BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV No. 426 of 2017

BETWEEN:

DAVID ANDRÉ COMISSIONG **CLAIMANT**

AND

FREUNDEL STUART
MINISTER RESPONSBILE FOR
TOWN AND COUNTRY PLANNING **DEFENDANT**

AND

VISION DEVELOPMENTS INC. **PROPOSED SECOND DEFENDANT**

Before Dr. The Hon. Madam Justice Sonia L. Richards, Judge of the High Court.

2017: August 10, 16, 17
December 20

Mr. D.A. Comissiong and Mr. R. Clarke, Attorneys-at-Law for the Claimant.
Mr. H. Gollop Q.C., Mr. S. Gollop, and Mr. N. Marshall, Attorneys-at-Law for the Defendant.
Mr. B. Gale Q.C., Mrs. L. Harvey-Reid, and Mrs. M. Maynard, Attorneys-at-Law for the Proposed Second Defendant.

DECISION

Introduction

[1] Before the Court is an application by the Defendant seeking to raise a point *in limine.* The Defendant contends that the Claimant has no *locus standi* to initiate proceedings against the Defendant under either the Town and Country Planning Act (Cap.240), or the Administrative Justice Act (Cap.109B).

[2] It has been said that in many respects, standing "is a metaphor to describe the interests required, apart from a cause of action as understood at common law, to obtain various common law, equitable and constitutional remedies". (**Allan v. Transurban City Link Ltd (2001) 208 CLR 167** at para. [15]). And another Judge proffered that "Standing focuses on the parties seeking to get their complaint before the court, not on the issues they wish to have the court consider….Denial of standing does not deny merit in a plaintiff's legal claims but denies the plaintiff the right to have these claims adjudicated". (**Onus And Anor. v. Alcoa of Australia Ltd 149 CLR 27** at 43-44 per Murphy J).

The Factual Background

[3] By a Fixed Date Claim Form filed on 22 March 2017, the Claimant alleged that the Defendant unlawfully granted planning permission to the Proposed Second Defendant (Vision). Vision is not a party to these proceedings, but

has filed an application to be so joined as the Second Defendant. For the purposes of the present application, the Court permitted Vision to make written and oral submissions.

[4] On 30 March 2015, Vision forwarded its application for permission to develop land, numbered 0445/03/2015B, to the Town and Country Planning Department. The Claimant issued correspondence to the Chief Town Planner, (CTP), and to the Defendant in his capacity as Prime Minister, expressing his concerns about the proposed development. The correspondence was dated 04 August 2016 and 24 August 2016 respectively.

[5] On 15 February 2017, the Defendant granted permission to Vision to build a 15 storey hotel on beach front land situated at Bay Street, St. Michael. That permission was subject to 58 conditions.

[6] The Claimant challenged the legality of the permission on several grounds. These grounds are, *inter alia*, that:

1. the Defendant was not advised by a properly constituted Advisory Committee as required by Cap. 240 (Ground 1);
2. the CTP did not carry out the survey which is a precursor to an amended physical development plan as required by Cap.240. Therefore, the planning application was considered against the background of an outdated plan (Ground 2);

3. there was no updated coastal management plan provided by the Coastal Zone Management Unit. Therefore, the permission granted had no regard to an appropriate coastal zone management plan (Ground 3);

4. the proposed development impacts on cultural heritage conservation areas, and constitutes an application to amend the physical development plan. As such, a public inquiry was required by Cap.240, but this did not occur (Grounds 4 and 5);

5. the proposed development is in close proximity to listed buildings, and, in keeping with current policy, should be discouraged rather than approved (Ground 6);

6. the proposed development includes the construction of a large hotel on the south coast of the island, a jetty and a sewage treatment plant. As a result, an environmental impact assessment was an imperative that was not undertaken by Vision or required by the Defendant (Ground 7);

7. the Defendant was under a common law duty to act fairly by consulting nearby residents and users of the beach in the area of the proposed development (Ground 8);

8. the Defendant failed to give proper or sufficient regard to the material considerations that flowed from the 2011 designation of Historic Bridgetown and its Garrison as a World Heritage Site (Ground 9);

9. the permission for the erection of a 15 storey hotel is in breach of planning policies and regulations that limit construction of beach front tourist accommodation to a height of 5 storeys or 55 feet (Ground 10); and

10. the permission breached the principles of natural justice in that over the years other persons were refused permission to build beach front or non beach front tourist accommodation above the stipulated height of 5 or 7 feet respectively(Ground 11).

[7] Amongst the remedies sought is a twelve part declaration in these terms:

> "(A) A declaration that the decision made by the [Defendant], in response to the application made by [Vision] to the [CTP] on the 30th day of March 2015 bearing Reference Number 0445/03/2015B – to grant permission to [Vision] to erect a hotel at Bay Street in the parish of Saint Michael in the Island of Barbados constitutes:-
>
> 1. a decision that conflicts with the policy of several Acts of Parliament inclusive of [Cap.240] and the Coastal Zone Management Act CAP 394;
>
> 2. a decision that was made in breach of

[Cap.240];

3. a decision, the making of which is not in compliance with relevant requirements specified under [Cap.240];

4. an unreasonable or improper exercise of discretion on the part of the [Defendant];

5. a decision that is contrary to law;

6. a decision that is based on and invalidated by a failure to satisfy or observe conditions or procedures required by law;

7. a decision that is based on and invalidated by breach of or omission to perform a duty on the part of the [Defendant] and/or the [CTO] and/or the Director of the Coastal Zone Management Unit;

8. an act or decision that is in excess of the jurisdiction of the [Defendant] and that is ultra vires [Cap.240];

9. a decision that is not based on or supported by the evidence or the objective infor-mation that such a decision requires;

10. a decision that is marred and invalidated by a failure of the [Defendant] to apply or adhere to the principles of Natural Justice;

11. a decision that is marred and invalidated by the Defendant's breach of the Common Law duty that obligates a public authority such as the Defendant to act fairly towards all relevant parties and to consult the residents of the nearby housing districts and the

> regular or habitual users of the relevant beach; and
>
> 12. a decision that conflicts with the policy of the Cabinet and Government of Barbados as outlined in the Physical Development Plan, the Management Plan for Historic Bridgetown and its Garrison, and in the National Sustainable Development Policy".

[8] The other remedies prayed for are:

> "(B) An immediate interim order suspending the said grant of permission until the final determination of the proceedings herein.
>
> (C) An order of certiorari quashing the said decision or grant of Permission.
>
> (D) Such further and other relief that this Honourable Court considers to be appropriate and just in the circumstances.
>
> (E) Costs in favour of the Claimant to be agreed or assessed".

[9] By a Notice filed on 11 July 2017, the Claimant wholly discontinued his interlocutory application for an interim order against the Defendant.

[10] At Ground 12 of the Fixed Date Claim Form, the Claimant refers to sections 69 and 72 of Cap. 240, and sections 3 to 7 of Cap.109B, as the legal basis for the claim.

[11] The Claimant is an attorney-at-law by profession, and is a well known social activist in Barbados. He regularly contributes to the debate on national and

regional issues through the local print media. Of relevance to this matter is his affidavit filed on 22 March 2017 in support of his claim, and further affidavits filed by him on 24 March 2017 and 21 April 2017.

[12] In the abovementioned affidavits, the Claimant averred that he is a citizen and resident of Barbados, "with a substantial interest in maintaining and fostering the social, cultural and economic welfare of my country, Barbados". (Para.7 of Affidavit filed on 24 March). He is also the part owner of property at Crumpton Street in Bridgetown. This property houses both his law office (the Clement Payne Chambers) and the Clement Payne Cultural Centre. The property is said to be within the parameters of Historic Bridgetown and its Garrison. Additionally, the Claimant is the President of the Clement Payne Movement.

[13] As a confirmed Methodist, the Claimant believes that this gives him "an interest in the protection and preservation of the Bethel Methodist Church, an historic Listed Building that is immediately opposite to the site of the proposed 15 storey hotel". (Para.7 of Affidavit filed on 24 March). There is a burial ground at that church which contains two grave plots owned by the Claimant's family. His father, a former Methodist minister of religion, and his maternal grandmother are buried there. He therefore considers these grave sites to be a sacred space for him and for his family.

[14] The Claimant is also a user of the beach in the vicinity of the proposed development.

[15] The Defendant filed a Notice of Application on 10 July 2017. The Defendant's request is that the claim be struck out because the Claimant has no *locus standi* in the matter, and he is not a proper party to initiate these proceedings. The Defendant relied on two propositions, namely, that:

1. the Claimant is not an "aggrieved person" under section 72 of Cap.240; and
2. the Claimant is not a person whose interests are adversely affected by an administrative act or omission under section 6 (a) of Cap.109 B.

The Claimant as a "Person Aggrieved"

(1) The Legislative Backdrop

[16] The Claimant says that he is aggrieved by the Defendant's decision to grant permission to Vision to build the hotel. As a result, he claims an entitlement under sections 69 and 72 of Cap.240 to make this application, and to seek the abovementioned remedies. (Ground 12 (a)).

[17] The relevant portions of section 72 of Cap.240 provide that:

> "(1) Any person aggrieved –
>
> (a) by an order to which this section applies who desires to question the validity of that order on the grounds that the order is not within the powers of this Act or that any of the relevant

> requirements have not been complied with in relation to that order; or
>
> (b) by any action on the part of the Minister to which this section applies who desires to question the validity of that action, on the grounds that the action is not within the powers of this Act or that any of the relevant requirements have not been complied with in relation to that action,
>
> may within six weeks from the date on which the order is confirmed or published in the *Official Gazette*, or the action is taken, as the case may be, make an application to the High Court under this section in accordance with any rules of court.
>
> (2) This section applies ...to any such action as is mentioned in subsection (3) of ...section 69….
>
> (6) For the purpose of this section, the expression "the relevant requirements", in relation to any order or action to which this section applies, means any requirements of this Act or of any order, regulation or rules, which are applicable to that order or action".

