IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Application No. BBCV2017/001
BB Civil Appeal No. 31 of 2016

BETWEEN

JJ **APPLICANT**

AND

CHILD CARE BOARD **FIRST RESPONDENT**
SW **SECOND RESPONDENT**

Before the Right Honourable
And the Honourables

Sir Dennis Byron, President
Mr Justice Saunders
Mr Justice Wit
Mr Justice Anderson
Mme Justice Rajnauth-Lee

On Written Submissions
Mr M Tariq Khan for the Applicant
Ms Beverley Walrond, QC for the First Respondent
Mr Phillip McWatt for the Second Respondent

JUDGMENT
of
The Right Honourable Sir Dennis Byron, President, and the Honourable Justices Saunders, Wit, Anderson and Rajnauth-Lee

Delivered by
The Honourable Mr. Justice Saunders
on the 21st day of March 2017

Introduction

[1] In this application for special leave to appeal a judgment of the Court of Appeal, the essential underlying dispute is over the custody of a child. The Applicant is the mother of the child. We refer to her simply as "the mother". The Respondents are the Child Care Board ("the Board") and the child's father but, as will be explained further in this judgment, the father did not play a significant role in these proceedings.

[2] The Court of Appeal's judgment was rendered on the 19th January 2017. It related purely to an interlocutory matter. By its decision, the court agreed with the Board that the trial judge, Justice Sonia Richards, was wrong to order production of the file notes of an officer of the Board ("the officer"). The notes were garnered from interviews with the mother and also with the child's former primary school principal, his current secondary school principal and his former class teacher ("the teachers"). The mother had claimed that she was entitled to the notes so that her counsel could more effectively cross-examine the officer who had given evidence in the custody battle. Counsel for the mother had contended that the officer's evidence as to her interactions with the mother differed from what actually transpired and that the observations attributed to the teachers were either inaccurate or taken out of context. Counsel argued that his client's defence to the father's claim for custody would be greatly assisted by the officer's notes.

[3] The special leave application made to this Court was filed on the 2nd February 2017 and served on the Respondents on the 3rd February 2017. It was accompanied by an Affidavit of Urgency and a request by the mother that she be treated as a poor person. The Respondents have agreed that the matter is urgent. We are satisfied that the mother has met the requirements under Rule 10.17(1) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2015 and, accordingly, we grant the request that she be treated as a poor person.

[4] In an effort to expedite the disposal of this application, we convened a hearing on the 10th February 2017 and made a number of orders including orders that a) the hearing of the special leave application should be treated as the hearing of the substantive appeal, in the event that we were minded to grant special leave; b) if necessary, the submissions made by the parties in respect of the application be treated as the submissions in the appeal; and c) our judgment be delivered on the parties' written submissions without the need for oral argument. The parties were also given the option of relying on the submissions and authorities they had filed before the Court of Appeal without the need to file fresh submissions before us.

[5] We also decided that the timely disposition of the appeal required that we dispense with the usual requirement of awaiting the written reasons for the brief oral judgment of the Court of Appeal. That judgment did not disclose the reasons on which it was

based but it appeared to us that the court below had accepted the submissions of the Board and rejected those of the mother. The submissions of both the mother and the Board filed before the Court of Appeal are available to us. Since we also have the trial judge's judgment and the full transcript of the hearing before the Court of Appeal, we are persuaded that, in the exceptional circumstances of this case, proceeding in this manner occasions no prejudice to any of the parties and best accords with the interests of justice given the necessity for urgency.

Background and Issues for Determination

[6] The father of the child at the centre of this custody battle seeks the custody, care and control of the child, in keeping with the Minors Act,[1] on the ground that the child was being abused while in the mother's care. The matter was commenced on the 14th March 2014 when the child was then 13 years old. The trial judge gave a number of directions including those for access by the father and, on the 27th March 2014, the judge ordered the Board to investigate the living circumstances of the parties and to prepare a report in that regard. On the 12th September 2014, after hearing counsel for both the mother and father, the judge directed the officer to investigate the parental, educational and other circumstances of the child. The officer duly conducted interviews with the child and the teachers and furnished a second report.

