

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 10/2016

**BEFORE: THE HON MRS JUSTICE McDONALD-BISHOP JA
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE STRAW JA (AG)**

BETWEEN	THE MINISTER OF FINANCE	1ST APPELLANT
AND	THE JAMAICA CONSTABULARY FORCE	2ND APPELLANT
AND	THE ATTORNEY-GENERAL OF JAMAICA	3RD APPELLANT
AND	WINSOME BENNETT	RESPONDENT

Ms Carla Thomas instructed by the Director of State Proceedings for the appellants

Oraine Nelson instructed by Forsythe & Forsythe for the respondent

10 October 2017 and 9 March 2018

McDONALD-BISHOP JA

[1] I have read in draft the reasons for judgment of my sister Straw JA (Ag). Her reasons fully accord with my views. I endorse them, and there is nothing I could usefully add.

P WILLIAMS JA

[2] I too have read in draft the reasons for judgment of my sister Straw JA (Ag). I agree with her reasoning and conclusion and I have nothing further to add.

STRAW JA (AG)

[3] This is an appeal from the judgment of Campbell J, delivered in the Supreme Court on 11 December 2015 where he made a declaration that the respondent, Winsome Bennett ("Miss Bennett") was lawfully eligible for a widow's pension as the declared spouse of the late Mr Carlton Roy Campbell, a member of the Jamaica Constabulary Force. By this declaration, the appellants were directed to pay to Miss Bennett the widow's benefit/pension and other allowances payable on death, as it related to Mr Campbell's service as a member of the Jamaica Constabulary Force.

[4] On 10 October 2017 we heard the appeal and, following the submissions of counsel, made the following orders:

- "1. The appeal is allowed.
2. The judgment of Campbell J, dated 11th December 2015 in favour of the respondent, including the order for costs, is set aside.
3. No order as to costs in this court."

[5] We promised then to reduce the reasons for our decision in writing. These are my reasons for concurring in the decisions of the court.

Background

[6] Mr Campbell, an Inspector of the Jamaica Constabulary Force, stationed at the Port Maria Police Station in the parish of Saint Mary, died of natural causes on 22 September 2008. At the time of his death, Mr Campbell shared a common law union with Miss Bennett for a period in excess of five years. Miss Bennett and Mr Campbell were unmarried and had one child together who was born in 1973.

[7] On 1 October 2009, an order was made by the Supreme Court declaring Miss Bennett to be the common law and sole surviving spouse of Mr Campbell within the meaning of the Intestates' Estates and Property Charges Act. Consequent upon that declaration, Miss Bennett, through her attorneys-at-law, wrote to the 1st appellant ("the Minister of Finance"), on 7 December 2009 enquiring whether there were any "gratuities or pension which [was] payable to the estate of the decease [sic]". Miss Bennett was refused the payment of death benefits, as Ms Paula Tyndale for the Minister of Finance deponed in her affidavit sworn to on 20 November 2012 that, "she did not qualify for such payments, as she was not legally married to the deceased and was not his 'widow' or 'surviving spouse', within the meaning of section 62 of the Constabulary Force Act". Accordingly, the Minister of Finance decided to pay a pension to Mr Campbell's son, Rory Campbell, and a gratuity to the legal personal representative of his estate.

[8] By fixed date claim form filed on 27 January 2012, Miss Bennett sought to challenge the decision of the Minister of Finance seeking, in particular, the following reliefs:

"1. A declaration that as the declared spouse of the late **CARLTON ROY CAMPBELL** who was a member of the Jamaica Constabulary Force, that she is lawfully eligible for a widow's pension.

2. A declaration that by virtue of an Order dated October 1, 2009 made in this Honourable Court that she is lawfully entitled to claim and obtain the widow's benefit/pension and the other allowances payable on death as it relates to the service of the late **CARLTON ROY CAMPBELL** as a member of the Jamaica Constabulary Force.

3. An Order directing the First Defendant, **THE MINISTER OF FINANCE** and the Second Defendant **THE JAMAICA CONSTABULARY FORCE** to pay to the Claimant the widow's benefit/pension and the other allowances payable on death as it relates to the service of the late **CARLTON ROY CAMPBELL** as a member of the Jamaica Constabulary Force." (Emphasis as in the original)

[9] In opposing the claim, the appellants in the affidavit of Ms Paula Tyndale deponed at paragraph 14 that:

"[T]he Ministry of Finance and Planning has not paid any death benefits to Miss Winsome Bennett as it continues to hold the legal view that a "surviving spouse" within the meaning of section 62 of the Constabulary Force Act is one who was legally married to the deceased at the time of the latter's death. Miss Winsome Bennett was not legally married to the deceased and therefore does not qualify for death benefits pursuant to section 62 of the Constabulary Force Act."

