Project, *Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region* (2022); Law J and Martin E A, *A Dictionary of Law*, (Oxford University Press 2009); Lazarus-Black M, *The Rites of Domination: Tales from Domestic Violence Court*, (St Augustine Unit, Centre for Gender and Development Studies, University of the West Indies 2002); Lindsey M, *Violence Perpetrated by Ex-Spouses in Canada* (Research and Statistics Division, Department of Justice, Canada 2014); McQuigg R J A, 'Domestic Violence as a Human Rights Issue: Rumor v Italy' (2015) 26 Eur J Int'l L 1009; Organisation of Eastern Caribbean States (OECS), 'Report on [Draft] Domestic Violence Bill' (December 2007).

REASONS FOR DECISION

Rajnauth-Lee J (Barrow J concurring)

Concurring: **Saunders P, Anderson and Jamadar JJ**

RAJNAUTH-LEE J:

'... Domestic violence (a synonym for family violence) is pervasive embracing all classes of men and women and crossing all barriers of age, income, race, and culture. It is the most prevalent of all crimes in many societies, and its incidence varies according to the prevailing social and economic conditions in or cultural heritage of a particular community...'[1]

Introduction

[1] This appeal has served as yet another reminder that domestic violence has permeated and tainted the fabric of Caribbean society. Considering the nature of gender relations in the Caribbean, influenced by the remnants of our patriarchal

[1] Désirée Bernard, Judge of the Caribbean Court of Justice, 'Employing Strategies to Combat Violence Against Women' (Ministry of Community Development, Culture and Gender Affairs Distinguished Lecture and Workshop Series, Port of Spain, Trinidad, 26 September 2005).

plantation structures[2], it has become a reality of, primarily, the lives of women. However, it must also be recognised that men, children, and families have all been victims of violence within and outside the home, establishing domestic violence as an international human rights issue to be confronted.

[2] The key issue before this Court is the entitlement of the appellant, an unmarried woman, who had previously been in a common law relationship in Barbados, to protection under the Domestic Violence (Protections Orders) Act, Cap 130A, as amended by Act 2 of 2016 (hereinafter referred to as 'the amended Act').

[3] In this case, the appellant sought a protection order for her and her minor son at the District 'A' Magistrates Court in Barbados against the first respondent in this matter, her former partner. The Magistrate in refusing the protection order, focused on the appellant's status as a 'former spouse', this being one of the named categories in the amended Act under which an applicant can obtain an order. In the hearing, the Magistrate sought the appellant's opinion on whether she considered herself a 'former spouse' or in a relationship or any type of relationship with the first respondent. On appeal, the appellant's status as a 'former spouse' for the purposes of the amended Act was once again addressed by the Court of Appeal. The appellant left both courts with no protection.

[4] This Court heard the appeal on 28 March 2023. On the same date, the Court issued an order allowing the appeal with reasons to follow. The Court also reversed the decision of the Court of Appeal which upheld the Magistrate's dismissal of the application by the appellant for a protection order. The following are the reasons of the Court.

Background

[5] By the appellant's affidavit filed in support of her appeal to the Court of Appeal,[3] the appellant deposed that she was in a relationship with the first respondent for

[2] See also Marsha Hinds, 'Cap130 A - the Domestic Violence Protection Orders Act: An Advocate's Perspective' (OSS, January 2023).
[3] Record of Appeal, 'Affidavit of the First Appellant' 16-23.

three years and that they also lived together for 21 months until November 2019. In May 2019, their son was born.

[6] She further deposed that in November 2019, the first respondent was violent to her, and their relationship ended. In February 2020, however, they resumed their relationship and had a visiting intimate relationship until they ended that relationship at the end of May 2020.

[7] On 27 June 2020, the first respondent appeared uninvited at the business place of the appellant's mother and attempted to take their minor child off the premises without her permission. This led to an altercation between the parties. The appellant reported the incident to the police and sought a protection order.

Magistrates Court Proceedings

[8] On 29 June 2020, the appellant applied for a protection order for her and for her son against the first respondent at the District 'A' Magistrates Court. She was told to return to court on 2 July 2020. On that date, she appeared before the Magistrate at the hearing of the application for a protection order. The appellant was represented by her attorney at law.

[9] Counsel for the first respondent raised a point *in limine* that the Court did not have jurisdiction to hear the matter since the appellant was not one of the persons qualified to apply for a protection order under s 4 of the amended Act and therefore could not avail herself of the protection afforded therein. Counsel for the first respondent further contended that the appellant's application fell short of the definitions provided for under s 2 of the Act as the parties were neither in a cohabitational relationship, nor a domestic relationship, nor were they in a visiting relationship. The appellant was also not the spouse of the first respondent, it was contended.

[10] Counsel for the appellant argued, in response, that while the relationship between the parties had ended, the Court did have jurisdiction to hear the matter since the appellant was the former spouse of the first respondent; they had resided together

in the past; the parties were currently in a visiting relationship and they shared a child. Therefore, she qualified for protection under s 4(1) of the amended Act.

[11] At the hearing, the Magistrate felt it necessary to explain to the appellant the meaning of 'cohabitational relationship', 'domestic relationship', 'spouse' and 'visiting relationship'. The appellant, in response, informed the Magistrate that she was neither a former spouse nor was she currently in a relationship nor any type of relationship with the first respondent. At that time, she did not reside with the first respondent nor was she in an intimate or sexual relationship with him. The appellant further explained the history of the relationship to be one where she and the first respondent were in a live-in relationship for 21 months up until November 2019, during which time their son was born. After the parties had ended completely their intimate relationship, the first respondent continued to visit the premises but only to visit their minor child, and not to have any form of relations with her, intimate or otherwise. She concluded by informing the Court that she was not prepared to accept that she was in a visiting relationship or any type of relationship with the first respondent as provided for under the amended Act.

[12] After examining s 2(b) and s 4(1) of the amended Act and considering the information before her, the Magistrate concluded that the application for the protection order on behalf of the appellant did not conform with the meanings provided for under the sections. When she considered 'spouse' and 'cohabitational relationship' as defined under the amended Act, in the circumstances of the case, the appellant could not be classed as a 'spouse' or a 'former spouse' because they were not living together at the time as stated in the definition of 'cohabitational relationship'. According to the Magistrate, to attach a wider meaning to the words in the section or to go outside the intent and purpose of the legislation would be a fallacy and should not be encouraged. On her interpretation of the facts and law, the appellant did not qualify as a 'spouse', 'former spouse', or person in a 'domestic relationship', 'cohabitational relationship' or a 'visiting relationship' as submitted by the appellant. The Magistrate ultimately held the view that the legislation did not apply to the appellant and dismissed her application for a

protection order against the first respondent. She made an interim protection order under s 6(1) of the amended Act for the minor against the first respondent.

The Proceedings Before the Court of Appeal

[13] The appellant appealed to the Court of Appeal, challenging the decision of the Magistrate on the ground that, *inter alia*, the decision was erroneous in point of law, the appellant did not have a fair hearing and hence there was a fundamental breach of natural justice, and the matter raised public interest issues.

[14] The Court of Appeal relied heavily on the Magistrate's reasons. The majority's opinion was that the Magistrate was entitled to decline jurisdiction because, based on the facts and on her responses, the appellant by her own words took herself out of any of the classes of persons entitled to protection under the amended Act. Further, in relation to the construction of the legislation, it was difficult to comprehend how any person who once had a relationship with someone would fall under the amended Act, no matter how remote that situation may be.

[15] The majority opined that the legislation had to be given some purposive meaning; there had to be something else in the relationship, either the parties are living together or there is some way in which they depend on one another. In the view of the majority, the parties did not even have a proper manner of dealing with one another when it came to the interest of their child; that showed the extent to which they were separated from each other, and not dealing with each other as persons in any kind of relationship, even a relationship of two parties who are parents of a child. In the circumstances, the majority could not see how the Magistrate could be held to have erred by dismissing the matter on the basis that she had no jurisdiction.

[16] Disagreeing with the majority, Narine JA was of the view that the Magistrate did have jurisdiction to entertain the appellant's application. He considered s 2 of the amended Act, specifically the definitions of 'cohabitational relationship', 'spouse' and 'domestic relationship'. When all these definitions are construed together with s 4(1)(b) of the amended Act, 'domestic relationship' includes 'former spouse.' In

his view, when one considered the reality of the relationship, there were good reasons why the framers would have included 'former spouse.' Where there are still connections between parties that subsist following the breakdown of a relationship, there is added in the amended Act, deliberately so, the position of a 'former spouse.' The amended Act gives that 'former spouse' the capacity to apply for a domestic violence order. In this case, there was a minor child that emerged out of the relationship, and clearly, this case was one where there was still something very real which connected the parties, albeit that their relationship came to an end. Narine JA observed that it was precisely this kind of situation that the framers would have contemplated in including 'former spouse'. Thus, according to him, the Magistrate clearly had jurisdiction to entertain the application and did err in accepting the opinion of a layperson (the appellant) as what was required was a legal definition, which was not in the expertise of the appellant.

[17] It was with a sense of disquiet that the Court heard from Attorneys for the appellant, OSS/ICAAD and UN Women MCO[4] that victims of domestic violence wishing to apply for protection orders in Barbados were being turned away at the doors of the Magistrates' courts following the decision of the majority of the Court of Appeal. These persons were allegedly told that they had no status, not even to initiate an application for a protection order, since they did not fall within the meaning of 'former spouse' under the amended Act.

Appeal to the Caribbean Court of Justice

[18] The appellant appealed to this Court. In her notice of appeal, the appellant challenged the majority judgment of the Court of Appeal on the grounds that it was erroneous in point in law, irrational, created an uncertainty in the law and raised fundamental public interest issues. She accordingly sought a ruling that the phrase 'former spouse' as used in the amended Act was not time limited.

[4] *Amici curiae* – see [24] to [25] of this judgment.

The Court's Case Management

[19] Upon filing of the appeal, the notice of appeal was served by the appellant on the attorney who represented the first respondent in the Court of Appeal but Counsel informed the Court that he was no longer representing the first respondent. He further advised that subsequent to the Court of Appeal ruling, the first respondent advised him that he no longer wished to take any further steps in the matter.

[20] By order dated 21 September 2022, the Court directed that the Registrar of the Court serve the proceedings directly on the first respondent at his email address. The Court served the proceedings on the first respondent electronically by email. The first respondent confirmed that he received the proceedings from the Court, however, he failed to file and serve an acknowledgment of service as required by r 12.1 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 ('the Rules').

[21] Despite the first respondent's failure, the Court sought to ensure that he had every possible opportunity to participate in the appeal. The Court electronically served all relevant documents on the first respondent including the Record of Appeal, the Notice of the Case Management Conference, the Notice of the Hearing, and all of the parties' submissions. The first respondent did not acknowledge service of any of these documents nor did he attend the case management conference or hearing of the appeal.

[22] Prior to the case management conference, the Court also decided that it would be prudent to add the Attorney General of Barbados to the proceedings as a respondent. Rule 12A.1 allows the Court, after a notice of appeal has been filed, of its own volition to add a new respondent on either of the following grounds: that (a) it is desirable to add the new respondent so that the Court can resolve all the matters in dispute in the proceedings; or (b) there is an issue involving the new respondent which is connected to the matters in dispute in the proceedings and it is desirable to add the new respondent so that the Court can resolve that issue. The Court thought it best to hear from the Attorney General since the Attorney General's office was connected to the matters in dispute in the proceedings, and

charged with formulating, advising on and pursuing the legislative agenda of the Government of Barbados. Further, it was considered desirable to add the Attorney General as the question concerned one of statutory interpretation. By Notice dated 7 December 2022, the Court advised of its proposal to add the Attorney General and invited the parties and the Attorney General to file written responses to this proposal. After receiving submissions and hearing the parties at the case management conference, by order dated 17 January 2023, the Attorney General of Barbados (hereinafter referred to as 'the second respondent') was added as a respondent to the appeal.

[23] This appeal also allowed the Court to engage in the useful exercise of inviting amici curiae to assist the Court. The Court, following r 12.A4 of the Rules, issued an invitation for those persons or bodies with significant information or relevance to the appeal to file an application to assist the Court. This invitation to assist as amici curiae was issued by the Court on 9 December 2022. The Court published this invitation on its website, and forwarded it to the Dean and Deputy Deans of the Faculty of Law of the University of the West Indies, Cave Hill in Barbados and the Registrar of the Supreme Court of Barbados for further circulation. Two organisations made applications in response to the notice: Operation Safe Space Movement for Change Inc (OSS) in association with International Center for Advocates Against Discrimination Inc (ICAAD) (hereinafter referred to as 'OSS/ICAAD') and UN Women Multi Country Office – Caribbean ('UN Women MCO').

[24] OSS is a civil society organisation based in Barbados which provides client focused advocacy and strategic litigation services for women, their children and girls who are victims of domestic violence and other forms of abuse, inclusive of systemic abuse by state agencies. According to OSS, it is at present the only organisation in Barbados that provides client centred assistance, as opposed to systemic services, to victims and survivors of domestic violence. Its co-founder, Dr Marsha Hinds, was actively involved in the consultation process for the amended Act in 2016. Before the Court, OSS partnered with ICAAD, an

international human rights organisation which provides and uses a multi-disciplinary approach to facilitate the improvement of the transparency and accountability of judicial processes, focusing particularly on cases of gender-based violence, and the elimination of discrimination within the judicial system through data and legal innovation. OSS and ICAAD currently work closely with each other to ensure that legal standards and justice sector services conform to international human rights law and mirror international best practice.

[25] The second applicant was United Nations Entity for Gender Equality and the Empowerment of Women, Multi-Country Office – Caribbean (UN Women MCO). UN Women MCO has geographical coverage of 22 countries and has been working in the Caribbean since 1998. As part of its mandate, UN Women supports UN Member States as they set global standards for achieving gender equality and works with governments and civil society to design laws, policies, programmes and services needed to ensure that the standards are effectively implemented. UN Women's main roles are to support inter-governmental bodies and other relevant bodies in the formulation of policies, global standards and norms; to help UN Member States implement these standards and provide suitable technical support and to lead and coordinate the UN system's work on gender equality and promote accountability. Over many decades, the United Nations has made significant progress in advancing gender equality, including through landmark agreements such as the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW').

[26] After hearing all the parties at the case management conference, by order dated 17 January 2023, permission was granted for both organisations to assist the Court as amici curiae.

[27] The Court wishes to express its appreciation for the role played by OSS/ICAAD and UN Women MCO. Their written and oral submissions have helpfully provided the Court with rich data and research and other valuable historical, social and other perspectives on the important issues raised before the Court.

Statutory Framework of the Domestic Violence (Protection Orders) Act, as amended, Barbados

[28] Barbados enacted the Domestic Violence (Protection Orders) Act, Cap 130A ('the principal Act') in 1992. Section 4(1) of the principal Act provided, *inter alia*, that spouses and former spouses could apply for a protection order. 'Spouse' was defined to include 'a party to a relationship where the parties are living with each other in the same household as husband and wife.' Thus, both married persons but also persons in cohabiting relationships, ie, those living as husband and wife were entitled to apply for a protection order. Accordingly, those persons who were formerly married and formerly in a cohabiting relationship were also entitled.

[29] In 2016, the principal Act was amended by the Domestic Violence (Protection Orders) (Amendment) Act 2016. The aim of the amendment as seen from the preamble was to define domestic violence and to make greater provision for the safety of victims of domestic violence and the accountability of perpetrators of domestic violence. The objects of the amendment include: (a) to make provision for a comprehensive definition of the term 'domestic violence'; (b) to extend the classes of persons who are considered to be victims of domestic violence; (e) to extend the classes of persons who may intervene in applications before the Court on behalf of victims of domestic violence; and (g) to maximise the safety and protection of victims and ensure that perpetrators of domestic violence are held accountable.

