

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2019/0329

IN THE MATTER OF SECTION 8(8) OF THE CONSTITUTION

AND

IN THE MATTER OF SECTION 4 OF THE LEGAL PROFESSION ACT

BETWEEN:

THE GRENADA BAR ASSOCIATION

Applicant

AND

**[1] THE ATTORNEY GENERAL
[2] THE MINISTER OF FINANCE**

Respondents

Appearances:

Mr. James Bristol, QC with him, Ms. Melissa Modeste-Singh for the Applicant
Mr. Darshan Ramdhani, QC with him, Mrs. Sabrita Khan-Ramdhani and Ms. Dia Forrester
for the Respondents

2021: April 30;
June 4.

DECISION

[1] **GLASGOW, J.:** The applicant, the Grenada Bar Association (GBA), seeks an order pursuant to Part 21.2 of the Civil Procedure Rules 2000 (CPR) to be appointed to represent itself and all litigants who appear before the Supreme Court in Grenada whether in civil proceedings or as the accused in criminal proceedings. The GBA makes this application further to an originating motion that it filed on 11th July 2019 asking for constitutional relief.

Background

[2] On 11th July 2019 the GBA filed an originating motion seeking the following:

- (1) A declaration that the failure by the Government of Grenada to provide any or any adequate courts and associated accommodation is a breach of the claimant's [GBA's] fundamental right to a fair trial enshrined in section 8(8) of the Constitution.
- (2) A declaration that the Government of Grenada's failure to provide sufficient court administrative staff so as to ensure the timely production of trial transcripts is a breach of the claimant's [GBA's] fundamental right to a fair trial enshrined in section 8(8) of the Constitution.
- (3) A declaration that the Government of Grenada's failure to fund the Eastern Caribbean Supreme Court in accordance with its obligations so to do is a breach of the claimant's [GBA's] fundamental right to a fair trial enshrined in section 8(8) of the Constitution.
- (4) An order that the Minister of Finance do forthwith provide adequate funds to enable the provision of adequate courts and associated accommodation.
- (5) And order that the Minister of Finance do forthwith meet all outstanding sums of money due to the Eastern Caribbean Supreme Court in accordance with its obligations so to do.
- (6) That the costs of and incidental to the application shall be paid by the respondents.

[3] On 17th July 2019 the GBA filed this application pursuant to CPR 21.2 seeking an order to be appointed to represent itself and litigants who appear before the Supreme Court of Grenada. The GBA is a non-profit organisation continued under the Companies Act 1994.

The current membership of the GBA is approximately 125 legal practitioners in active practice. Section 4 of the Legal Profession Act¹ (LPA) recognizes the GBA as the representative body of the legal profession in Grenada. That section empowers the GBA to represent and protect the interests of the legal profession in Grenada; assist the public in all matters relating to law; promote, maintain and support the administration of justice and rule of law; and do all things incidental or conducive to the achievement of those purposes. Therefore, the GBA contends that it has the same vested interest in the due administration of justice and upholding of the fundamental right to a fair trial enshrined in section 8 of the Constitution as all civil litigants and accused persons before the Supreme Court².

Grounds of the application

- [4] The grounds of the representative action application are that the GBA has a sufficient interest in the proceedings and that it, as well as the litigants before the Supreme Court, have the same or similar interest in these proceedings.

Evidence of Lisa Taylor in support of the originating motion and notice of application

- [5] Ms. Lisa Taylor, the then President of the GBA, filed an affidavit in support of the originating motion which gave a historical background of the many challenges facing the court and its administrative staff with regard to the transient accommodation designated to house the court, physical deterioration of the court's infrastructure, including the deterioration of the Supreme Court Registry building and the need for urgent repairs, the backlog of cases, delays in the production of transcripts and environmental concerns.
- [6] Ms. Taylor says that the failure of the Government to provide adequate courts and associated accommodation and/or to provide sufficient court administrative staff so as to ensure the timely production of trial transcripts is a breach of the fundamental right to a fair trial pursuant to section 8 of the Constitution and is an abdication of the Government's

¹ 167A of the 2010 Continuous Revised Edition of the Laws of Grenada

² Affidavit of Lisa Taylor filed 11th July 2019 at para. 5 pages 2-3.

constitutional obligation to provide for the administration of justice. Further, Ms. Taylor says without the court's intervention she fears that the state of the affairs will continue. Ms. Taylor requests that this affidavit in support of the originating motion also be accepted in support of the representative action application.