[10] In determining whether the definition of "surviving spouse", in sections 61(2)(b) and 62 of the Constabulary Force Act ("the Act") prohibited Miss Bennett receiving a grant of pension or death benefits, the learned judge considered provisions from other

statutes as well as the ordinary dictionary meaning of the words "widow" and "spouse". Having done so, on 11 December 2015, the learned judge found in Miss Bennett's favour and upheld her claim against the appellants.

[11] In concluding as he did, the learned judge at paragraph [20] of his judgment stated that:

"I cannot agree with the [appellants'] submission that the ordinary dictionary meaning of the words "widow" or "widower" is the relevant meaning that should be attached to these words. The case law is supportive of the view that the question whether or not the words "widow or widower" or "spouse" meant a person who was married, was to be answered on the understanding of the ordinary man using the words in their popular sense at the time of the death of Inspector Campbell. (See; **Dyson Holding Ltd. v Fox** [1976] Q.B. 503)." (Emphasis as in the original)

[12] The learned judge found that in construing the meaning of the words "widow", "widower" and "spouse" within the meaning of the Act, the court was required to take a more purposive approach to the interpretation of the words rather than the ordinary meaning. The learned judge concluded that the ordinary meaning of the word ought to be determined by the understanding of the "ordinary man using the word in its popular sense" and in doing so he found that in Jamaica, the ordinary meaning may not necessarily accord with the meaning within the English dictionary and further, that the meaning of the word was susceptible to change in keeping with the social reality. In concluding that it would be inconsistent with social justice to prevent an unmarried spouse of a common law union from accessing the benefits, pursuant to the Act, the learned judge reasoned thus:

"[25] It is clear that, the meaning of the word "spouse", has been altered and modified by several Acts of Parliament which have brought about the *"fundamental and salutary changes"* in society as observed by Cooke JA in **Brown v Brown**. Cooke JA, pointed out that a change in the meaning of the words "widower" and "widow" had come about in that by section (2(1) of the **Property (Rights of Spouses) Act**, a widow, widower or divorcee as the case may be, who has cohabited with a single man or woman, or indeed with another widow, widower or divorcee, as the case may be, for the requisite period, will also qualify as a spouse. So the definition of "spouse", may include a married or an unmarried person for the purposes of the [sic] establishing property rights of spouses. The ordinary meaning of a word is to be determined by the understanding of the ordinary man using the word in its popular sense. The popular sense of the word in Jamaica may not necessarily be consistent with the meaning in an English dictionary. Moreover, the meaning of the word is susceptible to change in keeping with the social reality.

[26] The role of the Court in construing Section 62 of the **Constabulary Force Act** is to work for, and not against, the rights conferred on parties in common law unions by Parliament in the various statutory provisions. That right was conferred upon parties in a common law union, of at least five (5) years. The essence of those rights was to ensure that persons in a defined common law relationship is [sic] not disqualified or is placed at a disadvantage by not having been constituted in wedlock.

[27] Section 62 of the **Constabulary Force Act**, was enacted in 1985, with retrospective effect to the 1st July 1974, to provide pension benefits to surviving spouses, child or children, legal representative of constables who had died in the Force. It is for a limited class of persons. This amendment came nine (9) years, after the **Status of Children Act**, 1976, which ensured that children born out of wedlock enjoyed the same rights as children born in wedlock. Since the passage of Section 62 of the **Constabulary Force Act**, the **Property (Rights of Spouses) Act**, has made, 11 fundamental and salutary changes to entitlement to property, particularly for those couples in defined common law unions. It is against these legislative changes and the consequential social adjustments, that the meaning of the words in Section 62 of the **Constabulary Force Act**, come to be construed.

[28] There is no definition of "widow and widower", in the **Constabulary Force Act**, therefore counsel relied on the

dictionary meaning. Such an interpretation would exempt the [respondent] from the receipt of any benefit pursuant to Section 62 of the Act, on the basis that she was not married. This court should consider relevant that it would be inconsistent with the social justice that the reformative legislation sought to achieve by construing Section 62 of the Act so as to exclude surviving spouses of common law unions access to the gratuities and benefits pursuant to that section." (Emphasis as in the original)

Grounds of Appeal

[13] Dissatisfied with the learned judge's decision, the appellants filed seven grounds of appeal, they were as follows:

- "(a) The learned judge erred in finding that section 62 of the Constabulary Force [sic] is to be interpreted in light of current social conditions without having regard to the ordinary meaning of the word and the legislative framework/scheme of the section.
- (b) The learned judge erred in importing the meaning of 'widow' and 'widower' as provided for in the Property (Rights of Spouses Act) [sic] to his interpretation of those words as used in section 62 of the Constabulary Force Act.
- (c) The learned judge, in relying on and applying the definitions of spouse in the Intestates' Estate and Property Charges Act [sic] and the Property (Rights of Spouses) Act, to the interpretation of "spouse" within the meaning of section 62 of the Constabulary Force Act misapplied the purposive rule of interpretation.
- (d) The learned judge failed to apply the literal approach to the interpretation of section 62 of the Constabulary Force Act where the scope of that statute does not permit a finding that the meaning of 'widow' as used in section 62 has so changed that the [respondent] should be regarded as a 'widow' notwithstanding the fact that the [respondent] had not been married to the deceased at the date of his death.

- (e) The learned judge erroneously placed reliance on section 3(1) of the Status of Children Act and in any event erred in finding that the term "all other relationships" as used in that Act extends to the relationship between the parents of a child.
- (f) The learned judge erred in law by directing the Minister of Finance and the Jamaica Constabulary Force to make pension and related benefit payments to the [respondent] contrary to the provisions of section 62 of the Constabulary Force Act in circumstances where:
 - i. section 62 designates the Governor General as the sole authority with the discretion to grant a pension in the circumstances outlined in that section; and
 - ii. a grant by the Governor General's [sic] would therefore be a necessary prerequisite to payment of pension.
- (g) The learned judge in making the direction to the Minister of Finance and the Jamaica Constabulary [Force] for the make [sic] the said payments misconstrued the role of those Appellants and failed to recognize that any such payment would be *ultra vires* the Constabulary Force Act."

[14] Based on the grounds of appeal filed, there were two broad issues to be determined:

- i. Did the learned judge err in his interpretation of the words "widow", "widower" and "surviving spouse" as used in section 62 of the Act?
- ii. Did the learned judge err in law by directing the Minister of Finance and the Jamaica Constabulary Force to make pension and related benefit payments to the respondent?

Did the learned judge err in his interpretation of the words "widow", "widower" and "surviving spouse" as used in section 62 of the Act?

Submissions for the appellants

[15] Counsel for the appellants, Ms Carla Thomas, submitted that the respondent's claim is based on relevant provisions under the Act, in particular sections 61 and 62. These sections empower the Governor-General to grant pension, gratuity or other benefits where a constable dies prior to retirement. Section 61 provides for these to be paid where death occurred in circumstances where the constable was discharging his duty, while section 62 provides for payment where death occurs in other circumstances. Counsel submitted that there is no dispute that Mr Campbell died of natural causes, so section 62 would be the pertinent section of the Act to be applied.

[16] Counsel submitted further that section 62(1)(a) speaks to the rate of pension to be granted to the surviving spouse of the deceased while that spouse remains unmarried. Counsel then referred the court to section 61(2)(b) where "surviving spouse" is defined as "the widow or widower of a Constable". She contended that the learned judge should have restricted himself to the literal or ordinary meaning of the words in the statute and so he erred in his finding that the literal approach had been overtaken by the purposive approach. In support of these submissions, counsel relied on this court's decisions in **Special Sergeant Steven Watson v The Attorney General and Others**¹ and **Jamaica Public Service Company Limited v Dennis Meadows and Others; The Attorney General of Jamaica v Dennis Meadows**

¹ [2013] JMCA Civ 6

and Others.² Counsel contended that the learned judge should have limited himself to the ordinary meaning of the word “widow” as stated in **Stroud’s Judicial Dictionary**³, which is, a “lawful wife whose husband has died”.

[17] Ms Thomas also submitted that the learned judge fell into error when he asserted that case law is supportive of the view that the meaning of the words “widow”, “widower” or “spouse” were to be understood in the context of the ordinary man’s use of the words in their popular sense, at the time of the death of Mr Campbell. Counsel contended that the learned judge compounded this error, by importing into the Act, the meaning of the words “widow” and “widower” as provided for in the Property (Rights of Spouses) Act (“PROSA”).

[18] Similarly, counsel submitted that Campbell J should not have placed any reliance on, or allowed himself to be influenced by definitions used in the Intestates’ Estates and Property Charges Act 1937, as amended in 1988 and the Status of Children Act, in order to ascertain the intention of Parliament in drafting the Act, as unless otherwise stated, each statute should be regarded as discrete and the court was required to construe the relevant words within the context of the particular legislation. In support of these submissions, counsel referred the court to **Fitzpatrick v Sterling Housing Association Ltd**⁴ and **Maunsell v Olins and another**⁵. She also distinguished the

² [2015] JMCA Civ 1

³ Fifth edition p 2853

⁴ [1999] 4 All ER 705

⁵ [1975] 1 All ER 16

circumstances existing in **Dyson Holdings Ltd v Fox**⁶ on which Campbell J relied in applying the purposive approach to interpretation.