[30] Section 2 of the principal Act was thus amended to include a definition for 'cohabitational relationship'[5], 'domestic relationship'[6], and 'visiting relationship'[7]. The definition of 'spouse' was amended to 'a party to a marriage or cohabitational relationship', explicitly recognising those in cohabitational relationships as spouses. So, any party who was legally married or in a

[5] '"cohabitational relationship" means a relationship where persons who are not legally married are living together in the same household as husband and wife'.
[6] '"domestic relationship" means the relationship between a perpetrator of domestic violence and victim who is a spouse, former spouse, child, dependant or other person who is considered to be a relative of the perpetrator by virtue of consanguinity or affinity and includes cohabitational and visiting relationships'.
[7] '"visiting relationship" means a relationship where the parties do not live together in the same household, but in which there are romantic, intimate or sexual relations.'

cohabitational relationship ie, who is not legally married but is living together in the same household as a husband or a wife, can be considered a 'spouse'. 'Former spouse' is included in the definition for 'domestic relationship' per s 2 of the amended Act.

[31] Section 4 of the principal Act was replaced and included, *inter alia,* provision for an application for a protection order to be made by (a) the spouse of the person against whom the order is sought where an act of domestic violence was committed against that spouse or a child; or (b) any other person in a domestic relationship with the person against whom the order is sought, where an act of domestic violence was committed against that person or a child.

Domestic Violence in the Caribbean – Historical, Social and Other Perspectives

The Prevalence of Domestic Violence, and in Particular Post-Separation Violence in the Caribbean and Elsewhere

[32] As mentioned, the Court was pleased to receive the submissions of UN Women MCO on the prevalence of domestic violence in the Caribbean. This judgment will refer extensively to them.[8] UN Women MCO observed that intimate partner violence in the Caribbean is among the highest in the world. On average, nearly 1 out of 2 or 46%of ever-partnered women aged 15-64 in the Caribbean have experienced one or more of the four types of intimate partner violence in their lifetime (physical, sexual, psychological and/or economic).[9]

[33] UN Women MCO further noted that according to the UNDP,[10] 9.6% of adults in Barbados self-reported being subject to physical violence in the household. In 2009, the Caribbean Development Research Services (CADRES)[11] reported that

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[8] UN Women, 'Amicus Curiae Submissions on behalf of UN Women (The United Nations Entity For Gender Equality and the Empowerment of Women) Multi-Country Office (MCO)- Caribbean', Submission in BBCV2022/001, 7 February 2023, [18] – [19].
[9] Robin Haarr (ed), Research Brief - Intimate Partner Violence in Five CARICOM Countries: Findings from National Prevalence Surveys on Violence Against Women' (Caribbean Development Bank and UN Women, 2020) <https://caribbean.unwomen.org/en/materials/publications/2021/7/research-brief---intimate-partner-violence-in-five-caricom-countries#view > accessed 7 June 2023.
[10] Robert Zimmermann, Carol Lawes and Nanette Svenson (eds), *Caribbean Human Development Report 2012: Human Development and the Shift to Better Citizen Security* (UNDP 2012).
[11] Caribbean Development Research Services Inc (CADRES), 'Domestic Violence in Barbados: Report on a National Study Designed to Determine the Prevalence and Characteristics of Domestic Violence in Barbados' (2009) (CADRES Report).

27% of Barbadians were aware of at least one separate incident of domestic violence. Of those cases, 86% involved violence perpetrated by men against women.[12]

[34] In the period 2000-2007, on average 21% of murders in Barbados arose from incidents of domestic violence.[13] All victims in this period were women. In some years, nearly 1 in 3 homicides resulted from domestic violence. In a January 2022 press conference,[14] Commissioner of Police of Barbados, Richard Boyce, had observed that there were 491 reports of domestic violence from January to November 2021. In 2020, there had been a total of 498 reports of domestic violence.

[35] UN Women MCO further observed that despite these sobering numbers, it was essential to note that under-reporting of intra-family or domestic violence was notoriously prevalent due to feelings of shame, intimidation, and acceptance on the part of the victim. The Court notes with concern this feature of under-reporting, especially in domestic violence cases. The Court wishes to observe that it is only where victims/survivors of violence, and in particular intimate partner violence, as well as sexual violence, have trust and confidence in the courts, and where court systems and processes are accessible, effective and efficient, that this feature of under-reporting will be corrected. Indeed, Saunders P in his foreword to the *Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region*[15] pointed out that '… there is a need to ensure that survivors are not unwittingly re-traumatized or disadvantaged by unfortunate court rules, processes or systems. Judicial insensitivity, poor or inadequate dissemination of relevant information, lack of suitable accommodation for vulnerable witnesses, unconscionable delays

[12] OSS/ICAAD in their written submissions noted that the CADRES Report of 2009 was the most recent comprehensive report on the prevalence of domestic violence in Barbados; between the years 2000-2007, a total of 2796 cases of domestic violence were reported.
[13] ibid.
[14] Emmanuel Joseph, 'COP Reports Drop in Major Offences in 2021' *Barbados Today* (Bridgetown, 7 January 2022) <https://barbadostoday.bb/2022/01/07/cop-reports-drop-in-major-offences-in-2021/> accessed 7 June 2023.
[15] Judicial Reform and Institutional Strengthening (JURIST) Project, *Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region* (2022).

in the adjudicatory process are all shortcomings that erode trust and encourage the perception that access to justice is unattainable for some.'[16]

[36] The Court was particularly interested in data as it related to post-separation violence in Barbados. UN Women MCO indicated however, that there was no disaggregated data on post-separation violence for Barbados. However, there had been notable cases of post-separation violence in Barbados. UN Women MCO defined post-separation violence as the ongoing, wilful pattern of intimidation of a former partner that includes legal abuse, economic abuse, threats and endangerment to children, isolation and discrediting and harassment and stalking.[17] For example, in 2018, the media highlighted the death of Onica King, reportedly killed by her estranged husband in front of her two small children.[18] It was also noted that Barbados has the second highest rate of gender-related killings of women in the region, based on reported cases of femicide committed by an intimate partner or former partner.[19] People who have ended an abusive cohabitational relationship are not shielded from this type of violence.

[37] UN Women MCO also referred to a study done by the Government of Canada,[20] which reported that in 2009 approximately 3 million Canadians had been in contact with an ex-marital or former common law spouse in the five years prior. Approximately 534,000 respondents (17%) reported experiencing violence by their former spouse while living together or post-separation. A significantly higher proportion of women (20%) reported violence by an ex-spouse compared to women (3%) who reported violence by a current marital or common-law spouse. Between 2000 and 2011, ex-spouses were responsible for 4% of homicides perpetrated against men and women. Women accounted for 90% of homicide victims perpetrated by ex-spouses during this period.

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[16] ibid 8-9.
[17] Kathryn J Spearman, Jennifer L Hardesty, Jacquelyn Campbell, 'Post-separation Abuse: A Concept Analysis' (2023) 79(4) Journal of Advanced Nursing 1225 < https://onlinelibrary.wiley.com/doi/epdf/10.1111/jan.15310> accessed 7 June 2023.
[18] Tre Greaves and Heather-Lynn Evanson, 'Hunt for killer' *Nation News* (St Michael, 15 April 2018) < https://www.nationnews.com/2018/04/15/hunt-for-killer/ > accessed 7 June 2023.
[19] 'Bringing an End to Violence against Women and Girls and Femicide or Feminicide: A Key Challenge for Building a Care Society' (UN Economic Commission for Latin America and the Caribbean (ECLAC) 2022).
[20] Melissa Lindsey, *Violence Perpetrated by Ex-Spouses in Canada* (Research and Statistics Division, Department of Justice, Canada 2014).

[38] By virtue of ss 1 and 2 of the Domestic Abuse Act 2021 of the United Kingdom,[21] persons who are 'personally connected' can access protection, including those who are or have been in an intimate relationship. In April 2021, the Act was amended to extend the offence of coercive control to cover post-separation abuse. Similarly, *Jennifer's Law*[22] in the United States' State of Connecticut (which went into effect on October 1, 2021) expands the definition of domestic violence to include coercive control of family and/or household members which includes spouses and former spouses. UN Women MCO observed that the laws in these jurisdictions continue to evolve to recognise the different types of abuse experienced post-separation and do not impose time limits as to when a party is no longer vulnerable to domestic violence.

[39] The Court also gratefully received the submissions of OSS/ICAAD on the prevalence of domestic violence, including post-separation violence, in Barbados. OSS had conducted a purposive prevalence sample survey in order to assist the Court in these proceedings.[23] The survey was conducted among former or current clients of OSS who received services from OSS between 27 May 2021 and 31 January 2023. OSS noted that the survey provided a snapshot of the experiences of victims/survivors of domestic violence and their experience interacting with the Magistrates' courts in Barbados. The survey was completed by 21 persons between the ages of 18 and 64. Most respondents reported that they were in visiting (33.3%) and cohabitational (28.6%) relationships, consistent with historical data for Barbados.[24] Relationship periods ranged from between 6 months and 10 plus years. 76.2% have children under 18 years with their ex-partners. 71.4% of women reported either solely or a combination of emotional/psychological, physical, and financial abuse. 23.8% of women reported that they had experienced sexual abuse during their relationships. OSS noted that the survey disclosed that it continues to

[21] UK Public General Acts 2021 c 17.
[22] An Act Concerning the Definition of Domestic Violence, Revising Statutes Concerning Domestic Violence, Child Custody, Family Relations Matter Filings and Bigotry or Bias Crimes and Creating a Program to Provide Legal Counsel to Indigents in Restraining Order Cases, Public Acts 2021, No 21-78.
[23] See Operation Safe Space Movement for Change Inc (OSS), 'Written Submissions on behalf of amici curiae Operation Safe Space Movement for Change Inc (OSS) and International Center for Advocates Against Discrimination Inc (ICAAD)', Submission in BBCV2022/001, 3 February 2023, [2].
[24] CADRES Report (n 11) 18.

be the case that domestic violence is experienced by a wide cross section of people, regardless of age.[25]

[40] As to post-separation abuse, OSS/ICAAD provided very useful data based on the survey results. They submitted that their survey results indicated that domestic violence continues after the relationship has ended and that children are directly impacted. 57.1% of the women (12) surveyed reported that they were experiencing post-separation abuse. More women, 71.43% (15) reported their abuse once they were able to identify their experiences in the specific options provided. 38.1% (8) women reported abuse as being worse after the relationship ended. 14.3% (3) reported that they were unsure whether the abuse had intensified and 14.3% (3) reported that it had remained the same. 9.5% (2) women reported that they had experienced sexual abuse post-separation. 71.4% (15) women stated that their children had witnessed them being abused, and 47.6% (10) reported that their ex-partners were also abusive to their children.

Combatting Domestic Violence in the Caribbean

[41] Both OSS/ICAAD and UN Women MCO provided valuable historical perspectives of the current domestic violence legislation in Barbados and in other Caribbean jurisdictions. OSS/ICAAD observed[26] that domestic violence is an international human rights issue[27] and gender relations in Barbados are a relic of Barbados' patriarchal plantation structures.[28]

[42] UN Women MCO submitted that in the Anglo-Caribbean, domestic violence laws and policies have developed in phases. The 1990s saw the first generation of laws in the Bahamas,[29] Trinidad and Tobago[30] and Barbados.[31] These Acts provided a mechanism for persons to apply for protection orders to stop violence perpetrated within the context of specified familial relationships.

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[25] ibid 52, 75.
[26] See OSS, 'Written Submissions on behalf of amici curiae (OSS) and ICAAD' (n 23), [1].
[27] ibid. See also Ronagh J A McQuigg, 'Domestic Violence as a Human Rights Issue: Rumor v Italy' (2015) 26 Eur J Int'l L 1009, 1010.
[28] OSS, 'Written Submissions on behalf of amici curiae OSS and ICAAD' (n 23). See also Marsha Hinds, 'Cap130 A - the Domestic Violence Protection Orders Act: An Advocate's Perspective' (OSS, January 2023).
[29] Sexual Offences Act 1991.
[30] Domestic Violence Act 1991.
[31] Domestic Violence (Protection Orders) Act, Cap 130A.

[43] In Barbados, the first dedicated legislation providing civil-type remedy to victims of domestic violence was enacted in 1992. As mentioned earlier, under the principal Act, persons eligible to apply for protection orders included a 'spouse' and 'former spouse'. The principal Act defined 'spouse' as parties living in the same household as husband and wife. This definition arguably encompassed not only persons who were married but also persons in cohabiting relationships, those, in other words, who were living as husband and wife. This was consistent with the recognition of unions other than marriage under the Barbados Family Law Act 1981. Under the principal Act, s 4(1) (a), former spouses were included as persons who could apply for a protection order. This would therefore also include persons who formerly lived together as husband and wife.

[44] According to UN Women MCO, CARICOM, as part of its functional cooperation to member states to eliminate all forms of gender inequality, prepared a Model Domestic Violence law in 1997 to support law reform. This model law influenced the development of the second generation of domestic violence laws in the region. The CARICOM Model law introduced not just protection orders but occupation and tenancy orders. That model law also made explicit that protection orders should be available to de facto and former de facto spouses and defined de facto spouse as: 'a person living with another person of the opposite sex although they are not legally married to each other.' That CARICOM Model drew on the New Zealand Domestic Violence Act 1995[32] which gave eligibility to a spouse or partner to apply for a protection order. The New Zealand law defined spouse or partner as follows: 'in the phrase "spouse or partner" and in related contexts, means, in relation to a person,— (a) the person's civil union partner; or (b) the person's de facto partner; or (c) any other person, in any case where those persons are the biological parents of the same person'.

[45] UN Women MCO helpfully noted that in those Caribbean countries where law reform took place after the CARICOM Model, the categories of persons eligible for protection orders were expanded, based on an appreciation of the diversity of

[32] No 86 of 1995.

family forms and intimate partnerships in the Caribbean. This included the Antigua and Barbuda Domestic Violence (Summary Proceedings) Act 1999,[33] Saint Lucia Domestic Violence (Summary Proceedings) Act 1995,[34] Saint Vincent and the Grenadines Domestic Violence (Summary Proceedings) Act 1995,[35] and the Saint Kitts and Nevis Domestic Violence Act 2000.[36] In all of these Acts, the classes of persons eligible were spouses, parents, children and dependants. 'Spouse' was often then defined to mean or include persons in legal unions or formerly so, as well as persons in residential unions (common law spouses) as well as former common law spouses. For example, the 1999 Trinidad and Tobago Act[37] defined spouse to include: 'a former spouse, a cohabitant or former cohabitant'. In The Bahamas[38] and Trinidad and Tobago, persons in visiting relationships could also have applied for a protection order.

[46] UN Women MCO then traced the birth of what they described as the third generation of domestic violence legislation in the Caribbean stemming from the Organisation of Eastern Caribbean States (OECS) Family Law and Domestic Violence Project which produced the OECS Draft Domestic Violence Bill in 2007.[39] The draft bill moved away from confining eligibility to residential unions and away from omitting large classes of persons from protection. It introduced the 'domestic relationship' framework in which persons in a range of domestic relationships were eligible to apply for protection.

