

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 215 of 2022

BETWEEN

BELIZE SUGAR INDUSTRIES LIMITED

1<sup>st</sup> CLAIMANT

RUSSEL NAVARRO

2<sup>nd</sup> CLAIMANT

AND

ATTORNEY GENERAL OF BELIZE

DEFENDANT

Before the Honourable Madam Justice Patricia Farnese

**Hearing Date:**

24<sup>th</sup> February, 2023

**Appearances:**

Godfrey P. Smith, SC and Hector D. Guerra, Counsel for the Claimants

Samantha Matute, Asst. Sol. Gen. and Alea Gomez, Counsel for the Defendant

**DECISION ON CONSTITUTIONALITY OF CERTAIN PROVISIONS OF THE  
SUGAR INDUSTRY ACT**

**1 Introduction**

[1] Belize Sugar Industries Ltd. (BSI) and Mr. Russel Navarro seek declarations that certain provisions of the *Sugar Industry Act*<sup>1</sup> that regulate their private contractual interests are null and void because the provisions are discriminatory and violate their constitutional rights to equal protection, to work, and to free association.

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<sup>1</sup> Cap. 283, *The Substantive Laws of Belize*, Rev. Ed. 2020 [Sugar Act].

BSI also claims that the requirements to pay annual levies to the Sugar Industry Control Board (SICB) and an export levy violate their right to property. The Attorney General of Belize (AG) disagrees and argues that if any violation exists, the violation is reasonably justified as the provisions are in the public interest. The sugar industry is of fundamental social and economic importance to Belize.

[2] I find that certain provisions of the *Sugar Act* violate BSI and Mr. Navarro's constitutional rights. In reaching my decision, I have declined to expand the law in three ways proposed by the Claimants. First, discrimination based on place of origin does not occur when a law differentiates between persons based on where they reside *within* a country. Discrimination based on place of origin has only been found in cases where the discriminatory treatment was connected to the claimant's ethnicity or nationality. Those circumstances do not apply to this case.

[3] Second, outside of situations where access and procedural rights have been denied, a violation of the right to equal protection of the law will only be found if two conditions are met. Equal protection can be invoked to remedy circumstances where (1) the government had a duty to act to prevent the breach of another fundamental right and failed to do so and, (2) meaningful redress or remedy for that breach is unavailable. The Claimants have not established that those two conditions have been met. Consequently, BSI and Mr. Navarro have not established a *prima facie* case that the *Sugar Act* is discriminatory and violates their rights to equal protection of the law because the *Sugar Act* treats them differently than cane producers and a manufacturer located in western Belize.

[4] Third, the right to work protects the *opportunity* to work. A violation occurs when a person is prevented from making a living or freely pursuing a livelihood in their chosen field in a manner that is an affront to their inherent dignity. The mere interference with a person's opportunity to work and the freedom to contract does not result in a denial of that opportunity and is not a violation of the right to work. BSI has failed to demonstrate a *prima facie* case that their right to work has been violated by provisions in the *Sugar Act* that impose a quota on BSI's cane purchases from the Orange Walk and Corozal regions, that set the date for grinding season, and that purport to impose geographical restrictions on from whom and where they can purchase cane. Mr. Navarro has similarly failed to overcome the presumption of the constitutionality of corollary regulations aimed at to whom and where he can sell cane.

[5] However, I find that Mr. Navarro's constitutional rights to work and to free association have been violated by *de facto* registration requirements found in sections 17, 19, and 20 of the *Sugar Act*. These requirements prevent Mr. Navarro from

delivering cane unless he is on the cane register. The *Sugar Act* provides no mechanism to be placed on the register other than through membership in an association of cane farmers. Provisions that allow for revocation of membership are also violations of the rights to work and of association. BSI, however, has not demonstrated that these requirements violated their constitutional rights.

[6] Finally, BSI has proven that levies it is required to pay under sections 10 and 31 of the *Sugar Act* are an unconstitutional deprivation of their right to property under subsection 3(d) and section 17 of the *Belize Constitution*.<sup>2</sup> BSI, however, has not proven on a balance of probabilities that they have paid the export levy provided for under sections 67 and 68 of the *Sugar Act*. Thus, I am unable to conclude that there has been a deprivation of property.

## **2 Legal Framework for Assessing Constitutionality**

### **2.1 The Nature of the Right**

[7] The first step in determining whether the *Sugar Act* violates any of the Claimants' constitutional rights is "to examine the nature, content, and meaning of the right."<sup>3</sup> BSI and Mr. Navarro allege violations of their rights to work, freedom of association, equal protection of the law, and freedom from discrimination. BSI also claims that the *Sugar Act* violates their right to property.

### **2.2 Presumption of Constitutionality**

[8] Provisions of the *Sugar Act* can be found *ultra vires* because their form (on their face) or their implementation is a violation of the *Constitution*. The Parties agree that the Claimants have the burden to overcome the presumption that the *Sugar Act* does not violate the *Constitution*. In their oral submissions, the AG encouraged this Court to recognize that the burden to overcome the presumption of constitutionality is "a heavy one."<sup>4</sup> The Privy Council has held that the presumption will only be rebutted where the invalidity is "clear, complete and unmistakable...so clear as to be free from doubt,"<sup>5</sup> or "so arbitrary."<sup>6</sup>

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<sup>2</sup> Cap. 4, *The Substantive Laws of Belize*, Rev. Ed. 2020 [*Constitution*].

<sup>3</sup> *Virgo v. Board of Management of Kensington Primary School* [2020] JMFC Full 6 [*Virgo*] at para 95 quoting *Rural Transit Association Ltd. v Jamaica Urban Transit Company* [2016] JMFC Full 04.

<sup>4</sup> *Mootoo v. AG (Trinidad & Tobago)* (1979) 30 WIR 411 at 415 [*Mootoo II*].

<sup>5</sup> *AG (Trinidad & Tobago) v. Mootoo* (1976) 28 WIR 304 at 336 [*Mootoo I*].

<sup>6</sup> *Mootoo II* at 416 quoting *AG v. Antigua Times Ltd.* (1975) 21 WIR 560 at 574.

[9] The characterization of the burden to overcome the presumption of constitutionality as “heavy,” however, refers to a canon of construction that means if a law is capable of two interpretations, the court ought to adopt the interpretation that does not offend the *Constitution*.<sup>7</sup> The court “will refrain from striking it down if the court can bring the provision into conformity with the Constitution by making reasonable adaptations, additions or modifications to the provision.”<sup>8</sup> Where the *Constitution* provides for exceptions to the protection of rights, those exceptions must be narrowly interpreted to avoid eroding the substance of the fundamental rights protected.<sup>9</sup>

[10] The presumption of constitutionality as a burden of proof, on the other hand, merely requires proof on a balance of probabilities.<sup>10</sup> This less taxing burden has been applied in Belize when the Caribbean Court of Justice (CCJ) held that the party alleging unconstitutionality has the burden to establish “at least a *prima facie* transgression.”<sup>11</sup> For the Court to be able to find that any aspect of the *Sugar Act* is unconstitutional, the transgression of a claimant’s constitutional right must not be “merely indirect, incidental or consequential.”<sup>12</sup>

### 2.3 Justification/Proportionality

[11] If the Claimants prove a *prima facie* case of a violation, the onus shifts to the AG to present clear evidence that the breach of the constitutional right is justified. This shift reflects that the AG is in the best position to aid the court:<sup>13</sup>

The state has access to the information giving rise to policy decisions in the interests of the public and it makes good sense that it should bear the burden of establishing a measure is justified. The state should not require the court to speculate about the considerations that give rise to justification.

[12] The fundamental rights and freedoms protected by the *Constitution* are:

...subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said

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<sup>7</sup> Robinson, T, “The Presumption of Constitutionality” (2012) 37 WILJ 1 at 3 [Robinson 2012]

<sup>8</sup> *COP v. Nias*, (2008) 73 WIR 201 (St K-N) at para 11.

<sup>9</sup> *AG (Bahamas) v. Ryan* [1980] AC 718 at 728.

<sup>10</sup> *Robinson v. AG (Jamaica)* [2019] JMFC Full 04 at para 112. [Robinson].

<sup>11</sup> *Bar Association of Belize v. AG (Belize)* [2017] CCJ 4 (AJ) at para 22 [Belize Bar].

<sup>12</sup> *Frank Hope v. New Guyana Co. Ltd.* (1979) 26 WIR 233 at 265.

<sup>13</sup> Robinson, T, “The Presumption of Constitutionality” (2012) 37 WILJ 1 at 18.

rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.<sup>14</sup>

Therefore, a violation can only be justified on the grounds that the law is in the public interest or is necessary to protect the rights and freedoms of others.<sup>15</sup>

[13] The articulation of the proportionality test from the Canadian case of *R v. Oakes*<sup>16</sup> has been adapted and applied in the Commonwealth Caribbean to determine if a violation is justified:<sup>17</sup>

1. The law must be directed at a proper purpose that is sufficiently important to warrant overriding fundamental rights or freedoms;
2. The measures adopted must be carefully designed to achieve the objective in question, that is to say rationally connected to the objective which means that the measures are capable of realizing the objective. If they are not so capable, then they are arbitrary, unfair or based on irrational considerations;
3. The means used to achieve the objective must violate the right as little as possible;
4. There must be proportionality between the effects of the measures limiting the right and the objective that has been identified as sufficiently important, that is to say, the benefit arising from the violation must be greater than the harm to the right.

[14] The test for proportionality has been described as requiring that “the nature and extent of the State’s interference with the exercise of the right...must be proportionate to the goal it seeks to achieve....”<sup>18</sup> The test to justify the infringement imports “a high standard of accountability” because these rights are enshrined in the *Constitution* as a guarantee and means of their protection.<sup>19</sup> Laws that interfere with constitutional rights are intended to be the exception.

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<sup>14</sup> *Constitution* at s. 3.

<sup>15</sup> *Fundamentals of Caribbean Constitutional Law* at para 9-021.

<sup>16</sup> 26 DLR (4<sup>th</sup>) 200 (SCC) [*Oakes*].

<sup>17</sup> *Robinson* at para 108.

<sup>18</sup> *Robinson* at para 87 quoting *Puttaswamy v. Union of India* Writ Petition (Civil) No. 494 at 2012 at para 198.

