# THE POWERS OF THE COURT IN TERMS OF SECTION 7(2) OF THE DOMESTIC VIOLENCE ACT 116 OF 1998

## *KS v AM* 2018 (1) SACR 240 (GJ)

## 1 Introduction

The preamble of the Domestic Violence Act (116 of 1998) (DVA) recognises that domestic violence is a serious social evil and that there are high incidences of domestic violence in South Africa. The preamble further recognises that:

a) victims of domestic violence are among the most vulnerable members of society;
b) domestic violence takes many forms and may be committed in a wide range of domestic relationships; and
c) the remedies previously available to victims of domestic violence have proved to be ineffective.

The Constitution of the Republic of South Africa, 1996 (the Constitution) provides various rights that are also applicable to victims of domestic violence. The Constitution guarantees the right to dignity and to freedom and security of the person (see ss 10 and 12 of the Constitution respectively). Domestic violence against any person is a violation of these rights. The DVA further recognises that South Africa has international commitments to end violence against women and children in terms of the United Nations Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child (see also *S v Baloyi* 2000 (2) SA 425 (CC) par 12). A right not to be subjected to domestic violence may not be specifically mentioned in international human rights law instruments, but freedom from all kinds of violence and the right to equality and human dignity is generally emphasised (Kruger "Addressing Domestic Violence: To What Extent Does the Law Provide Effective Measures" 2004 29(1) *Journal for Juridical Science* 152–173).

The purpose of the DVA is to provide a legal remedy in the form of an interdict that prohibits a person from violating the rights of the complainant. In order to give effect to this purpose, section 7(1) of the DVA provides that the court may grant a protection order to protect the rights of the complainant. Section 7(2) of the DVA further grants the court the power to impose any additional conditions that it deems reasonably necessary to protect and provide for the safety, health or well-being of the complainant.

In *KS v AM* (2018 (1) SACR 240 (GJ)), the court found that section 7(2) of the DVA empowered the court to order the seizure of the respondent's digital

equipment to remove any photograph, video, audio and/or records relating to the complainant. This case note examines the decision in *KS v AM* (*supra*) and determines whether the decision is justifiable in law. The definition of domestic violence is discussed first and thereafter the remedies available in terms of the DVA are examined. A discussion of the judgment in *KS v AM* (*supra*) follows.

## 2 Protection against domestic violence in terms of the DVA

The DVA addresses the issue of domestic violence, mainly by providing for the issuing of a protection order (Kruger 2004 *Journal for Juridical Science* 152–173). Section 4(1) of the DVA provides that any complainant may apply to the court for a protection order. The DVA defines a complainant as any person

> "[w]ho is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant."

The DVA further defines "domestic relationship" and "domestic violence". The DVA defines domestic violence very broadly and it includes physical abuse, sexual abuse, emotional, verbal and psychological abuse, harassment, stalking and any other controlling or abusive behaviour towards a complainant where the conduct harms, or may cause imminent harm to, the safety, health or well-being of the complainant.

The person must also be in a domestic relationship with the respondent. The DVA defines a domestic relationship as a relationship between a complainant and the respondent in the following forms: marriage; life partners living (or who have lived) together regardless of whether they are of the same or of the opposite sex; being parents of a child, or persons having (or who have had) parental responsibility for the child; actual or perceived romantic, intimate or sexual relationship of any duration; family members; or sharing or recently sharing a residence. In *Daffy v Daffy* (2013 (1) SACR 42 (SCA)), the court defined the phrase "family member" and found that the legislature could not have envisaged that distant cousins, having nothing in common save for an ancient mutual ancestor, were for that reason alone to be regarded as having a domestic relationship (see *Daffy v Daffy supra* par 7). The court further found that the age of the family members and the fact that they had not shared a common household for many years may indicate that the parties are not in a domestic relationship (*Daffy v Daffy supra* par 9).

Kruger points out that the DVA provides a broad definition of a domestic relationship and that the definition includes relationships that were not recognised by earlier legislation addressing domestic violence. Kruger further points out the following types of relationships as examples (Kruger 2004 *Journal for Juridical Science* 152–173):

a) same-sex relationships;
b) people with parental responsibilities for a child;
c) co-residents (even if they are not related); and

d) people who are engaged or are dating.

The court in *Daffy v Daffy* (*supra*) also recognised that the definition of a domestic relationship is poorly framed and probably incapable of bearing a precise meaning.

Any complainant may, in terms of the Regulations under the Domestic Violence Act, apply to the court for a protection order (s 4(2) of the DVA). The court will consider the oral evidence or evidence by affidavit and if it is satisfied: that there is *prima facie* evidence that the respondent committed or is committing an act of domestic violence; and that undue hardship may be suffered by the complainant owing to domestic violence if a protection order is not granted, it will grant an interim protection order (s 5 of the DVA). The interim order must be served on the respondent and must call upon the respondent to show cause on the return date why a protection order should not be granted.

The interim protection order will only have force and effect after it has been served on the respondent (s 5(6) of the DVA). The application for the interim protection order must be served together with the interim protection order (s 5(3) of the DVA). Personal service is not required in this instance (*Omar v Government of SA* [2005] 3 All SA 65 (N)). If the court does not grant a protection order, it must direct the clerk of the court to cause the certified copies of the application and supporting affidavits to be served on the respondent together with a notice requesting the respondent to show cause on the return date why a protection order should not be granted (s 5(4) and (5) of the DVA).

The court will grant a final protection order in the following instances:

a) where the respondent does not appear on the return date and the court is satisfied that proper service has been effected on the respondent, and the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence (s 6(1) of the DVA); or

b) where the respondent appears on the return date and the court, after considering all the evidence, finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence (s 6(4) of the DVA).

The final protection order must be served on the respondent (s 6(5) of the DVA).

Section 7 of the DVA empowers the court, by means of an interim or final protection order, to prohibit the respondent from, *inter alia*, committing any act of domestic violence; or from entering a specified part of the residence shared by the complainant and the respondent, or a part of such residence, and from entering the complainant's place of employment. Section 7(2) of the DVA provides for additional conditions that a court may impose in a protection order. The court may impose any other condition/s that it deems reasonably necessary to protect and provide for the safety, health or well-being of the complainant. Section 7(2) further provides that this includes: the seizure of any arm or dangerous weapon if the court is satisfied that the respondent has threatened to use it to harm the complainant or it is in the

interest of the respondent to seize such weapon; and ordering a peace officer to accompany the complainant to a specified place to assist with collection of the complainant's personal property (ss 7 and 9 of the DVA). Section 7 provides for more powers, but it is not necessary to discuss such powers for the purposes of this submission. The court cannot refuse to issue a protection order or to impose any condition that it is empowered to make in terms of section 7 of the DVA merely on the grounds that there are other legal remedies available to the complainant.

## 3 The facts of the case in *KS v AM*

The complainant and the respondent had an intimate relationship that began during May 2014. At the time, the respondent was married to someone else and the complainant was not aware of this fact. The complainant became aware of the marriage when she was confronted by the wife of the respondent. Shortly after the confrontation, the complainant terminated the relationship with the respondent. However, the respondent refused to accept the termination of the relationship and he threatened the complainant through phone calls and text messages and stated that no one could be with her if he could not be with her. The respondent also created a Facebook account in his own name, invited the complainant's friends and sent messages of defamatory nature to her friends. In August 2015, the respondent created a fake Facebook account in the complainant's name and posted sexually explicit videos and photographs of the complainant. These images were seen by the complainant's family, who alerted her. The complainant approached Facebook to have the video removed. The respondent continued to threaten the complainant until she brought an application for a protection order.

On 26 August 2015, the court granted an interim protection order prohibiting the respondent from, *inter alia*, posting explicit material of the complainant (including comments, videos or photographs) on any platform, including any social media forum, or sending such material to any other third party. On the return date, the complainant requested an order in terms of section 7(1) and (2) of the DVA. The court *a quo* granted an order in terms of section 7(1), but not in terms of section 7(2).

On appeal in the High Court, the complainant contended that the court *a quo* ought to have interpreted the provisions of section 7(2) broadly and promoted her right to dignity, privacy, and bodily and psychological integrity. The complainant contended that it would have been appropriate to order the respondent to hand over to the sheriff all the digital devices under his control in order for the forensic expert appointed by the complainant's attorney to identify and permanently remove from such devices any photograph, videos and audios relating to the complainant.

The respondent argued that the order as requested by the complainant would, *inter alia*, infringe on his right to privacy and his right not to have his home or property searched. The respondent also argued that the complainant had failed to prove that the continued possession of the material posed a threat to her safety, health and well-being.

## 4 Decision of the court

The court recognised that it was mandatory when interpreting the provisions of any legislation to promote the spirit, purport and objects of the Bill of Rights. Furthermore, in terms of section 233 of the Constitution, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative that is inconsistent with international law (see par 25 and 26; see also s 39(2) of the Constitution). The court further recognised that the provisions of section 7(2) of the DVA had to be interpreted based on the norms and values enshrined in the Bill of Rights and it concluded that these values and norms are enshrined in the preamble of the DVA, which provides that the purpose of the DVA is to provide victims of domestic violence with the maximum protection that the law can provide (see par 28). The court indicated that the DVA was enacted to provide for the right to equality and the right to freedom and security of the person in terms of sections 9 and 12 of the Constitution respectively (see par 29; see also *S v Baloyi supra*).

The court also acknowledged that the DVA recognises that: domestic violence is a serious social evil; there is a high incidence of domestic violence in this country; and the remedies that were available before the DVA proved ineffective (see the preamble of the DVA).

The court recognised that the decision of the court *a quo* with regard to section 7(1) of the DVA was not in issue, but what had to be decided was whether the respondent's continued possession of the offensive material constituted a violation of the complainant's dignity, privacy, and bodily and psychological integrity. After considering the decisions in *R v BZ* (2016 ONCJ 547), *Prinsloo v RCP Media Ltd t/a Rapport* (2003 (4) SA 456 (T)) and *NDPP v Mahomed* (2008 (1) SACR 309 (SCA)), the court concluded that the rights of the complainant were being violated.

In deciding whether the court *a quo* erred in refusing to grant an order in terms of section 7(2) of the DVA, the court recognised that it could only interfere with the decision of the lower court if it exercised its discretion capriciously or upon a wrong principle, or if it had not brought its unbiased judgment to bear on the question, or had not acted for substantial reasons (par 47). The granting of the order in terms of section 7(2) of the DVA would have entailed a search and seizure procedure, which would violate the rights of the respondent. It was clear that the complainant had consented to the production of the material and that it had been meant for the enjoyment of the parties while they were still in a relationship. The court concluded that it could not have been the intention of the parties that the respondent would retain possession or use of the material to attack and undermine the integrity of the other after the termination of the relationship (par 51).

The court further concluded that the court *a quo* did not exercise its discretion based on a correct principle and it was enjoined to have regard to the constitutional imperative of ensuring the protection of the complainant as a member of a vulnerable group. The court *a quo* had to strike a balance between the complainant's right to dignity and the respondent's right to ownership and possession. Therefore, the court *a quo* ought to have taken into account that the conduct of the respondent propagates the

subordination of women in society and, in the context of the positive duty of promoting dignity, equality, and freedom, it ought to have granted an order in terms of section 7(2) of the DVA (par 53).

The court noted that the legislature's intention in conferring the power under section 7(2) of the DVA is to provide adequate legal redress for the unacceptably high incidence of domestic violence (par 52). The court, after recognising that the threat and risk of repeated violation remained in the hands of the respondent, it concluded that the respondent's continued possession of the material constituted a continuous violation of the complainant's right to dignity, privacy and bodily and psychological integrity; and the special order requested by the complainant in terms of section 7(2) of the DVA was the only remedy capable of effectively protecting the rights of the complainant (par 63). The court directed that the respondent must hand over all the material to the sheriff and allow the forensic expert to identify and permanently remove any video, photographs, audio or records relating to the complainant.

## 5 Discussion

The appeal court had to consider whether the court *a quo* erred in refusing to grant an order to seize digital devices and delete videos, photographs, audios and/or records relating to the complainant. To do this, the court had to consider whether it deemed the order necessary to protect and provide for the safety, health or well-being of the complainant. It is submitted that the court had also to consider whether the order violates the respondent's right to privacy, which included the right not to be searched and have his property seized. It is further submitted that, as much as the judgment attempted to ensure that the rights of the complainant were considered, the court failed to consider that the matter involved competing rights that had to be balanced, and it is argued that the court does not have the power to grant such an overbroad order for search and seizure. The submission below deals with the two points in detail.

### *5 1 Competing rights*

It is submitted that the court correctly found that the publishing of sexually explicit video footage and photographs, and constant harassment by the respondent amounted to domestic violence. The court also identified that it had to consider whether the granting of the order in terms of section 7(2) was justified, taking into account the rights of the respondent. The court goes on to conclude that the respondent's continued possession of the material justified the seizure of the respondent's devices to remove any photographs, videos, audios and/or records relating to the complainant.

It is submitted that the court misdirected itself in the inquiry as it was first required to determine whether the order requested was an additional condition that it deemed reasonably necessary to protect and provide for the safety, health or well-being of the complainant in terms of section 7(2) of the DVA. Secondly, the court was required to decide whether the order would

infringe on the respondent's constitutional rights and if so, whether the limitation would be justifiable in terms of section 36 of the Constitution.

With regard to the first issue, the court points out that the continued possession of the material amounts to a violation of the complainant's dignity, privacy and bodily and psychological integrity. The court recognised that the material was taken with the consent of the parties and found that, because of the ending of the relationship, it was clear that the complainant no longer consented to the respondent being in possession of the material. The court found that this was a violation in terms of section 7(2) of the DVA.

It is submitted that that decision cannot be justified because the respondent had obtained the material with the consent of the complainant. The court's reliance on the judgments in *Prinsloo v RCP Media Ltd t/a Rapport* (*supra*) and *NDPP v Mahomed* (*supra*) cannot be justified as, in those cases, the explicit images or documents were obtained without consent. The court should not have relied on these judgments because the explicit material was procured with the consent of the complainant and there was no question, when the parties were still in a relationship, that the respondent was entitled to be in possession of the explicit images.

The court seems to suggest that if an explicit image is taken with the consent of the parties in a relationship, the consent would be tacitly and validly withdrawn if the relationship ends. The court does not offer any reason for this line of thinking, except to point out that the provisions of section 7(2) of the DVA must be interpreted broadly to protect the rights of a member of a vulnerable group, taking into account the principles underlying the Constitution. The court does not rely on any evidence presented by the complainant that the parties had agreed that when the relationship ended, the respondent must delete the explicit images. The court just accepts that when the relationship ended, the respondent was no longer entitled to the explicit images.

It is further submitted that the continued possession of the explicit material that was obtained with the consent of the parties does not violate the safety, health or well-being of the complainant and such possession does not amount to domestic violence. The main issue was whether there was a need for further conditions that would protect and provide for the safety, health or well-being of the complainant. It is submitted that a reading of section 7(2)(*a*) and (*b*) of the DVA gives direction on how the provisions should be interpreted. Section 7(2) gives two examples of orders that the court may give in terms of section 7(2); these are seizure of any arm or dangerous weapon in terms of section 7(2)(*a*) of the DVA, and accompanying the complainant to a specified place to collect personal property in terms of section 7(2)(*b*). Section 7(2)(*a*) must be read with section 9 of the DVA, which provides:

> "The court must order a member of the South African Police Service to seize any arm or dangerous weapon in the possession or under the control of a respondent, if the court is satisfied on the evidence placed before it including any affidavits supporting an application referred to in section 4(1), that–
>
> (*a*) the respondent has threatened or expressed the intention to kill or injure himself or herself, or any person in a domestic relationship, whether or not by means of such arm or dangerous weapon; or

(*b*) possession of such arm or dangerous weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent's
(i) state of mind or mental condition;
(ii) inclination to violence; or
(iii) use of or dependence on intoxicating liquor or drugs."

The court correctly points out that the interpretation of section 7(2) of the DVA is guided by the norms and values enshrined in the Bill of Rights, which indeed are expressed in its purpose, which is to afford the victims of domestic violence the maximum protection from domestic abuse (see preamble of the DVA). Reading section 7(2) together with section 9 of the DVA, it is clear that additional conditions imposed should be in order to ensure that the complainant does not suffer further acts of domestic violence. It is further submitted that the legislature did not intend that section 7(2) of the DVA would be relied upon in instances where there were no acts of violence or domestic abuse being prevented. The continued possession of the explicit material obtained with the consent of the complainant cannot be regarded as an act of domestic violence and therefore having granted an order in terms of section 7(1) of the DVA, the court *a quo* was correct in refusing to grant an order in terms of section 7(2). The legislature could not have intended that a party be allowed to rely on section 7(2) of the DVA to claim and order search and seizure of material that the respondent came to be in possession of with the consent of the complainant, just because a relationship has ended.

The court does recognise that the order requested infringes on the respondent's right to privacy, but no further analysis is conducted on whether such an infringement was justified. In terms of section 14 of the Constitution, everyone has the right to privacy, which includes the right not to have their person or home searched, their property searched and possessions seized. The right to privacy flows from the value placed on human dignity in terms of section 10 of the Constitution (*Minister of Police v Kunjana* [2016] ZACC 21). It is clear that the right to privacy is not absolute and may be limited in terms of section 36 of the Constitution. The provisions for search and seizure in terms of the Criminal Procedure Act (51 of 1977) (CPA) are an example. However, the CPA was not applicable in this case because the respondent had not been charged with an offence. The court stated that, in terms of section 7(2) of the DVA, it was entitled to give the order requested because the continued possession of explicit material by the respondent was an infringement of the rights of the complainant. The court merely dismissed the court *a quo*'s decision that the order was a drastic step. The court failed to conduct an analysis on whether the infringement was justifiable.

If we accept the court's interpretation of section 7(2) of the DVA, it is clear that section 7(2) is a law of general application (s 36(1) of the Constitution). Considering that the court *a quo* had granted a protection order in terms of section 7(1) of the DVA that prohibited, *inter alia*, the posting of the complainant's explicit material on any social media or sending it to a third party, the only issue that the court believed had to be addressed was the continued possession of the explicit material by the respondent. The purpose of the order would be to ensure that the explicit material received by

the respondent with the consent of complainant would be removed from the possession of the respondent because the relationship between the parties had ended. It is submitted that this purpose does not justify the infringement of the respondent's right to privacy since the explicit material was obtained with the consent of the complainant. The fact that the relationship had ended does not justify the infringement of the respondent's right and does not change the fact that the respondent had obtained the explicit material with the complainant's consent.

## *5 2 The power of the court when ordering search and seizure*

Even if the court is correct that the continued possession of the photographs by the respondent amounts to a violation of the rights of the complainant, it is submitted that the order given was too broad and vague. In *Lujabe v Maruatona* ((35730/2012) [2013] ZAGPJHC 66 (15 April 2013)), the court found:

> "The basic principle is that for an order to be executable or enforceable, its wording must be clear and unambiguous. An order that lacks clarity in its wording or is vague is incapable of enforcement." (par 17)

In *Loggenberg v Maree* ((286/17) [2018] ZASCA 24 (23 March 2018)), the court made the following finding regarding vague court orders:

> "The doctrine of vagueness, based on the rule of law, is a foundational value of our constitutional democracy. It requires laws to be written in a clear manner with reasonable certainty but not perfect lucidity. Court orders must comply with this standard: vague provisions in a court order violate the rule of law." (par 10)

With regard to search and seizure, section 21 of the CPA gives direction on what the court should consider when granting a search and seizure warrant. It is noted that the court in this case was not bound by the provisions of section 21 of the CPA. However, it is submitted that section 21 of the CPA provides guidance on how the court should have dealt with the issue. In *Minister for Safety and Security v Van Der Merwe* (2011 (5) SA 61 (CC)), the court pointed out that one of the safeguards for the issuing of a search and seizure warrant is that the warrant should not be too general. To achieve this, the scope of the search must be defined with adequate particularity to avoid vagueness or overbreadth (*Minister for Safety and Security v Van Der Merwe supra*). When granting a search warrant, the court must comply with, *inter alia*, the following guidelines:

> "(a) the terms of the warrant must be neither vague nor overbroad;
> (b) a warrant must be reasonably intelligible to both the searcher and the searched person;
> (c) the court must always consider the validity of the warrants with a jealous regard for the searched person's constitutional rights; and
> (d) the terms of the warrant must be construed with reasonable strictness."(See *Minister for Safety and Security v Van Der Merwe supra* par 26)

The court, in *KS v AM* (*supra*), made the following order:

> "The respondent is directed to handover and place in the temporary custody of the sheriff of this court all digital devices under his control in order for a forensic expert appointed by the applicant's attorneys to identify and permanently remove from any such devices any photograph, video, audio and or records relating to the applicant." (par 65)

The approach to adopt when interpreting a judgment or an order of the court is the same as that applicable when interpreting a document or legislation (*SATAWU obo Mbatha v Transnet* (JR2608109)). In *Natal Joint Municipal Pension Fund v Endumeni Municipality* (2012 (4) SA 593 (SCA)), the court made the following observation regarding the interpretation of a court order:

> "The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document." (par 18)

The order clearly provides for more than identifying and removing explicit material. The order clearly allows for identifying and removing any photograph, video, audio and records relating to the complainant. The problem with this order is that it allows for removal of any photograph, video, audio and/or records relating to the complainant even if it is not explicit. The order clearly leaves it to the parties to decide what relates to the applicant and what ought to be permanently removed. The court only found that the continued possession of explicit material was a violation of the complainant's rights. Does that mean that "any photograph, video, audio and records relating to the complainant" refers only to explicit material or to every photograph, video, audio and record relating to the complainant. That clearly indicates that the order is overbroad and vague. The order should have been clear on what exactly should be identified and removed (*Minister for Safety and Security v Van Der Merwe supra*).

## 6 Conclusion

This submission has examined the decision in *KS v AM* (*supra*) and has considered whether the decision was justifiable in law. First, the definition of domestic violence and the remedies available in terms of the DVA were considered.

It is submitted that the decision in *KS v AM* (*supra*), which grants an order compelling the respondent to hand over or place in custody of the sheriff his devices to allow the forensic expert to identify and remove from such devices any photograph, video, audio and/or records relating to the

complainant, cannot be justified in law. First, the court must be satisfied that the order requested was reasonably necessary to protect and provide for the safety, health or well-being of the complainant in terms of section 7(2) of the DVA, but the complaint failed to prove that. A proper interpretation of section 7(2) of the DVA indicates that additional conditions will be reasonably necessary when there is a need to protect a complainant from further acts of domestic violence or domestic abuse. The continued possession of the complainant's explicit material, obtained with the consent of the complainant, cannot be regarded as an act of domestic violence or domestic abuse and therefore it is submitted that the court *a quo* correctly refused to grant the order.

Secondly, the court failed to consider that the order violated the respondent's right to privacy and that the infringement cannot be justified in terms of section 36 of the Constitution. The court granted the order on the basis that continued possession of the explicit material after the parties' relationship ended violated the rights of the complainant. It is submitted that the purpose of the limitation did not justify the limitation. The court had already granted an order in terms of section 7(1) of the DVA and that was sufficient to protect the rights of the complainant.

Thirdly, if the court is correct that the order in terms of section 7(2) of the DVA was justified, the court order was too broad. The court accepted that the order had the effect of a search and seizure warrant. The court ought to have taken into account the safeguards for issuing a search warrant, including that the search warrant should not be too general and the terms must neither be vague nor overbroad. It has been argued that the order granted by the court was too broad and vague. The complaint was based on explicit material in possession of the respondent and the court order should have been limited to that material. The order granted by the court leaves it in the hands of the parties to decide what ought to be identified and removed.

It is accepted that the DVA read with the Constitution requires that the rights of vulnerable members of the community be protected from domestic violence. However, that must be done within the bounds of the law. For the reasons set out above, it is argued that a different court could have come to a different decision. There are grounds to appeal the decision and the Supreme Court of Appeal may find that the case was wrongly decided.

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