[47] Importantly, UN Women MCO noted that the draft bill was consistent with the most recent wave of legal reform which saw further expansion of the scope of eligible applicants to include non-cohabitational/visiting/dating relationships and included amendments to ensure that parties to cohabitational and non-cohabitational relationships were not treated less favourably to parties to a marriage. These amendments provide for protection for former cohabitants, former

[33] No 3 of 1999.
[34] No 17 of 1995.
[35] No 13 of 1995.
[36] No 3 of 2000.
[37] Domestic Violence Act No 27 of 1999.
[38] Domestic Violence (Protection Orders) Act 2007.
[39] Organisation of Eastern Caribbean States (OECS), 'Report on [Draft] Domestic Violence Bill' (December 2007).

common law spouses and parties to a former visiting relationship. For example, in Trinidad and Tobago and Saint Lucia, there is no time limit at all within which an applicant can be considered a former spouse or former cohabitant or party to a visiting relationship.[40]

Issues for Determination

[48] In this appeal, the following issues arise for determination:

i. Was the appellant entitled to seek the protection of the Domestic Violence (Protection Orders) Act, as amended (the amended Act)?

ii. Was the Magistrate correct to rely on the opinion of the appellant on an issue of law?

First Issue: - Was the Appellant Entitled to Seek the Protection of the Domestic Violence (Protection Orders) Act, as amended?

Statutory Interpretation

[49] This Court has made it clear that the object of the court in interpretating a statutory provision is to give effect to the intention of Parliament. Various approaches can be employed; the literal and natural and ordinary meaning approach or the purposive approach being among the principles of statutory interpretation. The various approaches should in most cases lead to the same result, and assist the court in its primary task of giving effect to the intention of Parliament.[41]

[50] In *Titan International Securities Inc v Attorney General of Belize*[42], this Court acknowledged the court's role in statutory interpretation:

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[40] See the Saint Lucia Domestic Violence Act 2022, which expands the definition of 'domestic relationship' in s 2; see especially (f) which includes in 'domestic relationship' where the applicant and the respondent are or were in an engagement, dating or visiting relationship. See also the Trinidad and Tobago Domestic Violence (Amendment) Act 2020 especially at s 3 which includes in a 'domestic relationship' a person who was or is, in relation to the respondent, a person in a visiting or dating relationship with the respondent. See also Domestic Violence Act 2015 (Anguilla) ss 1 and 3(2)(g); Domestic Violence Act 2015 (Antigua and Barbuda) s 2; Domestic Violence Act, Cap 178 (Belize) ss 2-3; Domestic Violence Act, Cap 84 (Grenada) ss 2 and 5; Domestic Violence Act 2014 (Saint Christopher and Nevis) ss 2 and 5; Domestic Violence Act 2015 (Saint Vincent and the Grenadines) ss 2 and 5(2).

[41] See *Smith v Selby* [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70 at [7]; *Titan International Securities Inc v A-G of Belize* [2018] CCJ 28 (AJ) (BZ), (2019) 94 WIR 96.

[42] [2018] CCJ 28 (AJ) (BZ), (2019) 94 WIR 96 at [40].

> Parliament makes the law; judges interpret it. Judges have a duty to interpret an Act according to the intent of those who made it. The primary indication of legislative intention is the legislative text, read in context using internal aids, like other provisions in the Act or external aids, such as the legislative history.

[51] In *Titan* it was further observed that in *Smith v Selby*[43], this Court discussed the particulars of such an exercise as follows at [40]:

> 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…
>
> … In *R v Rambarran,* 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…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 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.

Statutory Interpretation – Literal or the Ordinary/Plain Meaning Rule

[52] Both Counsel for the appellant and for the second respondent invited this Court to apply the literal interpretation or ordinary/plain meaning rule. This rule asserts that the interpretation of a statute should be based on the ordinary, literal, and grammatical words used in the statute by the legislature to discern Parliament's intention from the words used.[44] Where an enactment is grammatically capable of only one meaning (whether generally or in relation to the facts of the instant case)

[43] [2017] CCJ 13 (AJ) (BB), (2017) 91 WIR 70.
[44] *Smith* (n 43); *R v Flowers* [2020] CCJ 16 (AJ) BZ, [2020] 5 LRC 628.

and, on an informed interpretation, the interpretative criteria do not raise any real doubt as to that meaning, the enactment is to be given its grammatical meaning.[45]

[53] On reading s 4(1), the provision allows for certain persons to make an application for a protection order, one class being *'any other person in a domestic relationship with the person against whom the order is sought.'* In s 2, 'domestic relationship' means *'the relationship between a perpetrator of domestic violence and victim who is a spouse, former spouse… and includes cohabitational and visiting relationships'* and 'cohabitational relationship' means *'…a relationship where persons who are not legally married are living together in the same household as husband and wife'.* In neither of these definitions is there a qualification as to time for the purposes of making the application for a protection order.

[54] The term 'former spouse' has not been separately defined in the amended Act. Before the amendment in 2016, 'spouse' was defined as 'a party to a relationship where the parties are living with each other in the same household as husband and wife.' This definition of 'spouse' was redefined with the 2016 amendment to mean *'a party to a marriage or cohabitational relationship.'* Therefore, the current position is that any party who is legally married or in a cohabitational relationship ie who is not legally married but is living together in the same household as a husband or a wife, can be considered a 'spouse'.

[55] 'Former spouse' is included in the definition for 'domestic relationship' under s 2 of the amended Act. Dictionary definitions of 'former' provided by the parties include 'of or occurring in the past'; 'being earlier in time, of the past, belonging to or occurring in an earlier period, a previous holder of an office'; 'to have a particular position or status in the past.' Acknowledging that 'spouse' means *'a party to a marriage or cohabitational relationship'* and interpreting 'former spouse' in its natural and ordinary meaning in s 4(1), 'former spouse' must include any person who was married to the perpetrator *in the past* and any person who was

[45]Diggory Bailey and Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed, LexisNexis 2020) s 11.9. See interesting perspectives set out in Rose-Marie Belle Antoine, *Commonwealth Caribbean Law and Legal Systems* (Routledge 2008) 245-250.

in a cohabitational relationship with the perpetrator *in the past*. As such, once the marriage or cohabitational relationship has come to an end, the person who was once a 'spouse' during that relationship, now becomes a 'former spouse'. The provisions of the amended Act do not include any explicit reference to a prescribed time period during which an applicant for a protection order will be considered a 'former spouse'.

[56] In this case, the appellant and first respondent were not legally married, but had lived together for a period of 21 months. Indeed, the majority of the Court of Appeal accepted that the appellant had explained to the Magistrate the history of the relationship; that she and the first respondent had previously been in a live in relationship for a period of 21 months until November 2019. The majority noted that the appellant had further explained that following this 21 month period 'they were on and off again, for a period not in excess of three months'. It is therefore clear that the appellant was a party to a cohabitational relationship. During that relationship, she would have been a 'spouse' under the amended Act. When that relationship ended, the appellant ceased to be a 'spouse' for the purposes of the amended Act, and attained the status of 'former spouse'.

[57] Applying the literal rule and the natural and ordinary meaning approach, we are therefore of the view that the appellant was a 'former spouse' within the meaning of the amended Act. It therefore follows that the appellant was entitled to seek a protection order by virtue of ss 2 and 4(1) of the amended Act.

Statutory Interpretation – The Purposive Approach

[58] This Court has emphasised that where there is no ambiguity, uncertainty or inconsistency with the plain meaning of the words used in legislation, no further interpretation is needed.[46] However, if there is uncertainty, the parties have submitted that a purposive construction be given to the term 'former spouse'. We

[46] *R* v *Flowers* [2020] CCJ 16 (AJ) BZ, [2020] 5 LRC 628 at [37], [40]; *Persaud v Nizamudin* [2020] CCJ 4 (AJ) (GY), GY 2020 CCJ 1 (CARILAW) at [13]; *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590.

think it important in the circumstances of this case, to explore the purposive approach to statutory interpretation.

[59] According to *Antoine*[47], a purposive approach seeks to promote the general legislative purpose underlying the provision in issue. It suggests that the court can employ a wide variety of aids to find this purpose. A purposive construction may accord with a grammatical construction or may require a strained construction. The assumption can be made that Parliament intends its legislation to be interpreted in a meaningful and purposeful way giving effect to the basic objectives of the legislation.[48]

[60] As a start, the preamble of the 2016 Amendment Act can be used as an aid to assist in explaining its purpose and object.[49] The preamble states that it is 'An Act to amend the Domestic Violence (Protection Orders) Act, Cap 130A to define domestic violence and *to make greater provision for the safety of victims of domestic violence* and the accountability of perpetrators of domestic violence.'

[61] Further, when considering an Act that is based on a draft Bill, reference may be made to the commentary that accompanied that Bill.[50] The Object and Reasons of the Domestic Violence (Protection Orders) Bill 2016 state that the amendment would 'extend the classes of persons who are considered to be victims of domestic violence.' This confirms that a broad interpretation should be given to the provisions in order to achieve the objective of ensuring that a large class of persons can be considered victims under the legislation. It is plausible that this should be expanded to include former spouses, without limitation. OSS/ICAAD relied on the Hansard, 2nd Reading of a Bill entitled the Domestic Violence (Protection Orders) Bill 1991[51] and Hansard, 2nd Reading in the house of the Domestic Violence (Protection Orders) Bill 2016[52] which confirmed that the intention of the Domestic

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[47] Rose-Marie Belle Antoine, *Commonwealth Caribbean Law and Legal Systems* (Routledge 2008) 256. See also Diggory Bailey and Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020) s 12.2, in construing an enactment the court should aim to give effect to the legislative purpose.
[48] *Attorney-General's Reference* (No 5 of 2002) [2004] UKHL 40, [2005] 1 AC 167 at [31] (Lord Steyn).
[49] See s 12, Interpretation Act, Cap 1 (BB); *Smith* (n 43).
[50] Diggory Bailey and Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020) s 24.9.
[51] Barbados, *Hansard*, House of Assembly, 1st Session 1991-1996, (12 March 1991) 150.
[52] Barbados, *Hansard*, House of Assembly, 1st Session 2013-2018, (2 February 2016) 217 paras 217, 259, 283, 365.

Violence (Protection Orders) Act before the amendment was to protect parties who are or were married and parties who are cohabitating but not married, notwithstanding the duration of cohabitation. This, according to OSS/ICAAD, implicitly recognises the scale and seriousness of domestic violence. The 2016 amendment was intended to expand the classes of parties entitled to protection. Furthermore, Parliament did not include an explicit or prescribed time limit after the end of the relationship within which a former spouse (including a former unmarried cohabitant) must apply for a protection order.

[62] It follows that the relevant provisions must be interpreted in a meaningful and purposeful way, giving effect to the basic objectives of the legislation. In our view, to impose a time limit on an applicant's capacity/status to make an application for a protection order after the breakdown of a cohabitational relationship, as decided by the majority of the Court of Appeal, would run counter to the clear purpose and policy objectives of the amended Act. Additionally, to construe 'former spouse' as limited by time without any specific provision to that effect contained in the legislation would give rise to an absurdity. It is clear that there is no requirement for the existence of an ongoing or current interactive relationship between the parties for a party to launch a domestic violence complaint.

[63] It is unfortunate that the majority of the Court of Appeal held the view that 'it is difficult to comprehend how any person who once had a relationship with someone would fall under this – once had a living [sic] relationship with someone, would fall under this Act no matter how remote… in my view would mean that there has to be something else in that relationship…' This approach will undoubtedly discriminate against unmarried persons who are victims of domestic violence contrary to the clear purpose and objectives of the amended Act. It also unfairly favours victims of domestic violence who were previously married, and who, *despite the passage of time* since the breakdown of the marriage, would clearly be regarded as former spouses.

[64] Moreover, the imposition of an undefined time qualification would leave unanswered the question that must follow from the dicta of the majority of the

Court of Appeal, that is to say, at what point in time did a party to a former cohabitational relationship cease to be a 'former spouse' for the purposes of the amended Act? Or better yet, at what point in time did this appellant cease to be a 'former spouse'?

[65] We are of the view that Narine JA properly employed the purposive approach to statutory interpretation. He correctly held that 'the reality of a relationship' had to be taken into consideration and that 'there were good reasons why the framers' included 'former spouse' in the amended legislation. He noted that where there were still connections between parties that subsisted following the breakdown of a relationship, the framers deliberately added the position of 'former spouse'. Narine JA further noted that in this case, the minor child, whom the parties shared, provided that real connection, although the parties' relationship had come to an end. It therefore followed that the framers contemplated precisely this type of situation when they provided for a person such as the appellant to apply for a protection order as a 'former spouse'. We agree wholeheartedly with the statements of Narine JA. But we think it important to add that even where there are no children emerging out of a cohabitational relationship to provide that 'real connection' discussed by Narine JA, a party to a former cohabitational relationship, is nevertheless entitled as a 'former spouse' to seek the protection of the amended Act.

[66] The words of Justice Désirée Bernard, retired judge of this Court and former Member, Rapporteur and Chair of the CEDAW Committee, are apt in this case:

> … the courts are the final resort which an abused woman has in seeking redress for physical attacks on her. The judiciary and magistracy as part of their inherent function are to administer justice according to law. However, sometimes strict adherence and rigid application of the law may result in what some may regard as injustice. Theories have been advanced that in instances where the law permits a liberal interpretation as distinct from a rigid one, judges should be bold and strike out in this direction if it will result in fairness and correct an injustice.[53]

[53] Bernard (n 1).

Statutory Interpretation – The Constitution and International Obligations of Barbados

[67] This Court has pointed out that constitutional democracies function under the rule of law and in the context of constitutional supremacy. Accordingly, where the issue of statutory interpretation is at play, the Court should interpret legislation not only to achieve the objectives of the legislation, and the intention of Parliament but to achieve alignment with (1) fundamental human rights and core constitutional values and principles contained in Commonwealth Caribbean Constitutions,[54] and (2) international treaty obligations and commitments of these States.

[68] From as early as *Guyana Sugar Corp Inc v Dhanessar*[55] Wit J set forth an important principle of statutory interpretation in constitutional democracies. In that case, Wit J agreed with the majority that the respondent's misconduct was such as to amount to good or sufficient cause for the termination of his employment, but disagreed on the interpretation of the relevant legislation. At [48], Wit J pointed out that '…Workers in Guyana have a fundamental right to be protected by the law. This means that legislation must be interpreted so as to effectuate the protection it is intended to offer.' We agree with the approach set forth by Wit J.

[69] In *Trust Co (Guyana) Ltd v Guyana Securities Council*[56] this Court observed that:

> … an important principle of statutory interpretation, especially in the context of Commonwealth Caribbean jurisdictions, is that legislation must be interpreted purposively to give effect to the fundamental rights and values, and constitutional principles, contained in Commonwealth Caribbean Constitutions.' (See also the Privy Council judgment of *Public Service Appeal Board v Maraj*[57] upholding the judgment of the Court of Appeal of Trinidad and Tobago).

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[54] See *Francois v A-G of Saint Lucia* LC 2001 HC 16 (CARILAW), (24 May 2001) at [12] (Barrow J) as to the governmental obligation and constitutional imperative to deal effectively with domestic violence.
[55] [2015] CCJ 4 (AJ) (GY), GY 2015 CCJ 1 (CARILAW).
[56] [2021] CCJ 11 (AJ) GY, (2021) 99 WIR 422 at [45].
[57] [2010] UKPC 29, (2010) 78 WIR 461 (TT).

[70] Having approved of the approach to statutory interpretation by Wit J in *Guyana Sugar Corp Inc v Dhanessar*, the Court in the *Trust Co* case concluded that the relevant statutory provision must be interpreted in such a way as to reflect the fundamental rights of non-discrimination and equality before the law of all public companies within the scheme of the legislation in Guyana.[58]

[71] The Barbados case of *Commissioner of Police v Alleyne*[59] is important to this discussion. In *Alleyne*, Jamadar J noted that in constitutional democracies all statutory interpretation must include a consideration of whether the law as stated can be interpreted in a manner that is consistent with the Constitution, as to the extent that there is an inconsistency, the law is void[60]. Statutory interpretation in a state where there is constitutional supremacy, such as in Barbados, necessarily requires that all legislation be filtered through constitutional lenses[61].

