

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MRS JUSTICE V HARRIS JA
THE HON MRS JUSTICE G FRASER JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2023CV00023

BETWEEN	THE ATTORNEY GENERAL OF JAMAICA	APPELLANT
AND	SOUTHERN TRELAWNY ENVIRONMENTAL AGENCY	1ST RESPONDENT
AND	CLIFTON BARRETT	2ND RESPONDENT
AND	NORANDA JAMAICA BAUXITE PARTNERS II	3RD RESPONDENT
AND	NEW DAY ALUMINUM (JAMAICA) LIMITED	4TH RESPONDENT

Miss Lisa White and Mrs Taniesha Rowe-Coke instructed by the Director of State Proceedings for the appellant

B St Michael Hylton KC, Ms Marlene Alleyne, Ms Melissa McLeod and Miss Daynia Allen instructed by Hylton Powell for the 1st and 2nd respondents

Ransford Braham KC, Glenford Watson and Miss Christina Thompson instructed by Glenford Watson for the 3rd respondent

Ms Carlene Larmond KC and Ms Giselle Campbell instructed by Patterson Mair Hamilton for the 4th respondent

28, 29 November 2023 and 7 June 2024

Constitutional Law – Constitutional construction and interpretation – whether a company is a person - whether an artificial or legal person can seek constitutional redress in its own right - section 3 of the Interpretation Act - sections 13, 15, and 19 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

BROOKS P

[1] I have read the draft judgment of my learned sister V Harris JA. I agree with her reasoning and conclusion and have nothing to add.

V HARRIS JA

[2] On 14 March 2023, Wint-Blair J (‘the learned judge’) refused an application brought by the appellant, the Attorney General of Jamaica (‘the AG’) to remove the 1st respondent, Southern Trelawny Environmental Agency (‘STEA’), as a party to a claim for constitutional redress that STEA and the 2nd respondent, Mr Clifton Barrett, initiated against the AG, the 3rd respondent, Noranda Jamaica Bauxite Partners II (‘Noranda II’) and the 4th respondent, New Day Aluminum (Jamaica) Limited (‘New Day’). In that application, the AG sought to strike out STEA’s statement of case on the basis that STEA, as an artificial or legal person, lacked the requisite standing to commence the constitutional claim under section 19(1) of the Constitution. The section is a part of Chapter III, The Charter of Fundamental Rights and Freedoms (‘the Charter’).

[3] This appeal, therefore, raises the novel and important question of whether STEA, as an artificial or legal person, can seek constitutional redress in its own right under section 19(1) of the Charter. The answer to this question turns primarily on the interpretation of section 19 of the Charter, in particular, whether STEA is a person within the meaning of that section. However, before addressing this issue, a brief outline of the background to this matter is necessary to provide the factual context of the appeal.

Background

[4] The AG is the Jamaican Government’s principal legal advisor and its representative in civil proceedings by virtue of section 13 of the Crown Proceedings Act.

[5] STEA is a company that is incorporated under the Companies Act of Jamaica. Its main objectives are to promote public awareness of the importance of maintaining the quality of the environment, enable the development of the Cockpit Country as a protected and managed park area, and encourage ecologically sound planning practices,

environmental research, and eco-tourism. STEA also facilitates eco-tourism tours to the Cockpit Country as part of its business.

[6] The 2nd respondent, Mr Barrett, is a Jamaican citizen and farmer who has resided in Alps District in the parish of Trelawny for over 60 years.

[7] The 3rd respondent, Noranda II (now "Discovery Bauxite Partners"), is a partnership between the 4th respondent, New Day, and Jamaica Bauxite Mining Limited, which the Jamaican Government wholly owns. The 4th respondent, New Day, formerly "Noranda Bauxite Limited", is a company incorporated under the Companies Act of Jamaica and owned by New Day Aluminum Holdings LLC and Jamaica Bauxite Mining Limited. Jamaica Bauxite Mining Limited owns 51% of the Noranda II partnership, while New Day, which holds 49% of the partnership, is its managing partner. Noranda II performs all mining activities on behalf of New Day.