[18] Section 69 (3) of Cap.240 refers in part to

> "(a) any decision of the Minister on an application for planning permission referred to him under section 18".

It is not disputed that Vision's application was forwarded to the Defendant under section 18 of Cap.240.

[19] Section 18 (1) provides that:

> "The Minister may give directions to the [CTP] requiring that any application made to that officer for planning permission or all such applications of any class specified in the directions shall be referred to the Minister instead of being dealt with by the [CTP], and any such application shall be so referred accordingly".

[20] By virtue of S.I. No.103 of 1986, the CTP was directed to refer to the Minister:

> "(b) all applications made for planning permission in respect of beach front properties".

It follows that the grant of permission to Vision by the Defendant can be challenged by "any person aggrieved". The question to be resolved by this Court is whether the Claimant is such a "person aggrieved" under section 72 of Cap. 240.

(2) The Defendant's Submissions

[21] Counsel for the Defendant argues that the Claimant, like any other citizen in Barbados, may be a person with a grievance, but he is not a "person aggrieved". This distinction was made by the Lord President in **Lardner v. Renfrewshire Council [1997] SCLR 454**, where he stated that the appellant in that case was:

> ".....a member of the public who has an interest in what happens to the site because it is near him and he uses it, but on the other hand he did not avail himself of the opportunities which

> Parliament has afforded for participating in the process for adopting the local plan. We do not suggest, of course, that someone who has not objected to a draft plan or taken part in an inquiry can never be 'a person aggrieved'. On the other hand, there is a difference between feeling aggrieved and being aggrieved: for the latter expression to be appropriate, some external basis for feeling 'upset' is required – some denial of or affront to his expectations or rights ". (Page 457).

[22] Counsel for the Defendant further argued that the Claimant's attributes, as represented in his affidavits, do not bring him within the definition of a "person aggrieved". It was submitted that the Claimant has not demonstrated that he is genuinely a person aggrieved as distinct from a mere busybody.

[23] The Defendant's counsel was guided by judicial pronouncements made in relation to legislative provisions that are in *pari materia* with section 72 of Cap.240. The equivalent Scottish provision was considered in the **Lardner** case, (supra at para. [21]), where it was held that the appellant was not "a person aggrieved". The Lord President opined that:

> "The particular circumstances of any case require to be considered and the question must always be whether the appellant can properly be said to be aggrieved by what had happened. In deciding that question it will usually be a relevant factor that, through no fault of the council, the appellant has failed to state his objection at the appropriate stage of the procedure laid down by

> Parliament since that procedure is designed to allow objections and problems to be aired and a decision then to be reached by the council. The nature of the grounds on which the appellant claims to be aggrieved may also be relevant. We express no view on the merits of those advanced by the appellant, but we observe that they all relate to matters which he could have put, or endeavoured to put, to the council or to the reporter at the inquiry. Had he done so, his objections could have been considered at the due time. Instead of that the appellant now seeks to have these issues reopened after the decision has been taken in accordance with the prescribed procedure. In these circumstances, having regard both to the nature of his interest in the site and to his failure to take the necessary steps to state those objections at the due time, the appellant cannot properly be regarded as 'a person aggrieved'....".

(3) Vision's Submissions

[24] Counsel for Vision mirrored to some extent the submissions of counsel for the Defendant. He assessed the Claimant as "a mere busybody who is seeking to interfere in things which do not concern him". In his view, the two protest letters written by the Claimant demonstrated a very limited intervention. These letters provided proof that the Claimant's true purpose was to influence Government policy.

[25] According to counsel for Vision:

> "The Claimant is neither the Appellant in the planning process nor, we submit, someone who took a sufficiently active role in the plan-ning

> process. Indeed, the Claimant took no role in the planning process. The evidence as presented by the Claimant clearly establishes that he is simply someone who, primarily in his role as a citizen of Barbados and social and political activist, voiced only his **concerns** (as opposed, we submit, to objecting) to the granting of permission and did no more about it" (Para.17 of the Written Submissions filed on 14 July 2017).

(4) Other Relevant Case Law

[26] More recently, the United Kingdom Supreme Court determined that an appellant was a "person aggrieved" under the Roads (Scotland) Act, 1984. Schedule 2 of the 1984 legislation provided that:

> "2. If any person aggrieved by the scheme or order desires to question the validity thereof, or of any provision contained therein, on the grounds that it is not within the powers of this Act or that any requirement of this Act or of any regulations made thereunder has not been complied with in relation to the scheme or order, he may.... make an application as regards that validity to the Court of Session".

[27] In **Walton v. The Scottish Ministers [2012] UKSC 44**, Lord Carnwath commented that:

> "[109] Provisions of this kind are found in many statutes relating to planning, highways and other similar public functions, but the detail varies".

[28] Notwithstanding that the appeal in **Walton** was dismissed, the appellant was found to be a "person aggrieved", having made representations in accordance

with statutory procedures, and having taken part in the local inquiry. The appellant also lived in the vicinity of the proposed road works, and he was an active member of various local environmental organisations. Lord Reed described the appellant as:

> "....not a mere busybody interfering in things that do not concern him....He has demonstrated a genuine concern about what he contends is an illegality in the grant of consent for a development which is bound to have a significant impact on the natural environment. In these circumstances, he is indutiably a person aggrieved within the meaning of the legislation". (Para.[88]).

[29] Lord Reed examined case law "both north and south of the border" (para.[85]). The learned Law Lord concluded that:

> "[86] It is apparent from these authorities that persons will ordinarily be regarded as aggrieved if they made objections or represent-ations as part of the procedure which preceded the decision challenged, and their complaint is that the decision was not properly made...
>
> [87] The authorities also demonstrate that there are circumstances in which a person who has not participated in the process may none-theless be "aggrieved", where for example an inadequate description of the development in the application and advertisement could have misled him so that he did not object or take part in the inquiry, as in **Cummins v. Secretary of State for Scotland [1992 S.C. 463; 1993 S.L.T 228]** and the analogous English case of **Wilson v. Secretary of State for the Environment [[1973]**

> **1W.L.R.1083; [1974] 1 All E.R. 428].** Ordinarily, however, it will be relevant to consider whether the applicant stated his objection at the appropriate stage of the statutory procedure, since that procedure is designed to allow objections to be made and a decision then to be reached within a reasonable time, as intended by Parliament".

[30] There were no dissenting judgments in the five member **Walton** panel. And, in addition to Lord Reed, another Law Lord expressed views on the appellant's standing as a "person aggrieved", within the context of the environmental issues raised by the appellant. Lord Hope of Craighead was of the opinion that the Scottish provision, under consideration by the court, should not be construed narrowly where the grounds of the challenge related to the protection of the environment.

[31] Lord Hope reasoned that:

> "[152]...An individual may be personally affected in his private interests by the environmental issues to which an application for planning permission may give rise. Noise and disturbance to the visual amenity of his property are some obvious examples. But some environmental issues that can properly be raised by an individual are not of that character. Take, for example, the risk that a route used by an osprey as it moves to and from a favourite fishing loch will be impeded by the proposed erection across it of a cluster of wind turbines. Does the fact that this proposal cannot reasonably be said to affect any individual's property rights or interests mean that it is not open to an individual to challenge the proposed

> development on this ground? That would seem to be contrary to the purpose of environmental law, which proceeds on the basis that the quality of the natural environment is of legitimate concern to everyone. The osprey has no means of taking that step on its own behalf, any more than any other wild creature. If its interests are to be protected someone has to be allowed to speak up on its behalf.
>
> [153] Of course, this must not be seen as an invitation to the busybody to question the validity of a scheme or order under the statute just because he objects to the scheme of the development. Individuals who wish to do this on environmental grounds will have to demonstrate that they have a genuine interest in the aspects of the environment that they seek to protect, and that they have sufficient knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity. There is, after all, no shortage of well informed bodies that are equipped to raise issues of this kind...It is normally to bodies of that kind that one would look if there were good grounds for objection. But it is well known that they do not have the resources to object to every development that might have adverse consequences for the environ-ment. So there has to be some room for individuals who are sufficiently well informed, to do this too. It will be for the court to judge in each case whether these requirements are satisfied".

[32] The UK Town and Country Planning Act Planning Act 1990, contains provisions in *pari materia* with the Barbados and Scottish legislation. Referring to section 288 of the UK statute, Lord Denning stated that:

> "The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests". (See **Attorney General of the Gambia v. N'Jie [1961] AC 617** at 634).

[33] And in **Ashton v. Secretary of State for Communities and Local Government et al [2009] EWHC 2287 (Admin)**, the Court of Appeal distilled certain principles on standing, after a review of relevant case law. Speaking on behalf of a unanimous court, Lord Justice Pill concluded that:

> "The following principles may be extracted from the authorities and applied when considering whether a person is aggrieved within the meaning of section 288 of the 1990 Act:
>
> 1. Wide access to the courts is required under section 288 (...**N'Jie**).
>
> 2. Normally, participation in the planning process which led to the decision sought to be challenged is required. What is sufficient participation will depend on the opportunities available and the steps taken (**Eco-Energy [(GB) Limited v. First Secretary of State and others [2004] EWCA Civ.1566], Lardner**).
>
> 3. There may be situations in which failure to participate is not a bar (**Cummins,** cited in **Lardner** supra, at para.[21]).