[72] Jamadar J also made the important observation that consistent with the principle of sovereignty[62], the task of statutory interpretation in Barbados included attending to the state's declared international undertakings through signed and subscribed international treaties and legal instruments[63]. Sovereignty in a constitutional democracy means that a state that enters into treaty arrangements does so with full autonomy, intending to mean what it represents to the world and its citizens as having been done… The result is a constitutional impetus to interpret all domestic laws in alignment with state undertaken international obligations and commitments, an approach recognised and endorsed by this Court.[64]

[73] Jamadar J therefore observed that two principles of statutory interpretation emerge for states which exist in the context of constitutional supremacy. Methodologically, a) respect for fundamental rights and basic deep structure

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[58] *Trust Co* (n 56) at [47].
[59] [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590.
[60] ibid at [23].
[61] ibid. See also *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW) at [27]-[46]; *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) (GY), [2022] 2 LRC 491 at [54]-[56], [72]-[79], [82].
[62] *Alleyne* (n 59) at [24] citing Preamble (a) to the Constitution of Barbados 1966.
[63] ibid at [24] citing *R (Chester) v Secretary of State for Justice* [2013] 3 WLR 1076 at [121].
[64] See *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332 at [54], [55].

principles[65], and b) formal international treaty commitments, are both lenses through which all statutes must be viewed, interpreted, and applied so as to adhere to and be consistent with, so far as is appropriate, those core values, principles, and commitments. What Jamadar J posits therefore[66] is not that the application of these rules is unnecessary because they support the outcome arrived at in the *Alleyne* case by Barrow J without their application. Jamadar J affirmed that these two rules of statutory interpretation must be considered and applied because in a constitutional democracy where the Constitution and not Parliament is supreme, it is a constitutional imperative, integral to the task of statutory interpretation. The Constitution therefore is at the centre of statutory interpretation and not at the periphery.

[74] We share the views of Jamadar J as to the role played by the Constitutions of the various Commonwealth Caribbean jurisdictions in the exercise of statutory interpretation carried out by the courts, mindful that the Constitution is the supreme law in constitutional democracies. In particular we note that regard must be had to the fundamental rights provisions. Accordingly, the sections in issue in this appeal should be viewed through the lens of the following fundamental rights and freedoms contained in the Constitution of Barbados

(i) s 11 (a) – the right to life, liberty and security of the person, whatever their sex;

(ii) s 11 (c) – the right to protection of the law regardless of sex; and

(iii) ss 11 (c) and 23 - the prohibition against discriminatory laws.

[75] The Court will further view the relevant definitions in the light of the international human rights obligations of the State of Barbados, which place emphasis on

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[65] *Alleyne* (n 59) at [25]. See *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104 at [20] (Wit J); *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178 at [59] (Byron P); *McEwan* (n 64) at [41]-[45], [51] (Saunders J); *Belize International Services Ltd v A-G of Belize* [2020] CCJ 9 (AJ) BZ, [2021] 1 LRC 36 at [319]-[321], [350] (Jamadar J); *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) (GY), [2022] 2 LRC 491 at [75]-[97] (Jamadar J); Tracy Robinson, Arif Bulkan and Adrian Saunders, *Fundamentals of Caribbean Constitutional Law* (Sweet & Maxwell 2015) para 3-028. International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 26.

[66] *Alleyne* (n 59) at [27].

eliminating discrimination against women and addressing gender-based violence against women.

[76] The Convention on the Elimination of All Forms of Discrimination Against Women[67] ('CEDAW' or 'the Convention'), ratified in Barbados in 1980, addresses the issue of discrimination against women. The Convention defines 'discrimination against women' as meaning any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. General Recommendation No 35 of CEDAW focuses on gender-based violence against women. This General Recommendation updates General Recommendation No 19, and sets out, *inter alia,* State party obligations in relation to gender-based violence against women.

[77] An Optional Protocol to the Convention was adopted in 1999 and provides a mechanism for consideration of complaints by individuals of violation of the provisions of the Convention. The Optional Protocol therefore provides direct access to the CEDAW Committee for persons who allege that the terms of the Convention have been breached, provided they have exhausted all internal domestic remedies. It is a matter of some concern that only three Member States of the Caribbean Community (Antigua and Barbuda, Belize and Saint Kitts and Nevis) have signed and ratified the Optional Protocol. Unfortunately, Barbados and many other Member States of the Caribbean Community are yet to follow suit.[68]

[78] Justice Désirée Bernard has written extensively on the Convention and its role in enhancing the human rights of women. She has often focused on the issue of

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[67] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. See this Court's references to the CEDAW in *McEwan* (n 64) and *Alleyne* (n 59).

[68] UN Gender Equality Observatory for Latin America and the Caribbean, 'Countries that have signed and ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (UN ECLAC Division for Gender Affairs) <https://oig.cepal.org/en/indicators/countries-have-signed-and-ratified-optional-protocol-convention-elimination-all-forms> accessed on 7 June 2023; UN Committee for the Elimination of All Forms of Discrimination against Women (CEDAW), 'Concluding Observations on the combined fifth to eighth periodic reports of Barbados' (24 July 2017) CEDAW/C/BRB/CO/5-8.

discrimination against unmarried women and women in common law relationships. In her compilation of speeches and papers delivered through the years[69] Justice Bernard has included a remarkable paper delivered at the University of the West Indies, Cave Hill, Barbados, on the 18 November 2005. Entitled 'The Promotion and Enforcement of Women's Human Rights Within the Judicial System of the Caribbean' Justice Bernard explored the value of the Charter of Civil Society signed and adopted by the Heads of Government of the Caribbean Community in 1997. By the Charter, these Governments commit themselves to respect and strengthen several principles, such as fundamental human rights and freedoms, including women's rights. Justice Bernard pointed out that Article XII of the Charter focuses on women's rights and includes the right not to be discriminated against by reason of marital status.[70]

[79] In addition, the Court will consider the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, which was adopted by the General Assembly of the Organization of American States in 1994 and ratified by Barbados in 1995. Better known as the Convention of Belém do Pará, the Convention asserts that violence against women violates fundamental human rights and freedoms, based on the unequal power relations between women and men.[71]

[80] Additionally, the best interest of the child principle[72] cannot be overlooked in the exercise of statutory interpretation as to whether the appellant was entitled to the protection of the amended Act. Of note is the Convention on the Rights of the Child[73] which at Article 19(1) requires States Parties to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent

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[69] Désirée Bernard, Reflections *and Opinions* (Hansib Publications 2018).
[70] ibid 313-314.
[71] See the European Court of Human Rights Case of *Opuz v Turkey* (2009) 48 ILM 909 which considers the cases of *Velasquez-Rodriguez v Honduras* (1989) 28 ILM 294 and *Da Penha v Brazil*, Case 12.051, Inter-American Commission on Human Rights, Report No 54/01, OEA/Ser L/V/II/111, doc 20 rev (2000), and the responsibility of states to protect rights under the Inter-American System.
[72] See the value of art 38B of the Constitution of the Co-operative Republic of Guyana, Cap 1:01 which incorporates the best interests of the child as the primary consideration in all judicial proceedings and decisions and in all matters concerning children.
[73] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3. Ratified by Barbados in 1990.

treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'. It is regrettable that the Magistrate should think that she had provided sufficient protection for the child by making an interim protection order for the child but without making any order for the protection of the child's mother in these circumstances. The Parliament of Barbados could not have intended such a restrictive approach to be taken to interpreting the amended Act. Such a narrow approach would leave the mother exposed to the risk of violence without the realisation that it was in the best interest of the child to protect the mother as well as the child.

[81] Viewed through these lenses, therefore, we arrive at the conclusion that the decision of the Magistrate upheld by the majority of the Court of Appeal that the appellant was not a 'former spouse' within s 2 of the amended Act was wholly incorrect. The legislation in issue was not viewed, interpreted and applied so as to adhere to Barbados' obligations to respect fundamental rights and freedoms, and constitutional principles and values contained in its Constitution, and to align with Barbados' international treaty obligations and commitments, as they relate to the protection of women from violence and discrimination.

Visiting Relationships

[82] At the Court of Appeal stage, Counsel for the appellant submitted that the appellant was in a visiting relationship with the respondent. Three weeks prior to the incident that prompted the application for the protection order, the parties had been in an intimate relationship. The appellant's application therefore fell squarely within the ambit of the amended Act, he contended.[74]

[83] As mentioned earlier, 'visiting relationship' in the amended Act is defined as 'a relationship where the parties do not live together in the same household, but in which there are romantic, intimate or sexual relations'. The appellant's counsel had contended that the parties had been in an intimate or sexual relationship just 3

[74] Transcript of proceedings, (Court of Appeal of Barbados, 27 May 2021) 4.

weeks prior to the incident that gave rise to the domestic violence complaint. Indeed, the Court of Appeal noted that the parties had been in an on and off again relationship for a period not in excess of three months (presumably ending at the end of May 2020). This therefore gives rise to the question of whether the appellant was entitled to a protection order as a party to a former visiting relationship.

[84] The submissions of UN Women MCO provided useful insight into the question of the protection afforded to parties in visiting relationships and former visiting relationships under the amended Act.[75] UN Women MCO referred to the 2012 Report of the Domestic Violence Law Reform Working Committee[76] established by the Bureau of Gender Affairs, Barbados, which made recommendations for the reform of the Domestic Violence (Protection Orders) Act 1992. The work of this Committee was highlighted by Barbados as part of the state's policy of zero tolerance of all forms of violence against women in the *Report of the Working Group on the Universal Periodic Review*.[77] The Working Committee recommended that the class of protected persons under the domestic violence legislation be expanded to include those in intimate relationships of any duration. The Working Committee noted that in the 1992 Act, '*Absent from the list of protected persons are those in visiting or former visiting relationships'*.

[85] UN Women MCO further submitted that many countries in the Caribbean extend protection to parties to former visiting relationships, so re-affirming the goal of comprehensive protection to victims and survivors of domestic violence. UN Women MCO observed that the amended Act did not explicitly include former parties to visiting relationships, though they remain vulnerable to post-separation domestic violence. This may be a gap in the existing legislation, UN Women MCO suggested. UN Women MCO therefore echoed the Working Committee's recommendation that the domestic violence legislation be amended to include this group to ensure certainty in the legislation. Such legislation exists in Saint Lucia

[75] UN Women, 'Amicus Curiae Submissions on behalf of UN Women MCO' (n 8), [17].
[76] Domestic Violence Law Reform Working Committee, 'Report on the Consultation on Domestic Violence Legislation' (Bureau of Gender Affairs, Ministry of Family, Culture, Sports and Youth, 30 July 2012) 10.
[77] United Nations Human Rights Council (UNHRC) 'Report of the Working Group on the Universal Periodic Review: Barbados' (12 March 2013) UN Doc A/HRC/23/11 para 19.

which passed the Domestic Violence Act in 2022[78], to expand the definition of 'domestic relationship' in s 2 to include at (f) where the applicant and the respondent are or were in an engagement, dating or visiting relationship. Trinidad and Tobago also amended its domestic violence legislation in 2020, the Domestic Violence (Amendment) Act[79]. At s 3 of Trinidad and Tobago's Act, a 'domestic relationship' includes a person who is or was in a visiting or dating relationship with the respondent.

[86] Applying the purposive approach to statutory interpretation and viewing the term 'visiting relationship' in the context of clear policy of the amended Act, and Barbados' fundamental human rights and international obligations,[80] this Court is of the view that former visiting relationships fall within the definition of 'domestic relationship' contained in the amended Act. Accordingly, parties who had previously been in visiting relationships are entitled to seek protection orders pursuant to the amended Act. To hold otherwise would be contrary to the clear intention and objectives of the legislature, that is, to expand the classes of persons entitled to be protected under the amended Act. Further, an interpretation which excludes parties who were in former visiting relationships would amount to an absurdity, in effect incentivising and/or coercing victims of domestic violence to stay in violent visiting relationships in order to qualify for protection from domestic violence under the amended Act. In the view of the Court, the appellant was so entitled as a party to a former visiting relationship to seek protection under the amended Act.

Second Issue: - Was the Magistrate Correct to Rely on the Opinion of the Appellant on an Issue of Law?

[87] In compliance with the order of the Court dated 17 January 2023, the appellant filed an unsworn statement dated 23 January 2023 recounting her experience before the Magistrate and the consequential impact of the Magistrate's decision on her and her minor child. The appellant stated that she was asked by the

[78] Act No 11 of 2022 (SLU).
[79] Act No 18 of 2020 (TT).
[80] See [67]-[81] of this judgment.

Magistrate whether she was the spouse of the first respondent. She replied that she was not. The appellant further stated that the legal meaning of the word 'spouse' was not given to her by the Magistrate, who also refused to allow her Attorney, to advise her as to what a 'spouse' meant in law. Her application for a protection order was refused. Thereafter, the appellant fled the jurisdiction with her minor child.

[88] UN Women MCO has provided some valuable insight into this issue.[81] They cite *The Rites of Domination: Tales from Domestic Violence Court*[82] by Mindie Lazarus-Black who examines why, in spite of new legislation in the Caribbean designed to provide fast protection at minimum costs to victims of abuse, the law often does not accomplish that goal. Rite #2 *intimidation* describes 'an environment in which individuals feel they cannot speak freely because the listener(s) hold(s) physical, social, psychological or economic power over them' ultimately making women feel intimidated, overpowered and uncertain. UN Women MCO contends that in the present case, the heavy reliance placed on the appellant's response that she was not a former spouse ignores these realities. It belies an understanding of the ways in which legal processes can perpetuate class and gender hierarchies and undermine women's use of the court for protection from violence.

[89] It is unfortunate that the majority of the Court of Appeal approved of the Magistrate's approach. They stated that the Magistrate had said in her Reasons for Decision that she felt it necessary to explain to the appellant the meaning of 'cohabitational relationship', 'domestic relationship', 'spouse', and 'visiting relationship' as defined by law.[83] They agreed that a protection order was not granted to the appellant because she 'took herself out of the definition' by saying to the Magistrate that she was 'none of these things'. In addition, the majority noted that the appellant 'by her own words withdrew herself' from the protection

[81] UN Women, 'Amicus Curiae Submissions on behalf of UN Women MCO' (n 8), [30].
[82] Mindie Lazarus-Black, *The Rites of Domination: Tales from Domestic Violence Court* (St Augustine Unit, Centre for Gender and Development Studies, University of the West Indies 2002).
[83] Transcript of proceedings, (Court of Appeal of Barbados, 27 May 2021) 21.

afforded by the amended Act. They also approved of the Magistrate's giving weight to the responses of the appellant.

[90] It is to be regretted that the Magistrate and the majority of the Court of Appeal did not appreciate that the issue before the Magistrate was a matter of statutory interpretation as it related to the status of the appellant to apply for a protection order. It was therefore a question of law, and not one that could be determined by the opinion of the appellant. It was for the appellant to state the facts relating to her relationship with the first respondent, and thereafter for the Magistrate to decide the question of law as to the status of the appellant. The approach of the Magistrate and of the majority of the Court of Appeal is to be deprecated. It was a fundamental mistake giving rise to unfairness and injustice.

Closing Observations

[91] This appeal has highlighted the desirability for specialised, problem-solving courts to be established in the Caribbean to deal in a sensitive and holistic manner with matters relating to gender-based and family violence.[84] It has also underlined the necessity for judicial officers and court staff dealing with domestic violence matters to receive comprehensive training and sensitisation, to better understand the significance of human rights provisions and international treaties to the legislation which they are tasked to interpret and apply. In this regard, the Court is heartened to learn that Barbados has committed to establishing a dedicated hybrid Family Court which will deal with family matters.[85] It is hoped that the Family Court will also have jurisdiction over domestic violence matters.

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[84] For example, the Sexual Offences Model Court has been established in Antigua and Barbuda under the JURIST Project executed by the Caribbean Court of Justice.