[8] On 28 August 2018, the Jamaican Government granted Special Mining Lease No 173 (SML-173) to New Day to mine bauxite in, under or upon approximately 120 square kilometres (or approximately 12,000 hectares or 29,652.60 acres) of land ('the proposed mining area') in the parishes of Saint Ann and Trelawny. A term of the lease provides that New Day will appoint Noranda II as its agent to mine the bauxite and carry out other mining operations. STEA contends that the proposed mining area falls within an area of approximately 1,099 square kilometres (or 271,568.80 acres) that is traditionally known as the Cockpit Country, based on "the forest cover, rich biodiversity, significant hydrological features and cultural and heritage sites, all inter-connected to the landscape's unique geomorphology". The Cockpit Country includes several communities (such as the Alps District, where Mr Barrett resides), which are on the periphery of the proposed mining area and will be impacted by the mining activities to be undertaken under SML-173.

[9] Consequent on the grant of SML-173, on 20 January 2021, STEA and Mr Barrett filed a fixed date claim form seeking, among other things, declarations that SML-173

breaches or is likely to breach the following constitutional rights that are guaranteed by section 13(2) of the Charter:

- a) the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage (section 13(3)(l));
- b) the right to reside in any part of Jamaica (section 13(3)(f)(ii)); and
- c) the right to protection from degrading “other treatment” (sections 13(3)(o) and (6)).

[10] On 25 October 2022, the AG filed a notice of application to remove STEA as a party to the claim and strike out its statement of case. The learned judge, having heard the application, refused it and awarded STEA the costs of the application.

The relevant findings of the learned judge

[11] In her written reasons given on 14 March 2023, the learned judge found as follows:

- i) any rights or freedoms given to a “person” in section 13 of the Charter, which were by their nature capable of being enjoyed by a company, could be claimed by that company;
- ii) STEA, as a legal person, had the standing to commence the claim for constitutional redress in its own right pursuant to section 19(1) of the Charter because the word “person” in that section, where the context required it and where it was applicable, included a company;
- iii) a legal person could invoke section 19(1) of the Charter to seek redress for an alleged infringement of any of the rights and freedoms it could enjoy;

- iv) the question of whether STEA has shown that it was capable of enjoying the rights it seeks to enforce was to be determined at the trial of the substantive claim; and
- v) questions concerning the interpretation of the relevant constitutional provisions, as well as the nature and extent of the rights and freedoms sought to be enforced, were also to be determined at the trial of the claim.

[12] It was for these reasons, among others, that the learned judge refused the AG's application.

The appeal and issue of importance

[13] Dissatisfied with the learned judge's decision, on 30 March 2023, the AG filed its notice and grounds of appeal. The six grounds advanced by the AG in support of the appeal have been helpfully summarised by learned King's Counsel, Mr Michael Hylton, in his written submissions and are gratefully adopted. These are that, on a proper interpretation of section 19(1) of the Charter, STEA, being an artificial person, does not have the requisite standing to initiate a constitutional claim in its own right, and could only commence a constitutional claim on behalf of natural persons in a representative capacity under section 19(2) of the Charter, after obtaining leave of the court to do so. According to the AG, the premise for those grounds is that an artificial or legal person cannot engage the human rights recognised by the Charter.

[14] Despite the several grounds, the parties agreed that the narrow issue to be resolved is as stated at para. [3] above.

The law

[15] The Charter includes sections 13 to 20. The provisions of the Charter that are relevant to the appeal are sections 13(1), 19(1) and (2). Sections 13(1)(a),(b) and (c) are set out below:

“13.- (1) Whereas-

(a) the state has an obligation to promote universal respect for, and observance of, human rights and freedoms;

(b) all **persons** in Jamaica are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and as citizens of a free and democratic society; and

(c) all **persons** are under a responsibility to respect and uphold the rights of others recognized in this Chapter,

the following provisions of this Chapter shall have effect for the purpose of affording protection to the rights and freedoms of **persons** as set out in those provisions, to the extent that those rights and freedoms do not prejudice the rights and freedoms of others.” (Emphasis added)

[16] Sections 19(1) and (2) provide:

“19. – (1) If any **person** alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to **him**, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) Any **person** authorized by law, or, with the leave of the Court, a public or civic organization, may initiate an application to the Supreme Court on behalf of **persons** who are entitled to apply under subsection (1) for a declaration that any legislative or executive act contravenes the provisions of this Chapter.” (Emphasis added)

[17] Section 3 of the Interpretation Act is also relevant:

“3. In this Act and in all Acts, regulations and other instruments of a public character relating to the Island, now in force or hereafter to be made, the following words and expressions shall have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided –

... ‘person’ includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons;

...”