Submissions for the respondent

[19] Counsel for the respondent, Mr Oraine Nelson, conceded that the respondent's eligibility for a pension benefit under the Act rests on the interpretation of the words "widow" and "surviving spouse". He contended that both the Minister of Finance and the Attorney-General have failed to interpret section 62 of the Act in light of current realities. Mr Nelson therefore submitted that the appellants' arguments were repugnant to both the law and social realities in Jamaica, as they blatantly ignore the significant strides made legislatively since the passage of PROSA which came into effect in April 2006.

[20] Counsel referred to the learned judge's review of the Intestates' Estates and Property Charges Act to bring the definition of spouse in line with social norms in Jamaica and allowing for the recognition of common law unions. Counsel further submitted that this extended definition of spouse was reproduced in other legislations, including PROSA.

[21] Mr Nelson referred the court to the decisions of **Annette Brown v Orphiel Brown**⁷ , **Fitzpatrick v Sterling** and **McCartan Turkington Breen (A Firm) v**

⁶ [1975] 3 All ER 1030

⁷ [2010] JMCA Civ 12

Times Newspapers Ltd⁸ and submitted that Campbell J did not err in applying the purposive approach to the interpretation of the words “widow” and “surviving spouse” as used in the Act. Counsel therefore contended that the learned judge was correct in interpreting those words in light of current social conditions. He contended also that the learned judge was correct in importing the meaning of the word "widow" as provided for by PROSA and in relying on and applying the definition of "spouse" in the Intestates' Estates and Property Charges Act. Counsel concluded that an injustice would have been perpetuated if Campbell J had done otherwise.

Analysis

The legislative context

[22] The relevant portions of sections 61 and 62 of the Act are set out below:

"61. (1) Where a Constable dies on or after the 1st of July, 1974, as a result of injuries received –

(a) in the actual discharge of his duty; and

(b) on account of circumstances specifically attributable to the nature of his duty; and

(c) in circumstances in which the injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct,

while in the Force, it shall be lawful for the Governor-General to grant in relation to that Constable, pensions and gratuities as prescribed by regulation 16 of the Regulations contained in the First Schedule and by the Appendix to those Regulations.

⁸ [2001] 2 AC 277

(2) For the purpose of this section, unless the contrary intention appears-

(a) 'child' includes—

(i) a posthumous child;

(ii) an adopted child, adopted in a manner recognized by law before the date of the injury; and

(iii) a stepchild wholly or mainly dependent on the Constable for support;

(b) 'surviving spouse' means the widow or widower of a Constable;

(c) ...

...

62. (1) Subject to subsection (2), where a Constable dies on or after the 1st of July, 1974, while in the Force, and his death did not occur in the circumstances specified in section 61, it shall be lawful for the Governor-General to grant –

(a) if the deceased Constable leaves a surviving spouse, a pension to that spouse while unmarried at a rate not exceeding one-third of the annual pay of the Constable at the date of death;

(b) the deceased Constable leaves a child or children, a pension in respect of each such child until such child attains the age of nineteen years, at a rate not exceeding an aliquot part (determined as provided in paragraph (A) of the proviso of one-sixth of the annual pay of the Constable at the date of his death;

(c) whether or not a pension is granted under this section, a gratuity to the legal personal representatives of the deceased Constable, not exceeding a sum equal to one year's pay of the Constable at the date of his death or the amount of commuted pension gratuity which would have been payable to the Constable if he had retired at the date of his death, whichever is the greater:

...

(2) In this section and in section 63 -

'child' includes—

(i) a stepchild born before the date of the death of the Constable and wholly or mainly dependent upon; and

(ii) an adopted child, adopted in a manner recognized by law;

...

'surviving spouse' means the widow or widower of a Constable."

[23] Also relevant are sections 3(1) and (2) of the Status of Children Act, which state as follows:

"3.—(1) Subject to subsection (4) and to the provisions of sections 4 and 7, for all the purposes of the law of Jamaica the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is hereby abolished."