[85] Sharon Austin 'A Hybrid Family Court In The Making', *Barbados Government Information Service* (St Michael, 19 November 2018) <https://gisbarbados.gov.bb/blog/a-hybrid-family-court-in-the-making/> accessed 21 June 2023; Julia Rawlins-Bentham, 'Family Court Set For Later This Year', *Barbados Government Information Service* (St Michael, 12 April 2019) <https://gisbarbados.gov.bb/blog/family-court-set-for-later-this-year/ > accessed 7 June 2023; 'Family Court coming, says AG', *Barbados Today* (Bridgetown, 12 March 2023) <https://barbadostoday.bb/2023/03/12/family-court-coming-says-ag/> accessed 7 June 2023.

SAUNDERS P (concurring):

[92] I agree fully with the lead judgment of Rajnauth-Lee J and wish to add some remarks of my own mainly on two important aspects of this case. The first has to do with the eligibility of current and former intimate partners to seek protection under the Domestic Violence (Protection Orders) Act,[86] as amended by Act 2 of 2016 ('the amended Act'). The second contextualises the first. It addresses the general approach that must be taken to a) interpretation of the amended Act and b) the treatment and hearing of applications for protection orders.

[93] The facts of this case have been amply described by Rajnauth-Lee J. The broad scenario is regrettably pervasive. Two people enjoy an intimate relationship. There is violence, or a threat of violence. One party (or sometimes both parties) feels compelled to seek the protection of the law.

[94] At a regional level, parliaments throughout the Caribbean Community have enacted legislation to afford effective recourse to those affected. Non-governmental organisations in Barbados, such as Operation Safe Space Movement for Change Inc (OSS), International Center for Advocates Against Discrimination Inc (ICAAD) and also, UN Women MCO, are proactive in trying to stem domestic violence. International treaties have also been entered into in order to protect women in particular from such violence.[87] Despite these efforts, newspapers throughout the Caribbean still report, from time to time, several instances where persons continue to be seriously injured by partners or former partners. Some are murdered.

The Applicable Legislation

[95] The Barbados Parliament responded to this grim reality by passing the Domestic Violence (Protection Orders) Act in 1992 (the principal Act). The legislation was significantly amended and updated in 2016. In moving the passage of the Domestic

[86] Cap 130A.
[87] See for example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women also known as the *Convention of Belém do Pará* (adopted 9 June 1994, entered into force 5 March 1995) (1994) 33 ILM 1534.

Violence (Protection Orders) Amendment Bill 2016, the Hon Steven D Blackett provided some sobering statistics to underscore the seriousness of the problem (see *Hansard*, 1st Session 2013-2018, (2 February 2016) 5). He stated in Parliament that

> … Twenty seven per cent of Barbadian homes had in fact experienced some form of domestic violence, with an average of 21 per cent of murders in Barbados between the years 2000 and 2007 credited to violence in the homes. This represented one in every five murders committed in Barbados. All the victims of those murders, Mr. Speaker, were our precious women.

[96] The amended Act unquestionably responds to a grave and pressing human rights issue. The safety of those at risk is paramount. Social workers, governmental agencies, police officers, court staff, judges, magistrates, all have a role to play in making the amended Act work. Everyone must faithfully strive to understand fully, and fulfil efficiently and effectively, their respective responsibilities. Further, both the Judicial and Executive branches of Government have a duty to train their relevant personnel in an appropriate manner. Only in this way will we help to safeguard the rights and dignity of the victims and ultimately rid the society of this scourge.

[97] The amended Act is designed to offer effective procedures and remedies for those affected by the ugly face of domestic violence. It departs significantly from the rigour of the ordinary criminal law. Once the court considers it prudent to take measures to ensure the safety of a victim, a protection order may be made, even in the absence of the alleged perpetrator. The survivor's evidence can be given by a sworn statement. The standard of proof grounding the making of protection orders is relaxed. The complainant's allegations are tested on a balance of probabilities and not on the usual criminal standard of beyond a reasonable doubt. The entire process is (or is supposed to be) user friendly, speedy, inexpensive. The intention is to make it easy for those threatened readily to obtain the protection they deserve. In Saint Lucia, one accused abuser claimed that these measures prescribed by Parliament violated his constitutional rights to due process, but this specious

complaint was fittingly rejected by Barrow J. See *Francois v Attorney General*[88]. A person who does not engage in or threaten violence against a partner or former partner has absolutely nothing to fear from a Domestic Violence Act.

[98] The amended Act is aimed at deterring violent conduct and promoting peace between persons involved in a 'domestic relationship'. Parliament has defined what constitutes such a relationship and has deliberately drawn its scope extremely wide. According to the amended Act[89],

> 'Domestic Relationship' means the relationship between a perpetrator of domestic violence and victim who is a spouse, former spouse, child, dependents or other person who is considered to be a relative of a perpetrator by virtue of consanguinity or affinity and includes co-habitational and visiting relationships.

[99] Parliament gave a specialised meaning to some of the terms and forms of relationship referred to in the amended Act. As the lead judgment notes, the expression 'spouse', for example, bears a meaning that goes way beyond marriage. The amended Act defines a 'spouse' as 'a party to a marriage or cohabitational relationship'[90]. A 'cohabitational relationship' is 'a relationship where persons who are not legally married are living together in the same household as man and wife'[91]. So, for the purposes of the amended Act, if two persons merely live together in the same residence as lovers, they are deemed to be 'spouses'. As is evident, the expression 'domestic relationship' also embraces 'visiting relationships'. What is a visiting relationship? The amended Act defines this form of association as one 'where the parties do not live together in the same household, but in which the partners enjoy romantic, intimate or sexual relations'[92].

[100] In summary, *among other relationships*, the amended Act includes in the definition of those regarded as being in a domestic relationship: i) persons married to each other, whether they live together or apart, ii) unmarried partners who live together, and iii) unmarried persons who do not live together but who enjoy romantic,

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[88] *Francois* (n 54).
[89] See s 2 of the amended Act.
[90] ibid.
[91] ibid.
[92] ibid.

intimate or sexual relations. The amended Act states that an application for a protection order may be made by, among others, the 'spouse' of the accused or any other person 'in a domestic relationship' with the person against whom the order is sought, where an act of domestic violence was committed against the applicant.[93]

The Treatment of the Case by the Courts Below

[101] To return to this case, when the appellant, appeared before the Magistrate, urgently seeking the court's protection, the Magistrate was sufficiently impressed that there was violence or the threat of violence because the Magistrate made a protection order in relation to her child. The Magistrate, however, declined to make one in favour of the appellant with whom the child lived. The Magistrate seemed to be more concerned with interrogating the nature of her current relationship with her ex than with her safety or with the aggressive conduct of her former partner towards her. Instead of paying attention to the violent inclination of the man, the Magistrate chose to school the woman on jurisdictional aspects of the law. The Magistrate asked her a series of questions regarding her opinion of how the law applied to her circumstances. The Magistrate then concluded that, *because of the answers she gave*, the court lacked jurisdiction and she did not qualify for a protection order for herself.

[102] When the case reached the Court of Appeal, the judges were divided. A majority on the court agreed with the Magistrate that the appellant '*by her own words withdrew herself*', according to them, from the categories of persons entitled to seek a protection order. The irony here of course is that three Court of Appeal judges were unable to agree among themselves the answer to the legal question whether the appellant fell within or outside those categories. Yet, two of the three regarded as decisive her innocent answer to that precise question. Narine JA disagreed with that approach. He was also firmly of the view that, on the

[93] See s 4 of the amended Act.

undisputed facts, the appellant did fall within at least one of those categories and that the Magistrate had the jurisdiction to make a protection order in her favour.

[103] We agree emphatically with Narine JA. Incidentally, just as a Magistrate is duty bound to disregard a confession of guilt if an accused goes on to give an explanation that, as a matter of law, discloses exculpatory circumstances, so too here, the Magistrate was wrong to feel constrained by, and to regard as definitive, the answers of the appellant, a lay-person, as to whether she was a 'spouse' or 'former spouse', or was or was not at the time in a visiting relationship, or was or was not entitled to apply for a protection order. Given the way the amended Act is drafted, these were all legal conclusions to be drawn from primary facts. The Magistrate was required to take due note of and form an independent assessment from the primary facts.

Intimate Partners and Protection Orders

[104] In construing the amended Act as a whole, like Rajnauth-Lee J, I am of the firm view that, as against an abuser, the following persons *must* be regarded as being among those entitled to seek a protection order, namely:

a) a current or former 'spouse',

b) a current or former cohabitant of an intimate partner, and

c) a current or former partner in a visiting relationship.

[105] Of course, this list only references intimate partners. It does not at all exhaust the various categories of persons entitled to apply for such an order. In addition to those on the list above, any 'child, dependent or other person who is considered to be a relative of the perpetrator by virtue of consanguinity or affinity' is also entitled to apply.

[106] Given the partial legislative overlap between categories a) and b), the appellant fitted into, or was deemed by the amended Act to fit into every single one of the three categories listed above. She qualified for categories a) and b) because she lived 'as man and wife' with the accused in the same house for almost two years

and the amended Act unambiguously includes, in the definition of 'spouse', the cohabitant of an intimate partner. In keeping with the provisions of the amended Act, she is therefore to be regarded as 'a former spouse'. Mr Hanuman, counsel for the appellant, was right when he submitted that, just as a long retired Chief Justice, for example, is entitled to be forever recognised as 'a former Chief Justice', so too, *for the purposes of the Domestic Violence Act*, the appellant was deemed to be, and would forever be so deemed to be in relation to her child's father, a 'former spouse'. This is a legal result that flows ineluctably from the amended Act's provisions irrespective of what the appellant might herself think, or say, or like having said about her. The appellant also qualifies for category c) because the evidence given by her was that after she and the first respondent ceased living together, but before they broke up entirely, they continued to have a visiting relationship for a period not exceeding three months.

[107] There is another point to be made in relation to the appellant and her eligibility for a protection order. She was a mother bringing proceedings against her child's father. With perhaps few exceptions, every woman who conceives, or who bears a child, is, or has been at some point in time, in a 'domestic relationship' with the man responsible for that pregnancy. Without more, such a woman *automatically* is presumed to fall into one of the categories described as a), b) or c) at [104] above. If any such woman feels threatened with violence from the man responsible for that pregnancy (or from the man who is her child's father), the onus is on that man to establish, if he can, that he is not or was never in a domestic relationship with the applicant and that therefore the ordinary criminal law and not the amended Act must apply. It is difficult to fathom how such a man could ever overcome that burden. Exceptional circumstances such as rape or sperm donation may probably qualify, but I make no determination on that here and now. If and when rare exceptions like these arise, courts must consider them on a case-by-case basis in light of all the circumstances.

[108] The point is that, in this case, there was an extremely strong platform on which to base both the Magistrate's jurisdiction and the grounds for protecting the appellant

from her former partner because the perpetrator (who the Magistrate clearly appreciated had a violent propensity) was the father of her young child. This latter circumstance naturally meant that the two parents were very likely to have to interface with each other even if only on account of matters relating to the infant. That interface could threaten the appellant's safety and/or engender a breach of the peace, as proved to be the case when the first respondent turned up at the business premises of the appellant's mother.

Purposive Interpretation of the Amended Act

[109] The Magistrate likely fell into serious error because there is a view that, in relation to intimate partners, a gap in the legislation exists that Parliament first needs to fix and that the courts are impotent to fill. The notion is that because the amended Act specifically authorises applications for a protection order from the spouse of the accused, or any other person *in* a domestic relationship with the person against whom the order is sought, this meant that *former* unmarried spouses, that is, *former* cohabitants, and also *former* partners in a visiting relationship were left unprotected. Some judicial officers appear to link the eligibility of an applicant for a protection order to the stability or duration or currency or recency of the applicant's intimate relationship with the perpetrator. These views are mistaken. Regrettably, the mistake seems to be a common one made in Barbados. It was distressing to hear during the course of the proceedings before us that former cohabitants of, and persons who used to be in visiting relationships with alleged perpetrators, invariably women, are routinely turned away from the courts or denied protection orders because of this erroneous view of the law.

[110] The fallacy of this notion is exposed if one approaches the matter from the standpoint of purposive statutory interpretation. Ms Thompson, who made submissions before us on behalf of UN Women MCO, was right to emphasise that the clear focus of the amended Act is to prevent violence; particularly intimate partner violence. As rightly pointed out in the lead judgment, the amended Act cannot sensibly be interpreted to mean that, unlike married spouses, an unmarried person who is or was in an abusive domestic relationship should be forced to stay

in or resume that relationship to be eligible to apply for a protection order. Or that, to put it another way, if a traumatised unmarried woman or man ends a violent domestic relationship (irrespective of the length of the union) and tries to move on, they thereby automatically 'withdraw themselves' from the category of persons who may seek the protection of the amended Act, even if the threat of violence from their former partner persists. Since it is common knowledge, Parliament must have appreciated that intimate partner violence often becomes more serious, even deadly, *after* parties separate.

[111] Any interpretation of the amended Act that suggests that former intimate partners were left out in the cold defeats the purpose of the legislation. It rips out of the amended Act its vital essence. It places the safety of oftentimes vulnerable persons at grave risk and, for no good reason, it discriminates against unwed partners. Parliament could never have envisaged that courts would place such an interpretation on its noble interventions in this realm of the law. Where a statute is constitutionally compliant, the courts must endeavour to realise the unmistakeable intentions of Parliament by interpreting the legislation in a purposive manner.[94] Even assuming that the court perceived a gap in the law because no explicit provision was made catering for the eligibility of *former* partners to obtain protection orders, that lacuna occupies such an interstitial space in the architecture of the amended Act that it is the natural responsibility of a common law court to fill the gap so as to achieve Parliament's purpose.

[112] A court is also entitled to have resort to treaties to fill gaps in domestic legislation. One applicable treaty here is the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women which Barbados has ratified in 1995.[95] That Convention proscribes violence against women 'that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman…'[96] By Article 7 of the Convention, the State Parties condemn

[94] Bennion (n 50) s 12.2.
[95] (Adopted 9 June 1994, entered into force 5 March 1995) (1994) 33 ILM 1534, ratified by Barbados on 8 February 1995.
[96] ibid art 2.

all forms of violence against women and agree to pursue policies to prevent, punish and eradicate such violence. They also undertake to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation. Courts and other official authorities in Barbados must pay due regard to this Convention when interpreting domestic laws or when otherwise treating with issues concerning the prevention and eradication of violence against women. When doing so, Courts should strive to interpret domestic legislation to render it consistent with the treaty.

[113] The use of international treaties to fill gaps is well demonstrated in Caribbean jurisprudence.[97] It is illustrated, for example, in *Grant v Gran*t.[98] When Hariprashad-Charles J perceived that there was nothing in Saint Lucia's domestic statute law directing the Court to have regard to children's views, that judge rightly noted the prominence accorded to this principle in the Convention on the Rights of the Child.[99] Since Saint Lucia had ratified the Convention, the judge accepted that this principle should be applied in that country.

[114] An applicant for a protection order reasonably expects to be dealt with by court staff who appreciate and are sensitive and responsive to the fact that they are dealing with a rational fellow human who is fearful for their safety, perhaps even their life; someone who, often as a last resort and at some sacrifice, has had little choice but to place their faith in the court as a source of protection; someone who urgently needs to be heard by an equally sensitive judicial officer. The admonitions of the Hon Steven D Blackett, made in Parliament and cited earlier at [95], must constantly be borne in mind.

