

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE D FRASER JA**

SUPREME COURT CIVIL APPEAL NO COA2023CV00085

BETWEEN	SHELDON SHEPHERD	1ST APPELLANT
AND	RICHARD GILLESPIE	2ND APPELLANT
AND	ATTORNEY GENERAL OF JAMAICA	RESPONDENT

Written submissions filed by DunnCox for the appellants

Written submissions filed by the Director of State Proceedings for the respondent

1 May 2026

Civil procedure – Order granting extension of time to file defence – Preliminary issue – Jurisdiction – Whether Court of Appeal has jurisdiction to hear appeal – Statutory restriction on appeals from orders granting unconditional leave to defend an action – Whether order extending time to file defence within specified time frame amounts to unconditional leave to defend – Judicature (Appellate Jurisdiction) Act, section 11(1)(b)

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules, 2002)

MCDONALD-BISHOP P, EDWARDS AND D FRASER JJA

[1] This is a procedural appeal by the appellants, Sheldon Shepherd ('Shepherd') and Richard Gillespie ('Gillespie'), from the order of Master R Harris ('the learned master'), made in the Supreme Court on 31 October 2023. The learned master had granted applications filed by the respondent, the Attorney-General of Jamaica ('the AG'),

for an extension of time to file defences to the appellants' claims, and refused the appellants' applications for permission to enter default judgment against the State.

[2] When the matter came up for consideration on paper, the court, of its own motion, raised a preliminary issue as to its jurisdiction to hear the appeal in light of section 11(1)(b) of the Judicature (Appellate Jurisdiction) Act ('JAJA'), which provides:

"11. (1) No appeal shall lie -

...

(b) against an order of a Judge giving unconditional leave to defend an action."

[3] The preliminary issue is whether the learned master's order extending the time for the AG to file defences amounted to an order granting unconditional leave to defend within the meaning of section 11(1)(b), such that there is no right to appeal from the order. We directed the parties to file written submissions on the issue, particularly in light of decisions by the Judicial Committee of the Privy Council, this court and decisions by other Caribbean courts interpreting section 11(1)(b) and similar provisions.

[4] Of particular relevance is the decision of this court in **National Commercial Bank Jamaica Limited and another v Scotiabank Jamaica Trust and Merchant Bank Ltd** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 80/2004, judgment delivered 7 April 2006 ('**NCB v Scotia**'), in which the court found that section 11(1)(b) does not preclude an appeal from the refusal of a claimant's application for summary judgment made under Part 15 of the Civil Procedure Rules, 2002 ('CPR'). In arriving at its decision, the court relied on the Privy Council's statement in **Manderson-Jones v Société Internationale de Télécommunications Aéronautiques** (1998) 53 WIR 257 ('**Manderson-Jones v SITA**'), that section 11(1)(b) "applies only" where leave to defend has been given under section 83 of the Judicature Civil Procedure Code ('CPC').

[5] Given the preliminary issue raised for determination and the court's conclusion concerning it, only a brief outline of the factual and procedural background is considered necessary at this juncture.

The relevant background

[6] The appeal arises from claims filed by the appellants on 2 September 2019, concerning an incident involving the appellants and the police that occurred on 16 August 2015 in the parish of Saint James. Shepherd's claim (claim no SU2019CV03573) sought damages for battery and false imprisonment. Gillespie's claim (claim no SU2019CV03574) sought damages for assault, battery, false imprisonment, and malicious prosecution.

[7] The claims were served on the AG on 3 September 2019. In accordance with rules 9.3(1) and 10.3(1) of the CPR, the AG was required to file acknowledgements of service and defences within 14 and 42 days, respectively, after being served with the claim forms. The AG filed acknowledgements of service as required by the rules, but failed to file defences within the prescribed time frame. Consequently, on 18 October 2019, several days before the deadline for filing the defences, the AG filed applications in both claims to extend the time for filing the defence.

[8] The applications were supported by affidavits from counsel in the AG's chambers, to which the AG's draft defences to the claims were attached. After the deadline for filing defences to the claims had passed, the appellants filed applications on 14 November 2019 seeking permission to enter default judgment against the AG. Permission to enter default judgment was required by rules 12.3(1)(a) and 12.3(6) of the CPR.

[9] The learned master heard and considered the appellants' and AG's respective applications, in relation to both claims, together, and made the following orders:

- “1. Time is extended to file the defences. Defences are to be filed on or before 10th November 2023.
2. Applications for default judgment are refused.
3. Upon filing the defences, matters to proceed to mediation.

4. Case Management Conference is set for January 18, 2024 at 3:00 p.m.
5. Leave to appeal is granted.
6. Costs of the applications to the Claimants to be agreed or taxed.
7. Defendants'/Applicants' Attorney-at-Law to prepare, file and serve this Order."

[10] The reasons for the orders were not formalised in a written judgment, memorandum, or agreed summary. However, it is understood from the appellants' notice of appeal and written submissions filed in support of the appeal that the master gave oral reasons for her decision. According to the appellants, the master granted the applications for extension of time because there was no delay by the AG in filing the applications; the AG's proposed defences to the claims had a real prospect of success; and there was no prejudice to the appellants in granting the extensions of time. These assertions have not been disputed by the AG.

The appeal

[11] Aggrieved by the learned master's reasoning and orders, the appellants filed a notice of appeal, with leave to appeal granted by the learned master. Through the appeal, the appellants seek to set aside the master's decision to extend the time for filing the defences. They also seek default judgment against the AG on both claims, with damages to be assessed. Collectively, the grounds of appeal assert that the learned master's order extending the time was an incorrect exercise of discretion, as she erred in law and in fact when considering the merits of the proposed defence and the issues of delay and prejudice to the appellants.

[12] The AG did not respond to the appellants' submissions on the appeal by filing written submissions or otherwise. The appellants and the respondent, however, filed submissions in relation to the preliminary issue in compliance with the court's directions.

The written submissions on the preliminary issue

The appellants' submissions

[13] The appellants submit that the learned master could not grant unconditional leave to defend based on the applications before her, which were made pursuant to the CPR. Therefore, section 11(1)(b) is not applicable to them. The appellants heavily rely on the Privy Council's pronouncements in **Manderson-Jones v SITA**, which were adopted in **NCB v Scotia**, that section 11(1)(b) applies only where leave to defend has been given under section 83 of the CPC. Section 83 of the CPC provided:

"Leave to defend may be given unconditionally, or subject to such terms as to giving security, or time or mode of trial or otherwise, as the Judge may think fit."