[7] The first report, dated the 23rd May 2014, recommended that care and control of the child should remain with the mother. The second report, dated the 1st October 2014, recommended that both parents should continue to have joint custody but that care and control of the child should be granted to the father with liberal access to the mother. Both reports were provided to the parties. For ease, we refer to this latter report as "the October Report".

[8] The hearing before the judge began on the 9th July 2015, nine months after completion of the October report, with evidence being given by the officer. The matter was adjourned to the 13th July 2015 for continuation of the officer's evidence and cross-examination by counsel for the mother. It is at this juncture that counsel for the mother wrote to the Board requesting "copies of the notes, statements and other material relevant and germane"[2] to the case ahead of his expected cross-

[1] CAP 215.
[2] *SW v JJ* (High Court of Barbados, 29 November 2016) at [4].

examination of the officer on resumption of the trial. The request was vigorously opposed by counsel for the father and also by the Board. The Board filed an Affidavit in which it claimed privilege from disclosure on the basis of confidentiality and public interest immunity.

[9] After receiving submissions, in a judgment delivered some fourteen (14) months after hearing the submissions, the court decided the confidentiality/disclosure issue in the mother's favour. It is this judgment that was reversed by the court below and which the mother now seeks special leave to have this Court reinstate.

[10] In the proceedings before us, counsel for the father declined to file any submissions. His understandable position was that the contention here is really between the mother and the Board. Counsel for the Board opted to rely on the same submissions that were made to the Court of Appeal. Counsel for the mother filed submissions on the 17th February 2017.

[11] There are two fundamental questions which demand our attention:

1. Bearing in mind that the judgment of the court below is purely interlocutory in nature, has the mother met the required threshold to obtain special leave to appeal?
2. If she has, and we agree that special leave should be granted, should the trial judge's order requiring the Board to disclose its file notes be reversed?

Has the mother met the required threshold to obtain special leave to appeal?

[12] Rule 1.3 of the CCJ's Appellate Jurisdiction Rules identifies the overriding objective of those Rules as ensuring that "… unnecessary disputes over procedural matters are discouraged." This important policy reminds that the appellate process is properly applicable after final judgment because unnecessary interruption of trials to resolve procedural disputes undermines the effective, expeditious and fair disposition of cases. This case is an example, since in July 2015 the case was interrupted to resolve a procedural issue and the case is still in a state of suspension almost two years later. But the policy does not impose a ban on interlocutory appeals. With regard to its application in this case, for example, the Supreme Court of Judicature Act[3] permits, as of right, appeals of interlocutory orders from the High Court to the Court of

[3] CAP 117A.

Appeal in matters concerning the custody of minors.[4] Of course that provision does not apply to appeals from the Court of Appeal to this Court.

[13] It is our view that the overriding objective requires that an applicant seeking special leave to appeal an interlocutory order to this Court should face a high threshold. But what should that threshold be? The Barbados Caribbean Court of Justice Act of 2005[5] and the Appellate Jurisdiction Rules of this Court do not establish a special threshold for obtaining special leave to appeal to this Court in circumstances where the proposed appeal is from a judgment or order that is interlocutory in nature.

[14] Despite the silence of the legislative regime, the Court has identified criteria for granting special leave in such cases. For example, it is obvious that the threshold must include the need to prevent a miscarriage of justice. In *Barbados Rediffusion Services Limited v Mirchandi*[6], we alluded briefly to this question. De la Bastide, P referred then, in the circumstances of that case, to the likelihood of "a more than negligible risk of a miscarriage of justice"[7]. In *Ramdehol v Ramdehol*,[8] a proposed interlocutory appeal from Guyana, we stated that "the Court will intervene under section 8 of the CCJ Act only where it is necessary to avert a miscarriage of justice or to correct an egregious error of law".[9] The threshold should also include the need for a point of law of great public importance to be argued. Fulfilment of the policy of discouraging appeals of interlocutory orders right up to this Court, however, especially in circumstances where the substantive case must still be tried irrespective of the outcome of the appeal, necessitates the imposition of additional hurdles.