The Treatment and Hearing of Applications for Protection Orders

[115] When someone approaches the court, desperately seeking protection from the aggressive behaviour of their current or former intimate partner, particularly from their child's other parent, the court should not at the outset, or at all, get itself

[97] See for example *Stockhausen v Willis* JM 2008 SC 83 (CARILAW), (16 July 2008) (Anderson J).
[98] LC 2002 HC 30 (CARILAW), (17 December 2002).
[99] The United Nations Convention on the Rights of the Child (n 73), ratified by Saint Lucia on 16 June 1993.

bogged down in issues of the status and standing of the applicant. This indicates that the gaze of the court has unfortunately strayed. It has moved away from legitimate concern over the safety, dignity and human rights of the complainant; away from deterring violent conduct between persons who are or were involved in a domestic relationship; away from the preservation of peace.

[116] At a hearing, the Magistrate's first and overriding obligation is to assess whether there is a credible allegation of violence, or a threat of violence from the alleged perpetrator and correspondingly, whether the safety, dignity and human rights of the complainant have been or are at risk of being compromised. The Magistrate must then consider the relationship the perpetrator and the applicant have, or used to have. The Magistrate must view the alleged violence or threat in the context of that relationship. That context will assist the Magistrate in clarifying the applicant's need for and entitlement to a protection order. It will also assist the Magistrate in tailoring any order to be made to suit the precise circumstances. All of this naturally means that a liberal approach must be taken both to standing and to the grant of a protection order. The approach of the court must be guided by the observance of what in environmental law is regarded as the precautionary principle.

[117] The Magistrate here was right to grant a protection order in relation to the child. But the Magistrate should not have dismissed the appellant's application on the ground that the court lacked jurisdiction or that the appellant lacked standing. As indicated above, the court had more than ample jurisdiction and it is difficult to conceive of an applicant with a more compelling and deserving case. Moreover, the failure to afford the appellant a protection order in her own right could never be in the best interests of the child as it left the child's mother and principal caregiver terribly exposed. I agree that the appeal must be allowed.

ANDERSON J (concurring):

Introduction

[118] I am grateful to Rajnauth-Lee J for setting out the factual and legislative context thus obviating the need for me to go into any significant details on those matters. I am also grateful to the *amici curiae*, Operation Safe Space Movement for Change Inc (OSS) in association with the International Center for Advocates Against Discrimination Inc (ICAAD), and UN Women, Multi Country Office – Caribbean, for providing empirical, comparative, and international data on the incidence of, and on the legislative and treaty responses to, the scourge of domestic violence.

[119] There is an epidemic of domestic violence sweeping Caribbean societies. In its wake are strewn emotional and economic trauma, physical injuries, and all too often, untimely deaths. According to the statistics produced by the *amici curiae*, the prevalence of intimate partner violence (IPV) in the Caribbean is among the highest in the world with nearly 1 out of 2 or 46% of ever-partnered women aged 15-64 in the Caribbean having experienced one or more of the four types of IPV in their lifetime: physical, sexual, psychological and/or economic abuse.[100] A purposive sample survey conducted for the purpose of these proceedings indicates that domestic violence typically continues after the relationship has ended and that children are often directly impacted.[101] Many women reported the abuse as being worse after the end of the relationship.[102]

The Question for Determination

[120] The emotionally taxing nature of the foregoing information forms the powerful context in which this matter is to be decided but the issue remains simply, if quintessentially, one of statutory interpretation, and perhaps more so, of statutory application. The question for determination is whether the appellant was entitled to apply to the Magistrate for a protection order on the basis that she was a 'former spouse' of the respondent within the meaning of the Domestic Violence

[100] UN Women, 'Amicus Curiae Submissions on behalf of UN Women MCO'(n 8), [18].
[101] OSS, 'Written Submissions on behalf of amici curiae OSS and ICAAD' (n 23), [3].
[102] ibid.

(Protection Orders) Act 1992[103] of Barbados (Act of 1992), as amended and updated in 2016[104] (the amended Act). Substantially for the reasons given by Rajnauth-Lee J in the lead judgment, and by Saunders P in his concurring opinion, but as qualified by what follows, I agree that the appellant was entitled to apply for the protection order and that the Court of Appeal was wrong to uphold the decision of the Magistrate that she had no jurisdiction to entertain the appellant's application.

Applicable Statutory Provisions

[121] The Act of 1992 (the principal Act) was enacted by the Parliament of Barbados, in the words of its long title, 'to provide for the granting of protection orders in circumstances surrounding domestic violence and for related matters.' It enables an application for a protection order to be made by a 'spouse' (among others) to restrain actual or threatened acts of criminal conduct or harassment; such order being granted on a balance of probabilities that there had been proscribed behavior of the kind just described and that restraint of the perpetrator is necessary. The principal Act defined 'spouse' to include 'a party to a relationship where the parties are living with each other in the same household as husband and wife.' However, the Act did not define the word 'former' in the term 'former spouse'.

[122] The 2016 Amendment Act was enacted to provide a more comprehensive definition of domestic violence 'and to make greater provision for the safety of victims of domestic violence and the accountability of perpetrators of domestic violence.' The categories of persons eligible for protection orders were expanded, based on an appreciation of the diversity of family forms and intimate partnerships in the Caribbean. Accordingly, the 2016 Amendment Act expanded eligibility beyond residential unions by introducing the 'domestic relationship' concept, in which persons in a range of domestic relationships ('cohabitational' 'domestic' and 'visiting') were eligible to apply for protection. Section 2 states that:

[103] Cap 130A (n 86).
[104] Domestic Violence (Protection Orders) (Amendment) Act 2016.

> "domestic relationship" means the relationship between a perpetrator of domestic violence and victim who is a spouse, *former spouse*, child, dependant, or other person who is considered to be a relative of the perpetrator by virtue of consanguinity or affinity and includes cohabitational and visiting relationships (emphasis added).

[123] Section 4(1) of the 2016 Amendment Act provides that any person in a 'domestic relationship' may make an application for a protection order. This necessarily includes a '*former spouse*' which, under the terms of the amended Act,[105] is to be taken to include 'a former party to a marriage or cohabitational relationship', and by extension, a domestic relationship. Again, 'spouse' is defined to mean 'a party to a marriage or cohabitational relationship'; however, the word 'former' in the term 'former spouse' is not defined.

[124] These provisions were all in place when the appellant made her application to the Magistrate on 29 June 2020 for a protection order. In her affidavit in support of her appeal to the Court of Appeal, the appellant deposed that she was in a relationship with the first respondent for three years; that they lived together for 21 months until November 2019; and that they had a son who was born in May 2019. She further deposed that the respondent was violent towards her, and that the relationship ended at the end of May 2020. Whether the applicant is to be regarded as the 'former spouse' of the respondent necessarily turns on the rules of statutory interpretation.

Rules of Statutory Interpretation

[125] The purpose of statutory interpretation is to give effect to the will of Parliament. In ensuring that the legislative intent is properly and effectively applied, the court relies on certain established rules of statutory interpretation. These rules are not in doubt. *A Dictionary of Law*,[106] provides for the following methodology in the interpretation of a statute:

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[105] Section 2.
[106] Johnathan Law and Elizabeth A Martin, *A Dictionary of Law*, (Oxford University Press 2009).

> (1) An Act must be construed as a whole, so that internal inconsistencies are avoided. (2) Words that are reasonably capable of only one meaning must be given that meaning whatever the result. This is called the literal rule. (3) Ordinary words must be given their ordinary meanings and technical words their technical meanings, unless absurdity would result. This is the golden rule. (4) When an Act aims at curing a defect in the law any ambiguity is to be resolved in such a way as to favour that aim (the mischief rule)…

Literal Rule

[126] In their judgments, my colleagues focused primarily on the literal and purposive rules of interpretation as being those primarily applicable to this case. I entirely agree. The literal rule is elaborated upon by Bennion[107] who states that when undertaking the task of construing statutes, statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances. The presumption in favour of grammatical interpretation was stated by a 19th century Lord Chancellor, Lord Selborne, in the words, "there is always some presumption in favour of the more simple and literal interpretation of the words of the statute".[108]

[127] This approach has also been taken by this Court. In *Commissioner of Police v Alleyne*[109] the respondent was charged with the offence of having sexual intercourse with another man without his consent. The respondent was discharged prior to the start of the trial in the Magistrates Court, the Magistrate reasoning that the crime of rape under the Sexual Offences Act could not extend to intercourse between men, and this reasoning was upheld by the Court of Appeal. A majority in this Court allowed the appeal and found that a literal reading of the legislative provision led to the conclusion that a man was capable of committing rape under the Sexual Offences Act, since the Act forbade 'any person' from 'sexual intercourse with another person without the consent of the other person…'. It was held that since on a literal interpretation of the word 'person' such a word would

[107] F A R Bennion, *Bennion on Statutory Interpretation* (5th edn, LexisNexis 2008).
[108] ibid 865.
[109] *Alleyne* (n 59).

be deemed gender neutral, the victim in respect of the actus reus could have been a male and therefore, rape could have been committed against a male.

[128] The literal rule rests on the simple assumption that Parliament said what it meant and meant what it said. Where there is no uncertainty or ambiguity in the words used according to the grammatical and ordinary meaning of the words used, Parliament has succeeded in clearly communicating its intention in the legislative provision. That intention must be enforced by the courts subject to any conflict with the Constitution; a matter to which I shall return in due course.

[129] A literal interpretation of the term 'former spouse' produces no uncertainty or ambiguity or incongruity with the objective of the legislation under consideration. The legislature went to the precision of specifying in the definitional section of the 2016 Amendment Act that a 'spouse' meant 'a party to a … cohabitational relationship' and expressly permits a 'spouse' to apply for a protection order. But the 2016 Amendment Act did not stop there. Replacing s 4 of the principal Act, s 4 of the 2016 Amendment Act provides that 'any other person in a domestic relationship' may also apply for a protection order. As we have seen, a domestic relationship includes the relationship between a perpetrator and a 'former spouse'.[110] The inclusion of the word 'former' before 'spouse' in no way extinguishes the statutory meaning of 'spouse'; the Interpretation Act of Barbados requires that wherever the word 'spouse' appears in the enactment, it must be read as defined.[111] The ordinary and grammatical meaning of 'former' is ' that used to have a particular position or status in the past'.[112] Accordingly, 'former spouse' must include any person who was married to the perpetrator *in the past* and any person who was in a cohabitational relationship with the perpetrator *in the past*.

[130] On the evidence presented it is virtually impossible to comprehend how it could be asserted that the appellant was not a former spouse thereby fully entitled to make the application for the protection order. The appellant and respondent had lived together for 21 months in a cohabitational relationship, and their relationship

[110] Domestic Violence (Protection Orders) (Amendment) Act 2016, s 2.
[111] Interpretation Act, Cap 1, s 33(1).
[112] 'former', A S Hornby, *Oxford Advanced Learner's Dictionary of Current English* (7th edn, Oxford University Press 2005).

produced a child. When their relationship ended the parties became *past* or 'former cohabitants' and therefore *past* or 'former spouses'. As such the appellant plainly and squarely fell within the category of 'former spouse' and was entitled as such to make the application for a protection order.

[131] The Magistrate explained the meaning of 'spouse' and the various relationships covered by the amended Act and then accepted the appellant's response that she was neither 'a former spouse nor is she currently in a relationship of any type with the respondent'. It was clearly wrong for the Magistrate to interrogate the appellant and to adopt her assessment as to whether she fell within the definition of the categories of persons protected by the amended Act. The question of whether the appellant was a 'former spouse' was obviously a matter of statutory construction, not a matter for a layperson. It was a matter for the Magistrate to decide by applying the facts to the statutory definition, not a matter for the appellant to decide without the benefit of a legal education. In seeking to elicit a legal assessment from a layperson untrained in the law the Magistrate fell into grievous error.

[132] I very much regret that the majority in the Court of Appeal also fell into same error when they held that the answers by the appellant to the interrogatories of the Magistrate meant that the appellant, 'took herself out of the definition by … saying to the Court in fact, that she was none of those things…'. By way of contrast, Narine JA opined that s 2 combined with s 4(1)(a) and (b) of the amended Act meant that it followed 'quite clearly' that the appellant qualified as a 'former spouse' and that the Magistrate had the jurisdiction to entertain her application for the protection order. With respect, this view is unanswerable and follows ineluctably from a proper construction and application of the statutory provisions.

[133] The foregoing is sufficient to dispose of this appeal. However, other issues were raised in written and oral submissions by the parties and some of these have been dealt with in the judgments of my colleagues. It may therefore be useful to seek to clarify my own position on these issues, albeit somewhat summarily so as not to overwhelm the relatively short point of statutory interpretation that is at the heart of these proceedings.

Statutory Interpretation – Literal and Purposive Approaches

[134] Where application of the literal rule disposes of the case, there is no need to go further to consider other approaches to statutory interpretation. If the literal interpretation leads to a result consistent with the general terms and the overall objective of the statute, then the task of statutory interpretation is over. The legislature has spoken in clear and unambiguous terms which do not create an inconsistency with the objectives of the Act or with the various terms of the Act as a whole. The next step is simply to apply the legislative will. In *R v Flowers*[113] this Court explained that it is a cardinal principle of statutory interpretation that a statute should be interpreted according to the intention of the legislature. That intention is to be inferred from the words used in the legislation. The Court made it clear that where no ambiguity arises in respect of the words in the legislation, no further interpretation is needed beyond a literal construction.

[135] Now, in determining whether the literal rule gives rise to ambiguity or uncertainty, a baseline must be identified. In my view that baseline or yardstick is not merely one of the clarity, grammar, or syntax of the words used, but rather, also whether the words used make sense in the legislative context and purpose 'construed as a whole, so that internal consistencies are avoided.'[114] There are thus three rules to be applied *sequentially*. First, if, as in the present case, the words do make sense in the way just described, then they have passed the literal test of statutory interpretation and must be applied. Secondly, if the words do not make sense, meaning that they are out of sync with general statutory purpose or otherwise lead to an absurd result, but at the same time they are not reasonably capable of another meaning, then effect, 'must be given to that meaning whatever the result';[115] subject again to the supremacy of the Constitution, including basic requirements for what constitutes 'law'.[116] Thirdly, if the words do not make literal or purposive

[113] [2020] CCJ 16 (AJ) BZ, [2020] 5 LRC 628 at [37].
[114] Law and Martin, *A Dictionary of Law* (n 141).
[115] ibid.
[116] The rule of law requires that legislation which is hopelessly vague and uncertain be struck down as being unconstitutional: *Sabapathee v State* [1999] 4 LRC 403, 412 (Lord Hope); *McEwan* (n 64).

sense but are reasonably capable of other meanings, then there is room for the application of other rules of statutory interpretation, such as the golden rule or the mischief rule, among others.

[136] The 'purposive rule' may not, therefore, be an independent rule but rather a foundational or baseline rule of statutory interpretation. As Lord Steyn posited, 'No explanation for resorting to a purposive construction is necessary. One can confidently assume that Parliament intends its legislation to be interpreted not in the way of a black-letter lawyer, but in a meaningful and purposeful way giving effect to the basic objectives of the legislation'[117]. And according to *Bennion,*[118] a purposive construction of an enactment is one which gives effect to the legislative purpose by – (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.

[137] In the case of *Smith v Selby* [119] this Court considered the highly controversial issue of whether a 'single' man included a married man who was separated from his wife and who lived with another woman until his death. The answer to that question was critical to determining whether the woman qualified as his spouse for purposes of the inheritance rights under the Succession Act. In this hotly contested litigation there was, arguably, an apparent difference between a literal and a purposive approach to the interpretation of the statutory prescriptions of a 'single' man. The Court accepted that both the literal and purposive approaches to statutory interpretation are tools towards achieving the goal of ascertainment of the parliamentary intent, and that in most cases either approach would produce the same result. However, where it is perceived that the language of the statute is capable of two or more meanings then the judge 'should find the right balance between the two approaches'.[120] In the schematic outlined above, given that the word 'single' was reasonably capable of another meaning consonant with the

[117] *Attorney-General's Reference* (No 5 of 2002) (n 48) at [31].
[118] *Bennion* (n 107) 944.
[119] *Smith* (n 43).
[120] ibid at [7].

parliamentary will, the 'right balance' would have been to discard the literal meaning in favour of the meaning which accords with the object and purpose of the statute.