Statutory interpretation

[24] The correct approach to determining the meaning of words or phrases in a statute is to ask what is the natural and ordinary meaning of those words in its context, in the statute. Brooks JA in **Special Sergeant Steven Watson v The Attorney General and Others** at paragraph [19] of the judgment, quoted and applied Lord Reid's statement on this issue in **Pinner v Everett**⁹ and stated thus:

"In determining the meaning of any word or phrase in a statute the first question to ask always is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be

⁹ [1969] 3 All ER 257

supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that **it is wrong and dangerous to proceed by substituting some other words for the words of the statute.**" (Emphasis supplied)

[25] Both sections 61(2) and 62(2) define "surviving spouse" as the "widow or widower of a Constable". There can be no dispute that the ordinary and natural meaning of the words "widow" or "widower" refer to a spouse who was lawfully married to a deceased person. This is the definition given in **Stroud's Judicial Dictionary** as stated by counsel, Ms Thomas. The **Oxford English Dictionary**¹⁰ retains a similar definition of widow as "a woman who has lost her husband by death and has not married again". Campbell J did not attempt to make a contrary finding. He stated at paragraph [37] of his judgment that:

"...[E]ven if the word widow would be construed as a married woman whose husband has died when Section 62 was enacted, that interpretation must now be made in light of current social conditions."

[26] The word "spouse" in the Act carries no extended definition as in the Intestates' Estates and Property Charges Act and PROSA. The amendment of the extended definition of spouse in the Intestates' Estates and Property Charges Act took place in 1988. The learned judge correctly summarized the purpose of that legislation as one dealing "with the distributions of estates of intestate and the administration of intestate estates in certain cases and charges on property" (see paragraph [8] of the judgment).

¹⁰ Eighth edition, p 1402

The definition of "spouse" in the Intestates' Estates and Property Charges Act is stated as follows:

"2.—(1)(d) 'spouse' includes –

(i) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death; and

(ii) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death;"

[27] Comparatively, PROSA is concerned with the determination of property rights of spouses. "Spouse" as defined by that Act is set out as follows:

"2.—(1) 'spouse' includes -

(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;

(b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years,

immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be."

[28] These definitions are essentially identical and are a recognition of common law relationships that extend legal benefits for the purposes as defined in the statutes. Campbell J, at paragraph [27] of his judgment, also noted that section 62 of the Act was enacted in 1985, with retrospective effect to 1 July 1974, to provide pension benefits to surviving spouses, child or children and legal representatives of constables

who had died in the Force. There have been subsequent amendments made by Parliament up to 2010, however, the extended definition of "spouse" has not been included.

[29] Section 62(1)(a) of the said Act speaks to the rate of the pension that is not to be exceeded to the surviving spouse "while unmarried". The marriage of a surviving spouse to someone else therefore alters any entitlement to the pension. Since there is no equivalent provision in relation to a "spouse" entering into a new (common law) relationship, it is sound to conclude that the ordinary dictionary meaning of the word "widow", that is, lawful wife whose husband has died, would be the context grounding the use of the word "surviving spouse" in the Act.

[30] Was Campbell J correct, therefore, in disregarding the ordinary and natural interpretation of the word "surviving spouse" and "widow"? Was he correct in placing great reliance on the definitions in the Intestates' Estates and Property Charges Act as well as PROSA, in applying a purposive approach to the definition in light of current social conditions?

The purposive approach to statutory interpretation

[31] Campbell J concluded that any literal approach in interpreting section 62 of the Act had been overtaken by a purposive approach to statutory interpretation. He referred to the social conditions existing in Jamaica and stated that the ordinary Jamaican had long described persons in a stable common law union as husband and wife.

[32] At paragraphs [15] and [16] of his reasoned judgment, Campbell J stated as follows:

"[15] ...The ordinary man has long been accustomed to long stable common law relationships. The **Status of Children Act** and the **Property (Rights of Spouses) Act** recognised such a social reality. The scope of Section 3(1), is all embracing, the change in the law that it effects are relevant, *"for all purposes of the law of Jamaica"*. Its applicability to Section 62 of the **Constabulary Force Act**, cannot be called into question. It makes impermissible the determination of the relationship of a surviving spouse and the deceased dependent on whether they were married or not.

[16] What is clear is that the police force as an organisation was not expressly excluded from the reach of any of these reformative legislations. There is no denial that Ms. Bennett would be entitled to claim Inspector Campbell's residuary estate pursuant to the Intestates' Estate and Property Charges Act."

[33] At paragraph [20] the learned judge went on to say:

"[20] I cannot agree with the Defendants' submission that the ordinary dictionary meaning of the words "widow" or "widower" is the relevant meaning that should be attached to these words. The case law is supportive of the view that the question whether or not the words "widow or widower" or "spouse" meant a person who was married, was to be answered on the understanding of the ordinary man using the words in their popular sense at the time of the death of Inspector Campbell. (See; **Dyson Holding Ltd. v Fox** [1976] Q.B. 503)." (Emphasis as in the original)

[34] The learned judge also relied on an article, "**The Changing Approach to the Interpretation of Statutes**"¹¹ by Professor John Burrows, Professor of Law, University of Canterbury. The learned judge noted that the author spoke to a shift in

¹¹ (2002) 33 VUWLR 981

statutory interpretation to the purposive interpretation which would facilitate the implementation of policy rather than obstructing it. He concluded that since fundamental and salutary changes had been brought about by several reformative legislations, which conferred rights on spouses in a common law union of five years or more, then the meaning of the word "spouse" had been altered and modified. The learned judge therefore interpreted the word "spouse" in sections 61 and 62 of the Act, to reflect those current realities.