[15] In such cases, the threshold must also require establishing the necessity of dealing with the dispute at the level of this Court *at this stage of the proceedings.* A disputed procedural issue may involve a point of great public importance but its resolution may not be necessary or opportune until the trial has been completed. In such a case, the proposed appeal could be deferred to be part of an appeal against the final judicial order. In this context, the standards to be applied could require establishing the extent to which the appeal could be determinative. This would occur where the appeal

[4] The Supreme Court of Judicature Act, CAP 117A, s 54(1)(g)(i).
[5] CAP 117.
[6] *Barbados Rediffusion Service Limited v Mirchandani* (No 1) [2005] CCJ 1 (AJ), (2005) 69 WIR 35.
[7] ibid at [44].
[8] [2013] CCJ 9 (AJ).
[9] Ibid at [18].

would materially advance the termination of the litigation or clarify further proceedings in the litigation or protect the applicant from substantial or irreparable injury.

[16] In granting special leave in interlocutory appeals, the Court would therefore take into account whether, in its opinion: the appeal would avert a miscarriage of justice; be necessary to clarify a point of law of great public importance; materially advance the termination of the litigation; clarify further proceedings in the litigation; or protect the applicant from substantial or irreparable injury. Naturally, the weight to be accorded to each of these factors will vary according to the specific circumstances of the case.

[17] The mother's contention in these proceedings is that her ability to put forward her case effectively would be compromised if she did not receive or at least have sight of the officer's notes; that in the absence of this, cross-examination of the officer would be severely hampered. The Board, on the other hand, states that, as a matter of law, its files and working materials are protected by public interest immunity as their confidentiality is essential to the Board's role in child protection. There is evidently here a tension between the public interest immunity asserted by the Board and the public interest involved in guaranteeing the imperative of a fair trial.

[18] This Court has not previously addressed how such a tension should be resolved. The weight to be accorded to each of these competing interests and the manner in which a court should reconcile them raise matters of exceptional public importance. Further, the mother's grounds of appeal also disclose material that touches on two extremely important issues, namely, the constitutional right to a fair trial and judicial determination of where the best interests of a child lie. We are accordingly satisfied that the mother has crossed the policy hurdle previously discussed. As to the strength of the mother's case, we will only say at this stage that the trial judge's judgment as to how these various matters should be resolved was well reasoned and that the mother's submissions in support of upholding that judgment suggest clearly "a more than negligible risk of a miscarriage of justice". In our view special leave should be granted.

[19] Before leaving this part of the judgment we make these additional remarks. The duty to discourage unnecessary appellate disputes over procedural issues also invites

consideration of whether trial proceedings should be suspended while a procedural dispute is being resolved. The general rule should be that the court, in addressing applications relevant to the conduct of the examination of witnesses, should rule confidently and promptly and decline to stay execution of its order, unless it was necessary for the appellate process to be completed to protect the applicant from substantial or irreparable injury. This factor may be applicable where, for example, the right to a fair trial is involved. If, in this case for example, a court denied the opportunity to test the credibility of a witness by reference to interview notes made contemporaneously, it could be considered that, if the case proceeded to judgment on that basis, the potential inability to find the truth may be irreparable. But the factor of the impact of time is also highly relevant. As discussed elsewhere in our judgment, this case, for example, is one where the welfare of the child required urgency in the resolution of the dispute. The delay resulting from the stay of proceedings while this dispute was resolved on appeal would inevitably have an adverse impact on the relevance of any decision that may be made. Even when there is justification to appeal, the court is under no obligation to stay execution of its order until the appellate process is completed, unless it is necessary to do so to protect the applicant from irreparable harm.