[138] The instant proceedings are considerably different from those in *Smith*. In the present case, there were no contrasting contentions between the parties for the meaning of 'former spouse'. The appellant and the Attorney General both agreed that the definition included the appellant. Unlike *Smith*, where the statute contained no definition of a 'single' man, the principal Act and the amended Act make pellucidly clear who constitutes a 'spouse' and therefore a '*former* spouse.' The long titles of the principal Act and the amending Act elucidate the intention to identify domestic violence, suppressing its incidence by empowering victims to seek a protection order, and holding perpetrators of domestic violence accountable. Accordingly, the current judicial task was simply to apply the definition of 'former spouse' to the evidence presented in the affidavit in support of the application for the protection order.

Statutory Interpretation and the Constitution

[139] The relationship between the Constitution and statutes has an important bearing on statutory interpretation. The first and foremost rule is that the Constitution is the supreme law of the land and any other law inconsistent with the Constitution is void to the extent of the inconsistency.[121] This means that a statute which has emerged from the process of statutory interpretation and is found to be inconsistent with the provisions of the Constitution, subject to any power of appropriate modification (mentioned below), must be struck down for unconstitutionality. This is a trite principle of Caribbean jurisprudence of which *Hinds v R*[122] is a famous illustration.

[140] A corollary of the primary rule is that there is a presumption of constitutionality. A court will generally presume that Parliament intended its statutes to be consistent with the Constitution and, therefore, where the rules of statutory

[121] Constitution of Barbados 1966, s 1. See also *Hinds v R* [1977] A C 195.
[122] [1977] A C 195.

interpretation allow, will interpret an Act in a manner that upholds its validity. Thus, if an Act is reasonably susceptible to multiple interpretations a court will always prefer the interpretation that avoids potential constitutional conflicts.[123] If a statute is, or certain statutory provisions are, ambiguous, courts will tend to choose the interpretation which renders the statute and statutory provisions constitutional and which upholds constitutional rights and principles.

[141] However, in performing this task of interpreting the statute through the lens of the Constitution, so to speak, the court must be astute not to re-write or re-draft what Parliament intended. To remain true to the principles of the separation of powers, the court must first discern the intention of Parliament through the normal means of statutory interpretation. It is only if those normal means lay open the genuine possibility of construing the legislative language consistent with the Constitution, that such an interpretation is available; otherwise, the statute must be struck to the extent of the inconsistency and Parliament given the opportunity of refashioning its policy choices in a manner and with language that meet constitutional muster. The following passage by this Court in *Attorney General of Belize v Zuniga*,[124] on the not unrelated issue of severance of unconstitutional aspects of statutes, is instructive. This Court said:[125]

> [90] In performing the exercise of severance the court has no remit to usurp the functions of Parliament. Assuming severance is appropriate, the aim of the court is to sever in such a manner that, without re-drafting the legislation, what is left represents a sensible, practical, and comprehensive scheme for meeting the fundamental purpose of the Act which it can be assumed that Parliament would have intended. The court is entitled to assess whether the legislature would have preferred what is left after severance takes place to having no statute at all. If it can safely be assessed that what is left would not have been legislated, then severance would not be appropriate. As Demerieux notes, severance involves speculation about parliamentary intent. The court seeks to give effect, if possible, to the legitimate will of the legislature, by interfering as little as possible with the laws adopted by Parliament. Striking down an Act frustrates the intent of the elected

[123] *Observer Publications Ltd v Matthew* [2001] UKPC 11, (2001) 58 WIR 188 (AB) at [49]. See also *A-G of Guyana v Richardson* [2018] CCJ 17 (AJ) (GY), (2018) 92 WIR 416.
[124] [2014] CCJ 2 (AJ) (BZ), (2014) 84 WIR 101.
[125] ibid (citations omitted).

representatives and therefore, a court should refrain from invalidating more of the statute than is necessary.

[142] For similar reasons, in performing the exercise of statutory interpretation the court cannot usurp the functions of Parliament by construing the Act to say something that Parliament did not mean or intend. What is left after statutory interpretation must be the authentic expression of the will of parliamentary policymaking. The court is duty bound to interfere as little as possible with the laws adopted by Parliament and the limits of that interference are constituted by the rules of statutory interpretation.

[143] Finally, the Constitution sometimes give the courts power to modify statutory law to bring the statute into conformity with the Constitution. There may be limits to the power of modification imposed by the separation of powers doctrine where policy choices are to be made, but any such limits are not relevant for present purposes. The power to modify statute law for constitutional consistency was recently exercised by this Court in *Bisram v DPP*.[126] Having found s 72 of the Criminal Law (Procedure) Act of Guyana to be incompatible with constitutional provisions entrenching judicial independence (art 122A), and securing the protection of the law (art 144), and the separation of powers, this Court nonetheless, held that simply to strike down s 72 would 'leave a substantial gap in the criminal procedure' and therefore proceeded to exercise the power under art 7(1) of the Constitution to modify the operation of s 72, 'until the National Assembly addresses this matter.'[127]

Statutory Interpretation – Conventions, Other International Instruments, and Legislation

[144] The *amici curiae* presented informative and important data sets for arguing that the domestic violence legislation in Barbados ought to be interpreted within the wider international law and human rights context. Barbados and other Caribbean

[126] [2022] CCJ 7 (AJ) (GY), [2022] 5 LRC 1.
[127] To similar effect, see majority decision in *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178 .

countries are among a growing number of jurisdictions to have accepted convention and resolutions and adopted legislation intended to suppress domestic violence. This is a very welcome development. The forensic issue here is whether these conventions, other international instruments, and the development of comparable legislation in an increasing number of countries may properly influence the interpretation of Barbadian statutes on domestic violence.

[145] The starting point is the basic rule that treaties and other international instruments require incorporation by legislation to alter the rights and obligations of persons under Barbadian domestic law. Apart from the exception adopted by this Court in *Attorney General v Joseph,*[128] that an unincorporated treaty may confer rights on citizens who have a legitimate expectation to enjoy those rights, treaties ratified but not domesticated by legislation have no direct and independent effect on domestic legislation. This was the rationale of the *Joseph and Boyce* case itself. The principle was also recently reaffirmed in the English context by the UK Supreme Court in *R (Friends of the Earth Ltd) v Secretary of State for Transport.*[129] Refusing to accept that certain statements by government officials and the UK ratification of climate change obligations in the Paris Accord could give effect to domestic government policy without legislative incorporation, the court made the following remarks worth quoting in full:[130]

> [106] … In our view the criteria for a 'policy' to which the doctrine of legitimate expectations could be applied would be the absolute minimum required to be satisfied for a statement to constitute 'policy' … Those criteria are that a statement qualifies as policy only if it is clear, unambiguous, and devoid of relevant qualification…The statements of Andrea Leadsom MP and Amber Rudd MP (para [72] above) on which the Court of Appeal focused and on which Plan B Earth particularly relied do not satisfy those criteria. Their statements were not clear and were not devoid of relevant qualification in this context. They did not refer to the temperature targets at all and they both left open the question of how the Paris Agreement goal of net zero emissions would be enshrined in UK law. Andrea Leadsom went out of her way to emphasise that 'there is an important set of questions to be answered before we do'. The statements made by these ministers were wholly consistent with and plainly reflected the fact that there was then an

[128] [2006] CCJ 3 AJ (BB), (2006) 69 WIR 104.
[129] [2020] UKSC 52, [2021] 2 All ER 967.
[130] ibid at [106], [108].

> inchoate or developing policy being worked on within Government. This does not fall within the statutory phrase.
> …
> [108] Although the point had been a matter of contention in the courts below, no party sought to argue before this court that a ratified international treaty which had not been implemented in domestic law fell within the statutory phrase 'Government policy'. Plan B Earth and FoE did not seek to support the conclusion of the Court of Appeal (para [228]) that it 'followed from the solemn act of the United Kingdom's ratification of [the Paris Agreement]' that the Government's commitment to it was part of 'Government policy'. The fact that the United Kingdom had ratified the Paris Agreement is not of itself a statement of Government policy in the requisite sense. Ratification is an act on the international plane. It gives rise to obligations of the United Kingdom in international law which continue whether or not a particular government remains in office and which, as treaty obligations, 'are not part of UK law and give rise to no legal rights or obligations in domestic law'… Ratification does not constitute a commitment operating on the plane of domestic law to perform obligations under the treaty. Moreover, it cannot be regarded in itself as a statement devoid of relevant qualification for the purposes of domestic law, since if treaty obligations are to be given effect in domestic law that will require law-making steps which are uncertain and unspecified at the time of ratification.

[146] There is an equally venerable and established rule that Parliament is presumed to legislate in conformity with and not in defiance of the State's treaty obligations. In instances where a statute makes clear that it was enacted to incorporate a treaty, the interpretation of that statute ought to be wholly consistent with the country's obligations under the treaty: *Office of the Children's Lawyer v Balev*.[131] Where the statute is silent as to its intention to implement, but covers the same subject-matter as a treaty which the State has ratified, the presumption of legislating in accordance with international commitments is relevant but greater caution is needed. The treaty remains material to statutory interpretation, but it cannot overwhelm a clear legislative intent to legislate to the contrary of the treaty. Ultimately, the court's constitutional mandate is to interpret what the Legislature has enacted, and not subordinate this for what the Executive has agreed to internationally. It is always the domestic statute that governs because '[i]nternational law cannot be used to support an interpretation that is not permitted by the words of the statute': *Kazemi*

[131] [2018] 4 LRC 241 at [31].

Estate v Islamic Republic of Iran[132] (see also *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*[133]). Where the legislation cannot be harmonised with the pattern of treaty-making on the subject or with the treaty obligations of the state, effect must be given to the legislation, regardless.

[147] There are two other related circumstances that warrant mention here. First, conventions, other international instruments, and a significant body of comparable legislation from diverse countries may demonstrate that state practice on a certain subject has developed into a principle of customary international law. In such circumstances customary law is applicable directly in domestic law without need for legislation.[134] Customary law thus directly incorporated, has the status of common law, and will be applicable subject to any statutory and constitutional provisions or principles to the contrary. This is probably the safest reading of the decision by Hariprashad-Charles J in *Grant v Grant*[135] where the Judge used the fact that Saint Lucia had ratified the Convention on the Rights of the Child to hold that a principle in the Convention directed that a court should have regard to views of the child. This was despite the absence of any such direction in domestic legislation but possibly in line with the development of a concordant policy in state practice. On present reasoning, the Judge presumably found that the principle was one of customary law.

[148] Secondly, outside of the context just discussed, where customary law is automatically incorporated as common law, the question arises as to whether the judge has competence to develop the common law bearing in mind the developments in International Law. An assertion to the affirmative is a difficult proposition for which there is little traditional support. The fact is that Barbados and other Commonwealth Caribbean countries over which this Court exercises final appellate jurisdiction, stand in the tradition of the common law which evolved

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[132] [2014] 3 SCR 176 at [60].
[133] [2022] 4 LRC 518 at [48].
[134] *Triquet v Bath* (1764) 3 Burr 1478, 97 ER 936; *Chung Chi Cheung v R* [1939] AC 160; *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104 at [46] (Wit J); *Tomlinson v State of Belize* [2016] CCJ 1 (OJ), (2016) 88 WIR 273 at [44]..
[135] *Grant* (n 98).

from British legal tradition following the Norman Conquest of 1066**.** The common law embodies a unique style of legal reasoning. In general, courts and judges follow the precedents set by higher courts when dealing with similar cases, in accordance with the principle of *stare decisis*. A court is required to follow that precedent when making a ruling on the same or closely related issue. An opportunity to 'develop' the common law may arise where the precedent is outdated or where the current case is substantially different from the precedent case. In general, the advantages of the common law system are said to be stability and consistency, efficiency, adaptability to the unforeseen, and flexibility. Common law is not past the age of childbearing, but the fact is that increasingly, statutory law and regulations are replacing the need and the importance for the development of common law. As with other sources of common law, customary international law is subject to statute law and final decisions of apex courts.[136]

[149] In the present case, there is no need to assess whether the conventions, other international instruments, and the impressive body of legislation from within and without the region are sufficient to demonstrate the emergence of customary law. This is simply because a literal interpretation of the domestic violence legislation in Barbados provides the answer that the appellant was a former spouse of the respondent and as such was entitled to seek a protection order against him.

JAMADAR J (concurring):

Introduction

[150] I have read the lead opinion of Rajnauth-Lee J and the concurring opinion of Saunders P, and I agree fully with their analyses, reasoning, and outcomes. I wish only to add a few comments of my own on what I will refer to, in the context of this case, as the intersection of three voices in the process of law-making and legal interpretation. These are not the only voices that are relevant, but this case highlights these three. In this case these three voices speak as one to those who

[136] *Triquet v Bath* (1764) 3 Burr 1478, 97 ER 936; *Chung Chi Cheung v R* [1939] AC 160; *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104; *Tomlinson v State of Belize* [2016] CCJ 1 (OJ), (2016) 88 WIR 273.

can hear, and reveal statutory intentionality and meaning for those who are willing to listen.

[151] These three voices may be effectively described as: (i) the voices of society, voices of trauma, fear, and suffering – phenomenological and social context perspectives, (ii) the voices of the law – philosophical/policy and jurisprudential perspectives, and (iii) the voices of peace, healing, and reconciliation – therapeutic and restorative perspectives. Both law makers and interpreters of law have recourse to these perspectives in the disciplines that inform their spheres of activity in a liberal democratic state, in what is classically described as the separation of powers. I propose to interrogate these three voices in the context of this appeal, to demonstrate both their abiding salience and practical usefulness in the task of statutory interpretation. My interest, having agreed with the reasoning and outcomes as explained, is analytically methodological, and is also in response to heartfelt angst.

[152] This appeal is entirely about statutory interpretation in a constitutional democracy. Statutory law making is the primary business of the legislature, driven largely by policies and philosophical/ideological intentionality emanating from the executive, but not exclusively so. Ultimately the parliamentary process of law-making imprints the imprimatur of the legislature on all statutory laws. However, the interpretation and application of statutes in the resolution of disputes before the courts, falls generally to the judicial arm of state in the exercise of its constitutional powers, with judicial law-making implications (despite naivete or otherwise disingenuous protestations to the contrary).[137] A statute as interpreted and applied by a court of law is thereafter 'the law of the land'.

The First Voice – The Voices of Society, of Trauma, Fear, and Suffering

[153] The Domestic Violence Act of Barbados (1992) - and as amended in 2016 ('the amended Act'), is a response to social context. That context has been comprehensively explained by Rajnauth-Lee J. The intention and meaning of the

[137] Enforcement is generally under the province of the executive branch.

provisions in the legislation are therefore to be informed and discovered by also having regard to the relevant social context.

[154] Social context is now indisputably a critical consideration in understanding and applying the law. In the seminal Canadian Supreme Court decision in *R v RDS*,[138] it was pointed out that: 'Judicial inquiry into the factual, social and psychological context within which litigation arises is not unusual. Rather, a conscious, contextual inquiry has become an accepted step towards judicial impartiality.'[139] That: 'Judicial inquiry into context provides the requisite background for the interpretation and the application of the law.'[140] Indeed, and as demonstrated by this Court in this case, *RDS* explains:

> An understanding of the context or background essential to judging may be gained from testimony from expert witnesses in order to put the case in context;[141] from academic studies properly placed before the Court; and from the judge's personal understanding and experience of the society in which the judge lives and works. This process of enlargement is not only consistent with impartiality; it may also be seen as its essential precondition.[142]

[155] In *McEwan v Attorney General of Guyana*,[143] this Court in the process of statutory interpretation explained[144]:

> Before examining these issues, it is necessary to spend some time first, in placing s 153(1)(xlvii) in its historical context, and secondly, in determining whether the court is barred from testing that section for unconstitutionality. Although both courts below pronounced on the latter, neither paid much attention to the historical context of the section.