[35] Counsel for the appellants contended that Campbell J misunderstood the application of the purposive approach to statutory interpretation and that the cases cited in support of his approach can be distinguished from the present circumstances. She submitted further that the purposive approach to the interpretation of statutes is directed towards ascertaining the purpose of Parliament, as revealed by the provisions of the statute in question and not the provisions of other statutes.

[36] In **Jamaica Public Service Company Limited**, Brooks JA referred to a summary of the rules of statutory interpretation proffered by the learned editors of Cross' Statutory Interpretation, 3rd edition. At paragraph [54] of the judgment, he stated that the authors stressed the use of the natural and ordinary meaning of words and cautioned against "judicial legislation" by reading words into statutes. He then stated:

"[54] ... At page 49 of their work, they set out their summary thus:

1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.
2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.
3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute; and **he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute....**" (Emphasis as in the original)

This summary is an accurate reflection of the principles governing statutory interpretation.

[37] When assessing these three rules, in light of the provisions of the Act, the learned judge should have considered if the grammatical or ordinary sense would produce a result contrary to the purpose of the statute. It plainly does not. Statutes can and do reflect decisions by legislatures to distinguish between persons who are lawfully married or in civil partnerships as against those in a common law union. In **Re McLaughlin's Application for Judicial Review**¹², a decision from the Court of Appeal of Northern Ireland, the court examined pension and bereavement benefits in

¹² [2016] NICA 53

light of article 14 of the European Convention on Human Rights ("Convention"), which provides protection against discrimination as well as other Convention rights. There, the court considered whether the Department for Social Development's decision to refuse the applicant a Widowed Parent's Allowance on the ground that she was not married or a civil partner at the date of her partner's death was discriminatory on the ground of marital status. Weatherup LJ found, that for the purposes of Widowed Parent's Allowance, an unmarried cohabitee was not analogous with that of a spouse or civil partner and that the difference in treatment of a cohabitee, spouse and civil partners for Widowed Parent's Allowance within the context of the statute being considered, was justified (see also the decision of **Ratcliffe v Secretary of State for Defence**¹³, where a similar issue was considered).

[38] Did Campbell J have to read in words to prevent the provision from being unintelligible, absurd, totally unworkable or unreasonable or irreconcilable with the rest of the statute? Again, the answer is a resounding no.

[39] Counsel for the appellants referred the court to the decision of **Katrina Smith v Albert Anthony Peter Selby**¹⁴, a decision of the Caribbean Court of Justice ("CCJ") that examined the principles of statutory interpretation. Sir Dennis Byron P, in delivering the judgment of the court, adopted the reasoning of Lord Bingham in **Regina**

¹³ [2009] EWCA Civ 39

¹⁴ [2017] CCJ 13 (AJ) (see paragraph 8)

(Quintavalle) v Secretary of State for Health¹⁵ and, at paragraphs [9] to [11] of the judgment, gave a summary of the principles which a judge must apply when interpreting statutes. These include:

- i. Respect for the language of Parliament;
- ii. The context of the legislation;
- iii. 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;
- iv. The social and historical context can be decisive in ensuring that the words are interpreted to give effect to the meaning and purpose of the Act. But, this did not extend to distorting the language used by Parliament;
- v. If the court considers there is a variance between the language used and its understanding of the special purpose of the Act, it should be left to Parliament to amend the legislation (see **Williams & Glyn's Bank Ltd v Boland**)¹⁶;

¹⁵ [2003] 2 WLR 692

¹⁶ [1981] AC 487

- vi. Where the words of the statute are not ambiguous there could be no justification for interpreting them in a manner that would alter their meaning, unless it may be necessary to resolve an inconsistency within the statute itself (see **The Independent Commission of Investigations v Digicel (Jamaica) Limited**)¹⁷;
- vii. In giving effect to these principles, the court, when interpreting any part of a statute, should review other parts which may throw light upon the intention of the legislature and may show how the provision ought to be construed. The underlying principle is that the court must use the available material to discover and give effect to the intention of Parliament; and
- viii. Consideration of the purpose of an enactment is always a legitimate part of the process of interpretation.

[40] At paragraph [12] of the judgment, Sir Dennis Bryon P noted that giving words their natural and ordinary meaning does not necessarily produce a different result than would be produced if a purposive approach was taken in the process of interpretation.

¹⁷ [2015] JMCA Civ 32

He stated that both principles assist the court in performing its primary task of giving effect to the intention of the legislature.

[41] When these principles are applied in relation to the relevant words used in the Act, there is no contextual basis to suggest that Parliament intended to benefit a common law spouse in relation to pensions and related benefits payable under the Act as it now stands. Campbell J therefore erred in his approach to the interpretation of the words "surviving spouse", "widow" and "widower" because he did not examine either the context of the statute or the intention of Parliament, alongside the natural and ordinary meaning of the words. There was no inconsistency or ambiguity within the statute itself. He relied exclusively on what would be considered socially just and was wrongly influenced by the extended definition of spouse used within both the Intestates' Estates and Property Charges Act as well as PROSA.

[42] Both these statutes deal with discrete matters that are dissimilar to the granting of benefits and pensions by the Government to a surviving spouse on the death of a constable pursuant to the Act. The case of **Annette Brown v Orphiel Brown** relied on by both Campbell J and counsel for the respondent is concerned with the wide ranging effect of the definition of spouse within PROSA. It is within this context that the words of both Morrison JA (as he then was) and Cooke JA in relation to the recognition of a common law union must be understood. The remarks of Cooke JA that the recognition of common law relationships would have "fundamental and salutary

consequences" cannot be used to justify any entitlement of common law spouses under the Act.

[43] I therefore agreed with the arguments of counsel for the appellants that the learned judge should not have placed any reliance on the definitions of "spouse" incorporated in the Intestates' Estates and Property Charges Act and PROSA, in construing the relevant words within the context of the Act. Campbell J, therefore erred in his approach in this regard.

[44] The cases relied on by counsel for the respondent do not lend support to any justification for adopting a purposive approach that allows a statute "to keep pace with the times" in the particular circumstances of this case. In **Dyson** and **Fitzpatrick v Sterling**, decisions of the English Court of Appeal and House of Lords (majority decision) respectively, the issue was the interpretation to be placed on the word "family" in the context of the Rent Act 1968. The word had not been defined in the statute but the schedule included protection to persons who could be considered to be a "member of the original tenant's family". In **Dyson**, the defendant had lived with W as man and wife for some 40 years. They were never married. W was a statutory tenant of the house and entitled to the protection of the Rent Act at the time of his death. The court had to consider whether the defendant could claim to be a "member of the original tenant's family" and so would also be entitled to the protection afforded a statutory tenant. The court held that, while she was not a widow who would be entitled to such protection, she could qualify as a "member of the tenant's family". The

court further held that the word "family" as set out in the schedule, should not be construed in a technical or legal sense, but in the sense that would be attributed to it by the ordinary man in the street, at the time relevant to the decision of the particular case.

[45] Counsel for the appellants submitted that the court in **Dyson** was at liberty to find that the interpretation given to the words by courts 20 years previously "owing to a change in social conditions" did not accord with modern thinking and that based on the stability and permanence of the couple's relationship, the defendant would popularly have been considered a member of W's "family".

[46] In **Fitzpatrick v Sterling**, the plaintiff had lived with the protected tenant of a flat in a stable and permanent homosexual relationship since 1976. The Court of Appeal upheld the finding of the trial judge that, based on the schedule to the Rent Act, the plaintiff had neither lived with the original tenant as his wife or husband, nor was he a member of the "original tenant's family" as also provided by the schedule. The House of Lords ruled that Parliament had sought to protect from eviction those who had shared their lives with the tenant in a single family unit and that since the word family had been left undefined, it fell to the courts to determine which relationships fell within its ambit for that purpose. The House of Lords held that the plaintiff fell within the definition of being a family member of the original tenant.

[47] In the case of **Turkington**, another decision of the House of Lords, the major issue that had to be determined was whether a particular gathering was a "public

meeting” within the meaning of section 7 of and paragraph 9 of the Schedule to the Defamation Act (Northern Ireland) 1955. The Act of 1955 was derived from section 4 of the Law of Libel Amendment Act 1888, which defined “public meeting” as follows:

“...For the purposes of this section 'public meeting' shall mean any meeting bona fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.”

[48] Lord Bingham of Cornhill, who delivered the leading judgment of the court, stated at paragraph 4, that despite the derivation from the 1888 Act, the words must be interpreted in a manner which gives effect to the intention of the legislature in the social and other conditions which obtain today. He noted that paragraph 9 of section 7 gave privilege to fair and accurate reports proceedings at a public meeting and then only if the meeting is bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of a matter of public concern. Lord Bingham noted that the section did not define the word “public” and said, “[t]hus “public”, a familiar term, must be given its ordinary meaning”.

[49] In the above cases, the courts had sufficient flexibility in the interpretation of the relevant words as they had not been specifically defined in the statute . In the present case, the word “surviving spouse”, has been defined as “widow” and “widower”. These words have a definite meaning. The ordinary and natural meaning of the relevant words, especially within the context and language of the statute, ought not to have been ignored by the learned judge in order to impose his view of what he considered just and expedient. Ultimately, it is for Parliament to decide whether the grant of

gratuities, pensions and related payments should be extended to common law surviving spouses under the Act. As an aside, it appears that Parliament has since done what Campbell J sought to do, by virtue of the Pensions (Public Service) Act, 2017¹⁸. This Act has *inter alia*, extended the definition of spouse¹⁹ to include a common law union for a period of not less than five years and defined "surviving spouse" as the spouse of a deceased pensionable officer. Grounds of appeal (a) to (d) therefore succeeded.

The Status of Children Act

[50] Further, I formed the view that the learned judge erred in his interpretation of the effect of section 3(1) of the Status of Children Act. Campbell J came to the following conclusion concerning the words "all other relationships" at paragraph [14] of his judgment:

"[14] The term, 'all other relationships' in Section 3(1) of the Status of Children Act, must include, the relationship between the parents of the child. It is expressly provided that such other relationships are to be determined accordingly, that is, it shall be determined irrespective of whether the father and mother are married to each other. Therefore, any rights that would accrue to a child of a police officer, could not be affected by whether his parents were married or not. The relationship between a surviving spouse and her deceased police officer spouse for all purposes of the law of Jamaica ought not to be determined by whether the surviving spouse was married to the police officer or not."

[51] Section 3 of the Status of Children Act removed any differentiation between children born in wedlock and those born outside wedlock. As counsel for the appellants

¹⁸ This Act is to come into operation on a day to be appointed by the Minister by notice published in the Gazette. (see: section 1(2))

¹⁹ See: section 30(1)

submitted, the primary focus of this Act is on the legal status of a child and how this impacts on the child's legal entitlements. Campbell J would therefore be correct when he stated at paragraph [14] of his judgment that any rights that would accrue to a child of a police officer could not be affected by whether his parents were married or not. It is noted that a pension was granted to Mr Campbell's son under the provisions of the Act although his parents were not married. This is in keeping with the intent of section 3(1) of the Status of Children Act.

[52] However, the term "all other relationships" as used in section 3(1) of the Status of Children Act, could only be construed to refer to relationships between the child in question and to members of his father's or mother's family. It cannot be interpreted so as to include the relationship between the parents of the child for the purpose of extending legal benefits to the parents themselves that may only be available to parties who are married. This is a misinterpretation of the meaning of the words used. No reliance should therefore have been placed on this section of the abovementioned legislation for the purposes of interpreting the provisions of the Act. Campbell J was therefore incorrect in assuming that section 3(1) of the Status of Children Act assisted him in his determination of Miss Bennett's rights to pensions and related benefit payments pursuant to the Act.

[53] Ground of appeal (e) therefore succeeded.

Did the learned judge err in law by directing the Minister of Finance and the Jamaica Constabulary Force to make pension and related benefit payments to the respondent?

Submissions

[54] Ms Thomas submitted that the learned judge misconstrued the role of the appellants and failed to recognize that any payment of gratuities could not be determined by the appellants as ordered, but by the Governor-General, who is the authority designated under the statute. She stated further that it is the Governor-General's function to make the determination or decision as to whether a pension payment will be made to the spouse of the deceased. She stated also that Part III of the Act, which includes sections 51 to 66A and is titled "Pensions, Gratuities and Disability Allowances," contains several provisions that confer on the Governor-General the power to grant such allowances and to make all decisions in relation to these matters.

[55] In relation to this issue, there is no dispute between the parties. Mr Nelson conceded that the order of Campbell J, directing the Minister of Finance and the Jamaica Constabulary Force to pay the widow's benefit/pensions to the respondent, cannot stand.

Analysis and conclusion

[56] Section 62 of the Act clearly states that the Governor-General is the party who grants the pension and related benefit payments. It is therefore the remit of the Governor-General to determine and approve any such payments. Any order therefore

directing the appellants to make such payments without such a determination from the Governor-General would indeed be *ultra vires* the Act.

[57] The appellants also succeeded in relation to grounds of appeal (f) and (g).

[58] It was for all the foregoing reasons that I concurred in the decision of the court that the appeal should be allowed and the consequential orders detailed at paragraph [4] made.