> 4. A further factor to be considered is the nature and weight of the person's substantive interest and the extent to which it is prejudiced. (**N'Jie** and **Lardner**)...
>
> 5. This factor is to be assessed objectively. There is a difference between feeling aggrieved and being aggrieved (**Lardner**).
>
> 6. What might otherwise be a sufficient interest may not be sufficient if acquired for the purpose of establishing a status under section 288 (**Morbaine [Ltd and Roberts v. First Secretary of State & Ors. [2005] J.P.L.337]).**
>
> 7. The participation factor and the interest factor may be interrelated in that it may not be possible to assess the extent of the person's interest if he has not participated in the planning procedures (**Lardner).**
>
> 8. While recognising the need for wide access to the courts, weight must be given, when assessing the prior participation required, and the interests relied on, to the public interest in the implementation of projects and the delay involved in judicial proceedings. ([**Commission of the European Communities v. Ireland (Case C-427/07, 16 July 2009**])". (See also **Harding v. Cork County Council [2008] JESC 27,** and Halsbury's Laws of England, 5th ed. Vol.82, 2010, para.842, text to fn.11).

[34] The brief facts of **Ashton** are that permission was granted for the development of a 43 storey tower in Central London on the South Bank of the River Thames. The appellant contended that the decision to grant

planning permission was based on a material error of fact. The tower would also interfere with his own property, *inter alia*, by casting a shadow over his balcony, and blocking his view of the Palace of Westminster.

[35] The appeal in **Ashton** was dismissed. Lord Justice Pill stated that:

> "54. I do not consider that the appellant has standing under section 288 to bring the present claim. His participation in the planning process was insufficient in the circumstances to acquire standing. He was not an objector to the proposal in any formal sense and did not make representations, either oral or written, at the properly constituted Public Inquiry. Mere attendance at parts of the hearing and membership of [the Waterloo Community Development Group] which has not brought proceedings in this court, were insufficient....
>
> 55. Moreover, the absence of representations before or at the Inquiry about the loss of amenity to his property, either personally or by [the Waterloo Group], deprived...the local planning authority of the opportunity to test the extent of the alleged loss and to call evidence in response. That being so, the Inspector, the fact finding tribunal, was not in a position to assess the extent of the loss and whether it amounts to a sufficient interest. The Court cannot make good that deficiency".

(5) <u>Are Property Interests Prejudiced?</u>

[36] It is a fact that the Claimant is not the person who applied for planning permission, or to whom planning permission was granted subject to myriad conditions. The Claimant is not the aggrieved developer of the land on which

the hotel is to be built. There is no evidence that he has a proprietary interest in that land.

[37] Does the Claimant have a proprietary interest in any contiguous or nearby properties? For convenience the Court will begin with his business premises. This property is the centre of the Claimant's professional and cultural endeavours. It is a few miles away from the Bay Street development. There is no allegation that the construction of the hotel will compromise the Crumpton Street premises structurally, or otherwise, or make access difficult because of increased traffic during or after con-struction of the hotel.

[38] The Claimant says that his business premises are "within the parameters of Historic Bridgetown and its Garrison". (Para.4 Affidavit of 22 March 2017). And at paragraph 7 of the 24 March affidavit, this property is described as being "within the precincts of Historic Bridgetown and its Garrison". The Court understands this to mean that the law office is within the area designated as Historic Bridgetown and its Garrison. The Defendant made no admission in this regard, and has put the Claimant to proof of this assertion. (See Affidavit of Timothy Maynard at para.8).

[39] For the purposes of the present application, neither counsel for the Defendant, nor for Vision, sought to rely on the Maynard affidavit. They did not dispute the assertion that the Claimant's business premises were located within

Historic Bridgetown and its Garrison, either in their written or oral submissions to this Court. Therefore, the Court will assume that the Crumpton Street location falls within a UNESCO historically designated area.

[40] Assuming that the Claimant's assertion is accurate, he has not alleged that his business premises will be negatively affected if Barbados lost the UNESCO world heritage designation as a result of the construction of a 15 storey hotel at Bay Street. It is not readily apparent that the Crumpton Street property will be affected in any manner that would confer on the Claimant the status as an "aggrieved person" under section 72 of Cap.240.

[41] There was no challenge to the Claimant's assertion that he is a user of the beach near to the proposed development. He claims that the construction of the hotel at Bay Street will have the following negative effects:

> "(a) the proposed hotel will be adjacent to Browne's Beach, one of the beaches that is most loved and used by the people of Barbados in general and by the residents of the densely packed working-class district of the City of Bridgetown in particular, and if the hotel is constructed it will fundamentally alter the social character of Browne's Beach and transform it into a tourist dominated beach that will be potentially alienating to the indigenous people of Barbados;

> (b) the construction of a hotel of the size envisaged will also severely and negatively impact the physical environment of the adjacent beach and of the animal, plant and marine life associated with the said beach, inclusive of the several turtle nesting areas that exist on the said beach". (See para. 50 of 22 March Affidavit).

[42] Once again the Claimant has offered no proof of a proprietary interest in any lands adjoining or in the vicinity of the proposed hotel, including the beach he uses. He does not live in the area, therefore, he is not a member of the public "who has an interest in what happens to the site because it is near to him and he uses it". (See **Lardner** supra at para. [21]).

[43] An immediate neighbour of the proposed hotel is the Bethel Methodist Church. As a confirmed member of the Methodist Church, the Claimant is concerned that:

> "the construction work that will be required to establish the foundation of the said hotel and the vibrations deriving therefrom will pose a severe risk to the physical structures of the many historically significant buildings located nearby;
>
> ....the construction of a hotel of this height directly opposite the historic Bethel Methodist Church (a listed building) will negatively affect the visual amenity of Bethel Methodist Church and will pose the problem of enveloping the Bethel Methodist Church in a massive shadow caused by the said hotel". (See paras. 50 (f) and (g) of 22 March Affidavit).

[44] Unfortunately, the Claimant has not demonstrated that his church membership automatically confers on him a proprietary interest in the property comprising the Bethel chapel. He has not offered any evidence that he is a trustee of the Methodist Church, or that the Church authorised him to act on its behalf. Indeed, the Claimant may well be interested in what occurs on adjacent properties that might negatively affect the Bethel chapel. But that interest, by itself, does not elevate the Claimant to the status of a "person aggrieved".

[45] Neither the Defendant nor Vision has contested the assertion that the Claimant has an interest in two grave plots on the Bethel compound. These grave plots are part of a private cemetery as defined by the Cemeteries Act, Cap.39C (S.2). Interestingly, the Methodist Church would have required the permission of the Minister responsible for Town Planning, in order to establish a private cemetery. (S.16, Cap.39C). And private cemeteries are operated by a licence issued by the Minister of Health. (S.17(1) and (2) of Cap.39 C).

[46] The evidence before the Court does not speak to any legal relationship between the Claimant and the Methodist Church, with respect to the grave plots in which his relatives are buried. Does the Claimant or a member of his

family possess a contractual licence from the Church for the use of the grave plots? Is he or a family member in possession of a deed vesting the legal title to the grave plots? There is nothing before this Court that establishes that the Claimant has a tangible legal interest in the grave plots at the Bethel Chapel.

(6) Other Interests Considered

[47] Absent a property or other legal interest in the grave plots, the Claimant must demonstrate more than an emotional, intellectual or esoteric interest. The Court does not doubt the personal significance of the grave sites to the Claimant and his family. His father's grave also represents a significant part of Church history, as during his lifetime he was an ordained Minister of the Methodist faith.

[48] In the **Onus** case (supra at para.[2]), the Australian High Court held that a cultural or religious interest was sufficient to give the appellants standing before the court. This allowed for the determination of the question whether the respondent could execute works, on the respondent's land, in a manner that would interfere with aboriginal relics on that land. The relics were no more than stone artefacts, and the debris of their manufacture, that were scattered in several areas and lying on or near the surface. The appellants sought to use the court's civil process to enforce the criminal liability of the respondent under the Relics Act.

[49] The Supreme Court of Australia had denied standing on the basis that the interest of the appellants was entirely emotional and intellectual. A unanimous High Court allowed the appeal. Stephen J commented that:

> "I do not regard the existing state of the law to be that the possession of intellectual or emotional concern is any disqualification from standing to sue. On the contrary, it will be but rarely that a person having a special interest in the subject matter of the action which he has instituted does not also possess at least a strong intellectual and perhaps also a strong emotional concern with that subject matter, what is more, the absence of mere material interest in that subject matter, in the sense of property or possessory rights, will not as the law now stands, be in itself any bar to standing; this the present case attests". (Pages 41-42).

[50] Gibbs CJ made the following insightful observations:

> "Of course, a special interest is none the less sufficient if it is accompanied by an emotional or intellectual concern. The present is not a case which a plaintiff sues in an attempt to give effect to his beliefs or opinions on a matter which does not affect him personally except in so far as he holds beliefs or opinions about it. The appellants claim not only that their relics have a cultural and spiritual significance, but that they are custodians of them according to the laws and customs of their people, and that they actually use them....
>
> It is common experience that in places all over the world interested members of the public are afforded an opportunity to obtain access to relics of historical interest, including ancient buildings, notwithstanding that they are situated on private

> property. There is no evidence, and it cannot be assumed, that such an opportunity would be denied to the Gournditch–jmara people. On the other hand, if the relics are damaged or destroyed, there will be no possibility that the Gournditch-jmara people will be able to make use of them; they will suffer an immediate and permanent disadvantage". (Pages 37 and 38).

[51] The Court recognises that the finding of standing in the **Onus** case was not made in the context of a determination about who is a person aggrieved. Nevertheless, that case provides the guidance that standing to sue is not limited to property interests, and may include, for example, cultural and religious interests.

[52] In the matter at bar the Claimant, unlike the **Onus** appellants, is not representing Methodist interests in a historically important grave site. However, he does have a special familial interest in the preservation of this particular environment, because the mortal remains of his close blood relatives are interred there. It is undoubtedly a sacred space for the Claimant, with spiritual significance.

[53] The Claimant has a legitimate concern that any construction across the street may impact on the graves, causing them to be damaged or destroyed. Such an outcome would place him at an immediate and possibly permanent

disadvantage. It will be recalled that the Claimant cautioned about the possible damage to structures in the vicinity, as a result of the vibrations from the construction of the hotel's foundation (Supra at para. [43]).

[54] The **Walton** case acknowledged that a "person aggrieved" is not restricted to someone with a property interest. A "person aggrieved" is also someone, for example, with "a genuine environmental interest in the aspects of the environment that they seek to protect". (Supra at para. [31]). Lord Hope in **Walton** further required that the person with "a genuine environmental interest" should also have "sufficient knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity". (Supra at para. [31]). Therefore, it was conceded in **Walton** that a "person aggrieved" is also someone acting in the public interest, but with the necessary qualifications to do so.

[55] The Claimant in this case has expressed views, *inter alia*, about the predicted negative effects of a Bay Street hotel on the social character of Brown's Beach; on the physical environment and marine life; on nearby buildings and structures; and on the visual amenity of the Methodist Church. However, he has produced no evidence of qualification, training or experience in town planning, environmental or heritage studies, sociology, marine biology, coastal planning or other relevant associated disciplines. Although a well

known cultural aficionado in Barbados, there is no evidence of expertise in cultural heritage conservation.

[56] There is nothing before the Court to identify the Claimant as an individual with authority to speak on such matters, and, more importantly, to represent the public interest in such matters as a "person aggrieved". The Court will revisit this issue of public interest representation when it considers the Claimant's standing under section 6 (b) of Cap.109B. (Infra at paras. [123] - [142]).

(7) Prior Objection

[57] Some of the cases mentioned earlier emphasized the necessity for a claimant to have objected to the proposed development. Has it been shown that this Claimant "failed to state his objection at the appropriate stage of the procedure laid down by Parliament"? (See **Lardner** supra at para. [23]). Did he fail to "state his objection at the appropriate stage of the statutory procedure"? (See **Walton** supra at para. [29]).

[58] It will be recalled that the appeal in **Ashton** was dismissed because the appellant's "participation in the planning process was insufficient in the circumstances to acquire standing". (See para. [35] supra). And in **Historic Buildings and Monuments Commission for England (English Heritage) et al v. Secretary of State for Communities and Local Government et al**

[2009] EWHC 2287 (Admin), Judge Mole Q.C. agreed that the question a court should ask is whether the person took a "sufficiently active role in the planning process". (Para. [111] of judgment, quoting Buxton LJ in **Eco-Energy (GB) Limited v. First Secretary of State et al [2004] EWCA Civ 1566** at para. [7]).

[59] According to Judge Mole Q.C., the court should consider:

> "....whether the person claiming to be aggrieved has played a substantial role in the process, for example as an active objector or possibly as an active interested person. Whether a challenger has met the test will always be a matter of fact and degree depending upon the circumstances".
> (**Historic Buildings** case supra at para. [58]).

[60] Counsel for Vision submitted that the Claimant is not someone who took a sufficiently active role in the planning process. He was simply someone who voiced concerns about the granting of permission, as distinct from objecting to the grant, and did no more about it. (See para.17 of Written Submissions). Interestingly, neither counsel for the Defendant, nor for Vision, pointed the Court to any legislative provisions that might have facilitated objections by the Claimant. (For example, sections 9(4) and (5) of Cap.240). And there is no evidence that any statutory procedures were engaged by the Defendant, during the processing of Vision's application, that would have facilitated objections by the Claimant.

[61] In these circumstances, the Court finds that the Claimant did not have access to any statutory procedures through which to channel his objections. Therefore, there was no appropriate stage for him to state any objections in accordance with a procedure laid down by Parliament. Also, it was impossible for the Claimant to play an active role in the planning process, if there was no legislated platform available for him to make his objections known.

[62] Despite the unavailability of a legislated platform, the Claimant wrote two letters setting out areas of concern about the project. There is no suggestion that his letter writing was enough to give him standing. Neither has he attempted to leverage himself into standing through these communications. The letters were described by counsel for the Defendant as containing a "glaring manifestation of the Claimant's personal prejudice in respect of general national development". (See page 7 of Written Submissions filed on 14 July 2017). Counsel pointed specifically to the Claimant's statement that:

> "....Barbados will be making a grave mistake if it permits such a priceless national asset as Browne's beach to fall into the hands of foreign multi-national companies and to become the location of out-sized foreign-owned hotels, rather than to be reserved for indigenous Barbadian entrepreneurs and for locally owned hotels, guest houses and related facilities that fit snugly into the national environment, and that radiate the unique

> charm, culture and hospitality of Barbados and Barbadians!".

[63] Counsel for Vision referred to the same excerpt from the Claimant's letters, and concluded that it demonstrated that the Claimant was attempting to:

> "....influence government policy as it relates to the suitability of the proposed development where it is to be situated as well as to request the Defendant.... to go about reaching a decision on the Town Planning Application before him by having Town Hall meetings and the carrying out of an Environmental Impact Assessment and other considerations (which on the evidence of the Defendant he carried out in essence an Environmental Impact Assessment and did consult with a number of relevant bodies)". (Para.16 Written Submissions).

[64] The Court reviewed the Claimant's correspondence and concludes that despite the absence of an initiated statutory process for objecting, the Claimant made his concerns known at the earliest opportunity available to him. After he became aware of and confirmed Vision's application for planning permission, the Claimant proceeded to write to the CTP and to the individual responsible for making the final decision. It is of no moment that the correspondence was directed to the Defendant in another capacity. The fact remains that the individual exercising the discretion was notified. There is no evidence to the contrary.

[65] A perusal of the correspondence reveals that the Claimant did not limit himself to expressing a personal or political policy statement. The first letter directed to the CTP highlighted the following concerns:

1. the publication of information about the erection of a hotel at Bay Street, before the decision to grant planning permission was entered in the public register at the Town and Country Planning Department;
2. that construction of the hotel would destroy the character of Browne's beach, and alienate Barbadians from nearby beaches;
3. the height and size of the hotel would "dwarf and dominate" all other buildings in Bridgetown, and undermine the world heritage status of Historic Bridgetown and its Garrison;
4. the vibrations caused by the deep and extensive pile driving required to construct the hotel's foundation would seriously damage nearby historic buildings including the Bethel Methodist Church, St. Patrick's Cathedral and St. Paul's Anglican Church;
5. the necessity for wide ranging consultations, via town hall meetings, with neighbouring residential communities, churches, community groups and social clubs within those communities;

6. that Vision's application should be subjected to a rigorous environmental impact assessment [EIA], inclusive of a social impact assessment; and

7. project personnel had announced publicly that all senior posts at the hotel would be filled initially by expatriates.

[66] The second letter recited the content of the first, with a few additions. The Claimant also mentioned:

1. environmental issues surrounding the animal, plant and marine life associated with nearby beaches;

2. issues pertaining to sewage disposal, urban congestion and possible pollution of Carlisle Bay; and

3. the legal implications of the Defendant exercising his statutory functions without a new and revised physical development plan as required by law.

[67] It is obvious that the Claimant's correspondence was not restricted to a venting of his personal antipathies and predilections. He also raised technical and legal questions about Vision's application. His insistence on consultation and an EIA, prior to a grant of permission, leaves the Court in no doubt that the Claimant was objecting to any grant without the execution of these processes.

[68] By the time his correspondence was directed to the Defendant, the Claimant had added his legal objections to any consideration of the application using an outdated physical development plan. Therefore, he cannot fairly be accused of issuing his correspondence and commencing these proceedings for a predominantly political purpose. Such a singularly manifest objective would have constituted an abuse of process. (See **Ashby v. Commonwealth No.4 (2012) 209 FCR 65,** at paras. [196] – [199], per Rares J; **The Queen in the Application of Feakins v. Secretary of State for Environment, Food and Rural Affairs [2003] EWCA Civ. 1546** at paras. 23 and 27**;** and **Dumas v. Attorney General of Trinidad and Tobago, Civ. Ap. No.P218 of 2014, decision delivered 22 December 2014,** at para.71 (Jamadar JA) affirmed by the Privy Council in **Attorney General v. Dumas [2017] UKPC 12**).

(8) Public Inquiry

[69] A number of the issues raised in the Claimant's correspondence have morphed into the claim form filed in this matter. An important pillar of his case is his contention that Vision's application for planning permission entailed significant changes to the proposed land use at the Bay Street site as set out in the physical development plan. If significant changes constitute a

proposal to amend the plan, the further argument is that the Defendant was required to act in accordance with sections 9 and 10 of Cap. 240.

[70] The Court refers to two interesting subsections in section 9:

> "(4) Before approving any development plan or proposals for the amendment of any such plan, the Minister shall cause to be published in three issues of the *Official Gazette* and of at least one newspaper published in the Island a notice –
>
> (a) stating that a development plan, or proposals for the amendment of such a plan, have been prepared by the [CTP];
>
> (b) naming the place or places where copies of the plan or proposals may be inspected and purchased by the public; and
>
> (c) stating the time (being not less than twenty-eight days from the last publication of such notice in the *Official Gazette*) within which objections or representations may be made to the Minister with respect to the plan or proposals.
>
> (5) Where any objection or representation with respect to any plan or proposal for the amendment thereof is made in writing to the Minister within the time specified in the notice published under subsection (4), the Minister shall by instrument in writing appoint a person to hold on his behalf a public inquiry into the objection or representation and shall, before approving the plan or proposals, consider the objection or representation together with the report thereon of the person holding the public inquiry".

[71] The abovementioned provisions constitute a statutory scheme conferring the right on any member of the public to participate in the decision making process. There is no restriction in section 9 on the persons who may object. It is akin to a consultative process. The Privy Council has pronounced that:

> "The requirement of consultation is never to be treated perfunctorily or as a mere formality. The [appellant] must know what is proposed: they must be given a reasonably ample and sufficient opportunity to express their views or to point to problems or difficulties: they must be free to say what they think". (**Port Louis Corporation v. Attorney-General of Mauritius [1965] AC 1111 at 1124 E-F).**

[72] Similar provisions are to be found in sections 7(2) and (3) of the Trinidad and Tobago Town and Country Planning Act Chap.35:01. Rahim J. considered these provisions in **Ulric 'Buggy' Haynes Coaching School et al v. Minister of Planning And Sustainable Development, CV2013-05227, H.C. T&T., decision dated 16 June 2015).** The learned Judge was of the considered opinion that:

> "[47]....the process also at the same time allows for transparency in the planning and development of land but more so it is a process which facilitates objections and representations from the public either through the local authority or otherwise thereby providing national partici-pation in development. The opportunity given to the public by virtue of the legislation may not be the gravamen of [the sections] of the TCPA but is an

> important democratic participative tool given to the public. In this way the system provides for the widest form of democratic participation in the national development process. The failure to adhere to the lawfully enacted process will result in the deprivation of the opportunity to object or make representation or call for an inquiry by the public."

[73] By invoking the abovementioned provisions of section 9, the Claimant has brought into sharp focus his position as a member of the public who is claiming a right to object to what he describes as a proposal to amend the physical development plan, and to be heard at a public inquiry into those objections. A determination of this issue in his favour would affirm the Claimant's right to a hearing in objection to the application by Vision.

[74] Allied to the question of whether Vision's application was in effect a proposal to amend the physical development plan, is the contention that the application was approved against the backdrop of an outdated development plan. In considering this issue, the Court is called upon to determine whether the existing plan accords with the statutory requirements, and if it does not, the legal consequences of that omission. Embedded in that determination is an assessment of whether one of the consequences was the denial of an opportunity for the Claimant to object and make representations as a member of the public. (See the **Haynes** case supra at para.[72]) of judgment). The

Claimant also penned his concerns about and his objection to Vision's application as a member of the public.

[75] At Ground 7(1) of the Fixed Date Claim Form, the Claimant contends that as Vision's application:

> "....constituted a proposal to construct, inter alia: a large hotel on the South Coast of Barbados; a jetty; and a sewage treatment facility, the Defendant was legally obligated to require the developer to carry out an [EIA], inclusive of the holding of at least one public or town hall meeting, before any decision could be made by the Defendant on whether or not to grant the said planning permission".

[76] It is argued by the Claimant that the grant of permission to Vision was null and void because of the failure to require an EIA. The Court is asked to make several findings of fact, including whether an EIA was a prerequisite to a grant of permission. A positive finding in that regard would bring to the forefront the question whether members of the public, including the Claimant, were prevented from being heard.

[77] Section 17 of Cap. 240 may also be relevant to this aspect of the case. Sub-section (1A) of that section provides that:

> "The [CTP] shall request an [EIA] where part or all of the development or use of land is proposed to occur in the coastal zone management area".

A possible question to be answered by the Court is whether the proposed development falls within a coastal zone management area, and therefore required an EIA. The Claimant made it known, to both the Defendant and the CTP, that he believed an EIA to be critical to the Defendant's consideration of the application. And this now forms part of the grounds for his claim.

(9) Exercise of Discretion

[78] The Court is required to determine, as a matter of mixed fact and law, whether the Defendant was mandated to provide a statutory forum for the Claimant to canvass his views as a member of the public. The Court also recognises the Claimant's special interest in a nearby property, which he alleges will be negatively impacted by the construction of the hotel. Given the complexity of the issues raised in the pleadings, the Court is unable to determine, at this juncture, that the Claimant is engaged in a lost cause obfuscated by copious detail. Therefore, the Court exercises its discretion to treat him as a person aggrieved, and to consider and determine the merits of his claim. (See too text to para. [150] infra).

[79] The finding by this Court that the Claimant is a "person aggrieved", allows him to challenge the Defendant's grant of permission on any ground. In the **Ashton** case Pill LJ confirmed that:

> "A person aggrieved need not be aggrieved by the particular legal issue he chooses to raise. If he has standing to challenge the decision, he may challenge it on any ground he can find". (Para. [36]).

The learned Judge referred to the case of **R(Kides) v South Cambridge-shire District Council [2002] EWCA Civ.1370,** as the authority for this proposition. (See paras. 132 to 134 of **Kides**; see also **Dumas**, supra, at para. 69 of CA judgment of Jamadar JA).

Relief Under Cap.109B

(1) Statutory Framework

[80] At Ground 12 (b) of the Fixed Date Claim Form, the Claimant asserts that:

> "In addition, as a Citizen of Barbados with an interest in preserving the physical, social and cultural environment of his country, and as a user of the beach contiguous and adjacent to the said 15 storey hotel, the Claimant is a person whose interests are adversely affected by the decision of the Defendant to grant the said permission, and the Claimant is therefore entitled under Sections 3,4,5,6 and 7 of [Cap.109B] to make an Application to this Honourable Court for Judicial Review of the administrative acts, omissions and decisions of the Defendant".

[81] Section 6 of Cap. 109B enacts that:

> "The Court may on an application for judicial review grant relief in accordance with this Act

(a) to a person whose interests are adversely affected by an administrative act or omission;

(b) to any other person if the Court is satisfied that that person's application is justifiable in the public interest in the circumstances of the case".

[82] There is a similar provision in the Supreme Court (Civil Procedure) Rules, 2008. Rule 56.2 is drafted along the lines of sections 6(a) and (b) of Cap.109B. Rule 56.2 (a) expands the category of persons who may apply for judicial review, insofar as it refers to "any person, group or body whose interests have been adversely affected". The Court proposes to base its analysis on the provisions of section 6. The only comment offered here is that delegated legislation cannot override primary legislation unless its enabling act so provides. (See **Re Davis, ex p Davis (1872) 7 Ch App 526** at 529, and F. Bannion, "Bannion On Statutory Interpretation", 5th ed at p. 244).

(2) Submissions Against the Claimant

[83] Counsel for the Defendant contends that the Claimant has no relevant interest; that being a taxpayer does not give him that interest. Counsel found no evidence establishing either a particular interest, right, duty or liability in favour of the Claimant, on indicating the manner in which such interest was

affected. Put bluntly, no proprietary, pecuniary or other interests were affected.

[84] Counsel for Vision argued that the evidential burden was on the Claimant to show that he was a person whose interests were adversely affected, and he had not discharged this burden. There was no evidence that the Claimant represented affected persons in the areas surrounding the proposed hotel site. Additionally, there was an evidential deficit with respect to the Claimant's expertise to represent affected persons. The Claimant did not detail the adverse effects to his Crumpton Street property. Neither did he show adverse affects either as a citizen, a taxpayer, through his church membership, or as the owner of grave plots at the Bethel chapel. Counsel for Vision was adamant that the Claimant was a mere busybody pursuing his own political agenda.

[85] Both opposing counsels wished to persuade the Court to take guidance from the local **Scotland District** case. (See **Scotland District Assoc. Inc. v. The A.G. et al (1996) 32 Barb. LR 186**). They presented this case as an authority with a similar fact base that, if applied by this Court, denied standing to the Claimant.

(3) Are the Standing Requirements the Same Under Caps.240 and 190B?

[86] Counsel for the Defendant pointed to an "inextricable link" between *locus standi* claimed under Cap.240, as a person aggrieved, and that claimed under judicial review. Counsel further observed that there is a "tremendous overlap" between the satisfaction of *locus standi* under Caps.240 and 109B. He concluded that the Claimant had provided no evidence under either statute to satisfy the condition of *locus standi* in the instant case. (Pages 19-20 of Written Submissions dated 14 July 2017).

[87] In the **Walton** case, Lord Reid referred to a link between the requirements for standing under similar legislation. He opined that:

> "[96] So far as the present case is concerned, I have listed the various factors which support Mr. Walton's entitlement to bring the present application as a "person aggrieved". *Mutatis mutandis,* those factors would have given him standing to bring an application for judicial review if, for example, he had sought to challenge the minister's decision to restrict the remit of the inquiry so that some of his objections were, as he contended, unlawfully excluded from its scope".

[88] The Court notes that Lord Reid was balancing the requirement for the appellant in **Walton** to be a "person aggrieved" under the Roads (Scottish) Act, and the requirement that he should have a "sufficient interest" or be "directly affected" for judicial review purposes. However, Cap.109B does not legislate the test for standing as either a "sufficient interest", or as a

person "directly affected", or as being a "person aggrieved". Therefore, this Court must resist the temptation to automatically apply judicial extrapolations of these tests to determine whether the Claimant's interests are adversely affected.