[156] The Court then asked and answered several questions that interrogated the phenomenological and social context of the impugned statute. These questions included: (i) Why was the impugned section enacted? (ii) What interests did it

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[138] [1997] 3 SCR 484.
[139] ibid at [42].
[140] ibid at [43].
[141] *RDS* (n 138), citing *R v Lavallee* [1990] 1 SCR 852; *R v Parks* (1993) 15 OR (3d) 324 (CA) and *Moge v Moge* [1992] 3 SCR 813.
[142] *RDS* (n 138) at [44].
[143] *McEwan* (n 64).
[144] ibid at [28].

serve at the time of its enactment? (iii) What interests does it currently serve? In the lead judgment of Saunders P, he would explain[145]:

> …These kinds of questions are relevant because of the nature of the challenge made to the constitutionality of the section. To answer them we must turn to historians and social scientists. These academics have an enormous contribution to make to the interpretative process lawyers and judges must undertake. But their efforts are often insufficiently appreciated…

[157] This case is not about a challenge to the *vires* of legislation, yet the approach explained in *McEwan* remains apposite. Indeed, one may say that in theory the approach is relevant in every instance of statutory interpretation. The phenomenological and social context of legislation is a salient interpretative lens, as it provides the relevant context from which intention and purpose can be discerned. The questions asked in each case may differ, but the undertaking to discover relevant phenomenological and social context remains. To be clear, all laws are rooted in what I often refer to as the *sitz im leben*[146] of a society. To discover meaning, this is surely one necessary entry point.

[158] In this case the relevant phenomenological and social context questions include: (i) Why was this legislation enacted and amended? (ii) What were the prevailing phenomenological and social contexts at the time of passage and amendment? and (iii) What are those contexts now? In my opinion, those contexts include the following: (i) domestic relationships in Barbados, (ii) violence in the context of such relationships, (iii) the incidence (prevalence) and impacts (destructive) of violence in the context of such relationships, and (iv) the pressing need for effective protection, prevention, and healing in the context of violence and harm in domestic relationships.

[159] Immediately, and in the context of this case, we need to ask, sociologically what were/are the various prevailing types of domestic relationships in Barbados? And, what does the legislation as amended include? The answers have been

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[145] ibid at [29].
[146] Its 'life setting'.

comprehensively addressed in the opinions of Rajnauth-Lee J and Saunders P and I only propose to summarise the position.

[160] Domestic relationships are defined as being 'any relationship between a perpetrator of domestic violence and spouses, former spouses, a child, dependant, or other person considered to be a relative by virtue of consanguinity or affinity, and also includes persons in cohabitational and visiting relationships.'[147]

[161] A cohabitational relationship is a relationship where 'persons who are not legally married are living together in the same household as husband and wife.'[148] And a 'spouse' includes both parties to a marriage as well as those living in cohabitational relationships.[149] Finally, a visiting relationship is 'a relationship where the parties do not live together in the same household' (in contradistinction to cohabitational relationships) and is one 'in which there are romantic, intimate or sexual relations.'[150]

[162] What is clear is that the amended Act comprehensively describes and includes the variety of sociological domestic relationships that exist in Barbados (and indeed in the Caribbean). The reason for this lies in the incidence and impact of domestic violence in Barbados, and the intention to, among other things, protect victim-survivors from perpetrators of domestic violence. This is all grounded in social context.

[163] Thus, the range of relationships included covers various degrees of relational domesticity, including married persons, and as well cohabitational and visiting relationships. The sociological realities of family life in Barbados are also considered and covered, by including children, dependants, and relatives (whether by consanguinity or affinity). Therefore, when one comes to the gravamen of the legislation, domestic violence is intended to apply to all persons in any of these various forms of domestic relationships, and access to the courts is provided

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[147] Domestic Violence (Protection Orders) Act, Cap 130A, as amended, s 2.
[148] ibid.
[149] ibid.
[150] ibid.

accordingly (and expansively by other means also).[151] Moreover, in terms of temporality, there are no set pre-conditions, the focus being rather on the status of relationality. Thus, both current and former spouses (as defined) are included. Indeed, the definition of cohabitational relationship with its reference to 'a relationship where *persons* … are living together …', is arguably sufficiently gender neutral and so inclusive of all forms of gendered relationships, provided the statutory qualitative relational measures are satisfied.[152]

[164] Answering these social context questions immediately allows one to understand who is being protected by the legislation. What is apparent is that the legislation intends, as a primary objective, to protect from harm the wide variety of all the statutorily described persons who exist in domestic relationships in Barbados. The appellant is undoubtedly among the class of persons entitled to approach the courts for such protection.

[165] Under the legislation, protection from harm for persons in domestic relationships becomes a discrete species of action, that penalises anti-social behaviour in customised ways to meet the special needs and challenges, as well as the social context realities and circumstances of the offence. For example, the burden of proof for obtaining a protection order is different from the usual criminal burden of proof on a complainant, of proof beyond a reasonable doubt. The threshold of proof is lower, it is on a balance of probabilities, and on likelihood.[153] Also, an interim protection order may be made 'whether or not the respondent is present at the proceedings or has been given notice thereof.'[154] And, emergency protection orders may be issued by police officers in certain circumstances.[155] Why? Because the goal is an emphasis on access to the police and courts for prevention of harm, in a context where societal incidence, impact, and circumstance are well understood and have been legislatively addressed. Domestic violence is a special

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[151] See Domestic Violence (Protection Orders) Cap 130A, as amended, s 4(1).
[152] That is, qualitatively '… in the same household *as* husband and wife' (emphasis added). Here 'as' may be indicative of a species of socially constructed relationships and operates as a simile; hence distinguishable from say commercial or employment relationships. See also *Alleyne* (n 59).
[153] Domestic Violence (Protection Orders) Cap 130A, as amended, s 3(1).
[154] ibid s 3(5).
[155] ibid s 11B.The threshold standard is 'reasonable cause to believe that … an emergency protection order is necessary to ensure the safety of the person(s) at risk'.

species of criminality. It needs its own governing regime. Indeed, it ideally needs its own problem solving courts!

The Second Voice – The Voices of the Law

[166] Barbados is a constitutional democracy. The Constitution is the supreme law. Laws that are inconsistent with core constitutional provisions and principles/values are considered void to the extent of the inconsistencies. The Constitution prevails.[156] This is particularly so in relation to the human rights provisions of the Constitution, which are constitutive of the rule of law.[157] And it is also true in relation to other core constitutional provisions and the deep basic structures of the Constitution.[158] These are well established principles which are now beyond any reasonable debate.

[167] In Barbados, the 'modification first' principle applies to all pre-independence laws. The principle mandates construing these laws so as to bring them into conformity with relevant constitutional provisions and principles/values.[159] It evidences statutorily the supremacy principle in s 1 of the Constitution which is more generally stated and applicable. The duty to modify is however demonstrative of the deeper constitutional principle of conformity, which in its truest sense is a principle of statutory interpretation and application. Thus, in Barbados the domestic violence legislation must be interpreted and applied so as to further the appellant's rights to liberty, security of the person, and the protection of the law, and to do so with equality (and non-discrimination).[160]

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[156] Section 1 of the Constitution states, 'This Constitution is the supreme law of Barbados and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.'

[157] *McEwan* (n 64) at [39], 'The hallowed concept of constitutional supremacy is severely undermined by the notion that a court should be precluded from finding a pre-independence law, *indeed any law*, to be inconsistent with a fundamental human right' (Emphasis added). *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178 at [37].

[158] *A-G of Guyana v Thomas* [2022] CCJ 15 (AJ) GY, [2023] 2 LRC 298 at [135]; *Belize International Services Ltd v A-G of Belize* [2020] CCJ 9 (AJ) BZ, (2020) 100 WIR 109 at [14], [299], [301]; *Ali v David* [2020] CCJ 10 (AJ) GY, (2020) 99 WIR 363 at [1] [2]; *Alleyne* (n 59) at [23]-[25].

[159] *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178 at [63], 'No existing law is excluded from the requirement of being brought into conformity. The Constitution is the supreme law and the laws in force at the time when it came into existence must be brought into conformity with it.' See also *Nervais* at [65], [68], and *McEwan* (n 64) at [59].

[160] Constitution of Barbados 1966, s 11.

[168] In fact, formal international treaty commitments, are also lenses through which all statutes must be viewed, interpreted, and applied.[161] Rajnauth-Lee J has identified several such instruments that the State of Barbados has subscribed to. I would only add, in the context of a gender-neutral approach to domestic relationships and domestic violence, Article 1 of the Universal Declaration of Human Rights – which declares that all persons are born free and equal in dignity and rights. These four fundamental principles of freedom, equality, dignity, and rights ought to always be lenses through which we view and interpret legislation.

[169] Courts in Barbados therefore have a continuing responsibility to ensure that statutes adhere to and are consistent with, so far as is appropriate, the core values, principles, and commitments contained in both the Constitution and in ratified treaties. These philosophical/policy and jurisprudential perspectives are voices of the law that must never be brushed aside, but rather honoured in their application.

[170] The application of these overarching approaches to statutory interpretation in this case has been demonstrated by Rajnauth-Lee J, and I will not burden this opinion with repeating those proofs. What I will say however, is that in constitutional democratic states such as Barbados, these approaches to statutory interpretation are not peripheral, but are rather central and paramount.

[171] Thus, in answer to the statutory imperatives in s 7 of the Act, to 'ensure that persons are protected from violence and harassment'[162] and to have regard for 'the welfare of any child',[163] which are described as 'being of primary importance',[164] the voice of the law, grounded in the philosophical/policy and jurisprudential perspectives here articulated, is able to respond: (i) in ways that interpret and apply the law in alignment with social context and also with constitutional and international principles, and (ii) in ways that make sense to the citizens of Barbados. This occurs when legislation is interpreted and applied to protect the rights of all persons in domestic relationships equally.

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[161] *Alleyne* (n 59) at [24]; *McEwan* (n 64) at [55], accepting that Guyana by art 39(2) of its Constitution makes specific provision for this.
[162] Domestic Violence (Protection Orders) Cap 130A, as amended, s 7(1)(a).
[163] ibid s 7(1)(b).
[164] ibid s 7(3).

[172] In Barbados, the Preamble to the Constitution speaks of a commitment to have consistently strived to have 'enlarged and extended' fundamental freedoms for the benefit of all Barbadians, and correspondingly to have 'resisted any attempts to impugn or diminish those rights and privileges.' And, at s 11, confirms that 'life, liberty and security of the person' are among those rights. This constitutional narrative and imperative are also part of the more general 'rights centric' social context in Barbados.

[173] This appellant was undoubtedly in a domestic relationship, allegedly was the victim-survivor of domestic violence perpetrated by the first respondent, and was therefore entitled to access the courts for immediate protection and redress. Indeed, to maybe even be the beneficiary of an emergency protection order issued by the police! A rights centric approach to statutory interpretation confirms these positions.

The Third Voice – The Voices of Peace, Healing, and Reconciliation

[174] One unique feature of this legislation is its therapeutic and restorative objectives.[165] A feature that also supports the interpretations and applications expounded by Rajnauth-Lee J and Saunders P in their interpretations of who can approach the courts for relief under this legislation, and ultimately, in agreeing that the appellant is one of those persons.

[175] Whether it is in the context of marriage, cohabitational or visiting relationships, or otherwise as described in the legislation, this legislation is Barbados' response to the occurrence or threat of violence in domestic relationships. Because the underlying context is domesticity, peace, healing, and reconciliation are also primary objectives (alongside prevention, protection, and punishment).

[176] For example, the legislation mandates that once a protection order is made, a respondent (perpetrator), and a complainant (victim-survivor) including any children, shall 'attend the Family Services Division of the Welfare Department or

[165] See generally, Caribbean Association of Judicial Officers (CAJO), *Criminal Bench Book for Barbados, Belize, Guyana* (2023) ch 27.

such other agency as the Court specifies, for appropriate counselling and therapy.'[166] It goes further, a male respondent must also enrol in appropriate programmes, no doubt to address underlying causes of violent behaviours.[167] And there is a duty on these therapeutic agencies to report to the court within a timely manner.[168]

[177] In fact, and from community protection and accountability perspectives, there is a statutory obligation on the police to (i) 'respond to every complaint alleging domestic violence',[169] (ii) 'render assistance to a victim of domestic violence',[170] and (iii) keep a Domestic Violence Register and complete a written report of every complaint of domestic violence.[171]

[178] What is apparent are the twin intentions to both prevent/protect and heal/reconcile in the context of domestic violence cases. These therapeutic and restorative approaches seek to address the whole situation – victim-survivor, perpetrator, and community. They are indicative of an understanding that domestic violence is a societal issue, and a holistic approach is necessary to address the problems that it causes. It is responsive to the voices of peace, and the cries for healing and reconciliation that are present in these contexts – which are primarily domestic in nature (in contrast to being what one may describe as purely criminal).

[179] The need for specialized courts – problem solving courts – therapeutic courts, to deal with domestic violence cases must be emphasised, if the fullness of the legislative intent and the needs of Barbadian society are to be met and fulfilled. And if such courts are not available, then proactive problem solving approaches need to be taken. There is also a need for judicial officers, court staff, the police, and all supporting agencies to be properly educated, trained, sensitised, and motivated to be invested in upholding the spirit and true purposes of the legislation.

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[166] Domestic Violence (Protection Orders) Cap 130A, as amended, ss 6(4), 6(6).
[167] ibid s 6(5).
[168] ibid s 6(7), (8).
[169] ibid s 11A (1).
[170] ibid s 11A (5).
[171] ibid s 11A (2), (3).

[180] For example, a problem solving court approach would facilitate hearing the voices of all parties – victim-survivor, perpetrator, and community, together with relevant agencies. This approach would lend to opportunities for healing in relation to all parties and issues. It does not avoid accountability and responsibility for acts committed, but can result in reduced incidents of recidivism. To the extent that these therapeutic interventions are successful, the results can even be experienced in overall societal understanding, healing, and peace. Thus, to focus entirely on prevention and protection, necessary as that is, would be to miss the promise of this legislation, and to frustrate the needs and hopes of the society. Domestic violence is as much a matter of criminality, as it is a cultural, psychological, behavioural, and societal issue.

Conclusion

[181] My motivation to write this concurring opinion, is the desire to emphasise the constitutional and international law imperatives that compel action by all state agencies, including the Judiciary, to purposively address domestic violence cases in Barbados. These imperatives result in distinct analytical and methodological approaches to statutory interpretation. The constitutional principle of the protection of the law and the international law principles of equality of rights demand no less.

[182] Finally, it was a moment of great angst to have been informed that in Barbados, following the prior decisions in this matter, complainants of domestic violence are being denied access to the courts and the willing assistance and protection of the police. I hope these opinions forever correct those erroneous approaches.

Disposition

[183] It was for these reasons that the Court ordered the following:

i. The appeal is allowed.

ii. The decision of the Court of Appeal upholding the dismissal by the magistrate of the application by the appellant for a protection order is reversed.

/s/ A Saunders

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Mr Justice Saunders (President)

/s/ W Anderson

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Mr Justice Anderson

/s/ M Rajnauth-Lee

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Mme Justice Rajnauth-Lee

/s/ D Barrow

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Mr Justice Barrow

/s/ P Jamadar

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Mr Justice Jamadar