<sup>19</sup> *Robinson* at para 106.

### 2.3.1 Equal Protection of the Law

[16] BSI and Mr. Navarro have asserted that numerous provisions of the *Sugar Act*, both by their design and application, violate several of their constitutional rights. The first among these rights is the right to equal protection of the law. BSI and Mr. Navarro allege that the government has not brought the other sugar manufacturer, Santander Sugar Group (Santander), and many cane farmers who sell to Santander, under the purview of the *Sugar Act*.

[17] The content and nature of the right to equal protection of the law is often explained with reference to the description in *The Maya Leaders Alliance v. Attorney General (Belize)*:<sup>20</sup>

The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.” The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.

The Parties’ submissions demonstrate a shared understanding that sections 3(a) and 6 of the *Constitution* guarantee more than access and procedural rights and can give rise to a separately enforceable right. All persons, “whatever their race, place of origin, political opinions, colour, creed or sex,” are also protected against the State’s arbitrary and irrational exercise of power. In this way, equal protection of the law is fundamental to the rule of law.

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<sup>20</sup> *The Maya Leaders Alliance v. AG (Belize)* [2015] CCJ 15 [*Maya Leaders*].

[18] The Claimants assert there exists a free-standing right to equal protection of the law. A clear test for the breach of such a right has not emerged. The starting point, undoubtedly, is recognition of its potential for far-reaching application. Of the free-standing right to equal protection of the law, the CCJ has said:<sup>21</sup>

... the right to the protection of the law is so broad and pervasive that it would be well nigh impossible to encapsulate in a section of a Constitution all the ways in which it may be invoked or can be infringed.

*Maya Leaders* explains how, outside of the denial of procedural fairness rights, section 3(a) can be breached:

The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy. (emphasis added).

By referring to “appropriate cases”, the CCJ makes it clear that not all cases where a person’s constitutional rights have been frustrated will result in a violation of subsection 3(a).

[19] One cannot overlook the context of the cases where the courts have recognized a free-standing right to equal protection. In each case, despite calling the right free-standing, a breach of the right to equal protection was only found because two conditions were satisfied. First, the government had a duty to act to prevent the breach of another fundamental right and failed to do so. Second, meaningful redress or remedy for that breach was unavailable.

[20] The *Maya Leaders* case involved a claim to enforce indigenous property rights which the Government of Belize conceded were protected by the *Constitution*.<sup>22</sup> The CCJ held that:<sup>23</sup>

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<sup>21</sup> *A-G v. Joseph and Boyce* [2006] CCJ 3 (AJ) at para 60 [*Joseph and Boyce*].

<sup>22</sup> *Maya Leaders* at para 10.

<sup>23</sup> *Maya Leaders* at para 59.

...the Government of Belize was under a duty to take positive steps to recognize Maya customary land tenure and the land rights flowing therefrom and, without detriment to other indigenous communities, to delimit, demarcate and title or otherwise establish the legal mechanisms necessary to clarify and protect these rights in the general law of the country.

Implicit in the CCJ's analysis is the understanding that the government's failure to act to protect indigenous rights may result in the frustration of those rights to the point of extinguishment. Therefore, no meaningful redress for that breach was available. Indigenous land rights could not be protected without government intervention because existing property regimes would need to be modified to recognize these rights.<sup>24</sup>

[21] In *Jamaicans for Justice v Police Service Commission*,<sup>25</sup> the Privy Council found that the right to equal protection of the law imposed a duty on the Police Service Commission to investigate serious allegations that an officer being considered for promotion had engaged in extrajudicial executions in response to gang violence. The officer led a police unit that had repeatedly been accused of "taking the law into their own hands in dealing with [the violent crime], thus risking violations of the right to life, to due process of the law, and to equality before the law of the people involved."<sup>26</sup> As with *Maya Leaders*, the constitutional guarantee of equal protection of the law imposed a positive duty on the State to ensure the protection of fundamental rights of those that might find themselves the target of police suspicion.

[22] The government's failure to give effect to domestic legislation that prescribed specific conditions for the detention of 2 children was the basis of the claim of a violation of the right to equal protection of law in *Commissioner of Prisoners v Seepersad*.<sup>27</sup> The Privy Council found that the right to special treatment of children in criminal proceedings embodied in the *United Nations Convention on the Rights of the Child* and other international instruments was a special contextual feature to be considered.<sup>28</sup> Children are the most vulnerable members of society and can only be deprived of their liberty in a manner that is in keeping with the recognition of their

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<sup>24</sup> *Maya Leaders* at para 60.

<sup>25</sup> [2019] UKPC 12 [*Jamaicans for Justice*].

<sup>26</sup> *Jamaicans for Justice* at para 28.

<sup>27</sup> [2021] UKPC 13 [*Seepersad*].

<sup>28</sup> *Seepersad* at para 56.

inherent dignity and their unique needs and circumstances.<sup>29</sup> The Privy Council held that a breach was not avoided by proof that the children’s procedural rights were not violated and they had not suffered cruel and unusual treatment.<sup>30</sup>

[23] The Privy Council in *Seepersad* referred to their earlier decision in *Maharaj v. Prime Minister (Trinidad and Tobago)*,<sup>31</sup> to highlight the role of meaningful redress in a finding of a breach of the right to equal protection of the law:<sup>32</sup>

The central theme of these passages and the later passage at para 43 is that, while the right to the individual’s protection of the law is capable of being fulfilled by the availability of an efficacious and timeous remedy through judicial proceedings, a breach will arise where the remedy “cannot be or is not provided”: para 40. The Board considers these words to be of some importance. The “cannot be” scenario will typically arise in a case where the affected person has not initiated legal proceedings because no appropriate remedy is available. In contrast, the “is not” scenario will normally arise in a case where the person concerned has indeed pursued legal proceedings in which event the focus will be on an adverse outcome or whether any remedy secured thereby was both prompt and efficacious.

The children’s right to equal protection of law was violated because of the absence of a “*prompt and efficacious* judicial remedy” for the government’s failure to give effect to the special provisions to protect incarcerated children in domestic legislation.<sup>33</sup>

[24] In *Maharaj*, the claimant’s due process rights were violated when the government decided not to reappoint him to the Industrial Court based on allegations of misconduct.<sup>34</sup> Mr. Maharaj was not given an opportunity to respond to those allegations. The court was concerned that the breach of his procedural rights occurred within the context of a judicial appointment:

Where a serving member of the judiciary is not afforded the chance to defend his reputation against such allegations, the integrity and independence of the judiciary are obviously implicated.

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<sup>29</sup> *Seepersad* at para 71.

<sup>30</sup> *Seepersad* at para 72.

<sup>31</sup> [2016] UKPC 37 [*Maharaj*].

<sup>32</sup> *Seepersad* at para 55.

<sup>33</sup> *Seepersad* at para 74 and 75.

<sup>34</sup> *Maharaj* at para 1.

Although judicial review was open to Mr. Maharaj, the Privy Council held that he was denied equal protection of the law. The Privy Council found that no tangible redress, such as reappointment, was available to him because of delay in having the matter resolved.<sup>35</sup> The importance of judicial independence to the rule of law was further justification for finding a breach of Mr. Maharaj’s right to equal protection of the law.

[25] The foregoing establishes that BSI and Mr. Navarro have the burden to prove a *prima facie* case that (1) the government had a duty to act to prevent the breach of another fundamental right and failed to do so and, (2) meaningful redress or remedy for that breach is unavailable. If a *prima facie* case that the Claimants’ rights to equal protection is established, the burden shifts to the AG to justify the breach on the basis that the breach was in the public interest or necessary to protect the fundamental rights of others.

### 2.3.2 Non-Discrimination

[26] Section 3 of the *Constitution* guarantees all persons, “whatever their race, place of origin, political opinions, colour, creed or sex” fundamental rights and freedoms. Only differentiated treatment that is required to “respect [...] the rights and freedoms of others and for the public interest,” as outlined in subsection 3(a), can offer a valid reason to infringe a person’s right to equality before the law. Subsection 6(1) adds that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

Freedom from discriminatory laws and treatment is further protected in section 16 of the *Constitution*.

[27] In their submissions, BSI and Mr. Navarro emphasize that section 16 prohibits laws that are “discriminatory either of itself or in its effect” or that treat a person in “a discriminatory manner.” For different treatment to amount to discrimination under section 16, that discrimination must be based on an enumerated ground listed in the definition of “discriminatory” found in subsection 16(3):

In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective

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<sup>35</sup> *Maharaj* at para 43.

descriptions by sex, race, place of origin, political opinion, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

For the purposes of section 16, it is simply not enough to point to different treatment or effect of the law. That difference must arise from a personal characteristic listed in subsection 16(3).

### 2.3.3 Right to Work

[28] As Chabot J. outlined in *Caribbean Investment Holdings Ltd. v. AG (Belize); Courtney Coye LLP v. AG (Belize)*,<sup>36</sup> “[i]t is common ground that section 15 of the Constitution protects not an absolute right to work, but the right not to be deprived of an opportunity to gain a living through work that is freely chosen and accepted.” Moreover, she held:

168. The case law does not recognise a quantitative dimension to the right protected under section 15 of the Constitution of Belize. Indeed, the word “opportunity” in section 15 protects the right to have access to work, not the right to benefit from a certain amount of work. In both *H.T.A. Bowman* and *Petroleum Haulers*, the courts found violations of section 15 where a licensing scheme prevented individuals from having *any* access to the exercise of their chosen profession or to a market for their products. In *Lucas and Carillo*, the CCJ refers to cases where an unmarried woman is “deprived of the opportunity to work” (*Maria Roches v Clement Wade*), where membership in an association is a pre-condition to obtaining a statutory licence (*Petroleum Haulers*), and where a person is removed from office contrary to the provisions of the Constitution (*Innis v The Attorney General of Saint Christopher & Nevis* and *Horace Fraser v Judicial and Legal Services Commission*). In all of these examples, a denial of access to *any* work was the impetus for the finding of violation of the right to work.

169. By contrast, courts have never found a violation of section 15 where an individual’s ability to work was limited but not denied. In *Lucas and Carillo*, the CCJ found no violation of the claimant’s right to work as a result of a suspension which prevented her from performing her duties for a temporary

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<sup>36</sup> Sup. Ct. Claim nos. 66 and 77 of 2017 (Consolidated) [*Caribbean Investment*].

period. Similarly, in *Fort Street Tourism Village*, the Court of Appeal declined to find a violation of section 15 as a result of the claimant's loss of business caused by the construction of a wall making it less convenient for tourists to access the claimant's business premises.

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174. It is through the lens of human dignity that the protection afforded by section 15 of the Constitution of Belize must be read. Section 15 guarantees a right to decent work. As explained by the UN Committee,

Work as specified in article 6 of the Covenant must be decent work. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.

175. Section 15 of the Constitution of Belize does not protect an absolute right to choose one's work. It protects the rights of the citizens of Belize to have access to dignified work, work which they can freely choose to enter into, for which they receive adequate remuneration, and from which they are safe from harm.

[29] The right to work has been further described as follows: <sup>37</sup>

While it is often referred to as the right to work, what is in fact guarantee is not the right to work but the opportunity to work...In order for section 15(1) to be breached in so far as denial of the opportunity to work is concerned, legislation or some statutory instrument would have to provide that the claimants were not entitled to engagement in the [*sic*] any business or in a particular type of business.

[30] The case law is clear. A *prima facie* case that BSI and Mr. Navarro's right to work has been breached requires proof that they have been denied the opportunity to work. Limitation of that opportunity is not sufficient.

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<sup>37</sup> *Fort Street Tourism Village Ltd. v. AG (Belize)* Civ. Ap. no. 4 of 2008; *Fort Street Tourism Village Ltd. v. Maritime Estates Ltd.* Civ. Ap. no. 7 of 2008 at para 47 [Fort Street].

### 2.3.4 Free Association

[31] The Parties agree that requiring membership in an association to engage in business activities infringes sections 13(1) and 15(1) of the *Constitution*.<sup>38</sup> Although the *Sugar Act* was amended to clearly express that membership in an association is voluntary, a breach will still arise if there is no practical or lawful way for Mr. Navarro to sell sugar cane to BSI without being a member of an association. A *de facto* requirement of membership cannot be saved by a declaration that membership is voluntary.

### 2.3.5 Right to Property

[32] The right to own property in Belize is not absolute. Subsection 3(d) of the *Constitution* provides “protection from arbitrary deprivation of property.” While section 3 permits limits on property rights in order to protect the rights and freedoms of others or the public interest, section 17 outlines additional criteria for the lawful taking of property by the State:

17.-(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that,

(a) prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time; and

(b) secures to any person claiming an interest in or right over the property a right of access to the courts for the purpose of,

(i) establishing his interest or right (if any);

(ii) determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;

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<sup>38</sup> *Belize Petroleum Haulers Association v. Habet* Civ. Ap. no. 20 of 2004 at para 15 [*Petroleum Haulers*].

(iii) determining the amount of the compensation to which he may be entitled; and

(iv) enforcing his right to any such compensation.

(2) Nothing in this section shall invalidate any law by reason only that it provides for the taking possession of any property or the acquisition of any interest in or right over property,

(a) in satisfaction of any tax, rate or due;

(b) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law;

(c) by way of taking a sample for the purposes of any law;

(d) as an incident of any deposit required to be made with the Government of a reasonable number of copies of every book, magazine, newspaper or other printed work published in Belize;

(e) where the property consists of an animal, upon its being found trespassing or straying;

(f) as an incident of a lease, tenancy, mortgage, charge, bill of sale or any other right or obligation arising under a contract;

(g) by way of requiring persons carrying on business in Belize to deposit money with the Government or an agency of the Government for the purpose of controlling credit or investment in Belize;

(h) by way of the vesting and administration of trust property, enemy property, the property of deceased persons, persons of unsound mind or persons adjudged or otherwise declared bankrupt or the property of companies or other societies (whether incorporated or not) in the course of being wound up;

(i) in the execution of judgments or orders of courts;

(j) in consequence of any law with respect to the limitation of actions;

(k) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(l) for the purpose of marketing property of that description in the common interests of the various persons otherwise entitled to dispose of that property; or

(m) for so long only as may be necessary for the purpose of an examination, investigation, trial or enquiry or, in the case of land, the carrying out on the land,

(i) of work of soil conservation or the conservation of other natural resources; or

(ii) of agricultural development or improvement which the owner or occupier of the land has been required and has without reasonable and lawful excuse refused or failed to carry out.

...

The foregoing establishes that the *Sugar Act* can only deprive BSI of their property for a public purpose, and the deprivation must be authorized by law. BSI is also entitled to reasonable compensation unless a circumstance listed in subsection 17(2) exists. Therefore, a finding that property was taken in the public interest does not negate the requirement of compensation.

[33] The only exception to the prohibition against deprivation of property without compensation that is relevant in this case is if the deprivation is the result of a valid tax. To be a tax for the purposes of subsection 17(2)(a), a levy must be imposed by the State or other public authority, be compelled, and the levy must be used for public purposes.<sup>39</sup>

### 3 Preliminary Issues

[34] Before I consider the substance of the claim, I wish to address two preliminary issues. First, the AG has argued that BSI and Mr. Navarro should be barred from bringing this claim because they have acted with unreasonable delay. Next, I will provide some initial analysis on the AG's over-arching assertion that any violation of the *Constitution* by the *Sugar Act* is justified because the *Sugar Act* has been implemented to further the public interest.

#### 3.1 Delay

[35] The AG asserts that the Claimants have been operating within the regulatory regime created by the *Sugar Act* since its enactment, but have not acted promptly to bring forward this claim. The AG further alleges that by participating in

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<sup>39</sup> *IRC v. Lilleyman et al.* (1964) 7 WIR 496 at 504 [*Lilleyman*].

consultations related to the regime, BSI, in particular, has acquiesced to any violation of their constitutional rights.

[36] As with any claim, this Court will dismiss a constitutional claim when bringing it after much delay amounts to an abuse of process. The Court is particularly concerned where the constitutional claim seeks to avoid timelines of its ordinary, non-constitutional jurisdiction.<sup>40</sup> Likewise, where there has been a single incident that gave rise to the constitutional claim and a party has acted with delay in bringing the claim, the Court may find that they are out of time.<sup>41</sup> The ongoing application of an allegedly unconstitutional provision of a statute, however, is a continuous breach. The Claimants are not precluded from challenging the legality of the provisions because they have conducted themselves as if those provisions are lawful.

[37] Similarly, BSI cannot be said to have waived their rights to challenge the legality of provisions of the *Sugar Act* by participating in consultations prior to the enactment of recent amendments. To find otherwise, would set a very dangerous precedent that would discourage public participation in the development and amendment of legislation. Moreover, unless there is an express provision in a statute, persons are not free to waive compliance even where they challenge the legality of that statute. Participation in the industry is not consent to the regulations.<sup>42</sup> While there are circumstances where the State can infringe on a person's constitutional rights and where a person may decline to exercise their rights, these rights can never be waived.

### **3.2 Public Interest**

[38] The AG has invoked the public interest as justification for any breach the Court may find of BSI and Mr. Navarro's constitutional rights. The AG argues that the *Sugar Act* is lawful because of the social and economic importance of the industry in Belize. Much of the regime is also implemented through a public authority performing public functions. The AG argues that section 14 of the *Sugar Act*, which expressly designates the SICB a "public authority" for the purposes of the *Public Authorities Protection Act*,<sup>43</sup> confirms the *Sugar Act* has a public purpose and is in the public interest.

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<sup>40</sup> *Durity v. AG (Trinidad & Tobago)* [2002] UKPC 20 at para 35.

<sup>41</sup> *Sealy v. AG (Guyana)* [2008] CCJ 11 (A.J) at 12.

<sup>42</sup> *Trinidad Island-Wide Cane Farmers' Association Inc. v. Seereram* (1975) 27 WIR 329 at 339-340 [Seereram I].

<sup>43</sup> Cap. 31, *The Substantive Laws of Belize*, Rev. Ed. 2020.

[39] BSI and Mr. Navarro submit that the AG has not provided any evidence to support the claim that the sugar industry is of social and economic importance to Belize, especially as the country has all but eliminated government ownership of sugar manufacturing. They also assert that designation as a public authority is irrelevant to the question of whether the *Sugar Act* is in the public interest because public functions can be performed by private entities. Instead, the Court must decide if the challenged aspects of the *Sugar Act* serve a valid public purpose.

[40] Although processing is no longer conducted in a state-owned enterprise, the National Assembly has chosen to remain highly involved in the regulation of the sugar industry. The *Sugar Act* was enacted to:<sup>44</sup>

...make new and better provisions for the administration and control of the sugar industry in Belize; to provide for the organizational structure of the sugar industry...; to consolidate the laws regulating the control of the sugar industry.

BSI and Mr. Navarro, in their written and oral submissions, have invited this Court to recognize that the degree of this continued involvement serves no public interest and is “unjustifiable in a democratic society.”

[41] My task, however, is limited to assessing whether provisions of the *Sugar Act* violate the Claimants’ constitutional rights. I am not tasked with, nor would it be appropriate for me to make general findings regarding the degree to which the National Assembly has chosen to regulate some industries over others.

[42] The Preamble to the *Constitution* provides:

WHEREAS the people of Belize-

...

(b) *respect* the principles of social justice and therefore believe that the operation of the economic system must result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions, but there should be opportunity for advancement on the basis of recognition of merit, ability and integrity....

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<sup>44</sup> Act no. 27 of 2001.

There is nothing inherently undemocratic about the State's involvement in the country's economic system. The Preamble can be relied upon to argue that a high degree of the National Assembly's involvement in the economic system is justified to ensure the just distribution of the material resources of the community. The Preamble can equally be relied upon to argue the opposite if one believes that an unregulated free market best achieves those ends.

[43] Courts should be slow to interfere with legislative processes that support the policy decisions of governments:<sup>45</sup>

It is for Parliament to strike the balance between individual rights and the general interests. The courts may on occasion have to decide whether Parliament has achieved the right balance.

To respect the *Constitution's* separation of powers, the judiciary ought to be circumspect and resist the temptation to impose its own preference for how that balance ought to be struck:<sup>46</sup>

A wide margin is usually allowed to the State when it comes to general measures of economic or social strategy. This is due to the fact that the State's direct knowledge of the society and what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choices unless it is "manifestly without reasonable foundation."

[44] The test for what constitutes a public purpose is objective and considers whether the general interests of the community versus the interests of particular individuals are furthered.<sup>47</sup> While public ownership of aspects of the sugar industry would support a finding that the government is acting in the public interest when it regulates the industry, the absence of public ownership does not preclude such a finding. Likewise, I agree with the Claimants that designation of entities created by the *Sugar Act* as a public authority is not determinative. That designation is just one factor to consider in the objective test. Action by States that materially helps the national economy, that protects public health, or that promotes the general welfare of the community have been recognized as having a public purpose.<sup>48</sup>

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<sup>45</sup> *Suratt v. AG (T&T)* 71 WIR 391.

<sup>46</sup> *Cunha v. AG (Belize)* Sup. Ct. Claim no. 175 of 2020 [*Cunha*] at para 18 quoting *R v. Julie Delve et al and the Secretary of State for Work and Pensions* [2020] EWCA Civ 1199.

<sup>47</sup> *Petit v. Secretary of State for India* (1914) LR vol XLII (Indian Appeals) 44 at 47.

<sup>48</sup> *Narayan Singh v. Bihar* (1978) AIR 136 at 138.

[45] The Privy Council has held that the expropriation of land in support of the general “development of tourism” undeniably served a public purpose in Saint Lucia.<sup>49</sup> I, likewise, find that the regulation of the sugar industry in Belize serves a public purpose. Like tourism in Saint Lucia, this Court does not need specific data on the sugar industry’s contribution to the national economy and Gross Domestic Product (GDP) to appreciate that the industry is of social and economic importance to Belize.

[46] Cane farming is regularly the sole occupation of many people who frequent my Court. Even if the sugar industry is a small component of Belize’s GDP, it is undeniable that cane farming makes a significant contribution to the income of many multigenerational households. That many families are willing to dedicate what financial resources they have to defend their right to continue to farm when access to their cane fields is threatened underscores the social and economic importance of the sugar industry in Belize.

[47] By the Claimants’ own admission, the industry has gone through a significant transformation from the manufacturing being entirely publicly owned to one that is overwhelmingly private. There are also only 2 manufacturers in the country (with the second manufacturer only entering Belize in the last 5 years). The organization of cane farmers has also changed significantly in recent years with the creation of new associations. With this context, that the government continues to believe the industry requires regulation is not unreasonable.

[48] Mere recognition that the sugar industry is of social and economic importance to Belize, however, is insufficient to satisfy the objective test. The AG must still demonstrate how each impugned provision of the *Sugar Act* is in the public interest to justify infringing a constitutional right.

#### **4 Analysis**

[49] The present claim can be bifurcated into two broad complaints. The first complaint arises from BSI and Mr. Navarro’s allegation that the State entities empowered to implement and enforce the *Sugar Act* do not apply the Act to Santander and cane farmers in western Belize. The Claimants have asked this Court to find that this differentiated treatment is discriminatory and a violation of their right to equal protection of the law. Their second complaint focuses on the constitutionality

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<sup>49</sup> *Williams v. The Government of the Island of Saint Lucia* (1969) 14 WIR 177 at 180.

of specific provisions of the *Sugar Act*, which they say infringe their constitutional rights to work, to freedom of association, and to property.

[50] The Parties decided to proceed to trial on the strength of 6 affidavits filed with the originating claim and reply. The AG submitted 2 affidavits from Mr. Jose Novelo, the Coordinator Traditional Exports and Grains and the Director of the Project Execution Unit within the Ministry of Agriculture. Mr. Navarro submitted an affidavit and Mr. Shawn Chavarria, Director of Finance for BSI, submitted 3 affidavits. Although a handful of exhibits were attached to Mr. Novelo and Mr. Chavarria's affidavits, no further evidence was presented, and no witnesses were cross-examined. I have been challenged by this paucity of evidence to determine the constitutionality of the implementation of the *Sugar Act*.

## 4.1 Differentiated Treatment

### 4.1.1 Discrimination

[51] BSI and Mr. Navarro claim that they have been discriminated against based on their place of origin. As a cane farmer from the northern region of Belize, Mr. Navarro alleges that he is subject to regulations under the *Sugar Act* which do not apply to cane farmers from the western region. BSI similarly alleges that the *Sugar Act* does not apply to Santander. The Claimants, however, have not provided any authorities in support of their contention that differentiated treatment based on where one resides within a country can be discrimination based on place of origin within the meaning of the *Constitution*. I have not been persuaded that any different treatment Mr. Navarro and BSI may have experienced is discrimination based on place of origin.

[52] Neither a plain reading nor a generous and purposive interpretation<sup>50</sup> of place of origin in the *Constitution* support a finding that differentiated treatment based on where one resides alone is sufficient to ground a claim for a constitutional violation. A purposive approach to interpreting the *Constitution* begins with the text used.<sup>51</sup> Common definitions of 'origin' refer to a beginning, arising, or the source.<sup>52</sup>

[53] Origin must also be interpreted in a way that supports the purpose of the protection. The CCJ has held that the constitutional protection of equality and non-

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<sup>50</sup> *Attorney General (Grenada) v. The Grenadian Bar Association*, GDACVAP1999/008 at para 7.

<sup>51</sup> *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32.

<sup>52</sup> See e.g. "Origin." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/origin>. Accessed 31 Jul. 2023.

discrimination is connected to respect for the inherent dignity of persons.<sup>53</sup> The Belize Supreme Court, as it then was, has further held that “to sustain a claim for discrimination there must be different and less favourable treatment based on an identifiable characteristic, that is capable of amounting to discrimination.”<sup>54</sup> Where one resides is a mutable characteristic unlike one’s gender, sexual orientation, race, or disability. The Claimants have also failed to establish that where they reside is akin to their family status such that to be denied equality under the law or to be discriminated against on that basis offends their human dignity and, therefore, is unconstitutional.

[54] Cases which have dealt with this subject from outside of Belize reveal that discrimination based on place of origin has only been found where the discriminatory treatment was connected to the claimant’s ethnicity or nationality. The Bermuda’s Court of Appeal in *Minister of Home Affairs v. Williams* has interpreted place of origin as belonging to a place other than Bermuda.<sup>55</sup> This decision was based on an earlier Privy Council decision that considered the meaning of place of origin in Bermuda’s *Human Rights Act 1981*.<sup>56</sup> Despite also prohibiting discrimination based on national origin, the court interpreted place of origin to mean someone who is not from Bermuda. The need to distinguish nationality from place of origin reflects that Bermudans share a common nationality with many people not from Bermuda as a consequence of their status as a British Overseas Territory. Similarly, place of origin in the Constitution of Vanuatu was interpreted as prohibiting discrimination between local-born and naturalized citizens.<sup>57</sup> The Supreme Court of Zimbabwe has also found that land reform initiatives that only targeted landowners of “foreign origin” was discrimination based on place of origin.<sup>58</sup> The use of place of origin in the *Constitution* likely reflects Belize’s shared colonial history with Bermuda, Vanuatu, and Zimbabwe where persons could share a common nationality (i.e. be UK subjects), but be from another place.

[55] I have been unable to locate any Belizean jurisprudence that comprehensively considered the meaning of place of origin in the *Constitution*. An interlocutory decision in *Kilic v. Fort Street Tourism Village*<sup>59</sup> offers only a passing reference to place of origin when considering whether requiring security for costs from non-

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<sup>53</sup> *McEwan v Attorney General (Guyana)*, [2018] CCJ 30 (AJ) at para 68.

<sup>54</sup> *Cunha* at para 17.

<sup>55</sup> *Minister of Home Affairs v. Williams* (2016) 88 WIR 213 at para 29 [*Williams*].

<sup>56</sup> *Thompson v Bermuda Dental Board* [2008] UKPC 33 at paras 40 and 41.

<sup>57</sup> *Bohn v Republic of Vanuatu* [2013] VUSC 42, [2013] 5 LRC 211.

<sup>58</sup> *Commercial Farmers Union v. Minister of Lands, Agriculture and Resettlement and others* (2000) 10 BHRC 1.

<sup>59</sup> Sup. Ct. Claim no. 540 of 2013 [*Kilic*].

residents was discriminatory. Nonetheless, the reference in *Fort Street* reflects the same understanding of place of origin as the cases just discussed.<sup>60</sup> I have not been provided with any evidence on the history of the choice to use place of origin in the *Constitution*. The absence of any other reference to ethnicity or nationality in the anti-discrimination provisions of the *Constitution* nonetheless supports interpreting place of origin as prohibiting discrimination based on race, ethnicity, or nationality.

[56] In the absence of any evidence that Mr. Navarro’s location of residence is serving as a proxy for discrimination based on race, ethnicity, or nationality, Mr. Navarro has not established a *prima facie* case of discrimination. BSI has also not raised a *prima facie* case that it has been discriminated against based on a prohibited ground. Their objections to the *Sugar Act* are primarily concerned with where and from whom they must source their sugar cane and the accompanying obligations and restrictions that follow, not discrimination based on their place of origin. Any discrimination, therefore, is more accurately described as based on where they do business and not their place of origin. Moreover, BSI has not provided the Court with sufficient information to determine where their place of origin would be in the event I have incorrectly interpreted the scope of the right. BSI is the successor of many companies. Is their place of origin the corporate office of the first company or BSI’s current corporate office?

[57] I decline to adopt the broad interpretation of place of origin suggested by the Claimants. Consequently, Mr. Navarro and BSI are not entitled to any declarations that the *Sugar Act* unlawfully discriminates against them and is null and void for breaching sections 6 and 16 of the *Constitution*.

#### **4.1.2 Equal Protection of the Law**

[58] BSI and Mr. Navarro root their claim that the *Sugar Act* violates their right to equal protection of the law in their belief that the Act is fundamentally unfair, unreasonable, and arbitrary. Specifically, they assert that the government has failed to give effect to the *Sugar Act* in the west of Belize where Santander purchases cane from farmers for grinding and export. They find support for this position in the frequently cited line from *A-G v. Joseph and Boyce* that the constitutional guarantee of the equal protection of law safeguards against “irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.”<sup>61</sup> Although they allege multiple other breaches of their constitutional rights, the Claimants argue that a

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<sup>60</sup> *Kilic* at para 20.

<sup>61</sup> *Joseph and Boyce* at para 314.

broad and generous interpretation of the right supports a finding that violation has occurred independent of this Court finding a breach of any other constitutional right.

[59] The interpretation proposed by the BSI and Mr. Navarro is not consistent with the existing jurisprudence on the nature and scope of the right to equal protection of the law.<sup>62</sup> Consequently, the Claimants have not established a *prima facie* case that their right to equal protection of the law has been breached. They have not turned their mind to, and thus failed to demonstrate, whether (1) the government had a duty to act to prevent the breach of another fundamental right and failed to do so, and whether (2) meaningful redress or remedy for that breach is unavailable. While it is open to this Court to expand the scope of the right to equal protection of the law in the manner proposed by the Claimants, I decline to do so.

[60] The language from *Joseph and Boyce* must be assessed in context. Whether the court had jurisdiction to review a decision to carry out a death sentence was the central issue. Equal protection of the law was invoked to bolster legitimate expectations that procedural fairness guarantees would be respected in decisions that affected their fundamental right to life.<sup>63</sup> The reference to the meaning of equal protection of the law cited above can be found after a lengthy discussion of the function of the rule of law:<sup>64</sup>

It is clear that this concept of the rule of law is closely linked to, and broadly embraces, concepts like the principles of natural justice, procedural and substantive 'due process of law' and its corollary, the protection of the law. It is obvious that the law cannot rule if it cannot protect. The right to protection of the law requires therefore not only law of sufficient quality, affording adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power; but it also requires the availability of effective remedies.

The reference to equal protection as a *corollary* to natural justice, procedural and substantive due process of law supports the conclusion that equal protection of law operates to safeguard against breaches of the fundamental rights protected by the *Constitution* by ensuring there is an appropriate redress for violations. *Maya Leaders* expanded *Joseph and Boyce* only in so far as to say that equal protection of the law can be invoked in support of other fundamental rights and freedoms where natural justice and due process are not in issue.

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<sup>62</sup> See section 2.3.1 of this decision.

<sup>63</sup> *Joseph and Boyce* at para 128.

<sup>64</sup> *Joseph and Boyce* at para 314.

[61] *Maya Leaders*, and the cases that have followed, all stand for the proposition that the equal protection of law offers an additional layer of “protection” from the State unlawfully infringing on a person’s fundamental rights and freedoms. To hold otherwise creates the practical challenge of how to identify when differentiated treatment is lawful and when it is a constitutional breach which entitles a person to a remedy. Tying equal protection of the law to the protection of fundamental rights and freedoms avoids that problem. That the jurisprudence leads to this conclusion should also be unsurprising. Subsection 3(a), which guarantees equal protection of law, is located within Part II of the *Constitution*. Part II is titled *Protection of Fundamental Rights and Freedoms*.

[62] I decline to expand the scope of the right to equal protection of the law beyond circumstances where differentiate treatment is threatening the enjoyment of another fundamental right and no meaningful redress is available. Consequently, Mr. Navarro and BSI are not entitled to any declarations that the *Sugar Act* violated their right to equal protection of the law and is null and void for breaching sections 3(a) and 6 of the *Constitution*.

#### **4.2 Specific Features of the *Sugar Act* Being Challenged**

[63] BSI and Mr. Navarro object to 7 features of the *Sugar Act*:

- (1) Imposition of levies to fund the work of the Sugar Industry Control Board (SICB) and associated entities;
- (2) The imposition of a levy on sugar exports;
- (3) The imposed beginning and end of the grinding season;
- (4) The annual quota on the amounts of sugar BSI can purchase;
- (5) The geographical restrictions on sugar purchases by BSI;
- (6) The registration requirements for sugar cane farmers; and,
- (7) Regulation of production by the Sugar Cane Production Committee (SCPC).

##### **4.2.1 Levy to fund Sugar Industry Control Board (SICB) and associated entities**

[64] Each year the manufacturers and associations are required to pay the SICB’s anticipated expenditures including the expenses of the Sugar Cane Quality Control

Authority (SCQCA), the Sugar Cane Production Committee (SCPC), and the Sugar Industry Research and Development Institute (SRDI):

10(1) The expenses of the Board and, subject to the approval of the Board, the expenses of its authorized agencies, shall be met from the *Sugar (Industry Development) Fund*.

(2) The Board shall on or before the 30th September in each year submit to the manufacturers and to the association an estimate of their expenditure for the year commencing on 1st November next ensuing and the manufacturers and the associations shall deposit with the Board their respective shares of such estimated expenditure on or before the 30th October next following the receipt of the estimates of expenditure,

(3) For the purposes of subsection (1) of this section “authorized agencies” means the Sugar Cane Quality Control Authority, the Sugar Cane Production Committee, and the Sugar Industry Research and Development Institute.

Provided that, subject to the Board’s approval, the respective shares of the estimated expenditure, may be paid by quarterly instalments payable in advance.

In addition, subsection 31(1) of the *Sugar Act* provides that manufacturers and farmers will pay the expenses of the SCQCA:

(1) The funds of the SCQCA shall be made up of,

(a) such amounts as may be determined by the Board from time to time, to be contributed in each financial year by the manufacturers and the Association in a ratio of fifty per cent for cane farmers, and fifty per cent for manufacturers;

For ease of reference, I will refer to the payments required by section 10 and 31 as annual levies.

[65] In their written submissions, BSI neglects to identify, in a summary chart of fundamental rights breached, that sections 10 and 31 of the *Sugar Act* violate sections 3(d) of the *Constitution*. I find that to be an inconsequential oversight. BSI addressed section 3(d) with section 17 in their submissions. More importantly, their pleadings clearly allege a breach of sections 3(d) and 17 of the *Constitution* and request a remedy for the unlawful deprivation of their property.

[66] I find that BSI has established that the annual levies are a *prima facie* deprivation of their property without compensation contrary to sections 3(d) and 17

of the *Constitution*. The AG has not proven the annual levies fall within one of the exceptions, listed in subsection 17(2) of the *Constitution*, where paying compensation is not required.

[67] A plain reading of sections 10 and 31 of the *Sugar Act* establishes that BSI is required to pay a proportionate share of the annual expenses of the SICB, the SCQCA, the SCPC and the SIRDI. Money is property that can attract constitutional protections.<sup>65</sup> Therefore, these payments constitute a transfer of BSI's property without compensation. The annual levies are similar to the cess charged on cane sales that was found to be an unlawful tax and an unconstitutional deprivation of Trinidadian cane farmers' property in *Trinidad Island-Wide Cane Farmers' Association Inc. v. Seereram*.<sup>66</sup>

[68] The burden shifts to the AG to establish that the infringement is justified because compensation is not required in the circumstances and the deprivation of BSI's property was in the public interest. The AG did not address why compensation was not paid. The AG also did not assert that the annual levies fell within one of the exceptions to the compensation requirements. The AG cannot rely on the argument that compensation is not required because the deprivation is in the public interest. Such an interpretation would defeat the purpose of including exceptions in the *Constitution* because all expropriations of property are subject to a public interest requirement. Similar to the constitutional limits relating to the deprivation of liberty where certain conditions must be met for the detention to be lawful, compensation is mandatory unless an exception applies.

[69] The finding just reached on compensation dispenses with the need to address whether the levies are in the public interest. I do not feel it is appropriate or an efficient use of Court resources to decide this issue despite both parties presenting arguments. Further submissions would be necessary. Neither party made submissions on the significance of the Court finding that the annual levies support both private and public functions. Is it the case that if even one function is private, the annual levies are not within the public interest?

[70] Having failed to prove that the annual levies do not require that compensation be paid, the AG has not met the burden to prove the annual levies are justified. BSI is entitled to the declaration that the annual levies imposed by sections 10 and 31 of the *Sugar Act* breach their constitutional right to not be deprived of property without compensation.

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<sup>65</sup> *Lilleyman et al.* (1964) 7 WIR 496 at 503.

<sup>66</sup> *Seereram I* at 372.

#### 4.2.2 Export levy

[71] While I have no doubt that BSI pays 2% on their exports, BSI has failed to establish that they pay the export levy mandated by sections 67 and 68 of the *Sugar Act*. The *Sugar Act* imposes an export levy of 2% or \$11 (presumably per an industry recognized, standardized unit, but the *Sugar Act* is not precise and neither of the Parties explained this point) on all sugar exports to fund the Sugar (Industry Development) and the Sugar (Labour Welfare) Fund.<sup>67</sup> BSI argues that this export levy is not a valid tax and, thus, an unlawful deprivation of their property. The AG asserts that the export levy is a valid excise tax permitted under the *Customs and Excise Duties Act (Excise Act)*<sup>68</sup> that applies to all exports, not just exports from BSI. In effect, the AG argues that the export levy and excise tax are one and the same. The constitutionality of the *Excise Act* has not been raised in the Claimants' pleadings.

[72] Section 30 and schedule IV of the *Excise Act* sets an excise tax for raw sugar at 2% Ad Val. (based on the value assessed). Section 67 of the *Sugar Act*, likewise, provides that 2% (or eleven dollars whichever is less) be paid on exports:

67(1) Subject to section 69 of this Act, every exporter who, upon the commencement of this Act, either exports any sugar to which this section applies pursuant to any sale or agreement to sell or with a view to sell, or sells any sugar to which this section applies for export, shall, within such time as may be prescribed by the Board, after the receipt, whether in Belize or elsewhere, by itself or by any person on its behalf of monies,

(a) in respect of the sale of such sugar; or

(b) in the event of such sugar being lost, stolen, damaged or destroyed before the property in such sugar passes to any purchaser thereof, under any policy of insurance in relation to such sugar, pay to the Board an amount which shall be levied at the rate of **two percent or eleven dollars whichever is less**, in respect of the value of sugar so exported, sold for export or lost, stolen, damaged, or destroyed.

(2) This section applies to all sugar exported from Belize.

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<sup>67</sup> *Sugar Act*, at ss. 67 and 68(1).

<sup>68</sup> Cap.48, *The Substantive Laws of Belize*, Rev. Ed. 2020.

(3) In default of payment when due of any amount payable under this section by an exporter of sugar, such amount shall, after demand for payment has been made by the Board, be recoverable by him against the exporter as a debt due to the Government of Belize.

(4) For the purpose of this section the tonnage exported shall be deemed to be the outturn tonnage as certified by the account sales.

Section 68 directs where the funds collected by the levy are to be put:

68(1) The Board shall, subject to section 69 of this Act, allocate the amount paid to it under section 67 of this Act, to the credit of the special funds specified in section 66 of the this Act, in the following proportions,

(a) to the Sugar (Industry Development) Fund, at 92.5%; and

(b) to the Sugar (Labour Welfare) Fund, at 7.5%. (2) The Sugar (Industry Development) Fund shall also be credited with the monies hithertofore credited to the accounts of the Sugar (Rehabilitation) Fund and the Sugar (Stabilisation) Fund, and any other monies from any lawful source whatsoever approved by the Board from time to time.

[73] The burden is on BSI to prove a *prima facie* breach of their constitutional rights. In his witness statement, BSI's financial officer, Mr. Chavarria, states that BSI pays the export levy "which amounts to eleven dollars for each ton exported." This statement does not explain whether "amounts to" means that \$11 is the levy owing after BSI is charged at a 2% rate or BSI is paying the lesser amount permissible in section 68 because a rate of 2% would be more than \$11. Mr. Chavarria also makes no reference to any other export duties being paid on sugar exports despite the affidavit in reply to the Claimants' originating motion specifically relying on the *Excise Act* to justify the export levy.

[74] While I do not find the AG has proven that the export levy is a valid excise tax, it is clear that 2 separate statutes each authorize a 2% charge on sugar exports. I have no evidence before me that BSI is charged both the 2% export levy and the 2% excise tax on sugar exports. A financial statement submitted into evidence by the AG titled the "Estimated Net Stripped Value of Sugar and Molasses from the 2019 crop year," contains two notations for expenses under the category "Statutory Deductions." The first is for the "Sugar Industry Development Fund" and the second is for "Cargo Dues." I find it highly unlikely that Cargo Dues refers to the excise tax given the usual meaning of cargo and because it is 1/5 of the amount for the Sugar Industry Development Fund. If these amounts are not equivalent, the Sugar Development

Fund would be less because the *Sugar Act* permits \$11 to be charged when it is less than a 2% charge. This document, therefore, tends to support the AG's position that the export levy and the excise tax are one and the same. These notations, however, have not been explained and the maker of the financial statement has not been subject to cross-examination.

[75] BSI also does not provide any evidence or submissions that explain how and to whom the payments have been made that aids in proving that the amount charged on exports is the export levy and not the excise tax. Based on the evidence before this Court, it is equally possible that BSI is charged 2% on exports pursuant to the *Sugar Act* or the *Excise Act*. As a result, BSI has failed to establish that they have paid the export levy created by sections 68 and 69 of the *Sugar Act*, and, therefore, have been deprived of their property. BSI is not entitled to the declaration that the export imposed by sections 67 and 68 of the *Sugar Act* breach their constitutional right to not be deprived of property without compensation.

#### 4.2.3 Mandatory grinding season

[76] Subsection 6(1)(e) of the *Sugar Act* authorizes the SICB to sets an annual grinding season:

6(1) The functions of the Board shall include the following—

...

(e) fixing, in respect of each year, after consultations with the manufacturers and the association, the period or periods to be known as the grinding season during which manufacturers shall accept deliveries of sugar cane from growers and cane farmers; and specifying by order published in the Gazette the commencement and termination of each grinding season;

[77] As outlined, manufacturers are only permitted to accept delivery of cane from farmers in accordance with the schedule set by the SICB and published annually in the *Gazette*.<sup>69</sup> A manufacturer is defined in the *Sugar Act* as “a producer of sugar, ethanol or any derivative of sugar cane to whom a licence has been issued pursuant to section 58.”<sup>70</sup> BSI is a manufacturer.

[78] BSI argues that fixing the grinding session is not only unnecessary and inefficient, but constitutes an unreasonable and arbitrary restriction on their right to

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<sup>69</sup> *Sugar Act*, at s. 2.

<sup>70</sup> *Sugar Act*, at s. 2.

work. BSI emphasizes that the restriction is not justified because it is not required to further the public interest, to protect the rights of others, or aimed at restricting the right to work of non-Belizeans. BSI encourages me to interpret the right to work broadly and to recognize that the imposition of a grinding session interferes and impacts their opportunity to work.

[79] BSI offers a series of media reports and minutes of a meeting between BSI,<sup>71</sup> association representatives, and the chair of the SICB, about the consultation to set the dates for the 2021/2022 grinding season as evidence of how subsection 6(1)(e) impacts BSI's right to work. BSI also shares a letter from the SICB and their response, which BSI says was sent to pressure them to renegotiate the terms of the contract they held with one association. In the letter, SICB states that accepting cane for grinding prior to the order being published in the *Gazette* is unlawful. BSI argues that this letter, combined with minutes confirming that all parties had agreed to a December 20, 2021 start date, is proof of the unreasonable interference with their right to work. SICB published a start date for the grinding season after the date agreed to by the associations and BSI.

[80] The AG disputes BSI's characterization of the events surrounding the opening of the 2021/2022 grinding season and relies on *Fort Street* to argue that BSI's right to work is not infringed by section 6(1)(e) of the *Sugar Act*. *Fort Street* outlines that the right to work is violated when one is denied the "opportunity" to work. Section 6(1)(e) of the *Sugar Act* has not deprived BSI of the opportunity to work, but instead sets a date to promote stability and certainty for all industry stakeholders. The AG maintains that BSI and the associations had not agreed on a start date as proven by an association's refusal to deliver cane after grinding season opened. They also assert that publishing a start date after December 20, 2021, was not an attempt to interfere with BSI's contract, but the result of the normal procedure where the SICB must meet and set the date before it can be published in the *Gazette*.

[81] BSI has failed to prove a *prima facie* case that section 6(1)(e) of the *Sugar Act* violates their right to work. BSI recognizes that they have not been denied the opportunity to work, but asks that I find a violation because the SICB unjustifiably interferes with and impacts that opportunity to work. BSI has provided no authority for that proposition. Rather, BSI appeals to general calls<sup>72</sup> to broadly and generously interpret fundamental rights and freedoms found in the *Constitution*.

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<sup>71</sup> The second affidavit of Mr. Chavarria references minutes of a second meeting dated December 16, 2021, but the minutes of the December 8, 2021 are attached to the affidavit.

<sup>72</sup> See e.g. *Minister of Home Affairs v. Fisher* [1979] 2 WLR 889 at 894.

[82] While I agree with the call for broad and generous interpretations of the *Constitution*, those interpretations cannot lose sight of the fundamental values that underlie the *Constitution*. These fundamental values are reflected in the *Constitution's* Preamble and guide its interpretation.<sup>73</sup> The Preamble grounds the protection of the fundamental rights and freedoms, including the right to work, in the recognition and affirmation of the inherent dignity of individuals:

WHEREAS the people of Belize-

- (a) affirm that the Nation of Belize shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental freedoms, the position of the family in a society of free men and free institutions, **the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed** by their Creator; (emphasis added)

[83] The connection between the right to work and dignity is clear in the language of section 15:

15(1) No person shall be denied the opportunity **to gain his living** by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business, or otherwise. (emphasis added)

(2) It shall not be inconsistent with subsection (1) of this section to require, as a condition for embarking upon or continuing work, the payment of professional fees, trade or business licence fees, or similar charges, or the possession of appropriate licences or qualifications.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-

- (a) that is required in the interests of defence, public safety, public order, public morality or public health;

- (b) that is required for the purpose of protecting the rights or freedoms of other persons; or

- (c) for the imposition of restrictions on the right to work of any person who is not a citizen of Belize

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<sup>73</sup> *Nervais v. The Queen and Severin v. The Queen* [2018] CCJ 19 at [22] to [37].

Section 15 of the *Constitution* recognizes decent work is essential to self-fulfillment and survival and, therefore, protects a person's right to access work that is safe and provides adequate compensation.

[84] BSI has not overcome the presumption of constitutionality of section 6(1)(e) of the *Sugar Act*. A violation occurs when a person is denied the opportunity to work and freely pursue a livelihood in their chosen field in a manner that is an affront to their dignity.<sup>74</sup> Section 6(1)(e) places some restrictions on BSI's freedom to contract with farmers. It does not deny them the opportunity to make a living through work of their choosing.

[85] The Court risks minimizing the importance and fundamental nature of the right to work by being too quick to recognize a breach where a claimant has failed to demonstrate how the alleged breach is an affront to their dignity. BSI is not entitled to a declaration that fixing the grinding season pursuant section 6(1)(e) of the *Sugar Act* breaches their constitutional right to work and is null and void as a result.

#### **4.2.4 Annual Quota on sugar cane purchases**

[86] A plain reading of the *Sugar Act* confirms that the sugar industry is intended to operate under a system of supply management whereby the amount of sugar a manufacturer can produce is limited by a quota on the amount of sugar cane it is permitted to purchase each year. The "manufacturer's quota" is defined as "the amount of sugar cane which a manufacturer is licensed by the SCPC to receive from members of the Association." The system also limits who a manufacturer can purchase from and to whom farmers can sell their cane. BSI argues that the imposition of quota and its associated rules unlawfully interferes with their right to work.

[87] When the *Sugar Act* was passed, BSI was the sole manufacturer in Belize and only operated in the northern region. Consequently, the amount of BSI's quota and from whom the sugar cane is to be provided is explicitly listed in subsection 61:

61.-(1) In each crop year the Belize Sugar Industries Ltd., subject to grinding capacity, shall be licensed to purchase and receive one million five hundred thousand tons of sugar cane which, subject to availability, shall be supplied by the Corozal and Orange Walk divisions of the association as may be determined by the SCPC.

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<sup>74</sup> *Caribbean Investments* at para 177.

(2) Where there is in existence in any crop year other manufacturers other than the Belize Sugar Industries Ltd., such manufacturers shall be licensed to purchase and receive specified tons of sugar cane of which, subject to the grinding capacity of the manufacturers and the availability of sugar cane, a certain percentage of the number of tons shall be from the members of the Corozal Division of the association and the balance shall be from the members of the Orange Walk Division of the association, as may be determined by the SCPC.

(3) In any crop year where there is a surplus of sugar cane, other than that grown by manufacturers, over and above the manufacturer's quota as set out in sub-section (1) and (2), the SCPC shall determine the allocation of such surplus.

(4) The SCPC shall review and may revise each manufacturer's quota annually; provided that the manufacturer's quota as specified in sub-section (1) and (2), shall not be reduced. (5) Allocation of the manufacturer's quota under sub-section (2), shall be by Order published in the Gazette.

(5) Allocation of the manufacturer's quota under subsection (2) of this section, shall be by Order published in the Gazette.

Section 61 clearly limits the total amount of sugar cane BSI can purchase.

[88] As explained in the previous section, the recognition of the right to work in the *Constitution* does not preclude regulation or restrictions on how work is undertaken. For a constitutional violation to occur, quota must amount to a denial of the opportunity to work in a way that engages a person's inherent dignity.

[89] BSI has not established a *prima facie* case that it has been denied the opportunity to work by section 61 of the *Sugar Act*. I agree with the AG that section 61 operates to support BSI's opportunity to work by creating the conditions for a consistent supply of sugar cane to BSI from farmers like Mr. Navarro, and even goes so far in subsection (4) as to guarantee that supply will not be reduced. BSI is not entitled to a declaration that imposing a quota on cane purchases breaches their constitutional right to work and is consequently null and void.

#### **4.2.5 Geographical restrictions on purchases**

[90] As the previous section outlines, the *Sugar Act* imposes a quota on the amount of sugar cane BSI can purchase as well as from whom they can purchase that sugar cane. Subsection 61(1) outlines that BSI's supply "shall be supplied by the Corozal and Orange Walk divisions of the association as may be determined by the SCPC."

The daily deliveries during the grinding season are coordinated by the SCPC.<sup>75</sup> It is an offence to take delivery of sugar cane except in accordance with the schedule established by the SCPC.<sup>76</sup>

[91] BSI argues these restrictions violate their right to work because they are not permitted to directly negotiate contracts with farmers and must purchase cane grown in the north. The AG disagrees and states that the restrictions support BSI's opportunity to work by creating the conditions for a consistent supply of sugar cane. The AG also notes that BSI has never reached the upper limit of their quota, so these restrictions have not denied BSI the opportunity to work.

[92] BSI has not demonstrated a *prima facie* case that their right to work has been violated. As previously explained, a breach of section 15 of the *Constitution* occurs when the opportunity to make a living through work is denied. Regulation, including that which restricts with whom BSI can contract, does not violate BSI's right to work. BSI has not demonstrated that the restrictions put their livelihood at risk.

[93] Moreover, subsections 61(1) and (2) of the *Sugar Act* provide that all manufacturers are required to first purchase cane from Corozal and Orange Walk, subject to the supply in that region:

61.-(1) In each crop year the Belize Sugar Industries Ltd., subject to grinding capacity, shall be licensed to purchase and receive one million five hundred thousand tons of sugar cane which, subject to availability, **shall** be supplied by the Corozal and Orange Walk divisions of the association as may be determined by the SCPC.

(2) Where there is in existence in any crop year other manufacturers other than the Belize Sugar Industries Ltd., such manufacturers shall be licensed to purchase and receive specified tons of sugar cane of which, subject to the grinding capacity of the manufacturers and the availability of sugar cane, a certain percentage of the number of tons **shall** be from the members of the Corozal Division of the association and the balance **shall** be from the members of the Orange Walk Division of the association, as may be determined by the SCPC. (emphasis added)

The use of shall in subsection (2) requires other manufacturers to dedicate grinding capacity first to cane from Orange Walk and Corozal or risk violating subsection 61(2).

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<sup>75</sup> *Sugar Act* at s.17.

<sup>76</sup> *Sugar Act* at ss. 19(3) and (6).

[94] A plain reading of subsection 61(3) allows all manufacturers to purchase sugar from outside of the Corozal and Orange Walk regions, subject to permission from the SCPC:

(3) In any crop year where there is a surplus of sugar cane, other than that grown by manufacturers, over and above the manufacturer's quota as set out in sub-section (1) and (2), the SCPC shall determine the allocation of such surplus.

It is clear when section 61 is read as a whole that the *Sugar Act* intends to guarantee a market for sugar cane grown in the Corozal and Orange Walk regions. The "manufacturer's quota" referenced in subsections (1) and (2) is directly tied to the cane grown in those regions. Subsection (2) sets the quota of all other manufacturers besides BSI based on the availability of cane from those regions. The practical effect of subsections 61(1) and (2) requires that manufacturers buy all available cane grown by farmers in Orange Walk and Corozal.

[95] The "surplus" of sugar cane referenced in subsection (3) is any cane not from those regions or grown directly by a manufacturer. Subsection (3) does not prohibit BSI from receiving an allocation of that surplus. In addition, nothing in the *Sugar Act* suggests that surplus allocation is counted towards the manufacturer's quota. A plain reading of the *Sugar Act* does not preclude BSI from contracting with farmers who are not in Orange Walk and Corozal if they seek SCPC's permission.

[96] Consequently, BSI has not established a *prima facie* case that the geographical restrictions tied to their quota are unconstitutional. BSI is not entitled to declarations that section 61 of the *Sugar Act* violates their right to work and is null and void for breaching section 15 of the *Constitution*.

#### **4.2.6 Registration requirements for cane farmers**

[97] The Claimants assert that the combined effect of the registration requirements in sections 17, 19, and 20 of the *Sugar Act* that Mr. Navarro is subjected to, and BSI must respect, are unconstitutional violations of their rights of free association and work. At the core of their claim is an objection to Mr. Navarro being required to be a member of an association to sell cane to BSI. Once a member of an association, the *Sugar Act* subjects Mr. Navarro and BSI to several regulations that dictate how they do business with one another.

[98] I agree with Mr. Navarro's claim that the combined effect of sections 17 and 19 of the *Sugar Act*, in particular subsections 17 (1) (c), (e), (g), (h), (k), 17(3), 17(5), and

17(6), continue to require that he be a member of an Association despite amendments made to the Act in 2015, to now provide:

35(1) Membership of an association recognised or registered under this Act shall be entirely voluntary.

According to the definition of “cane farmer” in section 2 of the *Sugar Act*, one cannot be a cane farmer without being registered:

...a person or entity who is engaged in the production of sugar cane for the purpose of being manufactured into sugar, ethanol or any other derivative of sugar cane and registered by the Sugar Cane Production Committee pursuant to this Act;

[99] Moreover, subsection 61(1) requires BSI to purchase cane that “shall be supplied by the Corozal and Orange Walk divisions of the association.” All manufacturers are also required to purchase cane from farmers on the register:

19(1) From and after the commencement of this Act, no manufacturer shall purchase, or take delivery of any sugar cane except from the cane farmers appearing in the Cane Farmer Register.

(2) From and after the commencement of this Act, no person shall sell or deliver any sugarcane to a manufacturer unless his name appears in the Cane Farmer Register for the particular crop in which the cane is delivered.

(3) No delivery of sugar cane to any manufacturer shall be made by registered cane farmers except in accordance with a programme of deliveries agreed upon by the manufacturers and the Cane Harvesting Committee established under section 17(1) (k).

Each cane farmer association maintains a register of their members and the Claimants maintain that no other mechanism exists to become registered.<sup>77</sup>

[100] The AG contends that a plain reading of the *Sugar Act* outlines that the requirement to be registered is not conditional on membership in an association. While farmers must register, they are not required to name an association:

34(2) Each cane farmer shall register with the Sugar Cane Production Committee indicating the association to which he belongs, if any

The only conditions for entry on to the register are listed in the *Sugar Act*:

17 (5) The SCPC shall register new cane farmers provided it is satisfied that–

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<sup>77</sup> *Sugar Act*, at s. 34(1).

(a) the applicant has the capacity to produce a minimum of 200 tons of cane per annum within two years from the time of application; and

(b) there is a shortfall in cane production against milling capacity, such shortfall to be allocated 80% to existing registered farmers and 20% to new applicants;

(6) A cane farmer shall remain in the cane farmers' registration list so long as the cane delivered by him for any one crop does not fall below 75 tons.

[101] I find the AG's distinction meaningless in practice. Mr. Navarro is required to become a member of an association to maintain his livelihood. Section 19(2) of the *Sugar Act* requires Mr. Navarro to be on the register to sell cane to a manufacturer. I accept Mr. Navarro's evidence that it is within his personal knowledge that there is no system in place to register unless he is a member of an association. If an alternative way to register was available, those required to register can be expected to have knowledge of that process. A *prima facie* case that Mr. Navarro's constitutional rights to work and free association have been breached has clearly been made out.

[102] Requiring membership in an association to engage in business activities has been found to be an unjustified infringement on sections 13(1) and 15(1) of the Constitution.<sup>78</sup> The AG has not convinced me that the circumstances in this case warrant a different finding. I disagree with the AG's assertion that section 35(2) of the *Sugar Act* distinguishes the present case from *HTA Bowman Ltd. v. AG (Belize)*<sup>79</sup> where a statutory requirement that citrus growers be a member of an association to get a license to deliver citrus was found unconstitutional:<sup>80</sup>

The evidence is that the Claimants have resigned from the Association and as the law stands presently they cannot obtain a license. If they deliver citrus without a license, then it would be an offence. It is evident therefore, that though the Act does not expressly mandate membership in the Citrus Growers Association as in the Seereram case supra, the operation and effect of the provisions of sections 7(1) and (2) and 37(1) is to be hinder the enjoyment by the claimants of the fundamental freedom not to associate.

What matters is the operation and effect of the *Sugar Act* on Mr. Navarro's rights. With no mechanism for Mr. Navarro to be registered without first being a member of

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<sup>78</sup> Petroleum Haulers at para 15.

<sup>79</sup> Sup. Ct. Claim no. 730 of 2009 [*Bowman*].

<sup>80</sup> *Bowman* at para 57.

an association, section 35 does not have any practical consequence. The violation of Mr. Navarro's rights to freedom of association and to work is unjustified.

[103] Mr. Navarro has further alleged that section 20 of the *Sugar Act* also violates his rights to freedom of association and to work. Section 20 authorizes the SCPC to revoke a registration if a farmer fails to deliver 75 tons of cane in two consecutive years and regulates transfers between associations:

20 (1) It shall be lawful for a registered cane farmer to transfer his registration at any time subject to the approval of the SCPC on such terms and conditions on the transferor and the transferee may agree, after giving fourteen days written notice to the SCPC. Such transfer will be conditioned on the transferee may agree after giving fourteen days written notice to the SCPC. Such transfer will be conditional on the transferee being a registered cane farmer.

(2) Applications to the SCPC for the transfers of registration will be accepted throughout the year save and except that if an application for transfer is received after the end of August in any year it will not be considered for transfer of registration for the upcoming crop year but will be considered for transfer for the subsequent crop year. A fee for such transaction shall be prescribed by and paid to the SCPC and shall be payable by the transferor.

(3) It shall be lawful for the SCPC to revoke the registration of a cane farmer who in each of two consecutive crop years fails to deliver at least 75 tons of sugar cane to a manufacturer, unless such cane farmer has previously lodged with the SCPC his reasons, for such failure which the SCPC finds acceptable.

The legality of transfers was first raised in the Claimant's written submissions. I decline to discuss this issue because it was not raised in their pleadings. A plain reading of section 20 establishes a *prima facie* case that the revocation of membership, however, unlawfully breaches Mr. Navarro's freedom of association and right to work in the same way that requiring membership does.

[104] To justify the infringement, the AG points to the Preamble to the *Sugar Act* to highlight the objective of the legislation and its importance. Applying the *Oakes* test, the AG says:

- i. The objective is sufficiently important in that guarantees the supply and demand of sugar cane to the manufacturers from the cane farmers in order to maintain the sugar industry;

- ii. This guarantee is rationally connected to ensure the maintenance of the sugar industry;
- iii. The setting of the quota of 7 tons impairs the Claimants rights' no more than is necessary, since it gives both the manufacturers and cane farmers the opportunity to plan and coordinate harvesting and delivery of sugar cane, with the view to calculate profits, as well as it guarantees the sustainability of the industry; and
- iv. The section does not have disproportionate effect, since it gives the cane farmers the opportunity to plan ahead and coordinate harvesting and delivery of sugar cane, with a view to calculate its profits, as well as it guarantees the sustainability of the industry.

While I appreciate that it may be unfair to look at section 20, and specifically revocation, in isolation, I nonetheless find that the AG's justification lacks sufficient specificity. In particular, the AG has not proven that revocation of membership guarantees the supply and demand of sugar cane or that farmers with small yields jeopardize the maintenance of the sugar industry. To meet their burden, the AG must demonstrate how the impugned provisions support, or are otherwise connected to, the justifications being relied upon.

[105] BSI has not established, however, a *prima facie* case that their rights to freedom of association and to work are violated by the registration requirement. The *Sugar Act* requires BSI to purchase cane from registered farmers. Registration and licensing requirements are often prerequisites for engaging in business and not unique to the *Sugar Act*. BSI has provided no authority for the proposition that not being permitted to choose to purchase from unregistered farmers is unconstitutional. Moreover, the *Sugar Act* does not require BSI to join or decline membership in an association to be a manufacturer. As previously explained, the *Sugar Act* also does not prohibit BSI from seeking an allocation of sugar deliveries from outside the Orange Walk and Corozal regions and, therefore, is not prohibited from associating with registered farmers in other areas.

[106] Mr. Navarro is entitled to a declaration that the *Sugar Act* has been implemented in a manner that violates his rights to work and freedom of association because he is unable to deliver cane without being a member of a cane farmers' association. He is entitled to a further declaration that subsection 20(3), which gives the SCPC the power to revoke his membership in an association, also violates his rights to work and freedom of association and is null and void.

#### 4.2.7 Regulation of production by the Sugar Cane Production Committee (SCPC)

[107] In addition to the registration requirement, Mr. Navarro claims the authority given to the SCPC in section 17 of the *Sugar Act* to regulate cane production at the individual farm level is an unlawful interference with his right to work. The AG did not directly address this point in their written submissions. In their oral submissions, the AG justified any violation of the *Constitution* by the *Sugar Act* on the basis that they maintain stability and predictability in the sugar industry.

[108] A review of section 17 highlights that SCPC's functions are twofold. The SCPC (1) collects, analyzes, and shares information with stakeholders, and (2) establishes quantities farmers are permitted to deliver to manufacturers. These second functions, bolded below, are what Mr. Navarro claims breaches his right to work:

17(1) Subject to the provisions of this Act, the SCPC shall bear overall responsibility for all aspects of sugar cane production, harvesting and delivery, and without prejudice to the generality of the foregoing, shall perform the following functions,

(a) upon the commencement of this Act, arrange to conduct a comprehensive cane production census, and every 3 years thereafter, to gather cane production data, including but not limited to, acreage under cultivation, cane cycles, varieties grown, soil type on which cane is grown and estimated yields;

(b) conduct yearly field surveys to ascertain registered cane farmers actually in production, acreage under production and their estimated yields;

**(c) set up a system that will require cane farmers to report on any change in their cane production system, including, but not limited to, new acreage planted and replanted acreage;**

(d) develop, maintain and update a cane production data base;

(e) establish a Cane Farmer Registry, utilising the 2001 registered cane farmers' license list a base reference;

(f) provide a copy of the Cane Farmer Register to processors and Divisional Cane Farmers' Association at least 4 weeks before the commencement of crop;

**(g) determine the basic cane production of each cane farmer on such information as the SCPC may consider appropriate, and based on**

**each cane farmer production assessment, establish branch and divisional cane production estimates;**

**(h) establish at the commencement of each crop the allocated delivery quantities to harvesting groups, branch and division based on cane production estimates;**

(i) provide to industry stakeholders estimates of cane production by area and division by 15th November of each year and, thereafter, to provide updates every two months during each crop;

(j) organise and carry out cane aerial surveys to aid in the establishment of production estimates; and

**(k) establish a Cane Harvesting Committee in each Zone as established under section 25 paragraph (k) of this Act which shall have the responsibility of organizing and coordinating the harvest and delivery of cane with sugar cane reaping groups within its Zone, as may be established by the SCPC.**

(2) The cane harvesting committee will also liaise with manufacturers, the SCPC' and sugar cane reaping groups in satisfying the daily sugar cane quota required by the manufacturers.

...

(4) The SCPC shall coordinate cane production and forecast milling capacity through a system of annual production coefficient as follows,

(a) apply such production coefficient to the preceding crop deliveries to determine new reference quantities deliverable in the succeeding crop year;

(b) publish the production estimates coefficients and reference quantities by 31st December in each year;

**(c) advise the cane farmers to confirm the ability to deliver their allocations within one month of the publication of the production coefficient, and in the event of the inability of one or more cane farmer to deliver their allocations, to arrange for a reallocation of the shortfall quantities.**

[109] The system of cane delivery established by section 17 of the *Sugar Act* is enforced through section 19:

19(1) From and after the commencement of this Act, no manufacturer shall purchase, or take delivery of any sugar cane except from the cane farmers appearing in the Cane Farmer Register.

(2) From and after the commencement of this Act, no person shall sell or deliver any sugarcane to a manufacturer unless his name appears in the Cane Farmer Register for the particular crop in which the cane is delivered.

(3) No delivery of sugar cane to any manufacturer shall be made by registered cane farmers except in accordance with a programme of deliveries agreed upon by the manufacturers and the Cane Harvesting Committee established under section 17(1)(k) of this Act.

(4) Every manufacturer shall, during the grinding season, pay for the sugar content of all clean and mature sugarcane cut and delivered to him by registered cane farmers in accordance with the provisions of this Act.

(5) Deliveries of sugar cane accepted by manufacturers shall be paid for at the current price for sugar cane less any cess that may be levied under this Act.

(6) Any person who contravenes the provisions of this section commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars and, if such person is a registered cane farmer, shall further be liable to the cancellation or suspension of his registration by the SCPC for such period as the SCPC may determine.

[110] I find that Mr. Navarro has not met the burden to establish a *prima facie* case that the SCPC has violated his right to work. The right to work does not protect the absolute right to work free from regulation or other State intervention. Mr. Navarro has led no evidence to support his argument that SCPC's management of the delivery of cane threatens his livelihood to such an extent that he is being denied the opportunity to make a living.

[111] Mr. Navarro is not entitled to declarations that regulations of sugar cane production breached his right to work and are null and void for breaching section 15 of the *Constitution*.

## 5 Disposition

[112] I hereby order and declare:

1. Section 10 of the *Sugar Act* insofar as it requires BSI to contribute to financing the operations of the SICB and its authorized agencies, based on the SICB's estimate of expenditure, is an unlawful and unjustifiable deprivation of BSI's property in breach of sections 3(d) and 17 of the *Constitution* and is null and void.
2. Sections 17 and 19 of the *Sugar Act*, in particular sections 17 (1) (c), (e), (g), (h), (k), 17(3), 17(5), and 17(6) insofar as those provisions require cane farmers to belong to an association in order to be registered in the CSPC's Cane Farmer Register to be able to deliver sugar cane, amount to an unjustifiable interference with the Mr. Navarro's right to freedom of association and right to work under section 13 and 15 of the *Constitution* and are null and void.
3. Section 20 of the Act insofar as it authorizes the SCPC to revoke the registration of any cane farmer who in each of two consecutive crop years fails to deliver at least 75 tons of sugar cane to a manufacturer is in breach of Mr. Navarro's right to freedom of association under section 13 and his right to work under section 15 of the *Constitution* and is null and void.
4. Section 31 of the *Sugar Act* insofar as it requires BSI to pay 50% of the operational costs of the SCQCA, as may be assessed by the SICB annually, is an unlawful deprivation of BSI's property in breach of sections 3(d) and 17 of the *Constitution* and is null and void.
5. Each party shall bear their own costs.

**Dated 7 August 2023**

Patricia Farnese  
Justice of the High Court