



# FOCUS

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## Trust Protectors: Privy Council Clarifies the Scope of Protector Powers

N. Leroy Smith



The Judicial Committee of the Privy Council recently delivered an important decision clarifying the role of trust protectors where trust instruments require protector consent but are silent as to how that consent is to be exercised. The decision, *A and 6 Others v C and 13 Others*, provides authoritative guidance for settlors, trustees, and protectors alike and has significant implications for the drafting and operation of modern trust structures.

### Background

Many modern trust instruments confer on protectors powers to approve or withhold consent to certain trustee decisions, such as appointments of capital or dealings with key assets. Often, however, those instruments do not specify the basis on which the

protector is to decide whether consent should be given.

This drafting silence has given rise to uncertainty and debate over recent years, with two competing views emerging. Under a narrow supervisory approach, a protector's role is limited to checking that the trustees' proposed decision falls within the range of decisions open to a reasonable body of trustees. If so, consent should ordinarily be given. Under a wider approach, the protector is entitled to exercise an independent fiduciary discretion and may withhold consent even where the trustees' proposal is reasonable.

### The RST Trusts Decision

This uncertainty was brought into focus in the Bermuda case of *In the matter of RST Trusts*, where trustees and a protector sought court approval for an urgent share sale against the backdrop of an impending Privy Council decision expected to settle the issue.

Recognising both the commercial importance of the transaction and the unsettled law, the Bermuda court adopted a pragmatic approach and assessed the application under both the narrow and wide approaches. The court concluded that the protector's consent could properly be given in any event

and approved the transaction. The case highlighted both the usefulness of court guidance in appropriate circumstances and the practical difficulties created by uncertainty regarding the protector's role.

### The Privy Council Decision

The Privy Council has now resolved the issue. The appeal arose from a complex family trust structure involving multiple discretionary trusts governed by English, Jersey, and Bermudian law. The protectors had powers to approve capital appointments and transactions involving significant trust assets. When trustees proposed a scheme dividing trust assets unequally between two family branches, the protectors declined to approve it, on the basis that they were entitled to exercise an independent discretion.

The courts in Bermuda held that the protectors were limited to a narrow supervisory role. The Privy Council disagreed.

The Board unanimously allowed the appeal and held that where a trust instrument confers defined consent or veto powers on protectors but is silent as to how those powers are to be exercised, the protector is

generally entitled to exercise an independent fiduciary discretion. The correct question is not whether the protector should be assumed to have one of two predefined roles, but whether the trust instrument itself imposes any constraints beyond those arising under general fiduciary law.

The Board emphasised that limitations on fiduciary powers must be found in the express language of the trust deed or arise by necessary implication. Silence does not, of itself, justify implying a restriction. In professionally drafted trust instruments, an apparent gap may be deliberate, reflecting a choice to leave fiduciaries with flexibility rather than constrain them with detailed rules.

In this case, the trust deeds imposed no express or implied limitation confining the protectors to a supervisory function. Accordingly, the protectors were entitled to exercise an independent discretion when deciding whether to give or withhold consent.

### Practical Implications

The decision provides welcome clarity. Where protector consent is

required and the trust instrument is silent, protectors should assume that they are expected to exercise an independent fiduciary judgment, taking into account relevant considerations and disregarding irrelevant ones, rather than merely policing the reasonableness of the trustees' decision.

For settlors, the case highlights the importance of ensuring that protector provisions reflect their intentions. If a limited supervisory role is desired, that should be made explicit. Conversely, if protectors are expected to act as an independent fiduciary check, the implications of that role should be clearly understood.

Trustees and protectors should also take care to understand the scope of their respective functions when appointments are accepted and advice should be sought where there is uncertainty. In light of the Privy Council's guidance, careful drafting and a shared understanding of protector powers are now critical to the effective and predictable operation of trust structures. <sup>(1)</sup>



**N. Leroy Smith** is a Litigation Partner and leads the Firm's Private Client & Wealth Management practice with a robust traditional chancery practice (covering trusts, probate, and real property disputes) alongside a commercial chancery litigation practice (covering business and finance disputes).  
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## Gloria Bastian Excel Award Winner

**Ms. Shyvonne Anderson**, Accounts Officer, was the recipient of the Gloria Bastian Excel Award (Winter 2025).

Recognized as someone who truly goes above and beyond in her role as an Accounts Officer in our Finance Department, Shyvonne is often described as the glue of the team - steadfast, reliable, and consistently delivering exceptional service. A dedicated member of the Firm since 2000, Shyvonne exemplifies excellence and professionalism in everything she does. This bi-annual award is the Firm's way of recognizing and celebrating employees who consistently demonstrate outstanding performance.

# Why 2026 Is the Year to Secure Your Intellectual Property in The Bahamas

Kimberleigh Peterson Turnquest



For decades, businesses operating in The Bahamas faced a frustrating reality: the intellectual property laws were out of step with international standards, leaving brands, inventors, and creators with limited tools to defend their most valuable assets. That era is now over. For companies of every size, 2026 presents a clear and urgent opportunity to act.

## A New Legal Landscape

On 1 February 1 2025, The Bahamas undertook a sweeping overhaul of its intellectual property framework. Three landmark pieces of legislation came into force: (a) the Patents Act, 2024, which repealed both the Industrial Property Act (Ch. 324) and the Patents Act, 2015 (No. 40 of 2015); (b) the Copyright Act, 2024, which repealed the former Copyright Act (Ch. 323); and (c) the Trade Marks Act, 2024 which repealed the Trade Marks Act (Ch.322) and the Trade Marks Act, 2015 (No. 39 of 2015). Together, these Acts retired outdated provisions and repositioned

Bahamian intellectual property law in closer alignment with internationally recognised standards, including the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Complementing the new Acts, their respective implementing regulations are fully in force, introducing updated procedures and modernised protections across all three pillars of intellectual property law. Businesses operating in the Bahamian marketplace can enhance their commercial credibility and international recognition by confidently registering, protecting, and enforcing their intellectual property within a transparent and consistent legal framework.

## What Has Changed in the Trade Mark Laws and Why It Matters

Among the most consequential changes introduced by the new legislative framework is the expansion of trade mark protection

to cover services. Prior to 1 February 2025, trade mark registration in The Bahamas was limited to goods only. The new Trade Marks Act (together with the Trade Marks Regulations, 2025) now recognises and accepts service mark applications, opening Classes 35 to 45 of the Nice Classification system for registration alongside the existing Classes 1 to 34 in respect of goods. This is transformative for a Bahamian economy that is heavily driven by service industries.

The option to protect marks for services provides significant possibilities for brand owners seeking registered protection across hospitality, real estate, technology, creative, administrative, legal and financial services. For years, service-based businesses such as tourism operators, financial firms, technology startups, and professional service providers alike had no reliable mechanism to register their brand identities locally. That gap has now been firmly closed.

The new Act further establishes a ten-year term of registration, consistent with the standard applied in most jurisdictions worldwide.

Another noteworthy development, which offers meaningful cross-border continuity of protection, is the Act's recognition of claims of priority under the Paris Convention. Where an applicant has filed a trade mark, patent or design application in another Paris Convention member state, they may claim the date of that earlier foreign filing as their priority date when applying in The Bahamas, provided the Bahamian application is

filed within the prescribed convention period.

Beyond these structural reforms, the Act also modernises the very definition of what can be protected. The expanded definition of a "sign" capable of registration now encompasses a personal name, three-dimensional shapes, colours, moving images, holograms, sounds, scents, tastes and textures; reflecting the realities of contemporary branding and bringing The Bahamas in step with progressive IP regimes globally.

Finally, the introduction of the option to seek registration of collective marks and certification marks, provides industry bodies, trade associations and standard-setting organisations with a mechanism to protect shared identifiers and quality assurances that serve the broader

marketplace.


### Why You Should Act Now

For entrepreneurs and executives, the message is clear: the arsenal to protect your IP rights in The Bahamas has been fortified, and the framework has never been stronger.

Without a registered trade mark, patent or copyright on record, a business that discovers its brand, invention or creative work has been copied or exploited without authorisation may find itself facing a difficult legal battle.

Trade mark registration gives its owner the exclusive right to use that mark in connection with the relevant goods or services, and critically, the legal standing to oppose conflicting marks, demand that infringers cease and desist, and pursue damages

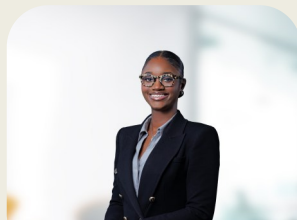
through the courts. A registered patent protects an inventor's exclusive right to commercialise an innovation, preventing competitors from replicating and profiting from years of research and development. Copyright protection, while arising automatically upon creation, is significantly easier to enforce when ownership is clearly established and documented.

Registration is not a formality, it is the foundation upon which every enforcement action is built. And registration transforms intellectual property from a passive asset into an enforceable right. It places rights holders in a position of strength, able to take decisive action when their IP is threatened. 



**Kimberleigh Peterson Turnquest** is a Senior Associate litigation and Private Client & Wealth Management practice groups with significant experience in commercial litigation, dispute resolution and trust litigation. [kpturnquest@higgsjohnson.com](mailto:kpturnquest@higgsjohnson.com)

## Higgs & Johnson Welcomes New Attorneys



Asha T. Lewis

During the first quarter of 2026, the Firm expanded three of its practice groups—Commercial Transactions, Real Estate & Development, and Private Client & Wealth Management—with the addition of **Asha T. Lewis**, **Candice S. Knowles**, and **Marie-Jacqueline Winder**. These strategic hires reflect the Firm's continued commitment to strengthening its core practice areas and enhancing the depth of expertise available to our clients.



Candice S. Knowles

Joining the Commercial Transactions group is Asha T. Lewis, an attorney with three years of experience in client advocacy, case management, and extensive legal research. Her addition reinforces the group's capacity to manage complex commercial matters with efficiency and precision.

Candice Knowles joins the Real Estate & Development team. With six years of experience as a property and development associate, her appointment supports the growing demand for transactional and development advisory services in an increasingly active real estate market.



Marie-Jacqueline Winder

Marie-Jacqueline Winder, a senior trust executive with over 25 years of experience in the financial services industry, joins the Private Client & Wealth Management team further strengthening the Firm's ability to deliver sophisticated, client-focused trust and estate solutions.

# The Usufruct Interest Bill, 2026

Asha Lewis



The Usufruct Interest Bill, 2026 (“the Bill”) was tabled in the House of Assembly in February of this year. The objective of the Bill is to expand the jurisdiction’s private wealth and estate planning capabilities.

## What is a Usufruct?

The term Usufruct derives from the Latin phrase *usus et fructus*, which translates literally to “use and enjoyment”. It is the temporary legal right to use and enjoy the profits or income of another person’s property, without altering the substance of it. It is a right that can be granted over real property or personal property (tangible and intangible possessions). The person who is entitled to use and enjoy the fruits of another’s property is termed the usufructuary, in contradistinction to the actual owner of the property. The usufruct principle separates the legal interests that—when combined—constitute ownership. The usufruct grants two primary privileges: the right to use a thing (*usus*) and the right to enjoy its fruits (*fructus*) to the usufructuary. While the bare owner of the property continues to have documentary title to the property, it is stripped of its right of usage. The crucial restraint of this legal regime is that the usufructuary is absolutely prohibited from damaging or altering the core

substance of the property.

## Usufruct in Civil Jurisdictions

The legal institution of usufruct is familiar to the civil systems of many states. It is manifested both in the codifications of statute and precedent law in countries of Anglo-Saxon law. The usufruct concept was developed in Roman law and found significant application in the determination of property interests between a slave and the master. Any property acquired by a slave as a result of his labour legally belonged to his master. In Roman law, real estate was the principal type of property that was the subject of usufruct. Real estate subjected to usufruct was divided into two categories – *praedia urbana* (urban land plots with residential and industrial, handicraft buildings) and *praedia rustica* (agricultural land). Usufruct was applicable not only to land but also to the buildings, animals, and slaves on it.

Contemporary European civil codifications (France, Spain, Italy, etc.), like Roman law, provide for usufruct over movable property and real property. Usufruct legislation can also be found in Brazil, Malta, and Thailand.

## The Bill

Under the Bill, usufructs can be created, with or without consideration, by an agreement, a will or trust disposition over tangible, intangible, moveable or immovable property. A usufruct may be established by a natural person for a period not exceeding ninety-nine years; and by a legal entity, for a

period not exceeding thirty years. A usufruct can be terminated before the expiration of its established period on its replacement; waiver by the usufructuary; destruction of the subject of the usufruct; or the death of the usufructuary. A usufruct can be reinstated after termination by the owner.


Under the Bill, the usufructuary has specific statutory rights and obligations. A usufructuary has the right to use and enjoy the property as if he were the owner; to collect income of the property, and lease or sublet the property. Unless otherwise agreed by the parties, the usufructuary is entitled to all economic benefits arising during the term of the usufruct, while the owner retains control rights over extraordinary matters including the sale the asset. The usufructuary’s obligations under the usufruct includes the obligation to carry out necessary repairs to maintain and preserve the property, as he is obliged to return the property in good condition.

The owner has some rights under this legal regime. The Bill provides that the owner has the right to retain the fruits due at the commencement of the usufruct, while those that are due on the date the usufruct terminates belong to the usufructuary. The owner also has the right to object to any unlawful use of the subject property or any use of it that materially diminishes its value or violates the terms of the usufruct agreement. The legal owner also has the right to be compensated for depreciation caused by the improper use of the property. The owner’s

primary obligation under this regime is to carry out all substantial repairs to the subject of the usufruct.

This legal mechanism makes it possible for individuals to pass on ownership of property during their lifetime, while maintaining the right to use and benefit from the property during their life. It is often used in inheritance to allow parents to live and enjoy the family home during

their lifetime, while children of the family hold the bare legal title. Upon the death of the parents, full ownership is automatically passed to the children. The usufruct interest provides a much swifter process to transfer ownership, than the probate process under which, upon the death of the parents, their will would then have to be probated before ownership of the property could be passed to their heirs.

The Bahamas will be one of the first common law jurisdictions to incorporate this civil law mechanism. The Government's motivation for the Bill is to attract investors and high net worth individuals from civil law countries. However, this mechanism may prove beneficial to locals as well, as it provides another means by which persons can transfer ownership to their heirs. 



**Asha T. Lewis** is an Associate in the Firm's Commercial Transactions practice group with experience navigating, interacting, and liaising with governmental agencies, private lending institutions and fellow counsel on behalf of clients for litigation matters and commercial transactions. [gcurry@higgsjohnson.com](mailto:gcurry@higgsjohnson.com)

## Deputy Managing Partners Appointed



**Stephen J. Melvin**



**Christel Sands-Feaste**

Higgs & Johnson is pleased to announce the appointment of **Stephen J. Melvin** and **Christel Sands-Feaste** as Deputy Managing Partners of the Firm. These appointments reflect the Firm's continued commitment to strong governance, strategic advancement, and leadership excellence.

In their roles as Deputy Managing Partners, Mr. Melvin and Mrs. Sands-Feaste will play an important role in shaping the Firm's strategic priorities, supporting executive leadership, fostering collaboration across practice groups, strengthening client relationships, and reinforcing the high standards of service and professionalism for which Higgs & Johnson is known.

These appointments highlight the Firm's continued focus on strengthening leadership capacity and reinforce its commitment to long-term growth and institutional excellence.

Consistently recognised as a top-tier firm in leading international legal directories, Higgs & Johnson remains committed to delivering timely, practical, and commercially sound legal advice. The appointment of two Deputy Managing Partners further strengthens the Firm's platform for sustained excellence and continued success in the years ahead.

## CASE UPDATE: Privy Council Issues Decision in *Rubis Bahamas Ltd v Lillian Russell*

The Judicial Committee of the Privy Council has now delivered its latest judgment in the long-running dispute between **Rubis Bahamas Ltd** (“Rubis”) and **Lillian Antoinette Russell** (“Ms Russell”), arising from historical and more recent fuel leaks at a New Providence service station.

Rubis was represented throughout this matter by Oscar N. Johnson, Jr KC, Audley Hanna, Jr and Dennise Newton-Briggs of Higgs & Johnson, Nassau, Bahamas.

The Privy Council’s decision, handed down on 13 March 2026, provides important guidance on issues of causation, environmental contamination, and liability of fuel station operators, including successors in title.

The case stems from two separate fuel leaks at the Robinson Road/Old Trail Road service station:

1. 1994 Leak – A significant leak from underground tanks on the south-east corner of the property caused groundwater and soil contamination that affected Ms. Russell’s adjacent property, rendering the well water undrinkable and impacting fruit trees.

2. 2012 Leak – After Rubis acquired the Texaco network in 2012, approximately 24,000 gallons of unleaded gasoline escaped from a riser pipe between November 2012 and January 2013. A central factual dispute was whether this later leak migrated through the subsoil and caused further damage to Ms. Russell’s property.

Ms. Russell commenced proceedings in 2015.

- Trial Court: The Trial Court found Rubis liable for both the 1994 and 2012/13 leaks, awarding \$692,825.14 in damages.
- Court of Appeal: Upon appeal by Rubis the Court of Appeal held Rubis liable only for the 2012/13 leak,

reducing damages to \$159,450.

- Privy Council (2025 preliminary issue): The Privy Council addressed whether Rubis’ appeal was “as of right” under section 23(1) of The Bahamas Court of Appeal Act (based upon a value threshold of \$4,000). The Board ruled that the appeal was as of right because the determination of an as of right appeal is based upon the value of the decision appealed against, and not the sum pleaded, overturning the Court of Appeal’s interpretation.
- Privy Council (Final Judgment – 2026): In granting Rubis’ appeal, the Board considered the substantive issues, including whether the 2012 leak caused the alleged property damage and whether Rubis, as owner but not occupier, could be held liable.

The Board closely examined expert and factual evidence relating to:

- The migration of hydrocarbons from the 2012 leak, and
- Whether they reached the Russell property.

The judgment emphasizes the need for clear, scientifically supported evidence to establish causation in environmental contamination cases.

Rubis argued that as a non-occupying owner which had leased the station to a third-party operator, it should not be liable. The Privy Council considered:

- Whether liability could attach under *Rylands v Fletcher* principles (non-natural use of land; escape of a dangerous substance).
- The degree of control retained by Rubis. This issue had earlier been central to Rubis’ attempt to obtain leave to appeal.

The key issue remained whether the

reduced damages award of \$159,450 was sustainable based on the Court of Appeal’s findings on liability and causation, in respect of which the Board held that the damages award was unsustainable.

While the 2026 judgment provides a comprehensive analysis, clients should note that the Board’s reasoning underscores the evidentiary burdens and legal exposure associated with environmental risks, even for fuel retailers who are not in physical occupation.

- The Board’s approach reinforces the importance of rigorous environmental monitoring, documentation, and risk-management systems.
- Liability may arise even where operations are contracted out, depending on the structure of control.
- The decision confirms that courts will treat property contamination claims seriously but will scrutinize causation carefully.
- The case signals heightened exposure around legacy contamination events and the necessity of robust risk underwriting.
- Review environmental compliance frameworks and site monitoring protocols.
- Ensure contractual arrangements with operators clearly allocate risk and responsibility.
- Re-evaluate insurance coverage and indemnity arrangements in light of the Privy Council’s reasoning.
- Document any environmental impacts promptly.
- Obtain expert assessments early when contamination is suspected.

## Chambers Global 2026 Launched



Oscar N. Johnson, Jr., KC



Sterling H. Cooke



Stephen J. Melvin



Christel Sands-Feaste



Zarina M. Fitzgerald



Tara Archer-Glasgow



N. Leroy Smith



Portia J. Nicholson



Tara Cooper Burnside, KC



Audley D. Hanna, Jr.

Higgs & Johnson has once again affirmed its standing as a premier law firm in The Bahamas, maintaining its Tier 1 ranking for the 18th consecutive year in the 2026 Chambers Global Legal Guide. This prestigious and internationally respected Guide evaluates and ranks leading attorneys and law firms across more than 200 jurisdictions worldwide. The Firm's continued Tier 1 status underscores its longstanding excellence, depth of expertise, and leadership within the legal profession.

According to the Guide, *"Higgs & Johnson is widely regarded as one of the most prominent law firms in The Bahamas. The team has considerable experience overseeing major commercial transactions, including M&A, financings, and capital markets issuances. The firm is equally well placed to assist clients with real estate development mandates, while its dispute resolution team is regularly instructed on some of the jurisdiction's most noteworthy commercial cases."*

Higgs & Johnson earned rankings across six (6) practice areas, reflecting the breadth and depth of the firm's capabilities. These include Dispute Resolution; Real Estate and Development; Commercial Transactions; Financial Services, Securities, Investment Funds and Fintech; and Private Client and Wealth Management.

Ten (10) Higgs & Johnson Attorneys, namely **Philip C. Dunkley, K.C., Oscar N. Johnson Jr., K.C., Sterling H. Cooke, Zarina M. Fitzgerald, Stephen J. Melvin, Tara Archer-Glasgow, N. Leroy Smith, Christel Sands-Feaste, Tara Cooper Burnside, K.C.** and **Audley D. Hanna, Jr.** achieved individual rankings in this year's Guide in recognition of their outstanding professional performance. Several Partners were also distinguished with Chambers' highest individual honour, the Band 1 ranking.

Managing Partner **Sterling H. Cooke** reflected on the Firm's continued success, stating, *"Receiving a Tier 1 ranking from Chambers Global for the eighteenth consecutive year is a powerful affirmation of Higgs & Johnson's enduring leadership and reputation for excellence. This recognition reflects the exceptional talent, commitment, and professionalism of our attorneys and staff. We remain firmly committed to providing trusted legal advice and outstanding service to our clients."*

## TerraLex Regional Meeting, Bogota



Attorneys **Stephen J. Melvin**, **Portia J. Nicholson**, and **Ximena Thompson** represented the firm at the TerraLex Latin America & the Caribbean Regional Meeting held earlier this week in Bogotá, Colombia. The conclave featured four regional Vice Chairs—including our very own Stephen Melvin—as well as TerraLex Global Chair Derek Humphery-Smith and CEO Terri Pepper. These regional meetings play a vital role in strengthening the TerraLex community. They provide a unique forum for members to exchange insights, align on emerging trends, and build the trusted relationships that drive cross-border client service and business development across the network. Lloreda Camacho & Co was the host Firm for the highly successful meeting.

## STEP Bahamas Annual Conference



Higgs & Johnson was a proud sponsor of the 2026 STEP Bahamas conference which brought together professionals from the legal, financial, fiduciary, and regulatory sectors.

Featured Higgs & Johnson speakers included **N. Leroy Smith**, Partner and Chair of the Private Client & Wealth Management practice group and **Alexandra T. Hall**, Partner and Chair of the Government & Regulatory Affairs practice group. We were also proud to celebrate with our former Private Client & Wealth Management Partners, **Earl A. Cash, Ph.D** and **Heather L. Thompson**, who were recognized as Pearl Honourees for their significant contributions to the development of the STEP Bahamas Branch and the trusts and estates industry in The Bahamas.

This high-quality event once again created valuable opportunities to exchange ideas, build relationships, and continue advancing the work we do for our clients and our jurisdiction.

Be sure to follow us on [LinkedIn](#), [Facebook](#) & [Instagram](#) to stay up-to-date with all H&J related news and articles.