Should the Trial Judge's Order granting disclosure of the file notes be reversed?

[20] The basis upon which the Board insists that its files and working papers, as a matter of law, ought automatically to be protected from disclosure on the ground of the public interest is that the Board receives confidential information which is critical to its mandate of child protection. Disclosure of that material, it is said, would impede the Board's ability to receive such information thereby preventing it from fulfilling its statutory mandate. The Board considers that it would be a dangerous precedent to permit the disclosure granted by the trial judge.

[21] The Board also took strong exception to the trial judge's reliance on the jurisprudence of the European Court of Human Rights ("the ECtHR") and, in particular, that court's judgment in *Gaskin v The United Kingdom*[10]. The Board considered that it was an error on the part of the judge to be so guided as Barbados is not a signatory to the European Convention on Human Rights ("the ECHR") and

[10] [1990] 1 FLR 167.

also because there were strong dissenting judgments in that case which, in any event, it was argued, turned on its own peculiar facts. The Board's position is that the courts of Barbados should follow the common law in preference to decisions of the ECtHR.

[22] The trial judge's judgment, in our view, represented a well-researched statement of the applicable law and a carefully crafted exercise of judicial discretion. We affirm its enunciation of the law and regard it as a useful guide on the relevant legal principles governing the privilege against, and immunity from, disclosure. Richards, J carefully and correctly analysed the Barbados Constitution[11] and statute law,[12] relevant conventions and treaties, and leading common law and ECtHR cases including *Re D (Infants)*[13], *D v National Society for the Prevention of Cruelty to Children*[14], *Gaskin v Liverpool City Council*[15], *R v Chief Constable of the West Midlands Police, ex p. Wiley*[16], *Conway v Rimmer,*[17] *Gaskin v The United Kingdom*[18] and *Re A (a child) (disclosure)*[19]. She conducted a reasoned balancing of those public interests namely the performance of the duties of the Board and the interests of the administration of justice. She made a detailed analysis of the cases on which the Board relied. In applying those cases to the facts of this case, the judge sought to distinguish between the core functions of the Board and actions taken by the Board in direct response to a specific court order. This part of the judgment was criticized by the Board but we understand the judge to be attempting to demonstrate that what was at stake here was less related to the Board's work in protecting the welfare of children than to supporting the fairness of the specific judicial proceedings before her. In other words, this was all part of the necessary balancing exercise, with the judge taking the view that the officer's role in preparing the two reports did not directly arise from the Board's statutorily prescribed functions under the Child Care Board Act[20] but was instead ancillary to the court's judicial process.

[11]The Constitution of Barbados.
[12] The Minors Act, CAP 215; the Family Law Act, CAP 214; the Child Care Board Act, CAP 381; the Supreme Court of Judicature Act, CAP 117A and the Supreme Court (Civil Procedure Rules), 2008 thereunder; and the Evidence Act, CAP 121.
[13] [1970] 1 All ER 1088.
[14] [1978] AC.171.
[15] [1980] 1 WLR 1549.
[16] [1995] 1 AC 274.
[17] [1968] AC 910.
[18] *Gaskin* (n 10).
[19] [2012] UKSC 60.
[20] CAP 381.

[23] The judge also discussed the way in which courts in England have addressed the balancing of competing public interests in dealing with this type of privilege, having regard to the requirements of the ECHR and the 1998 UK Human Rights Act, which incorporates the ECHR. In particular, the judge considered the way in which the Convention rights set out in Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life) have impacted on decision making in the courts. In doing this, the judge demonstrated an appreciation that although Barbados is not a signatory to the ECHR, fair trial rights, subject to respect for the public interest,[21] and modeled on the rights contained in the ECHR, are prescribed in the Barbados Constitution through section 18 (8). Further, although the rights to privacy and family life are not specifically provided for in the Constitution, the judge noted that they are included in the American Convention on Human Rights to which Barbados is a party. The judge supported her analysis by reference to Caribbean case law and authoritative Caribbean academic writings.