Evidence of Xiomara Forsyth in response to the application

[7] On 29th January 2021 Xiomara Forsyth, the Acting Registrar of the Supreme Court, filed an affidavit in opposition to GBA's representative action application. Mrs. Forsyth avers that the application has no grounding in the originating motion before the court as it seeks to represent all litigants even those who stand accused before the court. The Registrar's answer is that the GBA's originating motion does not request any declaration that any accused person's rights has been, is being or is likely to be infringed by the alleged state of the court system.

[8] Mrs. Forsyth says that litigants are presently having their matters heard and therefore there is clearly a large group of litigants who do not share any interest with other litigants and/or with the GBA. The identification of those persons would require a complete analysis of many matters before the court to determine whether there is any real risk that particular litigants are excluded from the matters which are sought to be litigated by the GBA.

Applicable rules under CPR

[9] Where a claimant is seeking to sue on behalf of himself and others he must be guided by the provisions of CPR Rule 21. The following rules are relevant:

21.1 (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, in which 5 or more persons have the **same or a similar interest**. (Bold emphasis).

(2)The court may appoint –

(a)a body having a sufficient interest in the proceedings; or

(b) one or more of those persons;

to represent all or some of the persons with the same or similar interest.

(3) A representative under this rule may be either a claimant or a defendant.

Appointment of representative claimant or defendant – procedure

21.2

(1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.

(2) The court may appoint –

(a) a body having a sufficient interest in the proceedings; or

(b) one or more of those persons;

to represent all or some of the persons with the same or similar interest.

21.2

(1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.

(2) An application for such an order may be made by any –

(a) party;

(b) person or body who wishes to be appointed as a representative party;
or

(c) person who is likely to be a party to proceedings.

(3) An application for such an order must –

(a) be supported by affidavit evidence; and

(b) identify every person to be represented, either

(i) individually; or

(ii) by description, if it is not practicable to identify a person individually.

21.3

(1) If there is a representative claimant or defendant, an order of the court binds everyone whom that party represents.

Case for the GBA

[10] Counsel for the GBA in written submissions filed on 16th February 2021 submits that Lord MacNaghten in the case of **Duke of Bedford v Ellis**³ identified three conditions which are required to be fulfilled by those seeking to act in representative capacity in a claim. First, the parties must have the same interest in the proceedings. Secondly, they must have a common grievance and thirdly, the relief sought must be beneficial to all.

[11] Lord MacNaghten made the following observation in **Duke of Bedford**:

“If the persons named as plaintiffs are members of a class having a common interest, and if the alleged rights of the class are being denied or ignored, it does not matter in the least that the nominal plaintiffs may have been wronged or inconvenienced in their individual capacity. They are none the better for that and none the worse. They would be competent representatives of the class if they had never been near the Duke; they are not incompetent because they may have been turned out of the market. In considering whether a representative action is maintainable, you have to consider what is common to the class, not what differentiates the cases of individual members.⁴”

Whether the GBA and the class of persons it seeks to represent have the same interest

[12] In discussing what constitutes class membership, counsel for the applicant relies on the learning extracted from **Emerald Supplies Ltd. v British Airways plc**⁵ and in particular the dictum of Lord Justice Mummery at paragraphs 45, 48 to 49 where he observes that –

(Commenting on **Duke of Bedford v Ellis**) “They were a large, indefinite and fluctuating class consisting of persons having the same rights and relying on one

³ [1901] AC 1

⁴ **Duke of Bedford** [1901] AC 1 at page 7

⁵ [2010] EWCA Civ. 1284

and the same Act as their charter. The House of Lords rejected the nature of that class as an objection, holding that, although it might be difficult or impossible to compile a catalogue of growers, there was not much difficulty in determining whether a particular person claiming a preferential right was a grower or not. Thus the representative class with same interest can fluctuate: under the rule what matters when the action starts is that there is a class of more than one person.”

(Elucidating further on what constitutes class membership) “in the case of representative actions it is essential that the class on behalf of which the relief is sought should be defined: it is impossible for the court to give any judgment as to the rights of the parties by virtue of their being members of a class without it being defined what constitutes membership of the class. That requirement is satisfied in a case where all the members are identifiable and have the same interest...”