[14] The appellants contend that the CPR was enacted in 2002 and repealed the CPC, enacted in 1889, and which previously governed the conduct of civil proceedings in the Supreme Court. No similar regime has been introduced by the CPR. Section 11(1)(b) of the JAJA, when enacted on 5 August 1962, was never intended by Parliament to be applied to applications other than a summary judgment application, bearing in mind that the wording "unconditional leave to defend" was a term of art. Even though section 11(1)(b) has not been repealed and is still valid and effectual in law, "its applicability from time immemorial has been limited to summary judgment applications pursuant to the old [CPC], which has since been repealed by the CPR". Therefore, none of the applications made before the learned master was an application for summary judgment, and the orders were not orders on applications for summary judgment. Accordingly, section 11(1)(b) had not been engaged.

[15] Further, even if section 11(1)(b) is applicable, the learned master could not grant unconditional leave to defend on an application for extension of time to file a defence or on an application for entry of default judgment. The orders of the learned master did not purport to do so. The appellants contend that the Privy Council's decision in **Manderson-Jones v SITA** is of "the highest persuasive judicial authority over this jurisdiction", as an appeal from Jamaica. Accordingly, the court is to be guided by its pronouncements and

find that the learned master did not grant unconditional leave to defend and could not have done so.

[16] The appellants submit even further that, in any event, the permission granted to the AG to file its defences out of time was conditional, because it was made subject to a time limit for filing a defence. As such, the learned master granted conditional leave to defend, which is an interlocutory order from which an appeal lies to the Court of Appeal, with leave to appeal obtained pursuant to section 11(1)(f). Accordingly, the grant of permission was not an order covered by section 11(1)(b). Additionally, the appellants submit that the order made on the default judgment applications is independent of the order made upon the extension of time applications and is not caught by section 11(1)(b). Finally, given the dicta of the court in **NCB v Scotia**, applying section 11(1)(b) to the instant case is contrary to the overriding objective of the CPR and would lead to an absurdity.

[17] In support of these submissions and concerning the approach to statutory interpretation that the court should adopt in holding that section 11(1)(b) is not applicable to the present case, the appellants further rely on **Regina v McCool and others** [2018] 1 WLR 2431, **R (Quintavalle) v Secretary of State for Health** [2003] 2 WLR 692 ('**Quintavalle**'), **Roseal Services Limited v Michael Challis and others** [2017] CCJ 7 (AJ) ('**Roseal v Challis**'), **Derwin Melrose Peltier v Jacinata Peltier nee Jno Lewis** (unreported), Eastern Caribbean Supreme Court (Court of Appeal), Saint Lucia, DOMHCVAP2015/0013, judgment delivered 13 January 2016 ('**Peltier v Peltier**'), **Gordon v Cradock** [1963] 2 All ER 121, and **Nealco Properties Limited v Services Dowell Schlumberger SA** (unreported), Trinidad and Tobago, Court of Appeal, Civil Appeal 45 of 1984, judgment delivered 29 April 1987.

The AG's submissions

[18] The AG's position is more straightforward. The AG contends that the extension of time to file defences granted by the learned master effectively amounts to leave to defend the claims without any conditions. Therefore, the learned master had made an order

granting unconditional leave to defend, which falls within the scope and operation of section 11(1)(b) of the JAJA. This is true notwithstanding that she did not use the words “unconditional leave to defend”.

[19] The AG further contends that, as indicated by this court in **NCB v Scotia**, section 11(1)(b) has not been repealed and remains applicable to appropriate cases. The present case is one such instance. The decisions in **Manderson-Jones v SITA** and **NCB v Scotia** relate to orders made on summary judgment applications and interpret section 11(1)(b) in the light of the repealed section 83 of the CPC. These decisions do not involve applications for extension of time to file a defence and, as such, provide limited guidance. Therefore, once it is ascertained that unconditional leave to defend a claim has been granted, as it was in these claims on appeal, section 11(1)(b), which is clear on the plain meaning of its terms, becomes applicable, and there is no right to appeal the order of the learned master.

[20] To support these submissions, the AG primarily relies on **Roseal v Challis; Maurice Ginton & Co (a firm) v Robert K Adams and another** (unreported), Supreme Court, Commonwealth of the Bahamas, 2021/CLE/gen/001115, judgment delivered on 2 August 2024 (**Ginton & Co v Adams**); and **Peltier v Peltier**.

The issues

[21] The overarching question arising from the parties’ submissions on the preliminary issue is whether the learned master’s order was an order granting unconditional leave to defend within the meaning of section 11(1)(b) of the JAJA. This is a question of law revolving around the proper interpretation of the section to determine its scope and intendment, and whether the order of the learned master falls within its ambit.

[22] From the written submissions filed, it is evident that **Manderson-Jones v SITA** and **NCB v Scotia** stand at the centre of the parties’ opposing contentions on the preliminary issue. In the context of the submissions made by counsel, it is necessary for the court to first determine two sub-issues. The first is whether, having regard to

Manderson-Jones v SITA and **NCB v Scotia**, section 11(1)(b) is limited in application to orders granting unconditional leave to defend under the repealed section 83 of the CPC and, therefore, inapplicable to orders made under the CPR (sub-issue (1)).

[23] If that question is answered in the affirmative, and the court holds that section 11(1)(b) is limited to section 83 of the CPC, the preliminary issue must be dismissed and the court must proceed to consider the merits of the appeal. If, however, the answer is in the negative, the court must then go on to consider the second sub-issue, which is whether the learned master's order granting the AG an extension of time to file defences to the claims in the court below was an order granting unconditional leave to defend within the meaning of section 11(1)(b) of the JAJA (sub-issue (2)).

[24] Given that the resolution of the preliminary issue involves the construction of section 11(1)(b), reference must be made to the applicable rules and presumptions of statutory interpretation, which have guided the court in its deliberations.

The applicable rules of statutory interpretation

[25] The generally applicable rules of statutory interpretation were helpfully summarised by Lord Hodge in the United Kingdom Supreme Court case of **R (on the application of O (a minor, by her litigation friend AO)) v Secretary of State for the Home Department** [2022] UKSC 3 in these terms:

"29. The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated:

'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.'

(*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a

whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, 397:

‘Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.’

[26] Lord Hodge further explained that, insofar as the meaning of a statute is referable to “the intention of Parliament”, Parliament’s intention is to be objectively determined having regard to the words used in the statute. Lord Hodge further opined:

“31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in *Spath Holme*, 396, in an important passage stated:

‘The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the ‘intention of Parliament’ is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. ... Thus, when courts say that such-and-such a meaning ‘cannot be what Parliament intended’, they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning.’”

[27] Lord Hodge’s statements were recently described by the United Kingdom Supreme Court as a “leading statement of principle” in **UniCredit Bank GmbH, London Branch v Constitution Aircraft Leasing (Ireland) 3 Ltd and another; UniCredit Bank**

GmbH, London Branch v Celestial Aviation Services Ltd [2026] UKSC 10 at para. 70. Therefore, bearing these principles in mind, the primary task of the court in considering the preliminary issue is to determine the objective meaning borne by the relevant words of section 11(1)(b) in their legislative context. The court must determine whether, properly construed, the section applies to bar the appellants from challenging the learned master's order by way of an appeal.

[28] Alongside the general principles, other principles of statutory interpretation are relevant to the court's analysis of the preliminary issue and have been applied where necessary. At this stage, it is only important to note, in light of the significance of the decisions in **Manderson-Jones v SITA** and **NCB v Scotia**, that a principle of statutory interpretation establishes that previous judicial decisions regarding the interpretation of a statute are generally binding on the court in future applications of the same legislation (see, for example, **R v London Transport Executive ex parte Greater London Council** [1983] QB 484). However, there is authority for the view that the court remains the ultimate arbiter of the meaning to be attributed to legislation, has a general duty to do so despite previous decisions, and may always decide to overturn a prior interpretation of a statute if it considers it to be based on flawed reasoning (see Bennion, Bailey and Norbury on Statutory Interpretation, section 24.20, with reference to **R v London Transport Executive ex p Greater London Council**).

[29] Against this background, the sub-issues identified for resolution will now be examined, in turn.

Sub-issue (1): whether section 11(1)(b) of the JAJA is limited in application to orders granting unconditional leave to defend under section 83 of the CPC and, therefore, inapplicable to orders made under the CPR

[30] To analyse and resolve the parties' opposing views, centred as they are on **Manderson-Jones v SITA** and **NCB v Scotia**, the court must first determine whether those cases have established that section 11(1)(b) applies solely to orders made under section 83 of the CPC and does not extend to orders made under the CPR. This analysis

will commence with **Manderson-Jones v SITA**, which was decided first, and which formed a significant pillar of the court's reasoning in **NCB v Scotia**.

Manderson-Jones v SITA

[31] In this case, the appellant issued a specially endorsed writ under the CPC, claiming a sum of money from the respondents with interest. The respondents failed to file a defence. The appellant obtained judgment in default. The respondents filed a summons to set aside the default judgment. The summons was heard by Cooke J (as he then was), who set aside the judgment on the ground that it had not been regularly entered, having regard to section 245 of the CPC. The judge, thereafter, granted the respondents leave to file and serve a defence within 14 days.

[32] The appellant challenged Cooke J's order on the grounds that the judge was incorrect in his conclusion that the default judgment was irregular. Alternatively, he requested that conditions be imposed on the respondents, requiring them to make a payment into court pending the outcome of the case. On appeal, this court concluded that Cooke J's order was tantamount to granting the respondents unconditional leave to defend within the meaning of section 11(1)(b) of the JAJA, as no conditions or terms had been imposed on the respondents as to the filing of their defence.

[33] On appeal to the Judicial Committee of the Privy Council, their Lordships held that the Court of Appeal was wrong to so conclude for two reasons. Firstly, Cooke J's order "was not in terms of an order giving unconditional leave to defend an action". The issue before Cooke J was whether the default judgment should be set aside on the ground that it was irregularly entered. The question of whether the respondents had a good defence to the claim was a requirement for granting unconditional leave to defend under title 13, section 82 of the CPC, and that question was not before the court. Secondly, the Privy Council held that "**section 11(1)(b) applies only where leave to defend has been given under section 83 of the [CPC]**" (emphasis added). The Board stated:

“Section 83 deals, and deals only, with cases which have been brought before the court for summary judgment under the procedure which is set out in title 13 of the Code, which is derived from RSC Order 14.”

[34] The Board reasoned that the proceedings were not brought under title 13 of the CPC. The appellant did not ask for judgment to be given under section 79, and, therefore, Cooke J did not give unconditional leave to defend under section 83. Accordingly, the Court of Appeal was wrong to conclude that the appeal fell within section 11(1)(b) of the JAJA. The appeal was allowed.

[35] Having closely examined the facts, reasoning, and decision of the Privy Council, it appears that the case provides limited guidance in determining whether section 11(1)(b) applies to orders made under the CPR. The case was concerned with determining whether, in proceedings regulated by the CPC, the setting aside of an irregularly entered default judgment amounted to giving unconditional leave to defend. The Privy Council answered that question with reference to the specific provisions governing the grant of unconditional leave to defend under sections 79, 82 and 83 of the CPC. Particular emphasis was placed on section 83, which specifically enshrined the court’s power under the CPC to give conditional or unconditional leave to defend. For unconditional leave to defend to be given under the CPC, there must have been a good defence to the claim. There was no other provision in the CPC that related to granting unconditional leave to defend. However, that provision, and the procedure set out in sections 79 and 80 of the CPC for engaging it, had not been invoked in the proceedings before Cooke J, as he was not required to consider whether there was a good defence to the claim for the setting aside of an irregularly obtained judgment. Therefore, the Privy Council held that there was a specific and express regime for granting unconditional leave to defend under the CPC, but Cooke J’s order did not fall within its ambit.

[36] In these premises, it is clear that the Privy Council’s approach was limited to determining what the concept of unconditional leave to defend in section 11(1)(b) meant within the context of proceedings initiated under the CPC. The Board did not purport to

consider the meaning of section 11(1)(b) in relation to proceedings initiated under any other existing enactment, or indeed any future procedural regime such as the CPR. Therefore, the Privy Council's decision in the context of the CPC cannot be taken as determinative of whether the concept of unconditional leave to defend exists under the CPR. In our view, the case does not assist with determining whether section 11(1)(b) is applicable to the proceedings before the learned master, which were brought pursuant to the CPR, and whether the learned master's order amounts to unconditional leave to defend within the meaning of that section.

NCB v Scotia

[37] Attention is now turned to this court's decision in **NCB v Scotia**. In this case, the appellants (the claimants in the Supreme Court) applied pursuant to Part 15 of the CPR for summary judgment against the respondent (the defendant in the Supreme Court). The application was refused by Dukharan J (as he then was), and the appellants appealed. The respondent raised a preliminary objection to the appeal, contending that the judge had refused summary judgment without imposing any conditions, and that the order therefore amounted to a grant of unconditional leave to defend. Accordingly, by operation of section 11(1)(b), there was no right of appeal from that order.

[38] For reasons explained in separate judgments, the court (Harrison P, Cooke JA, and H Harris JA (Ag)) unanimously dismissed the preliminary objection, on the grounds that the order refusing the claimant's summary judgment application, without conditions, was not an order granting unconditional leave to defend within the meaning of section 11(1)(b). In their respective judgments, all three judges examined the sections of the CPC that governed the procedure for applying for summary judgment in that regime, alongside the rules on summary judgment in Part 15 of the CPR. The judges agreed that the effect of the reasoning and decision in **Manderson-Jones v SITA** was that section 11(1)(b) applied only where unconditional leave to defend had been granted under section 83 of the CPC. However, the concept of unconditional leave to defend had not

been included in the CPR. Therefore, section 11(1)(b) would not prevent an appeal from the refusal of the claimant's application for summary judgment.

[39] Specifically, Harrison P reasoned that "unconditional leave to defend, in the context of an application for summary judgment, is a term of art" which has not been retained in the new scheme of the CPR. He opined that although an order refusing summary judgment without conditions could be construed as the grant of unconditional leave to defend an action, the CPR does not require the judge hearing the application to give leave to defend an action, nor specifically does it require him to give unconditional leave to defend as he was expected to do under the CPC. Further, the English Civil Procedure Rules ('UK CPR'), from which the CPR are modelled, had dispensed with the granting of unconditional leave to defend in the summary judgment regime. The evidence that the English rules did so is found in Practice Direction to Part 24 of the UK CPR entitled "Summary Disposal of Claims" which states that: "the court will not follow its former practice of granting leave to a defendant to defend a claim whether conditionally or unconditionally".

[40] The learned President reasoned that a judge, under the CPR, is no longer permitted to determine when he would permit or withhold appellate jurisdiction to a party's case within the context of rule 15.1 of the CPR. According to him, to hold otherwise would create uncertainty and amount to a failure to give effect to the overriding objective mandated by rule 1.1. Accordingly, section 11(1)(b) is "otiose and inapplicable" to the extent that it is referable to the summary judgment provisions of rule 15.1 of the CPR.

[41] Cooke JA, for his part, reasoned that section 11(1)(b) had not been repealed, and that the rules cannot, in any way, derogate from a statutory enactment. Thus, he rejected the argument advanced by the appellants that section 11(1)(b) "no longer had any effect" because the decision in **Manderson-Jones v SITA** limited its relevance to the CPC. However, he opined that at the time of the enactment, section 11(1)(b) derived its effect from the CPC; therefore, because the concept of unconditional leave is not provided for under the CPR, section 11(1)(b) is no longer relevant. While rule 15.6(1)(d) of the CPR

entitled the court to make a “conditional order” upon a summary judgment application, that power has nothing to do with leave to defend. It is merely an order which the court may make in its adjudication on an application for summary judgment before it.

[42] H Harris JA (Ag), exploring a different path of reasoning, examined the differences between the regime for summary judgment under the CPC and the CPR. She noted that a power to grant an order for unconditional leave to defend under the CPR would have to be expressly conferred by the rules, and the framers of the rules elected not to do so. She opined that under the CPR, the court has the power to make an order granting unconditional leave to defend under rule 15.6(1)(d), which sets out the court’s powers on an application for summary judgment. However, the making of such an order would pose difficulties in relation to section 11(1)(b) of the JAJA in that (i) the Privy Council in **Manderson-Jones v SITA** dictates that unconditional leave to defend within the context of section 11(1)(b) relates only to cases under section 83 of the CPC; and (ii) an order granting leave for unconditional defence of an action would give an unsuccessful defendant an unlimited right to appeal while a claimant’s right of appeal would be restricted. Therefore, the invocation of section 11(1)(b) would lead to an absurdity.

[43] Close scrutiny of the reasoning of all three judges reveals that the case does not support the appellants’ contention that it is authority for the principle that section 11(1)(b) applies only to section 83 of the CPC and not to proceedings under the CPR. We say so for the following reasons.

[44] The issue which arose for determination in **NCB v Scotia** was narrow. It was whether the refusal of the claimant’s application for summary judgment, without conditions being imposed on the defendant’s ability to defend the claim, was an order granting unconditional leave to defend within the meaning of section 11(1)(b). The court’s decision, therefore, did not broadly concern the existence of unconditional leave to defend in relation to any other type of order made under the CPR. This is borne out in the reasoning and conclusion of all three judges. For his part, Harrison P stated:

“We are of the view that **as far as section 11(1)(b) of the Act, is referable to the summary judgment provisions of rule 15.1 of the Civil Procedure Rules** prohibiting the jurisdiction to appeal to the Court of Appeal, it is now otiose and inapplicable.” (Emphasis added)

Cooke JA’s conclusion was similarly narrow in scope. At para. 9 of his judgment, he said:

“I hold that the erstwhile concepts of ‘unconditional’ and/or ‘conditional leave’ **are no longer part of the procedural regime pertaining to summary judgments.**” (Emphasis added)

[45] Similarly, H Harris JA (Ag), in treating with the question under consideration, undertook a comparative analysis of the summary judgment regime under the CPC with that under the CPR, without directly examining the relevance of unconditional leave to defend to any other procedure under the CPR.

[46] It is, therefore, evident from the analysis of all three judges that the court was concerned with the interaction between the section and the summary judgment provisions under Part 15 of the CPR. No consideration was given to whether an order of the Supreme Court granting an extension of time to file a defence, or any other order giving permission to defend a claim, without conditions, amounts to unconditional leave to defend an action within the meaning of section 11(1)(b). Therefore, the court’s reasoning in **NCB v Scotia** cannot be applied broadly to resolve the sub-issue under review concerning the general applicability of section 11(1)(b) to orders made under the CPR, or more specifically, to an order made in the Supreme Court extending the time to file a defence to a claim without conditions and refusing to permit default judgment to be entered.

[47] In any event, it might be reasonably inferred from the reasoning of all three judges, and in particular their reliance on **Manderson-Jones v SITA** as a central pillar of their decision, that the court accepted generally that the concept of unconditional leave to defend applies only to the CPC and has no application to the CPR in the absence of an express re-enactment of the concept in the CPR. However, to the extent that such a construction of the court’s reasoning in **NCB v Scotia** is taken, we believe that such a

conclusion by the court would be legally insupportable, and regrettably, must be departed from, in treating with the issue in this case.

[48] As previously stated, **Manderson-Jones v SITA** was solely concerned with the meaning and applicability of section 11(1)(b) within the context of the CPC, and not any other legislative instrument such as the CPR. Therefore, the decision would not be relevant or binding for this court to conclude that the concept of unconditional leave to defend used in section 11(1)(b) is applicable to the CPC only and not to the CPR.

[49] Reliance on **Manderson-Jones v SITA** and, by extension, the provisions of the CPC, to limit the applicability of section 11(1)(b), is an approach that conflicts with some relevant rules of statutory interpretation. Of most immediate relevance are the rules that:

- i) statutes should generally not be interpreted through the lens of earlier or repealed enactments (such as the CPC) (see **Farrell v Alexander** [1976] 2 All ER 721).
- ii) statutes should be interpreted in a manner that renders them effective (see **Attorney General of the Turks and Caicos Islands v Misick and others** [2020] UKPC 30 at para. 40, and Bennion, Bailey and Norbury on Statutory Interpretation, section 11.8); and
- iii) statutes should ordinarily be interpreted as “always speaking” and therefore applicable to changing circumstances and legal contexts (see, generally, **Quintavalle**).

[50] Apart from the court’s reliance on **Manderson-Jones v SITA**, the other reasons provided in **NCB v Scotia** for concluding that section 11(1)(b) did not apply in that case are equally hard to accept and, consequently, cannot be broadly used to determine that the section does not apply within the scope of the CPR. This includes Harrison P’s reliance on the Practice Direction to Part 24 of the UK CPR titled “Summary Disposal of Claims”, as evidence that section 11(1)(b) did not apply to proceedings for summary judgment

under the CPR. The Practice Direction forms part of the UK procedural scheme, and there was no equivalent rule or practice direction in the CPR. Therefore, that Practice Direction cannot be utilised as the learned President did to definitively establish the inapplicability of section 11(1)(b) to the CPR.

[51] It is also noteworthy that the court's references to the overriding objective of the CPR and the absurdity of an interpretation that permits the application of section 11(1)(b) outside the scope of the CPC are equally difficult to appreciate. Firstly, the overriding objective cannot properly be used to interpret the statutory provision, as the overriding objective applies solely to the interpretation and application of the CPR, not the JAJA. Secondly, there is nothing unreasonable or absurd in interpreting the statute in a way that suggests Parliament intended the restriction of a claimant's right of appeal when unconditional leave to defend is granted, whether within the context of the CPC which existed at the time or whichever body of rules replaced it.

[52] Furthermore, there are limited circumstances in which it is permissible to use subsidiary legislation, such as the CPC, to restrict the scope of primary legislation. However, it is usually permissible to do so when the subsidiary legislation is contemporaneous with the primary legislation and forms part of a single scheme (see **R v McCool**, relied on by the appellants, and Bennion, Bailey and Norbury on Statutory Interpretation, section 24.18). The CPC does not fall into this category in relation to section 11(1)(b). Therefore, this is not an appropriate case in which the CPC, a subsidiary legislation, should be used to interpret section 11(1)(b), the primary legislative provision.

Conclusion on Manderson-Jones v SITA and NCB v Scotia

[53] For all the reasons outlined above, we conclude that, contrary to the appellants' submissions, neither **Manderson-Jones v SITA** nor **NCB v Scotia** can effectively assist the court in determining whether section 11(1)(b) applies to the CPR or is limited solely to orders made under the CPC. For these reasons, the decisions in those cases do not resolve the preliminary issue. Accordingly, having found that these cases are of no material assistance in resolving the preliminary issue, this court must now interpret

section 11(1)(b) to determine its relevance within the existing procedural framework of the CPR.

The proper interpretation of section 11(1)(b) of the JAJA

[54] Due consideration has been given to section 11(1)(b) by reference to the general framework of the principles and presumptions of statutory interpretation and some relevant authorities in order to determine its meaning within the context of the JAJA. In particular, we are guided by the general rules that primacy is to be placed on the natural and ordinary meaning of the words used in the section within the context of the statute as a whole (see, for example, **Special Sergeant Steven Watson v The Attorney General and others** [2013] JMCA Civ 6 at para. [19], citing **Pinner v Everett** [1969] 3 All ER 257); and that statutes should be interpreted as “always speaking” and in a manner which renders them effective.

[55] The word “leave” means “permission”. “Unconditional” means “without conditions”. Words and Phrases Legally Defined LexisNexis (2024) defines a condition as “something demanded or required as a prerequisite to the granting or performance of something else”, “a provision, a stipulation” and “a stipulation in a contract which carries with it this consequence”. In **Orrett Bruce Golding and another v Portia Simpson Miller** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 3/2008, judgment delivered 11 April 2008 (**Golding v Simpson Miller**), Panton P stated at para. 11 that the natural and ordinary meaning of the word “conditional” means “not absolute” or “dependent”.

[56] The word “action” in section 11(1)(b) is not defined. However, the immediate legislative context of the section indicates its meaning. Section 11(1)(b) falls under Part III of the JAJA, which deals with the Court of Appeal’s jurisdiction in appeals from civil proceedings from the Supreme Court. Within the context of Part III, the word “action” means civil proceedings in the Supreme Court.

[57] Part 26 of the CPR prescribes the Supreme Court's general powers of case management. One of the relevant powers of the court is to extend the time for compliance with, among other things, any rule (rule 26.1(2)(c) of the CPR). Rule 26.1(3) then provides that when the court makes an order or gives a direction, it may make it subject to conditions and specify the consequence of failure to comply with the order or condition. Rule 26.1(4) provides a non-exhaustive list of the conditions that may be imposed under rule 26.1(3). These include requiring a party to give security or an undertaking, requiring the payment of money into court or making an order for payment of costs.

[58] From the above review of the rules, it appears reasonable to conclude that if a judge grants a defendant permission to defend a civil claim or, more relevantly, issues an order extending the time for the defence to be filed in response to an application for default judgment, without attaching a stipulation or condition, or making the permission dependent on any other fact or event, then an order granting unconditional leave to defend has been made within the meaning of section 11(1)(b). Conversely, if a judge grants permission for the defence to be filed but imposes conditions on the ability to defend or, in other words, refuses to give unconditional permission to defend, then section 11(1)(b) does not apply.

[59] In coming to this conclusion, we have benefited from the learning derived from some highly persuasive judicial pronouncements and decisions from jurisdictions in the Commonwealth Caribbean (emanating from Saint Lucia, Barbados, and the Commonwealth of the Bahamas), treating with procedural rules and statutory provisions that are functionally equivalent or similar to the CPR and section 11(1)(b) of the JAJA. Those decisions show that the interpretation we have given the section within the context of the CPR is in keeping with its plain meaning, purpose, and intendment. The applicability of analogous provisions to section 11(1)(b) to procedural regimes like the CPR, or to other enactments, has been widely accepted and, seemingly, relatively long established in the Commonwealth Caribbean.

[60] The first example of the application of the interpretation of section 11(1)(b) to an enactment (different from the CPC and CPR) is the decision of the Court of Appeal of the Eastern Caribbean Supreme Court in **Peltier v Peltier**, an appeal from the Saint Lucian High Court. In that case, Pereira CJ concluded that the permission granted by a High Court judge, without any conditions imposed, for a respondent to file an answer to a petition for divorce (which, in that jurisdiction, is not governed by the CPR) amounted to an order giving unconditional leave to defend, under the Saint Lucian equivalent to section 11(1)(b) of the JAJA. Admittedly, while the decision is not demonstrative of the applicability of section 11(1)(b) to the CPR, it is an example of applying the natural and ordinary meaning of the section to legislation other than a provision like section 83 of the CPC.

[61] The second decision is **Roseal v Challis**, an appeal from the Court of Appeal of Barbados to the CCJ, concerning proceedings under the Rules of the Supreme Court of Barbados ('Barbadian RSC'), which are analogous to the CPC. In that case, the CCJ considered the meaning of unconditional leave to defend within the context of section 54(1)(c) of the Barbadian Supreme Court of Judicature Act. That section, like section 11(1)(b) of the JAJA, provides that no appeal shall lie to the Court of Appeal from an order giving unconditional leave to defend an action. The question arose in the context of an order made by a Supreme Court judge under the Barbadian RSC. The Supreme Court judge in that case refused an application for summary judgment, but did not use the words "unconditional leave to defend". The judge made orders directing that the affidavits stand as pleadings and granting liberty to cross-examine at trial. The question before the CCJ was whether the judge's refusal of summary judgment, along with consequential orders for the trial to proceed, amounted to unconditional leave to defend. In the course of resolving that question, the CCJ said:

"The main issue is whether leave to defend was given with conditions. **We do not think it is necessary for judges to chant the magic words 'unconditional leave to defend' in giving unconditional leave to defend. The order must be examined to see whether conditions are being imposed on the grant of**

leave or whether directions are given pursuant to Order 81 rule 5 as to the further conduct of the proceedings. The usual form of conditions requires the payment into court of the whole or part of a claim. On the other hand, a judge might give directions as to filing of witness statements, discovery and as to the place and mode of trial. In our judgment, the order of Kentish J. was an order for unconditional leave to defend, as Simmons CJ correctly held in the Court of Appeal's judgment of June 11, 2010. As to the Court of Appeal's order of February 2009, it is clear that rulings made on granting or refusing leave to appeal are interlocutory, and as such remain subject to review in the judgment on the substantive appeal: see *Sanofi v Parke Davis Pty Ltd.*" (Emphasis added)

[62] The interpretation provided by the CCJ regarding provisions similar to section 11(1)(b) of the JAJA demonstrates that determining what constitutes unconditional leave to defend is a matter of substance over form. The primary question is whether permission to defend has been granted and whether any condition has been imposed or specified for the case to proceed with the defence. If, in essence, the order effectively authorises the defendant to defend the claim without conditions, then unconditional leave to defend is deemed granted under section 11(1)(b), which restricts the right to appeal from interlocutory orders.

[63] It is noteworthy that whilst **Roseal v Challis** was decided under rules which were analogous to the CPC, the principles enunciated therein concerning what constitutes unconditional leave to defend were subsequently applied by the CCJ in **Aaron Truss v Windsor Plaza Limited** [2016] CCJ 10 (AJ) (**Truss v Windsor**). The proceedings in that case were regulated by the Barbadian Civil Procedure Rules, 2008 ('Barbadian CPR') and involved an application for special leave to appeal from a decision of the Court of Appeal of Barbados. The matter concerned the refusal of a notice of application filed by the applicant (the claimant in the Supreme Court) for summary judgment under Part 15 of the Barbadian CPR.

[64] The respondent raised a preliminary objection to the application for special leave to appeal to the CCJ, based on section 54(1)(c) of the Barbadian Supreme Court of Judicature Act, which is in *pari materia* to section 11(1)(b) of the JAJA. The CCJ (Nelson,

Anderson and Rajnauth-Lee JJ) applied the meaning of unconditional leave to defend from **Roseal v Challis** and concluded that the decision and order of the Supreme Court refusing to enter summary judgment on the claim “constitute[d] an order that the parties go to trial” on the issues raised in the claim. Therefore, “to that extent, the effect of the order is to give the parties unconditional leave to go to trial and ventilate that issue”. Accordingly, in the court’s view, section 54(1)(c) of the Barbadian Act was a bar to appealing the refusal of summary judgment on that issue. The court said:

“[20]...Once the judge makes an unconditional order on a Part 15 application to go to trial on an issue, it matters not that the issue arises as part of a claim or defence to a claim. Section 54(1)(c) bars any appeal against the judge’s order. Accordingly, there was no jurisdiction in the Court of Appeal or in this Court to entertain an appeal against the decision and order [of the judge].”

[65] **Truss v Windsor**, therefore, persuasively affirms the applicability of section 11(1)(b) to orders made under the CPR, specifically in the context of the refusal of a claimant’s application for summary judgment, where no conditions are imposed on the defendant’s ability to defend the claim. This is the opposite conclusion to that reached by this court in **NCB v Scotia**, despite the similarities between the statutory and procedural frameworks examined in both cases.

[66] Lastly, we refer to the Bahamian first-instance case of **Glinton & Co v Adams**, which the AG heavily relies on to support his position on the preliminary issue. In that case, the claimant filed a summons for summary judgment, the 1st defendant filed a summons to strike out the claim and to dismiss or stay the claim; and the 2nd defendant filed an application to extend the time for filing a defence. The proceedings were commenced in the Bahamian Supreme Court under the Rules of the Supreme Court, 1978. However, during the pendency of the proceedings, the Bahamian Supreme Court (Civil Procedure) Rules 2022 were enacted, and the proceedings were brought under the operation of those rules. Therefore, the applications were treated as applications made under the 2022 Civil Procedure Rules (see paras. [1] – [3] of Winder CJ’s earlier judgment delivered on 16 February 2024 in the same proceedings).

[67] Winder CJ dismissed the claimant's summons for summary judgment (as well as the 1st defendant's summons for striking out and stay of the claim) and granted both defendants an extension of time to file defences. In making his orders, the learned Chief Justice stated:

"[106] For the foregoing reasons, I dismiss the Summary Judgment Summons and the Strike Out Summons.

[107] ... I grant both Defendants an extension of time to file and serve their defences by 7 March 2024."

[68] Aggrieved by these orders, the claimant applied for leave to appeal and a stay of execution. The defendants raised a preliminary objection to the application for leave to appeal. The objection was grounded on section 11(b) of the Bahamian Court of Appeal Act, which is in *pari materia* to section 11(1)(b) of the JAJA. Winder CJ considered the decisions of **Manderson-Jones v SITA** and **NCB v Scotia**. He refused to follow the reasoning in **NCB v Scotia** regarding the applicability of section 11(1)(b) to summary judgments under Part 15 of the CPR and accepted that orders granting unconditional leave to defend could be made in proceedings governed by the CPR. He stated:

"[12]...I struggle to accept that the Rules Committee of the Supreme Court could vary, by a change in the Rules, what parliament intended by Section 11(b) as it related to Summary Judgment. Firstly, there is no power to do so and secondly there is nothing to indicate that this was the intent. In my view such a change required legislative intervention as was done by the English Supreme Court Act, 1981 which legislated away the jurisdictional prohibition."

[69] Winder CJ then adopted the reasoning and approach of the CCJ in **Roseal v Challis** and **Truss v Windsor**, and stated at para. [14] that "[t]he position of the CCJ was not affected by the rules change, unlike what was determined by the Jamaican Court of Appeal under its new Part 15".

[70] In our view, these four cases demonstrate that the natural and ordinary meaning of section 11(1)(b) of the JAJA requires this court to examine the substance of the order made by the court below, under the CPR, to determine whether an order granted was, in

effect, permission or leave to defend an action without conditions or penalties. Even more importantly, analogous provisions to section 11(1)(b) have been applied to proceedings initiated under civil procedure regimes similar to the CPR, within the context of the refusal of a claimant's application for summary judgment and the granting of permission to file a defence.

[71] Based on the authorities cited, we are satisfied that section 11(1)(b) is not limited to orders made under section 83 of the CPC (now repealed), but is applicable to orders made under the CPR (now in force).

[72] We are fortified in our conclusion by the fact that this interpretation accords with not only the natural and ordinary meaning of section 11(1)(b) but also with rules 15.6(1)(d) and 26.1(3) of the CPR, which authorise the court to make orders or give directions either conditionally or unconditionally. Once the rules provide for conditional orders with the stipulation of penalties, the court, in its orders, need not use, as a term of art, the phrases 'conditional' or 'unconditional' leave to defend or to do any other act. This construction of section 11(1)(b) maintains the effectiveness of the section and treats it as "always speaking", notwithstanding the repeal of the CPC, in keeping with the rules of statutory interpretation cited above.

[73] Given the provisions of the CPR, which confer on the court the authority to make conditional or unconditional orders, including granting permission to defend, we would decline to conclude, in the absence of legislative prescription, that the section is irrelevant or inapplicable to the provisions of the CPR. Consequently, any contrary statements of law expressed in or derived from an interpretation of the court's pronouncements in **NCB v Scotia** cannot be accepted as good law.

Conclusion on sub-issue (1)

[74] Based on the preceding discussion, we have concluded that unconditional leave to defend under section 11(1)(b) of the JAJA is not limited solely to orders made pursuant to section 83 of the CPC, but applies to orders made under the CPR which, in substance

and effect, grant unconditional leave or permission to defend a claim. Sub-issue (1) must, therefore, be answered in the negative.

[75] Having reached this conclusion, the relevant and operative question now is whether the learned master's order granting the AG an extension of time to file defences to the claims in the court below was an order granting unconditional leave to defend within the meaning of section 11(1)(b) of the JAJA. This is the subject of consideration under sub-issue (2), which now follows.

Sub-issue (2): whether the learned master's order granting the AG an extension of time to file defences to the claims in the court below was an order granting unconditional leave to defend within the meaning of section 11(1)(b) of the JAJA

[76] When the learned master granted the applications for an extension of time, she also ordered that the defences be filed by 10 November 2023. Through her order, the learned master allowed the AG to file defences despite the deadline having passed, and the appellants had filed applications seeking permission to enter default judgments. In doing so, the learned master ordered that the matter proceed to trial, with the AG being permitted to present defences to the appellants' claims, through the grant of an extension of time and refusal of the grant of leave to enter default judgment. Applying the natural and ordinary meaning of section 11(1)(b), as clarified by the relevant case law we have examined, and having regard to the substance of the order, we accept that the learned master had clearly granted the AG leave to defend the action.

[77] At this juncture, the operative question in determining the applicability of section 11(1)(b) is whether the grant of permission to defend the action was conditional or unconditional. The appellants submit that because the learned master ordered that the AG's defences be filed within a specified time, that was a condition imposed upon the grant of permission to defend the action. We do not accept that argument as sound in principle or law.

[78] It cannot be said that the grant of permission was conditional, given the meaning ascribed to the term. The AG's permission to file a defence out of time was merely a stipulation or direction as to the time frame for the filing of the defence in furtherance of the procedural advancement and management of the case. There was no condition imposed on its filing, non-compliance with which attracted a penalty prescribed by the court or the rules. The learned master did not order that the permission granted to defend the claim would lapse upon the AG's failure to file a defence within the time specified.

[79] By way of illustration, the court notes rule 13.5 of the CPR, which provides:

"Court to impose condition as to filing of defence

13.5 Where judgment is set aside under rule 13.3, **the general rule is that the order must be conditional** upon the defendant filing and serving a defence by a specified date." (Emphasis added)

[80] As can be seen, this section establishes, as a general rule, that the court is to make the setting aside of a default judgment conditional upon the filing of a defence. If the judge makes such an order consistent with the general rule, and the defence is not filed within the specified time, the grant of leave lapses and the default judgment will remain in place. The same result does not obtain where a defence has not been filed within time, no judgment in default has been entered, and permission is granted for the defence to be filed. This is because permission to file the defence is not conditional on the filing of the defence.

[81] Rule 56.4(12) of the CPR is also similar in effect to rule 13.5. That rule provides:

"(12) Leave [to apply for judicial review] is conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave." (Emphasis added).

[82] With this rule, if the claim is not filed within the stipulated time frame after the grant of leave, then the leave lapses. Therefore, the existence or continuation of the leave depends on the filing of the judicial review claim within a specified time (see, generally, **Golding v Simpson Miller**). This is not the same as the order made by the

learned master stipulating the time frame within which the defence must be filed. The failure to file the defence would not have affected the permission to do so. The result would be that, in the absence of a further extension of time granted by the court, the claimant would be entitled to seek leave for default judgment to be entered. This procedural step is not a condition or sanction imposed by the order or any rule.

[83] On this point, the decision of **The Attorney General v Keron Matthews** [2011] UKPC 38 is instructive. That case concerned the interpretation of the default judgment provisions under the Civil Procedure Rules of Trinidad and Tobago. The Privy Council stated, insofar as is relevant, that:

“16. ... **There is no rule which states that, if the defendant fails to file a defence within the period specified by the CPR, no defence may be filed unless the court permits.** The rules do, however, make provision for what the parties may do if the defendant fails to file a defence with[in] the prescribed period: rule 10.3(5) provides that the defendant may apply for an extension of time; and rule 12.4 provides that, if the period for filing a defence has expired and a defence has not been served, the court must enter judgment if requested to do so by the claimant. **It is straining language to say that a sanction is imposed by the rules in such circumstances. At most, it can be said that, if the defendant fails to file a defence within the prescribed period and does not apply for an extension of time, he is at risk of a request by the claimant that judgment in default should be entered in his favour.** That is not a sanction imposed by the rules. Sanctions imposed by the rules are consequences which the rules themselves explicitly specify and impose.” (Emphasis added)

[84] This statement of principle was endorsed by this court in **Advantage General Insurance Company Limited (formerly United General Insurance Company Limited) v Marilyn Hamilton** [2019] JMCA App 29 at paras. [62] and [63]. Thus, this pronouncement by the Privy Council sounds true in the context of the CPR. In circumstances where a defendant has failed to file a defence within the period prescribed by the CPR, there is no stipulated consequence. By parity of reasoning, the same applies to the order of the learned master extending the time to file the defences. To borrow the words of the Privy Council, it would be “straining language to say that a sanction [was]

imposed by the [learned master's order] in the circumstances" when only a date was fixed for compliance.

[85] As already indicated, rule 26.1(4) of the CPR sets out examples of conditions that may be imposed by the court when making orders or giving directions generally, which by implication would include an order granting leave to defend. More specifically, the learned editors of Blackstone's Civil Practice 2008 (at para. 34.31) and The Caribbean Civil Court Practice 2024 (at note 12.7) also indicate conditions, which are usually imposed in the context of orders granting leave to defend. These include ordering the defendant to pay the claimant's costs thrown away, or to pay into court all or part of the money that is the subject matter of the claim, failing which any filed defence will be struck out. The editors of Blackstone's Civil Practice explain that such conditions are typically granted in circumstances where the defence is arguable but not strong, or where there are doubts about the *bona fides* of the defence. Those cases, it is said, fall within "the grey area between granting judgment and dismissing the application".

[86] In this case, the learned master concluded that the defences had a real prospect of success and imposed no condition when granting the extension of time for their filing. Therefore, the grant of an extension of time with the date for compliance specified did not render the order conditional and was thus tantamount to the grant of unconditional leave to defend the claim.

[87] This aligns our views with Winder CJ's persuasive reasoning and conclusion in **Glinton & Co v Adams**, following the CCJ's authoritative lead in **Roseal v Challis** and **Truss v Windsor**, that the orders refusing a claimant's application for summary judgment and extending the time for filing defences under the CPR by a specific date, without any condition, amounted to an order granting unconditional leave to defend.

Conclusion on sub-issue (2)

[88] In conclusion, the learned master's order granting the AG an extension of time to file defences to the claims was an order granting unconditional leave to defend within the

meaning of section 11(1)(b) of the JAJA. Accordingly, sub-issue (2) is answered in the affirmative.

Disposition of the preliminary issue

[89] Having carefully considered counsel's written submissions on the preliminary issue, we conclude that the learned master's order granting an extension of time to the AG to file defences to the claims in the court below was, in substance and effect, an order granting unconditional leave to defend, from which there is no right of appeal, as stipulated by section 11(1)(b) of the JAJA. Regrettably, the court is obliged to depart from the earlier pronouncements and conclusions in **NCB v Scotia**, which have established, or have been reasonably interpreted to mean, that section 11(1)(b) applies only to section 83 of the CPC and does not extend to Part 15 (summary judgment regime) and other provisions of the CPR due to the absence from the Rules of the concept of "unconditional leave to defend". With all due respect, such a construction of section 11(1)(b) within the context of the CPR procedural framework cannot be accepted as good law within this jurisdiction and so ought not to be followed.

[90] Consequently, the appeal must be determined on the preliminary issue and be struck out for lack of jurisdiction.

Costs of the appeal

[91] Regarding the issue of costs of the appeal, the general rule is that the successful party should pay the costs of the unsuccessful party. In this case, the AG is technically the successful party on appeal, having made submissions on the preliminary issue that led to the dismissal of the appeal. The application of the general rule would mean that the appellants should pay the AG's costs of the appeal.

[92] However, in our view, the circumstances of this case justify a departure from the general rule. Not only is the appeal the result of the AG's default in filing defences in the court below, which necessitated the grant of an extension of time, but the appeal has also been resolved on a preliminary issue raised by the court of its own motion. Therefore,

the merits of the proceedings have not been considered. It is also noted that the AG had not filed submissions in response to the substantive appeal, but only did so in respect of the preliminary issue upon the court's invitation. Given all these circumstances, we consider this an appropriate case to order that each party should bear its own costs in these proceedings, and so, we order accordingly.

Order

[93] The court, therefore, makes the following orders:

1. The appeal is struck out for want of jurisdiction because the order of the learned master granting an extension of time to the respondent, the Attorney-General of Jamaica, to file defences to the claims in the court below, was an order granting unconditional leave to defend the claims, from which no appeal lies to the Court of Appeal, as provided by section 11(1)(b) of the Judicature (Appellate Jurisdiction) Act.
2. Each party shall bear its own costs of the appeal.