[18] The question to be resolved on the appeal will now be addressed.

Discussion and analysis

[19] Before us, no issue has been taken (nor could the contrary be successfully advanced) with the applicability of section 3 of the Interpretation Act to the Charter, given the latter’s status as an Act of Parliament. In any event, it is an instrument of a public character. Since the Interpretation Act provides that the definition of the word “person” includes any corporation, and the Charter does not expressly state otherwise, an interpretation of section 19(1) restricting its applicability to natural persons could only be justified if the implications of that definition would be inconsistent with the subject or context of the Charter.

[20] The starting point of the analysis is the settled approach to constitutional interpretation. In **Patrick Reyes v R** [2002] UKPC 11, Lord Bingham of Cornhill, writing for the Board, provided the following guidance:

“26. ...It is unnecessary to cite these authorities at length because the principles are clear. As in the case of any other instrument, the court must begin its task of constitutional interpretation by carefully considering the language used in the constitution. But it does not treat the language of the constitution as if it were found in a will or a deed or a charterparty. A generous and purposive interpretation is to be given to constitutional provisions protecting human rights. The court has no licence to read its own predilections and moral values into the constitution, but it is required to consider the substance of the fundamental right at issue and ensure contemporary protection of that right in the light of evolving standards of decency that mark the progress of a maturing society...”

[21] This court has consistently adopted this well-recognised approach in several cases, including **Paul Chen-Young et al v Eagle Merchant Bank Jamaica Limited and another** [2018] JMCA App 7 at para. [101] and the more recent decisions of **Dawn Satterswaite v The Assets Recovery Agency and Terrence Allen v The Assets Recovery Agency** [2021] JMCA Civ 28 at para. [158] and **Maurice Tomlinson v**

Television Jamaica Limited et al [2020] JMCA Civ 52 at para. [86]. See also **Minister of Home Affairs and another v Fisher and others** [1980] AC 319 (**Minister of Home Affairs v Fisher**), **Attorney General of The Gambia v Momodou Jobe** [1984] AC 689, and **Chantelle Day and another v The Governor of the Cayman Islands and another** [2022] UKPC 6, decisions of the Privy Council, and **Smith and Another v LJ Williams Ltd** (1980) 32 WIR 395 (**Smith v LJ Williams Ltd**), an authority from the Court of Appeal of Trinidad and Tobago relied on by STEA.

[22] As the authorities illustrate, for decades, the courts have utilised this methodology when interpreting constitutional provisions that protect fundamental rights and freedoms to which all persons in a State are entitled. Therefore, the learned judge's approach to interpreting the provisions of the Charter is unassailable. Likewise, a broad, liberal and purposive interpretation, as distinct from a narrow and technical construction, will be given to the interpretation of the relevant provisions of the Charter in this appeal.

[23] The stance taken by Miss Lisa White, for the AG, is that while a legal person may be able to assert certain human rights, such as the right to own property, only natural persons can commence a constitutional claim for redress in their own right under section 19(1) of the Charter.

[24] Miss White commenced her oral submissions by stating that given the way the Charter is framed, it bears a closer textual affinity with the American Convention on Human Rights ('the ACHR') than the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'). This point is not made on a whim because Article 1(2) of the ACHR expressly defines "person" as being every human being. The cases of **A Newspaper Publishing Company v Trinidad and Tobago** CCPR/C/36/D/360/1989 (1989), **Ulufa'alu v Attorney General and Others** HC-CC (Const) No 195 of 2000 [2002] 4 LRC 1, **Shareholders of Banco De Lima v Peru** Report No 10/91, Case 10.169, delivered on 22 February 1991, and **Kaliña and Lokono Peoples v Suriname**, a decision of the Inter-American Court of Human Rights delivered on 25 November 2015 were relied on, among others. By contrast, the consistent approach

of the European Commission on Human Rights and the European Court of Human Rights (also known as the “Strasbourg Court”) has been to apply the rights in the ECHR to companies, in light of Article 1 of the first Protocol to the ECHR which refers to every natural or legal person, and Article 34 of the ECHR which provides that the Strasbourg Court “may receive applications from any person, non-governmental organisation or group of individuals” regarding the violation of the rights set out therein, (see **Capital Bank Ltd v Bulgaria** Application No 49429/99, **X and Church of Scientology v/Sweden** Application No 7805/77 and **Verein Netzwerk v Austria** Application No 32549/96 relied on by STEA).

[25] STEA’s position, as advanced by Mr Hylton, is that the construction of the Charter is such that it does not define the word “person” or indicate that a meaning contrary to the Interpretation Act should be adopted. Furthermore, that definition is supported by the context in which it is used in section 13 of the Charter. It was also submitted that the learned judge correctly considered the ECHR and its related decisions as an interpretative tool in the light of the historical context of the Charter. As a former British colony, Jamaica was bound by the ECHR (which afforded those rights to legal persons) prior to its independence. Counsel argued, therefore, that it could not have been the intention of the post-independence Constitution (including the Charter) to restrict who had access to those fundamental rights and freedoms in the absence of express words to that effect.

[26] In **Minister of Home Affairs v Fisher**, Lord Wilberforce, at page 328 of the judgment, referred to the influence of the ECHR in drafting the Constitutions of most Caribbean countries, including the Constitution of Jamaica. Reference was also made to this “common heritage” by Lord Hope of Craighead at para. 30 in **Lambert Watson v R** [2004] UKPC 34, an appeal from this court. Lord Bingham of Cornhill in **Steven Grant v R** [2006] UKPC 2 (also an appeal from this court), stated:

“17. Thirdly, the Board readily accepts the relevance of the Strasbourg jurisprudence on article 6(3) of the European Convention [ECHR], since that Convention applied to Jamaica before it became independent and the close textual affinity between article 6(3)(d)

and section 20(6)(d) [the equivalent of section 16(6)(d) of the Charter] makes it appropriate to pay heed to authority on the one when considering the meaning and effect of the other. Both parties acknowledged the persuasive authority of the Strasbourg jurisprudence, as did the Court of Appeal, and rightly so. ...”

Lord Bingham of Cornhill previously made a similar observation at para. 23 in **Patrick Reyes v R.**

[27] The force of the AG’s submission disappears when it is examined against the background of those contrary pronouncements made by the Privy Council. Any argument that the observations by the Privy Council referred to the 1962 Jamaican Constitution since they were made before the promulgation of the Charter on 7 April 2011 is easily dispelled (as the learned judge indicated at para. [124] of her judgment) by the statement of Lords Briggs and Hamblen writing for the Board in the recent decision of **The Attorney General v The Jamaican Bar Association and The General Legal Council v The Jamaican Bar Association** [2023] UKPC 6 (**AG v JAMBAR**) that the Charter is “loosely based” on the ECHR (at para. 6). Therefore, the learned judge cannot be faulted for acknowledging that the ECHR formed part of the historical context of the Charter and for utilising the Strasbourg jurisprudence as a useful tool in her interpretation of the Charter.

[28] I turn now to section 19(1) of the Charter. As already established, that section provides that any person who alleges that any of the provisions of the Charter has been, is being or is likely to be infringed in relation to him may apply to the Supreme Court for redress.

[29] The AG’s position is that the preamble to the Charter, in particular, sections 13(1)(a) and (b), provides the context which demonstrates the exclusion of artificial or legal persons from engaging the rights and freedoms entrenched in section 13 and by extension, their capability and standing to seek constitutional redress in their own right. Miss White submitted that section 13 lays the foundation for section 19 because the framers of the Charter chose to emphasise firstly, the State’s obligation “to promote universal respect for, and observance of, human rights and freedoms” (section 13(1)(a));

and secondly, the right of all persons in Jamaica “to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and citizens of a free and democratic society” (section 13(1)(b)). Miss White contended that given those provisions, the framers of the Charter chose to emphasise and guarantee the rights and freedoms of individual human persons, not artificial or legal persons, under section 13. Additionally, as I understand the argument, the word “him” in section 19(1) refers to the masculine gender (and would include females by virtue of section 4 of the Interpretation Act), an identity that artificial or legal persons do not possess.

[30] Mr Hylton argued that it is apparent upon a review of sections 13(1)(b) and 13(1)(c) (in circumstances where there is no dispute that the latter provision imposes a duty on both natural and artificial or legal persons to uphold the rights of others) that in the absence of clear terms, if the AG’s argument were to be taken to its logical conclusion, that would mean that the words “all persons” in section 13(1)(b) would apply only to human beings while those words in section 13(1)(c) would include both artificial and natural persons. Mr Hylton argued that neither section restricted the interpretation of persons in this way. In response to the AG’s submission on section 13(1)(a), Mr Hylton submitted that the Charter referred to “Fundamental Rights and Freedoms” as distinct from “Human Rights”, which supports STEA’s position that the rights covered by the Charter apply to both legal and natural persons. Finally, on this point, citing **Smith v LJ Williams Ltd** and placing heavy reliance on the Privy Council decision in **Attorney General and Minister of Home Affairs v Antigua Times Ltd** (1975) 21 WIR 560 (**AG v Antigua Times**’), Mr Hylton strongly submitted that the Privy Council considered similar constitutional provisions (as sections 13(1) and 19(1)), comprising of similar language and contexts, which have been interpreted to include artificial or legal persons.

[31] The facts of **AG v Antigua Times**, which are particularised in the judgment of Lord Fraser of Tullybelton, who delivered the opinion of the Board, are gratefully adopted with some amplifications. The respondent was the publisher of a bi-weekly newspaper

called the Antigua Times. Publication of the respondent's newspaper, which commenced in December 1970, ceased in December 1971 when the Parliament of Antigua enacted two Acts, the Newspapers Registration (Amendment) Act 8/1971 and the Newspapers Surety Ordinance (Amendment) Act 9/1971. The respondent complained that those Acts were unconstitutional and applied to the High Court of Antigua for redress under section 15 of The Antigua Constitution Order 1967 ('the Antiguan Constitution') (revoked by the Antigua and Barbuda Constitution Order 1981, when Antigua and Barbuda gained independence from the United Kingdom). Section 15(1) of the Antiguan Constitution, which was in similar terms to section 19(1) of the Charter, stated:

"15. – (1) If **any person** alleges that any of the provisions of sections 2 to 14 (inclusive) of this Constitution has been, or is being, contravened in relation to **him**, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress." (Emphasis added)

[32] The Attorney General, who was the appellant in that case, unsuccessfully took a preliminary point in the High Court and the Court of Appeal (similar to the argument of the AG in the present case) that the word "person" in that subsection referred to a natural person, and since the respondent was not a person within the meaning of section 15(1) of the Antiguan Constitution, it was not entitled to invoke the protective provisions of that section. That point was also pursued before the Board.

[33] The Board held that "person" in the Antiguan Constitution included artificial or legal persons after considering: (i) the meaning of the word "person" as provided by section 19 of the United Kingdom Interpretation Act 1889 (which was applicable by virtue of section 115(15) of the Antiguan Constitution), which stated "[t]he expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate", and (ii) the context in which the word "person" occurred in Chapter I. A company, therefore, could claim that its constitutional rights were being contravened once it was able to establish that the particular rights, by their nature, were capable of being enjoyed by an artificial or legal person. Consequently, the respondent could invoke

section 15(1) and initiate a claim for constitutional redress in its own right under that provision.

[34] The Board rejected the Attorney General's preliminary point for several reasons, including:

- a) The heading of Chapter I of the Antiguan Constitution, where section 15 is included, referred to "Protection of **Fundamental** Rights and Freedom" and not to human rights (similar to the heading of the Charter);
- b) The arrangement and wording of Chapter I of the Antiguan Constitution owed much to the ECHR, which appears to apply also to artificial or legal persons, at least in some of its articles, like Article 25 (which is now Article 34) (similar to the most recent pronouncement of the Privy Council in **AG v JAMBAR** that the Jamaican Charter is loosely based on the ECHR);
- c) The importance of corporate bodies in the economic life of society would make it seem natural for such a modern Constitution that dealt with, among other things, property rights to include corporations (the Antiguan Constitution was brought into effect by an Order in Council in 1967. Given that the Charter was promulgated on 7 April 2011, this principle would be applicable to the Jamaican Constitution and, in my view, with greater force); and
- d) There was nothing to exclude artificial persons so far as they were capable of enjoying the fundamental rights and freedoms, although the reference to "race, place of origin, political opinions, colour, creed or sex" in section 1 (the preamble) of Chapter I (which included sections 1 to 16) of the Antiguan Constitution appeared to be referring primarily to human or natural persons (this conclusion was arrived at

after considering and rejecting the Attorney General's argument that section 1 was the "master section" of Chapter 1 and the subsequent provisions of that Chapter were limited to protecting rights and freedoms that were specified in section 1 that belonged only to human beings. This is similar to the argument made by the AG about sections 13 and 19 of the Charter).

[35] It is worth noting that the Board declined to limit the rights and freedoms provided in Chapter 1 of the Antiguan Constitution in the manner proposed by the Attorney General and instead stated that "[t]he nature and extent of the rights and freedoms protected must depend upon the provisions of the sections respectively protecting them". Additionally, their Lordships pointed out that while some of those rights clearly could not be engaged by artificial or legal persons (such as the right to life, the right to personal liberty and the right to be protected from inhumane treatment, specified in sections 2, 3 and 5, respectively), others could be (for example, the rights relating to compulsory acquisition of property (section 6), the securing of protection of law (section 8) and protection from discrimination on various grounds specified in section 12).

[36] Mr Hylton similarly submitted that some of the guaranteed rights under the Charter, by their nature, could not be engaged by an artificial or legal person (for example, the right to life (section 13(3)(a)) and the right to obtain a passport (sections 13(3)(n)), while others could be (such as the protection of property rights as provided in section 15).

[37] In fact, their Lordships in **AG v Antigua Times** opined that section 6 of the Antiguan Constitution (which was identical in terms to section 15 of the Charter except for sections 15(3)(a), 15(4), and 15(5)) was "most clearly applicable to corporate bodies". They also indicated that sections 6(2)(g) (identical in terms to section 15(2)(g) of the Charter) as well as 6(4) showed "a positive intention to include bodies corporate". Special mention was also made of section 10, which provides for freedom of expression (similar in terms to sections 13(3)(c) and (d) of the Charter).

[38] For ease of reference and to place their Lordships' opinion in its proper perspective, sections 15(2)(g) of the Charter will be set out in full:

"15(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property –

...

(g) by way of the vesting or administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporated in the course of being wound up;

[39] As can be seen, the framers of the Charter have deliberately included corporate bodies in section 15(2) regarding the making or operation of law concerning the possession or compulsory acquisition of properties that they own in certain circumstances. It seems to me, therefore, as the Board observed, that this is illustrative of a "positive intention" that the word "person" was meant to include artificial or legal persons. As the Board emphasised, the query would be whether the particular right could be enjoyed by an artificial or legal person so that it could commence a claim to vindicate an alleged breach of that right.

[40] The Board then went on to give examples of the anomalies that would arise if companies were not entitled to utilise the machinery of section 15 of the Antiguan Constitution (page 570H):

"... a natural person would lose the protection of the Constitution for his business if he formed a company to take it over. An example nearer to the present case is that s. 10 (Freedom of expression) would, on the appellants' construction, draw an unexplained and irrational distinction between newspaper proprietors who were natural persons and those who were bodies corporate. Similarly, s. 11 (Freedom of assembly and association) which expressly includes the right to 'belong to trade unions or other associations for the

protection of his interests' would protect the right of a natural person to join a trade association, but not that of a body corporate."

[41] As Mr Hylton likewise posited, the AG's arguments taken to their logical conclusion would mean that as a farmer carrying out his business in the SML-173 area, Mr Barrett could claim constitutional redress, but a company which owns and operates an adjoining farm could not. This brings to mind the words of Cross JA in **Smith v LJ Williams Ltd** (see page 446 h-j), which I find are equally applicable to the present case:

"...I have come to the conclusion that the framers of [the Constitution of Trinidad and Tobago] could not have intended to and did not exclude corporations from the protection afforded by the Constitution. To hold otherwise would be not only to admit a 'scandalous defect in the law' which would permit Parliament by a bare majority to pass confiscatory legislation against corporate property but would also make a mockery of constitutional guarantees with respect to the enjoyment of property and to equality of treatment."

[42] King's Counsel also steered our attention to the fact that their Lordships, in construing section 15(1) of the Antigua Constitution, which, in the same way as section 19(1) of the Charter, referred to a person who alleges that a right "has been or is being contravened in relation to **him**..." (emphasis added), nonetheless concluded that the rights applied to artificial or legal persons, contrary to the AG's position on this point.

[43] It is perhaps useful at this juncture to indicate that this court, in **Maurice Tomlinson v Television Jamaica Limited et al**, in determining whether the respondents, Television Jamaica Limited and CVM Television Limited, as juristic persons (both being companies), had breached the appellant's constitutional rights to freedom of expression and the right to seek, receive, distribute or disseminate information, opinions and ideas through any media (guaranteed by sections 13(3)(c) and (d)), pronounced that the respondents also enjoyed equal corresponding rights under those sections of the Charter. At para. [142] of the judgment, Phillips JA stated:

"[142] It is, therefore, necessary as a consequence, to discuss the distinct difference between the vertical and horizontal application of

the Charter. In [**Irwin Toy Limited v Quebec (Attorney General)** [1989] 1 RCS 927], the question was whether the legislation was interfering with the Canadian Charter provisions. Whereas, in the instant case, the issue is not whether legislation is interfering or limiting Mr Tomlinson's rights to freedom of expression and the dissemination, information of opinions and ideas, but whether the respondents, who are not organs of the State, but juristic persons, are doing so. **One important thing to note in this distinction is that the respondents also have the same rights as Mr Tomlinson – the right to freedom of expression as well as the right to disseminate information, opinions and ideas. These rights are equal in content and in nature. ...**" (Emphasis added)

[44] The court went on to further explore this issue in the context of whether the failure of the respondents to broadcast the appellant's advertisement was justifiable given their own constitutional rights (see the discussion at paras. [192] – [217] and in particular paras. [214] – [216]). The decision in that case is a clear recognition by this court that artificial or legal persons can enjoy guaranteed rights under the Charter. Incidentally, the AG appeared as an interested party in that matter.

[45] Having considered the preceding authorities and, in particular, **AG v Antigua Times** and **Maurice Tomlinson v Television Jamaica Limited et al**, I find Mr Hylton's submissions on the approach to the interpretation of the word "person" to be irresistible. I am convinced, on the strength of those authorities, that the word "person" in the Charter includes artificial or legal persons. Therefore, the learned judge did not err when she determined at para. [276] of her written decision that "the rights and freedoms given to a person in [section] 13 of the Charter, which by their nature are capable of being enjoyed by a company, can be claimed by that company".

[46] Having so concluded, it is axiomatic that an artificial or legal person can invoke the protective provisions of section 19(1) of the Charter to seek redress for an alleged infringement of any of the rights and freedoms it can enjoy. The learned judge was also correct in this finding.

[47] Section 19(2) of the Charter will now be briefly addressed in light of the outcome of the reasoning on the interpretation of section 19(1). Section 19(2) is a new provision that provides that any person authorised by law, or, with the leave of the Supreme Court, a public or civic organisation, may initiate a claim on behalf of persons entitled to apply under section 19(1) for a declaration that any legislative or executive act contravenes the provisions of the Charter.

[48] I find that the arguments of the AG and learned King's Counsel Miss Larmond on behalf of Noranda II and New Day, that a company, such as STEA, could only initiate a constitutional claim under section 19(2) in a representative capacity by first obtaining leave of the Supreme Court, and particularly, Miss White's submission that a company could only bring a claim on behalf of natural persons under that section, reflect a rather restrictive approach to the interpretation of section 19(2).

[49] I am inclined to agree with Mr Hylton's submission that the purposive and broader interpretation to be given to section 19(2) (which was the approach adopted by the learned judge) is that it expands, rather than curtails, the rights that already existed under section 19(1). In other words, section 19(2) was included in the Charter to provide persons with greater access to constitutional redress by allowing any person authorised by law, or with leave of the court, a public or civic organisation, not affected by the alleged breaches of the Charter, to bring a claim for declaratory relief on behalf of persons who were.

[50] The learned judge's discussion on section 19(2) of the Charter can be found at paras. [202] – [216] of her written decision. She initially acknowledged that the Antiguan Constitution did not have a provision similar to section 19(2) of the Charter and that the Board in **AG v Antigua Times** was not analysing a company's right to initiate a claim in the context of such a provision (at para. [173]). I agree. She then traced the legislative history of section 19(2) and the reason for its inclusion in the Charter by referring to several reports of Parliament, including the "Final Report of the Constitutional Commission", February 1994, the "Report of the Joint Select Committee on Constitutional

and Electoral Reform”, May 1995 and the “Report of the Joint Select Committee on its Deliberations on the Bill entitled an Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and for Connected Matters”. Having done so, the learned judge found that by including section 19(2), Parliament intended to increase and expand access to constitutional relief under the Charter (at para. [216]). Given the material she considered, the learned judge cannot be faulted for arriving at that conclusion.

[51] Before concluding, I wish to make two observations. Firstly, the analysis of section 19(2), in my judgment, disposes of the arguments raised by Miss White in her written skeleton submission and that of Miss Larmond in her oral arguments before us (summarised at para. [49]). Both counsel acknowledged (somewhat contradictorily on the part of the AG, in light of oral submissions) that “person” includes both a legal and natural person and that it was the nature of the rights under section 13 that would determine if they apply to both legal and natural persons or only natural persons. However, they maintained that a legal person could not enforce those rights under section 19(1). That line of argument, which I found extremely difficult to follow, begs the question: why would a legal person be accorded guaranteed rights under the Charter and not be able to invoke, in its own right, the protective or enforcement provision of section 19(1) to vindicate an infringement of any of those rights? I believe that Parliament could not have intended and, in fact, did not restrict access by artificial or legal persons to constitutional redress under the Charter in the manner proposed by counsel.

[52] Secondly, although the parties sought to argue, admittedly with some encouragement from the Bench, whether a company such as STEA could enjoy the guaranteed environmental rights under section 13(3)(I), those arguments need not detain us. I agree with the learned judge that the question of whether STEA can enjoy the rights it seeks to enforce is a matter to be determined at the hearing of the substantive claim.

Conclusion

[53] For the reasons I have sought to explain, the learned judge was correct to refuse the AG's application to remove STEA as a party to the claim in the court below and to strike out its statement of case on the basis that it lacked the requisite legal standing to initiate an application for constitutional redress under section 19(1) of the Charter. The learned judge correctly determined that STEA was a person within the meaning of the Charter, and could enforce breaches of any guaranteed rights, which, by their nature, it is capable of enjoying by invoking section 19(1) of the Charter.

[54] As a result, there is no justification for this court to interfere with the learned judge's decision. I would, therefore, propose that the appeal be dismissed and the matter be remitted to the Supreme Court for the hearing of the substantive claim. Subject to submissions from the parties, I would recommend that STEA receive its costs for the appeal, which are to be agreed or taxed, and paid by the AG.

G FRASER JA (AG)

[55] I, too, have read the draft judgment of my sister V Harris JA. I agree with her reasoning and decision and have nothing useful to add.

BROOKS P

ORDER

1. The appeal is dismissed.
2. The order of Wint-Blair J made on 14 March 2023 is affirmed.
3. The matter is remitted to the Supreme Court for the hearing of the substantive claim.
4. Costs of the appeal to the 1st respondent, Southern Trelawny Environmental Agency, are to be agreed or taxed and paid by the appellant, the Attorney General of Jamaica.

5. The order as to costs shall stand unless either party files and serves written submissions proposing a different order within 14 days of the date of this order. The other party shall file and serve its response within 14 days of being served. The court shall consider any submissions on costs on paper and deliver its decision thereafter.