“The fundamental requirement for a representative action is that those represented in the action have “the same interest” in it. At all stages of the proceedings, and not just at the date of judgment at the end, it must be possible to say of any particular person whether or not they qualify for membership of the represented class of persons by virtue of having “the same interest” as Emerald. This does not mean that the membership of the group must remain constant and closed throughout. It may indeed fluctuate. It does not have to be possible to compile a complete list when the litigation begins as to who is in the class or group represented.”

[13] Counsel concludes that the representative action application meets all the prongs required to bring an action as a represented body of persons. Counsel says that the action is a request for declaratory relief for a described group, which consists of individuals within both civil and criminal jurisdictions who share the same interest in the administration of justice, namely the provision of adequate courts in Grenada, funding for the same and the provision of sufficient court administrative staff for its effective functioning. The members of this group all share a common grievance as it consists of persons whose fair trial rights as

guaranteed by the Constitution, have been breached. The relief sought to order the funding of the court systems will be beneficial to every person in the represented group whether or not presently identified.

Case for the respondents

[14] The case for the respondents is comprehensively set out in submissions filed on 19th February 2021 and 30th April 2021. The essence of the respondents' answer focuses on the provisions of sections 8 (1) and (2) and 16 (1) and (2) of the Constitution which sections read –

“ 8 (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

8 (8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

16.-(1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction-

to hear and determine any application made by any person in pursuance of subsection (1) of this section ; and

to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section and may make such declarations or orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.”

[15] Counsel for the respondents submits that whilst the CPR 2000 does not expressly state that each person in the group which is sought to be represented should possess the same interest, the learning found in the English case law are applicable to expounding on the provisions of CPR 21.2 and section 16 of the Constitution. The respondents explain that the cases suggest that “each of the proposed group must possess the same or substantially the same interests in the proceedings”.⁶

[16] Counsel for the respondents relies on **Emerald Supplies Ltd. v British Airways plc**⁷ and the dictum of Ackenhead J in **Millharbor Management Ltd. and others v Weston Homes Ltd and another**⁸. Applying these authorities to the present application, counsel says that the GBA must first show that it has the same interest as each member of that group it is seeking to represent. Counsel accepts that the GBA represents its members. However, counsel disputes whether the GBA has shown whether any litigant’s right to a fair trial in any particular case has been breached or is likely to be breached.

⁶ Respondents’ submissions filed on 19th February 2021 at para. 14

⁷ [2009] EWHC 741 at paras. 30-33.

⁸ [2011] 3 All ER 1027 at para 22.

[17] Further, counsel argues that even if the GBA passes the first hurdle, it must show that each and every litigant before the court or who may come before the court has the same interest which are relevant to and grounded in the declarations that his or her right to a fair trial has been breached or is likely to be breached. Counsel asks whether a court can make such a declaration that the GBA's right is breached and that must mean that every other single litigant to ever grace the doors of the court also has had his or her right to a fair trial breached. Counsel questions whether the GBA can maintain that the represented parties in effect have a common grievance and that the relief being sought is beneficial to all.

[18] Counsel notes that, unlike English Law, in order for a claimant to invoke section 16 of the Constitution, he must show that his right to a fair trial has been breached, is being breached or is likely to be breached. Counsel submits that the provisions of section 8(8) only relate to the determination of civil rights, however, the GBA is seeking to also represent defendants in the criminal courts. The GBA's claim is grounded in the argument that its own right to a fair trial along with that of its members is being breached. Counsel submits that this is an issue of liability which must be based on the formulation found in section 16: "has been, is being or is likely to be breached." Therefore Counsel maintains that for each litigant presently before the court or who may come before the court, to share an interest in a section 16 claim, they must be at least contending their right to a fair trial has been, is being or is likely to be breached.

[19] In further submissions filed on 30th April 2021, the respondents explain that the section 16 constitutional provisions cannot be rendered meaningless by allowing anyone to claim remedies unless it is clear that the claimant's rights have been, are being or are likely to be breached. In this regard, the court is asked to consider as a threshold question whether the GBA has presented a case that any of its rights or that of its constituent members or any one of the proposed litigants' rights has been, is being or likely to be breached. The respondents point out that the present application is being conducted in a court and as such there are courts in Grenada. The respondents ask "has the claimant filed any case in

court with regards to which it is contending that its section 8 rights have been contravened?”⁹ The respondents answer that no such case has been filed.

[20] The respondents contend that it is absurd to conclude that “all persons have some common grievance against the State with regards to which section 16 of the Constitution provides a remedy.”¹⁰ The respondents opine that the court ought to adopt the required approach of assessing the pleadings to ascertain the interests which are being asserted by the GBA and then go on to consider whether each and every litigant has the same or substantially the same interest and a common grievance and the relief sought is in its nature beneficial to all. The respondents posit that if this approach is adopted, the court will find it impossible to find that each and every litigant’s right to a fair trial has been infringed, is being infringed or likely to be infringed.

[21] The respondents present the case of **Bell v DPP**¹¹ to make the point that the assessment of the relevant factors as they affect the conduct of each case would vary from “jurisdiction to jurisdiction and case to case¹².” The point being made by counsel for the respondents is that where breaches of a section 8 right to fair trial case are being pursued, the court is enjoined to review the circumstances of each individual case. The long and short of the point being made by the respondents is that the GBA could not be complaining of a lack of court resources when on a closer examination it is apparent that cases are being heard and determined on a daily basis. The respondents take the view that there is therefore hardly any merit in the claim for relief being pursued by the GBA.

[22] The respondents conclude their argument by positing that even if the GBA has some basis to bring the claim, the court still retains the discretion pursuant to section 16(2) to refuse relief where it finds that adequate alternative remedies are available to the GBA. In this regard, the respondents advert to the long history of the court’s refusal to exercise its constitutional jurisdiction where adequate alternative remedies avail a claimant. Counsel

⁹ Respondents’ further submissions filed on 30th April 2021 at para 8

¹⁰ Ibid at para. 9

¹¹ [1985] 2 ALL ER 585. The respondents also rely on *AG of Guyana v Persaud* (2010) 78 WIR 335

¹² [1985] 2 ALL ER 585 at page 591.

posits that there are adequate powers available for a court to address breaches of fair trial rights in individual cases.

[23] The respondents also urge the court to consider whether conferring anyone with standing “in the context of this case is a proper use judicial resources and whether this claim is a proper and effective method of raising issues in court.”¹³ The court was urged to consider the Canadian case of **AG of Canada v Downtown Eastside Sex Workers United Against Violence Society and Others**.¹⁴

[24] The court is urged to consider several factors as elucidated in that case –

- (1) The court should ask itself 3 questions: firstly, whether there was a serious justiciable question raised, whether the plaintiff had a real stake or genuine interest in it and whether, in all the circumstances, the proposed suit was a reasonable and effective way to bring the issue before the courts. Counsel says the genuine interest element must be tied to section 16 of the constitution;
- (2) The foregoing factors must be weighed cumulatively and not as free standing or hard and fast;
- (3) The court ought to take a purposive approach to deciding whether a particular means of bringing a case to court is “reasonable and effective” and an “economical use of judicial resources”. The respondents find it ironic that the GBA laments the lack of resources for the courts but yet it files this claim that “is slated to take up much of those resources”;
- (4) By merely bringing this claim, the GBA pursues the interests and the rights of all the other proposed litigants. The court is also reminded of the previously

¹³ Supra note 9 at para. 30

¹⁴ [2013] 3 LRC 334

made point that the issues in this claim can be addressed by any court in an individual claim. There is no need for a representative action;

- (5) The court must be concerned to resolve issues in reasonable and effective manner. What is effective and effective is a matter of proportionality. The court must be prepared to seize control of its processes and “ensure that practical and sensible limitations are placed on unnecessary litigation seeking to make points for public consumption rather than to really seek effective remedies.”¹⁵

Discussion and Analysis

[25] CPR 21.1 is of significance to this discourse. The relevant provisions read –

21.1 (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, in which 5 or more persons have **the same or a similar interest**. (Bold emphasis).

(2) The court may appoint –

- (a) a body having a sufficient interest in the proceedings; or
- (b) one or more of those persons;

to represent all or some of the persons with the same or similar interest.

[26] Counsel for the respondents properly concedes that the English cases offer some guidance on the application of our CPR 21. Akenhead J in **Millharbour Management Limited & Ors. v Weston Homes Limited & Anor**¹⁶ summarized the guiding principles in relation to representative actions in this manner:

“(1) To enable a party to claim, or be claimed against, in a representative capacity for other parties, that party must have the same interest in the claim in question as those who are to be represented. That is a threshold point which must be established by reference to the facts so far as it is possible to ascertain the facts at the time when the court considers the representative capacity of any party. It is

¹⁵ Supra note 9 at para. 40

¹⁶ [2011] EWHC 661 (TCC)

legitimate to proceed by reference to the proposed or actual pleadings to ascertain at least what the facts are assumed to be.

- (2) It must be possible at any stage during the proceedings to ascertain whether any given person qualifies for membership of the represented class of persons as having the same interest as the party which seeks to represent them.
- (3) The question of whether and the extent to which parties have the same interest can only be answered by reference to the facts of the particular case, albeit that it will be necessary to determine, amongst other things, whether the representing party and the represented parties in effect have the same cause of action or liability as the case may be, subject of course to the relevant facts ultimately being found.
- (4) As in the Duke of Bedford case, it will be inappropriate, before the final judgement on the issues resolved in relation to the represented parties, for the Court to decide the issues or, indeed, to indicate in some obiter way what the answer may well be. That is simply because the Court will not have heard full argument and will only have unchallenged written evidence before it at that stage.
- (5) Once it is clear that there is the same interest, the Court has a discretion whether to allow the relevant party to act or to continue to act in a representative capacity. Indeed, the Court retains a discretion even at and after the judgement to direct that a judgement is not binding or is not to be enforced. Thus, it is conceivable that, if in the judgement findings of fact or other law are such that it emerges that one or more of the represented persons does not have the same interest, the judge could well direct that the judgement is not to be enforced against them.
- (6) The overriding objective must always play an important part in the exercise of the discretion. Thus the saving of cost and time to the parties, and indeed to the court, must be factors in appropriate cases to take into account.
- (7) Limitation defences could be a factor to take into account depending obviously on when the representative character is sought to be imposed. In general, however, it would be open to a defendant to run a limitation defence in relation to represented parties who were not actual parties to the litigation. If such a defence was established against certain persons, it would be a wholly exceptional case in which the judge allowed the judgement to be enforced by a person who had not been a party to the claim and against whom the limitation defence had been established¹⁷.

¹⁷ Millharbour Management Limited v Western Homes and another [2011] EWHC 661 (TCC) at para.22

[27] Applying the foregoing guidelines to this application, I am constrained to disagree with the respondents. Notwithstanding the lucidity and eruditeness of the arguments presented by counsel for the respondents, the following points impel me to conclude that the GBA's application must be granted –

- (1) I am not required to expound on the underlying merits of the GBA's claim. But as explained by Akenhead J in **Millharbour**, the threshold question of whether the GBA shares the same or similar interest as the proposed class must be determined by reference to the facts present on the underlying claim for which a representative action is being sought.
- (2) In respect of the GBA's claim to share the same or similar interest with the proposed litigants, the respondents take the view "*that the section 16 constitutional provisions cannot be rendered meaningless by allowing anyone to claim remedies unless it is clear that the claimant's rights have been, are being or likely to be breached.*"¹⁸ They have asked me "*to consider as a threshold question whether the GBA has presented a case that any its rights or that of its constituent members or any one of the proposed litigants' rights has been, is being or likely to be breached.*"¹⁹ In my view, this question amounts to an investigation of the GBA's standing to bring its originating motion. I will elaborate on this issue a little more below but I am of considered opinion that questions of standing are better suited for the trial court.
- (3) The furthest that this court ought to venture on this point is to form a preliminary view on the nature of the GBA's interest and whether it shares the same or similar interest with the intended class of litigants. The respondents correctly concede that all litigants who come before the court have a vested interest in the sufficient funding of and adequate allocation of resources to the court. Therefore, it can be hardly be a stretch of logic from that posture to the conclusion that the alleged failure to provide sufficient funds or adequate resources has the potential to affect

¹⁸ Respondents submissions filed on 30th April 2021 at para. 3

¹⁹ Ibid at para. 7

the effective, efficient and timely disposal of cases or more properly put, the failure to provide sufficient funds and adequate resources may affect the right to a fair trial secured by sections 8 (1) and (8) of the Constitution.

- (4) If the foregoing is a correct assessment, then any or all litigants who have cases before the court may potentially be affected by the lack of adequate resources or sufficient funds and may be well placed to show, on the requisite facts, that the failure to provide adequate resources or sufficient funds has indeed led to a breach of or is likely to lead to a breach of his or her section 8 rights. In a word, the litigant in a proper case based on those circumstances may be able to proceed via section 16 of the constitution for relief. If then that is the case, then it can hardly be gainsaid that those individuals have a right to argue, either individually or as a class, that their fair trial rights have been breached or are likely to be breached;
- (5) With respect to whether the GBA shares the same or similar interest with the proposed class, section 4 (b), (c), (f) and (h) of the LPA bears significance on this question. The section reads –

4. The purposes of the Association are to—

- (b) represent and protect the interests of the legal profession in Grenada;
- (c) **assist the public in Grenada in all matters relating to law;**
- (f) **promote, maintain and support the administration of justice and the rule of law;** and
- (h) do all things incidental or conducive to the achievement of the purposes set out in this section.

- (6) Without embarking on an excursion of expatiating on the issues in the GBA's originating motion or deciding the points raised therein, it would seem to me that by the terms of section 4 of the LPA, the GBA is vested with a statutory interest in the proper and effective functioning of the courts in Grenada to which functioning, the provision of sufficient funds and adequate resources are obviously necessary

ingredients. This statutory interest or responsibility as one may wish, in my view, confers a sufficient basis for the GBA to complain that insufficient funding or inadequate resourcing have led to or may likely lead to a breach of section 8(1) and 8 (8) of the Constitution.

- (7) It must be remembered that it matters not that the class is fluctuating or that an applicant for an order for representative action is incapable of producing a comprehensive list of each potential litigant. Lord Justice Mummery in **Emerald Supplies**²⁰ explained CPR 19.6, which is the equivalent to our CPR 21.2 thusly:

“The fundamental requirement for a representative action is that those represented in the action have “the same interest” in it. At all stages of the proceedings, and not just at the date of judgment at the end, it must be possible to say of any particular person whether or not they qualify for membership of the represented class of persons by virtue of having “the same interest” as Emerald.

This does not mean that the membership of the group must remain constant and closed throughout. It may indeed fluctuate. It does not have to be possible to compile a complete list when the litigation begins as to who is in the class or group represented.”²¹ (Bold emphasis mine)

- (8) The fundamental question as advised in **Duke of Bedford** and in **Emerald Supplies** is that the class should be easily identified at every stage of the proceedings. In my view, the class as proposed by the GBA can be certainly precisely delineated in these terms ***“all persons who appear before the court and have had or are having or are likely to have their matters affected by the alleged insufficient funding and inadequate resourcing of the courts to such an extent that it can be said that their rights to a fair trial are being infringed or likely to be infringed.”***

²⁰ Emerald Supplies Ltd, Southern Glass Produce Ltd v British Airways plc [2010] EWCA Civ 1284

²¹ Emerald Supplies Ltd. and another v British Airways plc [2010] EWCA Civ 1284 at paras. 62-63

- (9) It is again for the GBA to demonstrate to the trial court that the alleged issues facing the court are or are likely to affect the fair trial rights of the GBA and the persons whom they represent. It may not be the case that every person in the group is similarly affected but the authorities set out above clearly demonstrate that it is not necessary to show that a particular litigant is being affected or is likely to be affected. What matters is that when the matter comes before the trial judge, there is a class of more than one person so affected or likely to be affected in their rights. It matters that they all have a common stake in the outcome and that the relief is beneficial to all of them. I cannot see how it can be said that the GBA and all litigants will be unaffected in the conduct of fair trials where it can be shown that courts are insufficiently funded or inadequately resourced. As was said of the rule at page 8 of the **Duke of Bedford** case –

“The old rule in the Court of Chancery was very simple and perfectly well understood. Under the old practice the Court required the presence of all parties interested in the matter in suit, in order that a final end might be made of the controversy. But when the parties were so numerous that you never could "come at justice," to use an expression in one of the older cases, if everybody interested was made a party, the rule was not allowed to stand in the way. **It was originally a rule of convenience: for the sake of convenience it was relaxed. Given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent.** To limit the rule to persons having a beneficial proprietary interest would be opposed to precedent, and not, I think, in accordance with common sense.”²²
(Bold emphasis mine)

- (10) The authorities do not suggest that “each and every litigant” in a representative action must establish or contend that their “legal” or “proprietary” rights have been infringed as the respondents contend. The House of Lords in **Duke of Bedford** has elucidated that a class of proposed litigants is not confined to persons who have or claim some beneficial proprietary interest in the matter, but all that is

²² Emerald Supplies Ltd. and another v British Airways plc [2010] EWCA Civ 1284 at page 8

required is “a common interest and a common grievance and the relief sought is beneficial to all²³.”

Respondents’ adequate alternative remedy argument

[28] The respondents go on to argue that even if the court finds that the GBA and the proposed class share a common interest, the court ought to dismiss the application because there are adequate alternative remedies available to the proposed litigants. I am somewhat diffident about considering this issue and the one following because I am hard pressed to see how they have any impact on the question of whether the GBA shares a similar or same interest with the proposed class of litigants. Indeed the singular question that the court is enjoined to determine pursuant to CPR 21 is whether or not the GBA shares the same or similar interests with the proposed class of litigants. Once this court finds that the GBA has so satisfied the court then the application ought to be granted. These questions of the GBA’s standing to bring the originating motion or whether the court ought to exercise its powers to grant constitutional relief where adequate alternative remedies subsist seem, at first blush, better situated before the court hearing the originating motion.

[29] In case I am wrong about this, I am again constrained to disagree with the respondents. They submit that there is no reason for the court to expend time and resources to hear the GBA’s originating motion when individual judges dealing with allegations of a breach of section 8 fair trial rights in individual cases retain the jurisdiction to adjudicate on such issues in those cases before them. As such the proposed litigants possess adequate alternative remedies to address their fair trial rights concerns. I cannot agree that the respondents’ suggested approach would redound to the effective and efficient allocation of the court’s time and resources. It would be seem to me that the GBA’s originating motion may serve as a one time, compendious and comprehensive approach to resolving the question of whether the courts in Grenada are being sufficiently funded and adequately resourced and if not, whether the litigants’ section 8 fair trial rights have been, are being or

²³ [1901] 1 AC 1 at page 8

are likely to be infringed as a consequence. To insist that litigants who wish to complain of these matters should raise individual complaints before the court hearing their cases would appear to be a repetitive, time consuming and inefficient expending of the court's time and resources. It would require a case-by-case interrogation and determination of this singular question in every instance where the allegation is raised.

Respondents' argument on standing

[30] Finally, the respondents implore the court to consider whether conferring the GBA with standing "*is a proper use of judicial resources and whether this claim is a proper and effective method of raising the issues in court.*"²⁴ They propose the tripartite approach extracted from the case of **AG of Canada v Downtown Eastside Sex Workers United Against Violence Society and Others**²⁵ to wit whether there was a serious justiciable question raised, whether the plaintiff had a real stake or genuine interest in it and whether, in all the circumstances, the proposed suit was a reasonable and effective way to bring the issue before the courts.

[31] I find that all 3 factors weigh in favor of the court permitting the GBA to proceed. With respect to whether there is a serious question raised, I cannot see how either of the parties can dispute that the question of whether the courts are sufficiently funded and adequately resourced and if not, whether insufficient funding and inadequate resourcing amounts to a breach or potential breach of the fair trial rights of litigants is a serious question to be tried. Secondly, I have already found that the GBA and the proposed litigants have a similar or same interest in the issues on the originating motion. They have a genuine interest and a real stake in those issues. Thirdly, I have found that the originating motion is a reasonable and effective way of disposing of the questions before the court rather than the approach commended by the respondents.

[32] As I have stated above, the GBA is clothed with the statutory powers of "caretakers", or "watchpersons", if you may, of those rights on behalf of the public and in furtherance of the

²⁴ Supra, note 9 at para. 30

²⁵ [2013] 3 LRC 334

administration of justice and the rule of law. Therefore the GBA is, in my view, properly and appropriately situated with a statutory stake in the conduct of fair trials. As such the GBA is clothed with sufficient standing not only to litigate this claim on its own behalf but on behalf of the proposed class of litigants it seeks to represent. In view of the issues to be resolved in this case, I cannot see a more apposite instance in which the GBA ought to stand both on its own merits as litigant and as litigant on behalf of the proposed class. They all have an equally solemn stake in the outcome of the originating motion.

Conclusion

[33] For reasons given above, the notice of application filed by the GBA on 31st October 2019 seeking to be appointed to represent itself and all litigants who appear before the Supreme Court whether in civil proceedings or as the accused in criminal proceedings, for the purpose of obtaining the opinion of the court on the constitutional issues raised in its originating motion, is hereby granted.

[34] There shall be no order as to costs. I thank both counsel for their scholarship both in oral and written presentations.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar