



[2025] JMSC Civ 133

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU 2022 CV 03890

BETWEEN	DUNCAN BAY CITIZEN ASSOCIATION BENEVOLENT SOCIETY	CLAIMANT
AND	DUNCAN BAY DEVELOPMENT CO LTD	1ST DEFENDANT
AND	JULIAN LINTON	2ND DEFENDANT
AND	TONI ANN LINTON	3RD DEFENDANT
AND	THE TRELAWNY MUNICIPAL CORPORATION	INTERESTED PARTY

IN CHAMBERS

JULY 24, 2025 and OCTOBER 7, 2025

Ms. Tamiko Smith instructed by Smith, Afflick, Robinson and Partners Attorneys-at-Law for the Claimant

Mr. Jerome Spencer instructed by John Ross for the 1st Defendant

Mr. George Traile instructed by Phillip, Triale and Company Attorneys-at-Law for the 2nd and 3rd Defendants

Ms. Sidia Smith instructed by Bennett, Cooper, Smith Attorneys-at-Law for the Interested Party

Application to appoint representative – CPR 21 – Locus Standi– Naming a body as a representative party – Restrictive Covenants

TANIA MOTT TULLOCH-REID J

- [1] The Duncan Bay Citizen Association Benevolent Society ("Society") seeks an order that it be appointed in a representative capacity, pursuant to section 21 of the Civil Procedure Rules on behalf of its 23 members and pending members and to act in the capacity on their behalf as Claimant in the proceedings. The application is supported by Affidavits, one of which is the Affidavit of Kathie McMillen who depones that the Society was established to provide representation for citizens within the community on matters of common interest. This claim, says the Applicant, is a matter of common interest which the Society is authorised to act on behalf of its members in and can properly be named as a party in a representative capacity to represent the interest of its 23 members.
- [2] The Respondents and Interested Party are not of a similar view. They argue that the Society does not have the same or similar interest in the property and therefore cannot act on behalf of the group. The criterion required for acting has not been fulfilled and as such the Society cannot act in a representative capacity.
- [3] The Claimant, the Respondents and the Interested Party rely on the same case, that being the Full Court decision of **Maurice Housen v The Attorney General of Jamaica and The Commissioner of Police [2024] JMFC Full 02**. I too have considered the decision and find it very useful in explaining what is required under Part 21 of the Civil Procedure Rules for a representative party to be appointed. Part 21.1 provides that where 5 or more persons have the same or similar interest in the proceedings, the court may appoint one of more of those persons; or a body having sufficient interest in the proceedings to represent all or some of the persons with the same or similar interest. At paragraph 64 of the **Housen case**, the Full Court explained that the need for the representative to have the same or similar interest in the claim as the persons represented is to ensure that the representatives can effectively promote and protect the interests of the class being represented.
- [4] Ms Tamico Smith argues that the Society is a body that has sufficient interest in the proceedings as it was formed with one of the purposes *to provide*

representation for citizens within the community on matters of common interest (see Section 1 Article 3 of the Rules of the Society). The Respondents and Interested Party argue that same or similar interest means that the Society would have to own one of the parcels in order to qualify and it does not. If the Society owned a parcel, there would be no issue with it being appointed in a representative capacity, but since it does not, then a problem arises.

[5] In **Duke of Bedford v Ellis [1901] AC 1** it was held that there are three elements to be satisfied in deciding whether the representative party and the persons represented have the same interest. These are:

- a. Common interest
- b. Common grievance; and
- c. A remedy beneficial to all.

It appears therefore that the person who actually represents the group must him or itself be able to benefit from the order. The questions then become:

- a. does the Society have a common interest in the proceedings?
- b. does it share a common grievance with its members? and
- c. would any remedy made by the Court be of benefit to it?

As pointed out in Blackstone's Civil Practice 2012, if it is impossible to say whether a person is a member of the class when the claim form was issued, then no representation order is to be made because the criteria for inclusion in the class depends on the outcome of the litigation itself.

[6] In order for the Society to be a suitable representative, it would have to have a legitimate interest in the subject matter of the proceedings. Based on the tone of the rule, it would appear that it should itself be able to bring the proceedings and have a benefit independent of its members. This case concerns restrictive covenants which is an agreement between or among the landowners or between

landowners and the relevant municipal corporations as to how the land is to be used. Benefits and burdens run with the land and can only affect persons with interest in the land. The Court has to ask itself whether those benefits and burdens would impact or affect the Society in any material way (even though the landowners are the members of the society). The Court must also ask itself if judgment is granted in favour of the Society whether it will be able to enforce the judgment against the Respondents and Interested Party who could argue that they have no dealings with the Society as there was no covenant with it but rather the covenant was with the landowners. All of those issues must play in the mind of the Judge who considers whether a party is suitable to be named as a representative party.

- [7] I do not believe that the Society can be created to represent the interest of the group and then be named as a party. It must itself have shared in the grievance and is itself seeking to benefit from any orders made by the Court. This would satisfy the basis on which representatives are selected as set out in **Housen**. If the mission or purpose of the Society aligns directly with the claim, then it could be considered. If for example the claim was an environment related event, then perhaps an organisation which deals with environment related issues and can implement policies could be so appointed. It would have a direct interest in the outcome. But if it has no interest itself, then it would have no proper standing. A body with an interest in an issue is entirely different from a body which is created to represent people with an interest in an issue.
- [8] I do not understand “sufficient interest” to mean being interested to the extent that persons associated with you are affected. It goes beyond that. It goes to standing – it means having a significant connection to the claim and its outcome. The party must show it will be directly affected by the outcome. The Society will have to show that it is directly affected by the decision of the Respondents and the Interested Party in much the same way as the property owners would be. Unfortunately, it has not done so.

[9] My orders are therefore as follows:

1. The application to appoint Duncan's Bay Citizens Association Benevolent Society to represent the interests of its 23 members and pending members to act in the capacity of Claimant in these proceedings is refused.
2. Costs in the application are to be costs to the Respondents and Interested Party, which are to be taxed if not agreed.
3. The Applicant's attorneys-at-law are to file and serve the Formal Order.