[89] There is a plethora of case law giving guidance on the interpretation and application of such terms as "sufficient interest" and a "person aggrieved". On the other hand, the Court noted a paucity of judicial pronouncements with respect to a person whose interests are "adversely affected". While resort to relevant case law may prove useful, the Court heeds the caution of the Australian High Court that:

> "Careful attention to authority is always necessary. But it is equally important not to treat what is said in the decided cases as a sufficient substitute for the statutory language. If care is not taken, what is said in explanation of the decision reached in a particular case too easily takes on a life of its own separated from the facts and circumstances which explain its particular expression. More importantly, what is said in the decided case becomes separated from the applicable statutory text". (per Hayne and Bell JJ in **Argos Pty Ltd & Ors v. Simon Corbell, Minister for the Environment and Sustainable Development & Ors [2014] HCA 50** at para.59).

[90] Also, in **O'Keefe v. Cottram [1972] 1 NSWLR 319,** Sugerman P made the pertinent observation that:

> "There is a great deal of learning to be found in the books as to the meaning of "person aggrieved" and similar expressions, but there is no magic in the words. Their meaning is coloured, from case to case, by the context in which they are used and the character of the particular subject matter which is being dealt with". (P.320).

[91] This Court proposes to adopt the reasoning in **O'Keefe** by exploring the context of section 6 of Cap.109B, the character of the subject matter arising in this case, and any relevant judicial observations. By so doing, it is anticipated that the Court will arrive at an understanding of what constitutes an interest that is adversely affected. More particularly, the Court would be better positioned to determine whether, in this case, the Claimant's interests are in any way adversely affected by the Defendant's decision.

(4) The Context of Section 6

[92] Prior to the enactment of the Constitution in 1966, challenges to the legality of decisions made or actions taken by public authorities in Barbados were measured against common law principles. According to Eddy Ventose:

> "Judicial review in the Commonwealth Caribbean is unique in that in the pre-independence period the courts were preoccupied with the simple determination of whether the activities of the State or its organs have breached the common law rights of citizens, while in the post-independence period, the nature of the rights under challenge dramatically changed". (In "Commonwealth Caribbean Administrative Law", 2013 at p.1).

[93] The Constitution introduced other streams of judicial review for legislative, executive or administrative actions that infringed the fundamental rights provisions. Ventose identified "a new age of Commonwealth Caribbean public law" that witnessed an explosion of case law. Despite this burst of activity, statutory intervention was required to cater to the limitations of the common law. (See Ventose, supra. para.[92] at p.2).

[94] It is against this background that Cap.109B was enacted in 1980, some 14 years after the Constitution. But it was not until 07 July 1983 that Cap.109B came into force. (S.I. 1983 No.98). The Long Title to this legislation describes it as "An Act to provide for the improvement of administrative justice in Barbados and related matters". During the passage of the legislation through Parliament, there was minimal discussion on the provisions of the act, and no discussion with respect to section 6. (See House of Assembly Debates, Tuesday 21st October, 1980, pages 4416-4424, and Senate Debates, Wednesday 5th November, 1980, pages 1460-1461).

[95] The then Attorney-General informed the House that "the principal object of the [Bill] is to enable a unified and efficient procedure for seeking review of administrative acts and decisions, and most important.....to strengthen natural justice in this country". (Page 4416 HA Debates, Honourable H. deB. Forde).

Indeed, there is merely a hint about *locus standi* in Mr. Forde's statement that Cap.109B is the fulfilment of a manifesto promise to "....take steps to try to safeguard and protect the rights of the citizens of this country, and particularly ...look at the areas where government action has been expanding to subject those areas as much as possible to the review procedure of the courts of law". (Ibid).

[96] In **Narsham Insurance (Barbados) Ltd. v. Supervisor of Insurance and Anr. (1999) 56 WIR 101,** Sir Denys Williams CJ adequately explained the layout of Cap.109B. The learned Chief Justice did not mention the *locus standi* requirements of section 6, perhaps because no issue of standing arose in that case.

[97] Section 6(a) contains what may conveniently be referred to as the self interest test for standing. Then, section 6(b) broadens access to justice by empowering a person, who has no direct interest in the relief claimed, to institute an action in the public interest. There are no specific qualifications prescribed for the public interest claimant. The sole requirement is that the court must be satisfied that the application is justifiable in the public interest in the circumstances of the case. Cap.109B mandates that state action should conform to its statutory authority, and section 6 provides the practical and effective ways to challenge state action. (See Cromwell J in **Attorney-**

General of Canada v. Downtown Eastside Sex Workers United Against Violence Society [2012] 2 SCR 524 at para. [50]).

[98] There have been no amendments to section 6, or to any other sections of this act, during its 34 year existence. And, surprisingly, over the years there were limited judicial interpretations of the tests for standing in section 6. (See **Scotland District** supra at para. [85]). The legislation does not require a prior application for leave to apply for judicial review, therefore, the only tests for standing are to be found in section 6.

(5) Comparative Statutory Regimes

[99] In England, applications for statutory judicial review may pass through the judicial sieve twice. The first stage is an application for leave to apply for judicial review. The consideration here is whether the applicant has a "sufficient interest". If leave is granted, then at the second stage where the application is for judicial review, the test remains a "sufficient interest". (See **Ramdeem v. Registrar Supreme Court of Justice, Suit S.45 of 2004, HCTT, decision dated 24 July 2008,** at paras. 14-16).

[100] Trinidad and Tobago also has a two tier process for statutory judicial review. The test for leave to apply is the same as in England. However, at the second tier, that is the actual application for judicial review, relief may be granted to:

(1) a person whose interests are adversely affected by a decision; or

(2) a person or a group of persons if the Court is satisfied that the application is justifiable in the public interest in the circumstances of the case. (See the Judicial Review Act, s.5 (2))

[101] In **Ramdeem,** Alexander J (Ag.) was in no doubt that "....the English authorities on standing at the post leave stage are not applicable in our jurisdiction". (Para.16 of judgment). This conclusion holds true for any interpretation of section 6(a) of Cap. 109B, in light of the fact that the legislation does not require an initial application for leave, and that the formulation of the test for standing is worded quite differently.

[102] Alexander J (Ag.) added that the requirement that an applicant for judicial review should be a person whose interests are adversely affected was:

> "...far more stringent than that of "sufficiency of interest"....The applicant in my opinion must show that the actual outcome of this application will adversely affect her in some way". (Paras.19 and 20 of judgment).

[103] Both in Belize and the Eastern Caribbean states, the legislative framework for judicial review is to be found in subsidiary legislation. (See the Belize Civil Procedure Rules 2005, Pt.56, and the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Pt.56). Both sets of procedural rules provide for a two tier system similar to England and Trinidad and Tobago. The first tier

application for leave requires the applicant to state whether he is personally or directly affected, and if not so affected, to state what public or other interest he has in the matter. (Rules 56.3(3) (h) and (i)).

[104] With respect to the actual application for judicial review, the Belizean and Eastern Caribbean rules appear to conflate "sufficient interest" and "adversely affected". For example, Rule 56.2 states that:

> "(1) An application for judicial review may be made by any group on body which has sufficient interest in the subject matter of the application.
>
> (2) This includes -
> (a) any person who has been adversely affected by the decision which is the subject of the application;...
>
> (b) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application".

(6) Judicial Pronouncements

[105] Referring to Part 56.2 of the Eastern Caribbean Rules, Rawlins JA (Ag.) commented that:

> "[151] Part 56.2 of the Rules then provide very liberal and relaxed rules of standing for application for judicial review. These, as we have seen, related to applications for the prerogative orders. Interest groups and bodies are particularly facilitated. There is still a requirement that the

> person or body should be "adversely affected" by the decision. Interestingly, Part 56.2(d) of the Rules confers standing on a body or group that can show that the matter that is complained of is of public interest, and the body or group possesses expertise in the subject matter of the application". (See **The Attorney General v. Francois, CA St L, Civ. Ap. No.37 of 2003, decision dated 29 March 2004).**

[106] The **Francois** court offered no guidance for the interpretation of who is a person "adversely affected", even in the context of a "sufficient interest". And, whereas in **Ramdeen** Alexander J (Ag.) was of the view that the requirement for an applicant to be "adversely affected" is more stringent than a "sufficient interest", Rawlins JA (Ag.) referred to liberal and relaxed rules of standing. Additionally, Morrison JA as a member of the Court of Appeal in **Belize Bank Limited (Interested Party) v. Association of Concerned Belizeans et al, (Civ. Ap.No.18 of 2007, decision dated 13 March 2008)**, was unable to "ignore the movement in public law away from "technical restrictions on locus standi" ". Morrison JA took this position in relation to Rule 56.2 (1) of the Belizean Supreme Court Rules.

[107] Another useful decision comes from the High Court of Australia where that court recognised the adverse effect of an administrative decision on economic interests. In **Argos**, the High Court considered sections 5 (1) and 3B of the Australia Capital Territory's Administrative Decisions (Judicial Review) Act

1989, (the ADJR Act). Section 5 permitted a person aggrieved by a decision to apply to the Supreme Court for a review of the decision. Section 3B defined a "person aggrieved" as including "a person whose interests are adversely affected by the decision". (S.3B (1)(a)). Again, an apparent overlap of two tests for standing. (Supra para. [89] at para. [70] of judgment).

[108] Hayne and Bell JJ opined that:

> "...applying s.3B (1)(a) of the ADJR Act does not begin from recognising some supposed "general rule" that "mere detriment to the economic interests of a business will not give rise to standing". No rule of that kind finds any footing in the text of the ADJR Act and no party in this Court sought to support such a rule. Rather, as has now long been recognised, the relevant words – "a person whose interests are adversely affected by the decision" – are expressed very generally. To adopt what was said in a different but related context, those words should be "construed as an enabling, not a restrictive, procedural stipulation".
>
> The focus of the inquiry required by the words is upon the connection between the decision and interests of the person who claims to be aggrieved. The interests that may be adversely affected by a decision may take any of a variety of forms. They include, but are not confined to, legal rights, privileges, permissions or interests. And the central notion conveyed by the words is that the person claiming to be aggrieved can show that the decision will have an effect on his or her interests which is different from ("beyond") its effect on the public at large. Here, the effect was said to be economic.

> It is inevitable that there will be cases where deciding whether a person's interests are adversely affected by a decision will require judgments of fact and degree". (Paras.60 to 62. The two Judges found support in **Tooheys Ltd v. Minister for Business and Consumer Affairs (1981) 36 ALR 64** at 79 and **Bateman's Bay Local Aboriginal Land Council v. Aboriginal Community Benefit Fund Pty Ltd (1998) 194 CLR 247** at 267 [50]).

[109] It is noteable that Hayne and Bell JJ disavowed any restrictive interpretation of the test for standing. They also suggested that a court should focus on the connection between the decision challenged and the individual claiming to be aggrieved. In other words, a court must look to see whether the person claiming to have interests adversely affected has demonstrated that the decision will affect his interests.

[110] These two Judges advocated a comprehensive approach to the question of standing. In their collective opinion:

> "The ADJR Act provides for judicial review of decisions made under many different enactments. It should go without saying that regard must be had to the subject matter, scope and purpose of the ADJR Act in construing the words of s.3B (1)(a): "A person whose interests are adversely affected by the decision". But con-tent cannot be given to that expression, in its application to a particular decision, without regard to the subject matter, scope and purpose of the Act under which the decision was made and the proper construction of that Act. Only then can the

> relationship between the impugned decision and the interests said to be affected adversely be properly identified.
>
> Often, perhaps very often, the connection between decision, interests and asserted effect will be obvious and evidently relevant. But that may not always be so, and in such a case it will be necessary to identify both the interest of the applicant relied on, and whether it is adversely affected by the decision, having regard to the proper construction and application of the Act under which the impugned decision was made.
>
> Reference is not made to the Act under which the decision is made for the purpose of giving some different meaning to the words of s.3B(1)(a) of the ADJR Act. Rather, reference to the Act under which the decision is made will elucidate whether there is, in the circumstances of the decision in question, a relevant and sufficient connection between the decision, the applicant's interests and the asserted effect on those interests to show that the applicant is a "person aggrieved by the decision". (Paras.66-68).

[111] The Supreme Court of Oregon expressed similar sentiments in **Jefferson Landfill Comm. v. Marion Cty. 686 P. 2d 310 (1984), 297 Or.280.** In that case the defendant granted a conditional use permit and major partition to allow the siting of a landfill in Marion County. The petitioners appealed the decision to the Land Use Board of Appeals (LUBA). LUBA dismissed the appeal on the ground that the petitioners lacked standing to appeal under section 4(3) of the relevant law.

[112] Section 4 (3) provided that:

> "Any person who has filed a notice of intent to appeal....may petition the board for review of a quasi-judicial land use decision if the person....was a person whose interests are adversely affected or who was aggrieved by the decision".

[113] Allowing a review of LUBA's decision, Carson J held that:

> "In **Benton County v. Friends of Benton County [294 Or.79, 653 P.2d 1249 (1982)]**, we examined at length, within the context of section 4(3), the phrase "whose interests were adversely affected" and "who was aggrieved".....
>
> In the context of section 4(3), "adversely affected" means that a local land use decision impinges upon the petitioner's use and enjoyment of his or her property or otherwise detracts from interests personal to the petitioner. Examples of adverse effects would be noise, odours, increased traffic or potential flooding See, e.g., **Yamhill County v. Ludwick 294 Or. 778, 663 P. 2d 398** and **Benton County**....supra". (Paras. 312-313).

[114] Another judicial pronouncement comes from the Constitutional Court of South Africa. The Constitution of that country provides in part that:

> "33(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons".

[115] In **Giant Concerts CC [2012] ZACC 2B,** Cameron J remarked that:

> "[30] The Supreme Court of Appeal has rightly suggested that "adverse effects" in the definition of administrative action was probably intended

> to convey that administrative action is action that has the capacity to affect legal rights and that impacts directly and immediately on individuals". (Referring to **Greys Marine Hout Bay (Pty) Ltd and Others v. Minister of Public Works and Others 2005 (6) SA 313 (SCA)** at para.23. The other 10 Judges of the Constitutional Court concurred with Cameron J).

[116] Although Cameron J referred to an "immediate" adverse impact, the American court was open to the possibility of a "potential" adverse effect. (See para. [113] supra). In this matter, the Court found a nexus between the Defendant's decision under the town planning legislation, and the Claimant's personal interests. (See para. [78] supra). But according to Counsels for the Defendant and Vision, the **Scotland District** case offers no comfort to the Claimant.

[117] The application in **Scotland District** was for judicial review of the Minister's decision, under Cap.240, to permit the Ministry of Health to place a sanitary landfill at Greenland in St. Andrew. King J dismissed the application on several grounds, including that the applicants has no *locus standi*. The applicant was a non-governmental, non-profit company, whose main objectives were fostering and promoting the preservation and improvement of the amenity of the Scotland District as a geographical region.

[118] Affidavits were filed on behalf of the Association by one of its members, and by its consultant who was a professional and experienced town planner. King J agreed with the respondents that the affidavits filed on behalf of the applicant did not reveal any interests which the applicant had, or how those interests were affected. Also, the affidavits failed to show the number of members in the Association, or how many of the members lived in the Greenland area.

[119] The learned Judge quoted extensively from the judgment of Olton J in **R v. Inspectorate of Pollution and Another, ex parte Greenpeace Ltd. (No.2) [1994] 4 All ER 329.** (See pages 203-204 of **Scotland District** judgment). Olton J. referred to the cases of **IRC v. National Federation of Self-Employed and Small Business Ltd [1981] 2 All ER 93,** and **R v. Secretary of State of the Environment, ex parte Rose Theatre Trust Co. [1990] 1 All ER 754.** These cases relied on a test of sufficient interest. King J showed no appreciation for the differently worded test in section 6 (a). There was no attempt by him to correlate the two tests. One is left to infer that the test for a person whose interests are adversely affected, is the same as the test for a sufficient interest. Such an approach was rightly dis-

avowed by Alexander J (Ag.) in **Ramdeen**. (See para.[102] supra).

(7) <u>Standing Under Section 6 (a)</u>

[120] With respect to section 6 (a), the Court must ask itself two questions. The first question is whether the Claimant has demonstrated an "interest" in the context of the decision made by the Defendant under Cap.240. The Court has already found that although the Claimant has no proprietary or financial interests, his affidavits and pleadings reveal personal and special interests in the grant of permission by the Defendant. The personal interest mooted is a right to be heard as a member of the public, either through a public inquiry or an EIA. The special interest is in the grave plots at the nearby chapel.

[121] The second question posed is whether the Claimant's interests are adversely affected. What the affidavits and the pleadings infer is that in the absence of a hearing the Claimant was denied a forum to voice his objections. Likewise, with the Claimant's special interest, it is alleged that the Bethel property, which includes the grave plots, potentially will be damaged by construction of the hotel.

[122] The Court is satisfied that the pleadings contained sufficient particulars of interests and alleged adverse effects to those interests, to give the Claimant standing under section 6 (a) of Cap.109B.

(8) <u>Public Interest</u>

[123] The Defendant's application refers to a lack of standing under section 6(a). There is no mention of section 6(b). (See para.[15] supra). Counsel for the

Defendant never sought an amendment to include section 6(b). Therefore, the inference is that the Defendant concedes that the Claimant has standing to bring this action in the public interest. The Claimant too made no specific reference to section 6(b). He relied generally on section 6 to give him standing. (See para. [80] supra). Notwithstanding any deficiencies in drafting, all the parties made submissions with respect to public interest representation by way of judicial review.

[124] The Defendant's counsel cited the **Blackburn** cases as roadmaps for the modern approach to public interest litigation. (See **Blackburn v. Attorney-General [1971] 1 WLR 1037; R v. Commr. of Police of the Metropolis ex parte Blackburn [1968] 2 QB 118; R v. Commr. of Police ex parte Blackburn [1973] QB 241).** Counsel concluded that these cases made it clear "that a person who initiates an action against a public authority or government department may be considered as having sufficient interest, if the act on the part of the latter has an illegal or immoral tenor and which might injure or harm other citizens in the society, especially those that are most vulnerable". (Pp.16-17 Written Submissions 14 July 2017).

[125] The Defendant's counsel pointed out that the Claimant's pleadings failed the **Blackburn** test because "nowhere in the evidence before the court has he demonstrated how the matters he has complained about have relevance for

the wider community or how they are likely to affect the community in the future". (Ibid at p.17). The Court considers that counsel's reasoning, based as it is on the **Blackburn** cases, is flawed in this regard. There is no test of sufficient interest in section 6(b). That section does not stipulate that a claimant should have any interest in the subject matter of the claim. The emphasis there is on public interests.

[126] Referring to a provision in the Judicial Review Act of Trinidad and Tobago (No.60 of 2000), that is similar to section 6(b), Jamadar JA expressed the view that:

> "This clear policy statement provides that public-spirited citizens who can demonstrate that public law administrative review is "justifiable in the public interest", can bring actions for judicial review of administrative actions even though such person may not be directly or adversely affected by the impugned decision". (**Dumas** supra at para. 91 of CA judgment).

[127] Admittedly, unlike the Barbados legislation, the Trinidad act goes further by outlining six factors that the court should consider in any determination of what is justifiable in the public interest. The relevant sections state that:

> "(1) Notwithstanding section 6, where the court is satisfied that an application for judicial review is justifiable in the public interest, it may, in accordance with this section grant leave to apply for judicial review of a decision to an applicant

> whether or not he has a sufficient interest in the matter to which that decision relates.
>
> .....
>
> (7) In determining whether an application is justifiable in the public interest the court may take into account any relevant factors, including –
>
> (a) the need to exclude the mere busybody;
>
> (b) the importance of vindicating the rule of law;
>
> (c) the importance of the issue raised;
>
> (d) the genuine interest of the applicant in the matter;
>
> (e) the expertise of the applicant and the applicant's ability to adequately present the case; and
>
> (f) the nature of the decision against which relief is sought".

[128] The Barbados Parliament deliberately adopted a drafting formula that does not require a public interest claimant to prove any degree of interest in a decision made by a public authority. And by so doing, Parliament gifted these courts with an expanded jurisdiction to entertain applications that are justifiable in the public interest. Cap.109B empowers the Judiciary, through a statutory mechanism, to exercise judicial discretion and to determine the

framework for public interest actions. The legislation does not impose judicial strictures along the lines of the Trinidad and Tobago legislation.

[129] Opposing counsels both prayed in aid the **Scotland District** case as a precedent to be applied to the facts of this case, thereby denying the Claimant the requisite standing to pursue the matter. During his deliberations over section 6(b), King J proffered that:

> "As to section 6(b), counsel [for the Respondents] contended that the Court had to be satisfied, on a balance of probabilities, that the application was justifiable in the public interest... Counsel...suggested that the answer to the question is the application justifiable in the public interest, must be no, as nothing has been shown by the applicant in its documents what its interest was, nor what was the public interest they were trying to protect, nor how the application was justifiable in that interest. *Locus standi* has to be considered in light of the duties which the respondents had, and no duties or breaches had been disclosed, neither had the number of members, and their addresses been given, nor how many lived in the Greenland area, nor the applicant's local and foreign affiliations, nor its integrity historically, nor any suggestion as to its experience in environmental matters.....
>
> As the circumstances of the case are important, the applicant must show these circumstances and how they create in it a justification in the public interest. Nothing has been shown to justify an application under s.6(b). In addition, the applicant's objectives....do not seem to me to extend to actions of this nature.

> Furthermore, neither Mr. Goddard nor Mr. St. Hill individually would have an interest and joining themselves into a company creates no better right than is enjoyed by them as individuals. It is not known if there are other members.....
>
> If the criteria set out by [**Greenpeace** and **ex p. Rose Theatre Company**] are those to be applied in this type of application by this type of applicant, can it be said that the applicant has measured up to the criteria? I would think not, and I find that the submission *in limine* must be upheld resulting in a finding that in law this appli-cation has not been shown to be justifiable in the public interest under either section 6a or b". (Pp.205-206).

[130] This Court is not persuaded to follow the **Scotland District** decision for a number of reasons. First, section 6 (a) does not require a claimant's action to be justifiable in the public interest. That is the province of section 6 (b). Secondly, it was pointed out previously that the **Greenpeace, Rose Theatre,** and other decisions engaged by King J, do not assist with any interpretation of section 6(a). (Supra at para.[119]). This is equally true for section 6(b). Additionally, a number of breaches of duty by the Defendant are alleged in this case in the context of Cap.240.

[131] The circumstance of this case is the grant of permission for the erection of a 15 floor hotel at Bay Street. The background to **Scotland District** also involved the grant of town planning permission for a landfill. King J. found the applicant's affidavits to be deficient in vital information that would

support public interest litigation. For example, there was no evidence of experience in environmental matters.

[132] There are similar deficits in the Claimant's pleadings. There is no specific articulation of the public interest to be protected, or why the Claimant should be heard on behalf of the public interest. Absent too is evidence of any expertise or accreditation in environmental matters or other areas relevant to his case. (See paras.[55] and [56] supra). But what the pleadings do reveal are impressive credentials, including the Claimant's status as an attorney-at-law of many years standing, and as a former Senator. No one disputes that he is well known in Barbados as a social activist. The Court also takes judicial notice that this is not the Claimant's first foray in these courts to challenge the validity of administrative and legislative actions. (Eg, see **Comissiong v. Freundel Stuart, Minister Responsible for Immigration et al, Suit No. 337 of 2016 (HC B'dos)).**

[133] Jamadar JA conducted a comprehensive review of the case law and statute law in a number of common law jurisdictions, including Barbados. His analysis included both administrative and constitutional law approaches to public interest litigation. He then articulated twelve general considerations "arising out of the more permissive approach to standing in public interest litigation". (Para.95 of **Dumas** CA judgment).

[134] The general considerations referred to in **Dumas** are:

> "i. Standing goes to jurisdiction and is to be determined in the legal and factual context each case. It is a matter of judicial discretion.
>
> ii. The merits of the challenge and the nature of the breach raised are important considerations.
>
> iii. The value in vindicating the rule of law (the principle of legality) is a significant consideration.
>
> iv. The importance of the issue raised.
>
> v. The public interest benefit in having the interest raised and determined.
>
> vi. The bona fides and competence of the applicant to raise the issues.
>
> vii. Whether the applicant is directly affected by, or has a genuine and serious interest and has demonstrated a credible engagement in relation to the issue raised.
>
> viii. The capacity of the applicant to effectively litigate the issues raised.
>
> ix. Whether the action commenced is a reasonable and effective means by which the courts can determine the issues raised.
>
> x. The imperative to be vigilant so as to prevent an abuse of process by busybodies and frivolous and vexatious litigation.
>
> xi. Whether the issues raised are a general or specific grievance and whether there are other challengers who are more directly impacted by the decision challenged, or more competent to litigate it.
>
> xii. The availability and allocation of judicial resources".

(Para. 95 of CA judgment).

[135] Jamadar JA did not propose that these general guidelines should be "a checklist or....absolute criteria for determining standing". (Para.96 of judgment). Bearing these considerations in mind, the Court observed that the Claimant's pleadings in this matter were in depth and well reasoned. This is in no way to be taken as an assessment of his likelihood of success. The Court is left in no doubt about his expertise as a lawyer, his ability to adequately present this case, and his genuine interest in the matter. The Claimant is not a fly-by-night busybody.

[136] Central to the pleadings is the allegation that not only was the Claimant denied a hearing, both at common law and under statute, but that all Barbadians, including those living in the vicinity of the project, were entitled to be heard. No one else has come to court to make these claims.

[137] Quite apart from any issues surrounding a right to be heard, the Claimant is also alleging other breaches of Cap.240 by the Defendant. The Long Title to this legislation describes it as "An Act to make provision for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof...". All residents must have a stake in the achievement of these goals, whether or not they live or work in the immediate vicinity of an area that is being developed.

[138] In relation to the Bay Street project, it is alleged that the building, if completed, will be several stories higher than any other beach side property on the island. The commanding heights of this edifice would be seen by persons who either live, work, conduct business or pleasure activities, or pass through the nation's capital city. The impact of the project is not confined to Bay Street. Should this Court non suit a claimant if he had no interests of his own to serve, but his pleadings detail multiple alleged breaches of the town planning process?

[139] The useful research conducted by Jamadar JA revealed that "...courts have been working assiduously, if not uniformly, to open the gates to general grievance public interest litigation, where an applicant is not directly affected by the impugned...public/governmental action". (Para.67). And this Court agrees with Rahim J that "...there is substantial public interest in ensuring that administrators comply with statutory duties." (See **Haynes**, supra para. [72], at para. [107] of judgment). And in **North Queensland Conservation Council Inc. v. Executive Director, Queensland Parks and Wildlife Service [2000] QSC 72,** Chesterman J concluded that:

> "The purpose of the proceedings is to test the lawfulness of the decision... Another point of significance is that if [the applicant] does not have standing to test the validity of the permit no-one else will have and the decision, which may be quite

> unlawful, will go uncorrected. [The appli-cant] has an interest in efficient government but it has an equal interest in lawful government". (Para.35).

[140] This Court is of the view that there is a wider public interest in lawful government. Our very Constitution is premised on the rule of law. At paragraph (b) of the preamble, the people of Barbados "affirm their belief that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law". Section 6(b) of Cap.109B provides an avenue whereby public interest litigation may challenge the propriety of administrative action. It is too late to close the stable door except by statutory intervention. And courts must be ever vigilant against the use of floodgate theories to inundate the stable.

[141] As an attorney-at-law the Claimant is sworn to uphold the law. What better champion could there be of the public interest in the enforcement and maintenance of the rule of law. Cameron J recognised that "...there may be cases where the interests of justice or the public interest might compel a court to scrutinise action even if the applicant's standing is questionable". (See **Giant Concerts** supra, para [115] at para. [34] of judgment).

[142] Despite the lack of specificity in the pleadings, in relation to the public interest under section 6(b), clear and reasonable inferences can be drawn about the public interest to be protected, and the Claimant's ability to act on

behalf of the public interest. Had he no interest of his own under section 6(a) of Cap.109B, the Claimant would have standing to proceed with this case under section 6(b).

Appropriateness of *In Limine* Application

[143] The Claimant contended that the Court had no jurisdiction to entertain the *in limine* application in relation to his *locus standi*. This submission was premised on his interpretation of two Court of Appeal decisions, namely, **Judy Lloyd v. The Attorney-General, Civ.Ap. No.9 of 1998, decision dated 02 May 2000,** and **Bradston Clarke v. Attorney-General, Civ.Ap. No.11 of 2008, decision dated 25 February 2011.**

[144] In both cases the applicants claimed relief under section 8 of Cap.109B.

This section provides that:

> "The Court may, if it thinks fit, refuse to grant any relief under this Act if it considers that there has been undue delay in making the application for judicial review, and that the grant of the relief sought would cause substantial hardship to, or would substantially prejudice the