[24] The Judge further examined the statutory framework that could conceivably guide her in adjudicating the request for production of the Board's notes. There was no guidance from the Minors Act[22], under which the substantive matter was filed, or from the Child Care Board Act[23] or the Rules made under that latter Act. She noted that the combined effect of the Supreme Court of Judicature Act[24] and Rule 2.2(3)(b) of the Civil Procedure Rules ("the CPR") excluded application of the CPR to family proceedings. The judge reviewed the Evidence Act[25] in particular section 106 which dealt with Privilege: Confidential communications and documents and sections 108 to 110 dealing with exclusion of evidence in the public interest. She concluded that section 106 of the Evidence Act was applicable to these proceedings. The Board criticized her rejection of the relevance of section 109. This section however specifically limits its application to matters of state which it defines in a manner clearly excluding the circumstances of this case. We are in agreement with the judge that she was entitled to consider the factors outlined in section 106. These would include (i) the importance of the evidence; (ii) the extent to which the contents of the communication have been disclosed; (iii) whether an interested person has consented

[21] See The Constitution of Barbados, s 11.
[22] CAP 215.
[23] CAP 381.
[24] CAP 117A.
[25] CAP 121.

to the evidence being adduced; (iv) the nature of the defence and the nature of the subject-matter of the proceedings; and (v) the means available to limit publication of the evidence.[26]

[25] We affirm the principle that the public interest in maintaining the confidentiality of information given to the authorities responsible for protecting children from abuse falls within a class of information to which public interest immunity attaches. It is not the fact that the information is communicated in confidence which attracts the immunity, but the public interest in encouraging members of the public to come forward to help the authorities to protect children. But public interest immunity is not absolute. The public interest in maintaining confidentiality must be balanced against the public interest in a fair trial and the court is required to strike that balance. If, after the balancing exercise, public interest immunity prevails, then the information is not to be taken into account by the decision-maker in determining the substantive matter.[27] The principle is aimed at ensuring that parties to judicial proceedings can present their case fully. It must be applied to custody cases as their purpose is to protect and promote the welfare of any children involved. In such cases, the court must also be astute to consider and give weight to the extent to which the disclosure or non-disclosure would affect the interests of the child which are, and must be, of paramount importance.

[26] The recent United Kingdom case of *Re A (a child) (disclosure)*[28] builds on the principle. In that case, it was necessary to balance a multiplicity of competing rights arising under the Human Rights Act of the United Kingdom that incorporated the ECHR. These included the rights of the respective parents of a child, and the child herself, to a fair trial and also the right to respect for the private and family life of each of the three of them. On the other hand, there was the position of a young woman who had given information to a local authority on the condition that her identity would not be disclosed. The information, which was credible, was to the effect that the father of the child in question had sexually abused the young woman when *she* was a child. The father desired disclosure of the woman's identity so that he could contest her allegations. The mother desired disclosure so that she could use

[26] Evidence Act, CAP 121, s 106(2)(a), (c), (d) – (f).
[27] *Re A (a child (disclosure))* [2013] 1 All ER 761, [2012] UKSC 60 at [17].
[28] [2013] 1 All ER 761, [2012] UKSC 60.

the information to persuade the court that the father's access to the child should be modified. The problem was that the informant was a seriously ill, vulnerable person who vigorously contested any disclosure of her identity on the ground that disclosure would infringe her Article 3 right not to be subjected to inhuman treatment. The Supreme Court of the United Kingdom noted that if this were an ordinary public interest immunity claim under the common law, there would be no question where the balance of public interest would lie. Disclosure would have been necessary. The informant's allegations would have had to be properly investigated and tested so that the child could either be protected from any risk of harm which her father may present to her or resume a normal relationship with him.[29] The court then went on to assess the implications of the informant's Article 3 complaint and after so doing, she ordered the disclosure having found that public interest in a fair hearing and in protecting the rights of the child had to prevail.

[27] The fundamental question here is really, given the Board's mandate, and against the background of what is in the best interests of the child, how best to reconcile the public interest in protecting the Board's records with the public interest that a party to legal proceedings should be able to obtain relevant material in order to have effective access to justice. This is not a question that can be determined by laying down or applying hard and fast prescriptions. The unique facts of each case must carefully be examined and a judgment made as to the best manner of resolving the tensions at play. A judge may, in a particular circumstance, for example, decline or grant the discovery sought, or else grant limited discovery, or choose to calibrate closely any discovery granted as to appropriately satisfy the competing interests.

[28] In this context, it is necessary to be clear about the precise nature of the material that was ordered to be disclosed. Counsel for the mother had requested "copies of the notes, statements and other material relevant and germane" to the case. He specifically stated that the purpose of the disclosure was to assist his cross examination of the witness who had indicated that the notes from which she was referring in her testimony had been prepared for the trial. The judge's order was precise. The judge ordered production of all the "file notes arising from [the] interviews with the mother and [with the teachers]", righty limiting discovery to the contemporaneous notes made by the officer when she interviewed the mother and

[29] Ibid at [29] – [30].

the teachers, respectively, and which notes were used to assist in the compilation of the October report.

[29] The judge was also very much alive to the ability of the court to manage the disclosure so that the Board's legitimate concerns were met. The judge suggested that,

> "All parties, including persons called to give evidence, may be instructed not to provide information or interviews about the case to the media. The notes provided by the Officer should be filed in a sealed envelope, with only three copies delivered directly to the Court, and to counsel for the Claimant and the Defendant".[30]

The judge confidently expressed the view that "the proposed restrictions, on the dissemination of information, would negate the possibility of the compromise of the Board's ability to assist the Court, or to carry out its statutory functions".[31]

[30] An interesting feature of this case is that although usually, a party requesting disclosure will be seeking the identity of an informant or the content of particular information in the possession of the Board, *that is not the case here*. The Board's reports, which have been made available to the parties, contain ample details of the identity of the officer's informants and the nature of the information provided by each interviewee. There was no indication that any interviewee had requested confidentiality, and there was a suggestion by the Board that they were available to testify in the proceedings. Additionally, the officer's oral testimony gave specific details about events reported to her as well as her conversations with her interviewees. The purpose of the further disclosure requested is therefore very limited in scope. In the concrete circumstances of this case, it has little to do with the public interest that informants to the Board and the information they provide remain confidential. The aim of the discovery here is to test the officer's credibility by comparing her testimony against the contemporaneous notes taken during the interviews.

[30] *SW* (n 2) at [90].
[31] *SW* (n 2) at [91].

[31] While we had, regretfully, to undertake this appeal without the benefit of the reasons of the Court of Appeal, we can fathom no proper basis on which that court could have set aside the judgment of the trial judge. If, in a case like this one, a judge takes all the relevant factors into account, demonstrates sensitivity to meeting both the legitimate interests of the Board and the mother's right to a fair trial, and applies the right principles, an appellate court cannot be justified in setting aside the exercise of the judge's discretion. The judge properly considered that the public interest in the Board's confidentiality was insubstantial since the relevant information and the respective sources of that information had already been disclosed in the reports and the oral testimony of the officer. In all the circumstances, we allow the appeal and order that the judgment of the trial judge should be restored.

Closing Remarks

[32] We think it is necessary to applaud the trial judge for her insightful use of international standards and norms in supporting the interpretation and application of the domestic laws of Barbados. The Board urges that the judge had no right to rely on the international conventions and the jurisprudence of the ECtHR. In the realm of human rights adjudication, it is a profound error to think that the modern jurisprudence of international human rights courts is of little relevance to domestic judges. Many of the fundamental rights laid out in the Barbados Constitution mirror rights set out in the ECHR and other international human rights Conventions. The international jurisprudence that has developed in construing these rights is of inestimable value to domestic judges interpreting and applying like constitutional provisions. Over the last 30 years, several judgments of the apex court serving Barbados, that is, the Judicial Committee of the Privy Council[32] and now this Court[33], have illustrated the tremendous value of having regard, in appropriate circumstances, to international jurisprudence. Justice Richards was entitled and right to take this approach in this case.

[33] In this vein, however, another important principle may be extracted from International Conventions that the judge did not observe: the principle cementing the

[32] See, for example, *Minister of Home Affairs v Fisher* [1980] AC 319; *Pratt v Attorney General for Jamaica* [1994] 2 AC 1; and *Benjamin v The Minister of Information and Broadcasting* [2001] 1 WLR 1040.
[33] See, for example, *Attorney General v Boyce & Joseph* [2006] CCJ 3 (AJ), (2006) 69 WIR 104, *Maya Leaders Alliance v Attorney General of Belize* [2015] CCJ 15 (AJ), (2015) 87 WIR 178*; Gibson v Attorney General of Barbados* [2010] CCJ 3 (AJ), (2010) 76 WIR 137.

point on expedition in custody cases. In the Convention on the Rights of the Child, which Barbados ratified in 1990, Article 3 (1) states: "In all actions concerning children, … undertaken by … courts of law …, *the best interests of the child shall be a primary consideration.*"[34] The Committee on the Rights of the Children (CRC) which is charged with monitoring compliance with the Convention noted: "*Delays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible".*[35] It goes without saying that the best interests of the child requires the practice of the courts in cases involving children to be measured against these international standards which officially have been acknowledged by Barbados so that custody cases like these should normally be resolved quickly and with a material outcome.

[34] We must point out, therefore, that the judge took much too long to deliver the ruling on this issue. The overall delay in this case was also compounded by the appellate process during which time the proceedings remained suspended. Delay is never in the best interests of the child, the less so when there is an allegation of abuse, and judicial practice should reflect that. Hence, continuing the proceedings after our decision is likely to be an exercise in futility. Reports about the situation concerning a boy of 13 (as he was then), will have no or little relevance to a boy of now 16 years old. One is left to wonder how relevant to the resolution of the custody issue might be the material in the possession of the Board that was so anxiously sought by the mother.

[35] Over the last three years, the child's parents had to accommodate themselves to the routine and living circumstances that surround this child of theirs, without the benefit of the directions that they sought from the court. When counsel were before us, we inquired and were informed that there is not the same level of acrimony between the parties as there was at the outset. It will not be long before the child attains the age of majority and this battle for care and control becomes utterly redundant. If the present arrangements are acceptable and convenient to both sides and serve the best interests of the child, then counsel should immediately take steps to have the court

[34] Emphasis added.
[35] United Nations Committee on the Rights of the Children, *General Comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* (29 May 2013) at [93] (emphasis added).

reflect this in an order made by consent. Otherwise, it is important that this case be heard and concluded by the trial judge as soon as possible.

[36] On a final note, we endorse the views expressed by the Court of Appeal, during the hearing before that court that it was most regrettable that the full names of the parties and the child made their way into some of the documents that were filed. We agree with the Chief Justice that this should not be repeated.

Disposal

[37] The Court Orders that:

1. Special leave to appeal the order of the Court of Appeal, as a poor person, is granted to the mother.
2. The appeal is allowed and the order of the Court of Appeal made on the 19th day of January 2017 is set aside.
3. The order of the High Court made on the 29th day of November 2016 is restored and the date for compliance with it is varied to the 24th day of March 2017, unless the mother and father by consent conclude that there is no need to prolong further the substantive proceedings and the Court finds that any consent arrived at is in the best interests of the child.
4. Each party bears its own costs.

/s/ CMD Byron

The Rt. Hon. Sir Dennis Byron

/s/ A. Saunders

The Hon Mr Justice A Saunders

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee