

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 172 OF 2006

PATRICK FABER

Claimant

BETWEEN AND

**THE ATTORNEY GENERAL
THE COMMISSIONER OF POLICE**

Defendants

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Aldo Salazar, and later Ms. Deshawn Arzu on 1st February 2007, for the claimant.

Ms. Andrea McSweaney and Ms. Priscilla Banner for the defendants.

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JUDGMENT

The proceedings in this case relate to a claim for breaches of several constitutional rights of the claimant, Mr. Patrick Faber. The original claim related to six distinct provisions of the Belize Constitution which Mr. Faber averred were breached. The alleged breaches arose out of actions of police officers on 28th April 2005 at a barricade just outside the gates of the Belmopan Campus of the University of Belize in Belmopan.

2. At the time of the claim, Mr. Faber was then a leading member of the Opposition Party in the National Assembly; he was also a teacher and Vice Principal at Anglican Cathedral College and a member of the Belize

National Teachers' Union. However, since the hearing of this claim, there has been a change of fortune and since 2008, Mr. Faber is now the Minister of Education in the Government of Belize as well as a member of the Collet Division in the National Assembly.

3. When the case eventually came on for hearing, Mr. Aldo Salazar, Mr. Faber's first attorney, applied to withdraw three of the six original declarations that were being sought. In the event, Mr. Faber in this claim seeks the following relief against the Attorney General and the Commissioner of Police:

2. *A Declaration that the actions of the Belize Police Department in arresting and detaining the Claimant on the Belmopan Campus of the University of Belize (on the 28th day of April, 2005) constitutes a violation of the Claimant's constitutional rights enshrined in section 5 of the Belize Constitution.*

4. *A Declaration that the actions of the Belize Police Department in restraining and arresting the Claimant in order to prevent the Claimant from entering the recreation centre on the Belmopan Campus of the University of Belize (on the 28th day of April, 2005) constitutes a violation of the Claimant's constitutional rights enshrined in section 10 of the Belize Constitution.*

5. *A Declaration that the actions of the Belize Police Department in restraining and arresting the Claimant in order to prohibit the Claimant from entering the recreation centre on the Belmopan Campus of the University of Belize (on the 28th day of April, 2005)*

constitutes a violation of the Claimant's constitutional rights enshrined in section 12 of the Belize Constitution.

7. *Damages for the several violations of the Claimant's constitutional rights.*
8. *That the Defendant pay the Costs of this claim.*
9. *Further or Other Relief.*

Background

4. The year 2005 was a particularly trying one for Belize. There was seething discontent in parts of the country. Feeding the discontent was the rising cost of living and proposals by the government of new taxes. A part of the discontent was also the widely-felt dissatisfaction as to the handling of the disbursement of loans by the Social Security Board. A part of the potent mix of discontentment also was the swirling controversy surrounding the Belize Telecommunications Ltd. (BTL). The trade unions in the country, including the National Teachers Union, were especially vexed and agitated by these developments. There were calls for go-slow and strikes and demonstrations; and even students in some parts of the country, particularly in Belize City, got in on the act.
5. Truly, 2005 was a year of discontent and disquiet. In some instances the tension was palpable in parts of the country.
6. It is against this background that the Student Government for the Belmopan Campus of the University of Belize (UB) decided to hold two forums on 27th and 28th April 2005 with invited guest presenters. The

second of the forums on 28th April 2008 was a Question and Answer session with the Prime Minister.

7. The venue of the forums and access thereto are at the heart of Mr. Faber's complaints in these proceedings. From the evidence the forum for the 28th April 2005 was a Question and Answer session with the Prime Minister only and it is what has given rise to the claims by Mr. Faber.
8. Mr. Ivor Nicholas, a computer technician was at the material time president of the Student Government for the Belmopan Campus, made a witness statement in this case. He said at para. 4 of that statement that he decided to call a student body meeting which requested some input of the University administration. So he invited both the Dean of Students and the Provost of the University to attend the meeting to give advice.
9. Mr. Nicholas gives in his witness statement the organizational and other logistics of the forums as follows:

5. *At the meeting we decided that it was important for the university community to develop a common position on the very topical socio-political issues being face by the nation. We sought a plan of action which reflected sober, analytical, and responsible thinking, was lawful, democratic, and which would foster the holistic development of the student body.*

6. *After consultation with the Administration, the Student Government decided to break the forum in two, the first of which would be held at the University's Recreation and Sports Centre (Gymnasium) on the 27th April, 2005 with guest speakers including a United Democratic Party (UDP)*

representative and a People's United Party (PUP) representative and certain specially invited representatives from the Belize Telecommunications Limited, Social Security and others.

7. *I also invited, telephonically, members of the media to record the interaction between the invited guests and the University students.*
8. *The second forum was scheduled for the 28th April, 2005 (the following) at 2:00 p.m. to be held at the same venue. At this forum the Prime Minister, Honourable Said Musa was invited to address the students on the issues mentioned, namely, the increase in taxes, the Social Security scandal and the Belize Telecommunications controversy.*
9. *The forums were organized only for the students of the UB in order to ensure maximum benefit from the encounter with our honored guests.*
10. *In order to present the forums to the institutions and campuses nationwide which constitute the University Community, a one (1) page flyer was distributed by the Student Government only to the students, and as such was addressed directly to students on the first page. In the last paragraph of the first page I indicated to the students that the reverse side of the flyer*

contained the dates and time of the forums. The said flyer is hereto annexed and marked "I.N.1".

10. Additionally, several witness statements were tendered in evidence, including one from Mr. Faber himself. Most of these witnesses were cross-examined during the hearing of the case.
11. Ordinarily, of course, members of the Belize Police Department are not a regular sight on the campus or the vicinity of the University of Belize. It is therefore I think, helpful to see from the evidence how members of the police came to be present on 28th April 2005 at the entrance of the University of Belize. The witness statement of Mr. Henry Anderson, the University Provost at the time and acting President of the University at the time the student body was trying to organize the forums, is I think, germane in this regard. In this statement he states, among other things:

“2. I was also involved in the planning and conducting of the student forums held on the 27th and 28th April, 2005, at the UB Sport and recreational Center (Gymnasium) UB Campus, Belmopan.

3. On Wednesday 21st April, 2005 I was in Belize City seeking an update on students of the Student Government of UB, Belize City Campus who had executed certain plans in Belize City in response to the very topical Social Security Board and BTL scandals, and other serious socio-political issues (‘the issues’).

4. On the said date I was also summoned to an urgent meeting called by the Student Government of the UB Belmopan Campus. The purpose of this meeting was to discuss:

(a) the action taken by the Belize City Student Government in response to the issues, the resulting civil

unrest and the arrest of the Belize City Student Government President; and

(b) the action and the means, if any, that the Belmopan students would adopt to address the issues.

5. *At the meeting the general consensus was that the Belmopan Campus students wanted to be a part of the national discourse on the issues but wanted to be informed before deciding on how to participate in the national discourse.*
6. *In that very meeting, myself and other members of the UB Staff cautioned the students about being mindful of and guided by the rule of law, and the importance of them being properly informed about the issues before deciding on appropriate action.*
7. *The students therefore decided that the most effective means of gathering facts about the issues was to invite to the UB Belmopan campus well respected and prominent officials of the People's United Party (PUP) and the United Democratic Party (UDP) to make presentations to the students in respect of the issues, allow for an exchange of questions and answers, and then for the students from the Belmopan Campus to establish a plan of action and a common position for their involvement in the national discourse on the issues.*
8. *After getting a clear idea of their objective for the forums, the students did most of the planning but the UB Dean of Students, some staff and I provided support.*
9. *In particular, I asked the Belize Police Department if they would provide security for the Prime Minister's visit on the second day, especially in light of the tense political climate and the inability of UB to provide same. The Police indicated that they would be providing security for the Prime Minister. I also confirmed with the Office of the Prime Minister that the Prime Minister's audience was comprised of students and members of the University community.*

10. *The student government handed out on the Campuses invitational flyers addressed to and inviting students and others members of the University community to the forums, and informing them of the arrangements being made to facilitate their attendance.*
11. *Thus, from my discussions with the student government and my own involvement with the arrangements,, it was clear in my mind that the ‘public forums’ were for the benefit of the members of the UB Campuses across Belize, students in particular, and not for the public at large. At first the forums were only for the student and university community from the Belmopan Campus but the Chairman of UB and the President decided that the Prime Minister should address the entire UB population and made arrangements for students and UB community from other campuses to participate.*
12. *The 27th April, 2005 forum went without incident and the discussion involved an exchange of strong comments between the Speakers and the student body.*
13. *The forum of the 28th April was marked by heated discussion, and highly critical comments were exchanged.*
14. *Before the Prime Minister arrived, however, Police Department intelligence indicated to me that ‘Union members’ may be headed towards the Belmopan Campus to attend the forum. The Police asked if we had invited the unions. After consulting with the Student Government President and the Dean of Students, I informed the Police that it was a student meeting and the “Union Members” were not invited by the Student Government and the target audience was the UB students and community.*
15. *During the ongoing forum, I was informed that there was a mass of evidently angry persons at the front gate but that there was no need to cut short the proceedings as the Police had everything under control. I was concerned because these persons were not invited, and because the presence of a mass of*

angry persons would not have been beneficial to the Students' fact finding mission.

17. *To the best of my recollection, both forums were attended strictly by invited guests, and members of the University community including Students, Lecturers, and other Staff. The Honorable John Saldivar, who was a Guest Speaker on the 27th, is the only other person I can recall being allowed into the Forum on the 28th April.*
 18. *The University has held public forums in the past but these were always advertised through the media houses and students are not usually given a flyer.*
 19. *After the forum, I learned that Honorable Patrick Faber was, along with the assembled group of people, restrained from coming into the meeting.”*
12. The then substantive President of the University of Belize, Dr. Corinth Morter-Lewis, who came shortly after the forums had been planned also made a witness statement in which she states among other things:
- “4. *I was not in the country when the initial organization of the forums took place but I arrived back on Monday the 25th of April, 2005.*
 5. *Upon my arrival I became aware that the events were only planned for the students of the Belmopan campus and I suggested that the wider student population from Belize City, Central Farm and Punta Gorda should also be invited to attend.*
 6. *Based upon my suggestion, buses were arranged to bring in the students from the aforementioned areas.*
 8. *I do not think that the forums were intended to be open to the public and the issue did not arise when the matter was discussed at the University's Board level.*

9. *Personally, I would not have had a problem with members of the public being in attendance as long as they were prepared to be there with the clear understanding that it was an event organized by and for the students.”*

13. From the evidence, I come to the inescapable conclusion that both forums of the 27th and 28th April 2005, at the gymnasium of the Belmopan Campus of the University of Belize, were organized by and meant for the University of Belize Community in the country, and the “University community” included students, staff and administration only. This is in contrast to a “public forum” meant for the general public but organized or held on the premises of the University. To the latter, of course, subject always to the right of the University to restrict or exclude or regulate attendance for security or safety and other considerations the general public may have access.
14. But I am satisfied that the forums of the 27th and 28th April 2005 organized by the student government at the Belmopan Campus of the University of Belize, were not for the general public to which every and all members of the public could have insisted as of right, to attend. The forums were for the University community, in particular, for the students of the University of Belize.
15. Yes, the flyer advertising the forums had the words “Public Forums” printed on the back. But these words appear beneath the words “Belmopan SG Responds” and a closer read of the details of the flyer would leave no doubt that it was aimed at members, in particular, the students of the University of Belize. In fact the flyer is attached to an open letter clearly and expressly addressed to “students.

16. I find it difficult to understand therefore, how any one could say the forums were open to the public at large with the right of anyone to insist on attendance.

How did the Police come to be present for the forum of 28th April, 2005?

17. It is of course, the encounter between Mr. Faber and the police, in particular, Assistant Commissioner of Police Eduardo Wade, in the afternoon of 28th April 2005 outside the entrance of the Belmopan Campus of the University of Belize, that has given rise to Mr. Faber's claims in these proceedings. Mr. Anderson, at the time the Provost of the University, states in his witness statement at par as, 9 and 14 and 15 how the police came to be present for the forum on 28th April 2005. (I have already set these out at para. 11 of this judgment).
18. The Deputy Commissioner of Police (as she then was), Maureen Leslie, in her witness statement states:

- “2. In or about April 2005, the University of Belize (UB), Belmopan. Campus requested security during the Prime Minister's address to the students, staff and faculty of that institution for a university function to be held on 28th April 2005. Since it is customary for the Police Department to provide such security, we agreed.*
- 3. On the 28th April 2005, I received intelligence that attendees of a public meeting in Benque Viejo were headed to the Belmopan Campus to attend the meeting in Belmopan.*
- 4. I spoke to the Provost of the University who confirmed that the meeting with the Prime Minister was for students, faculty and staff only and that other persons were not invited.*

5. *Some time before the function commenced, I went to the UB Belmopan Campus with other Police officers. I was the senior officer at the time and I stationed myself at the gymnasium while other officers were posted at the front entrance gate to the UB.*
6. *While at the gymnasium I kept in contact with the senior officer responsible for crowd control, Eduardo Wade, at the front gate and we briefed each other periodically.*
7. *Through my briefings with the senior officer, I was informed about the situation with Mr. Faber and heard the commotion over the radio.*
8. *I did not see the actual incident unfolding at the front gate as the front gate is not visible from the gymnasium.”*

19. Assistant Commissioner of Police (as he then was), Eduardo Wade, in his own witness statement states on the issue of the police presence at the entrance of the University as follows:

- “1. *I was at all material times the Commander of Operations of the Belize Police Department and the Officer in charge of the Police Unit responsible for the control of public meetings and processions (‘the Unit’).*
2. *On the morning of Thursday 28th April, members of the Teacher’s Union, the Belize Telecommunications Limited and the National Trade Union Congress were having a public meeting in Benque Viejo and the Unit of which I was in charge was present.*
3. *The people at the Union meeting were very noisy and shouting and making a lot of noises. The mood was very tense.*

4. *At the close of the meeting at around 11:30 a.m., I can recall specifically that Mr. Fraser, General Secretary for the Teacher's Union informed the gathered crowd that they would leave Benque Viejo and go directly to the function being held on the Belmopan Campus of the University of Belize ('UB') with the Prime Minister of Belize.*
5. *I then drove back to Belmopan with the Unit, and around 12:30 p.m. I spoke with the Commissioner of Police. I informed him of the Unions' intention to attend the function at UB and inquired into whether measures were in place to deal with this angry crowd if they indeed gathered at UB.*
6. *I must add that due to the escalating unrest at the time, the Police Department was exercising increased vigilance with regard to order and crowd control and security.*
7. *I received an internal communication that the crowd which had been at the meeting in Benque did arrive at UB and the UB had requested Police security from the Police since the meeting at UB was for UB students and not for the public.*
8. *I departed for UB and arrived there shortly before 3:00 p.m. that afternoon.*
9. *I found that police officers were already present at the front entrance or Southwestern gate of the campus where a crowd of about one hundred (100) to one hundred and twenty-five (125) had gathered. The persons gathered at the gate were mostly members of the National Trade Union Congress whom I had seen gathered earlier in the day at the public meeting in Benque Viejo Town, but there were also others present whom I did not recognize.*
10. *The crowd gathering there at the time was noisy and shouting, and demanding entrance to the University of Belize Gymnasium where a meeting was in progress with the Prime Minister and students and faculty of that institution.*

11. *The police officers whom I found at the gate when I arrived at UB were attempting to maintain order and the main entrance road was blocked off with barriers set up by Police.”*

The Encounter between Mr. Faber and the Police

20. As is often the case in these matters, the accounts of the encounter between Mr. Faber and the police just outside the University campus on 28th April 2005, do not exactly converge, especially in their details.
21. Mr. Faber, in his own witness statement states on this as follows:

- “8. *I travelled to Belmopan on that afternoon arrived in my vehicle at the Belmopan campus of the University of Belize at about 2:40 p.m. I recognized that there were other persons present in the vicinity of the campus and I lowered my glass to greet the persons who were assembled in the area.*
9. *I stopped at the entrance to the campus where I was met by Assistant Commissioner of Police Eduardo Wade who stated to me that he would have to check with officer Orio to see if I would be allowed access to the forum. Officer Wade moved further away from my vehicle but returned shortly thereafter and told me that I was not permitted to enter the auditorium where the forum was to be held.*
10. *I asked why I was being prevented and he gave no valid reason for doing so and stated that the function was a private one and that only staff and students could attend.*
11. *At this time I brought to Officer Wade’s attention the flyer which had been circulated among the members of the public advertising the forum as public and bearing the seal of the student government.*

12. *Despite having been shown the flyer and despite my insistence that I had a right to attend a public function Mr. Wade refused to allow me access to the venue.*
 13. *At this point there were no members of the Police Riot Squad on the location.*
 14. *I was physically restrained by my arms by Officer Eduardo Wade even before the riot squad arrived and despite the fact that my freedom of movement was restricted I was not placed under arrest.*
 15. *I was restrained by Officer Wade and others for approximately 45 minutes. It was not until 45 minutes after my arrival that I saw the riot squad pull into the compound and commence to set up their formation.*
 16. *I kept insisting on my right to attend the public forum as in my opinion the police had given no valid reason for restraining me and had not placed me under arrest. I therefore attempted to make my way into the venue by running away from the Police Officers who were restraining me.*
 17. *I was unable to make it into the auditorium as I was caught by three members of the Riot Squad. Thereafter I was dragged and carried into a Police vehicle and taken to the Belmopan Police Station. Whilst I was being placed into the police vehicle one of the officers punched me in the stomach.*
 18. *I was charged with 2 counts of aggravated assault allegedly upon Rudolph Orio, Superintendent of Police and Edwardo Wade, Assistant Commissioner of Police.”*
22. Under cross-examination by Ms. Banner for the defendants, Mr. Faber stated that he was aware that from January to April 2005, there were ongoing teachers’ union strikes and other unions’ strikes in the country and that the leadership of his political party had said his party would begin a sustained campaign of civil disobedience. Mr. Faber also under cross-examination stated the he never received an invitation to the forum on 28th

April, nor did he hear it being advertised in the media, but was handed a flyer of the event when he arrived at the gates of the university. He also stated that he did not see copies of the flyer being distributed to the public.

23. I am satisfied that from Mr. Faber's witness statement and his answers in cross-examination, he could not have been under any reasonable impression that the forum on 28th April 2005, to which he so persistently tried to get into, was organized for other than the students and university community of the University of Belize. Any impression that he entertained that it was for the general public (including himself) must have been self-induced or a misconception of the flyer. The flyer itself was a composite of a letter to students of the University on one side, with details of the forums on the back of the letter.

24. Mr. Wade, the Assistant Commissioner of Police, who was at the material time the commander of and officer in charge of the Police Unit responsible for the control of public meetings and processions, states in his own witness statements about the encounter with Mr. Faber as follows;

“11. The police officers whom I found at the gate when I arrived at UB were attempting to maintain order and the main entrance was blocked off with barriers set up by Police.

12. Sometime around 3:00 p.m. of that same day while standing near the front entrance I saw a member of the House of Representatives, the Honourable Patrick Faber, arrive on the scene in a vehicle which he parked immediately behind another car which was parked beside the Police barriers. The manner in which the Representative parked was such that his vehicle was blocking the entrance to a nearby street.

13. The vehicle remained in that position but the occupants did not come out. I then noticed that some members of the crowd surrounded the vehicle and there was some conversation

between the occupants of the vehicle and persons standing by the vehicle but I did not hear the conversation.

14. *I returned into the area that was being guarded by police and, shortly after, I saw the Honourable Minister (sic) alight the vehicle from the driver's side and a female companion who as in the passenger side also alighted the vehicle.*
15. *At this point, the Honourable Minister (sic), who is the Claimant, forcefully entered into the area that was blocked off by the Police officers, and teachers and other union members who were present then forcefully removed the barriers, entered into the area being guarded by Police and began moving in various directions.*
16. *The Police set chase after those who had entered the grounds, including the Claimant, and were still trying to prevent the whole crowd from entering.*
17. *The Claimant was struggling with the Police as they were talking to him and trying to get him out of the area. I personally spoke with the Claimant and advised him to listen to the Police as I understood that the activity that was taking place at the gymnasium was a private student and staff function and I did not want matters to get out of hand.*
18. *The Claimant continued struggling and mentioned to us that he would reach the auditorium and no one would stop him as it was a public meeting and he had some questions for the Prime Minister.*
19. *The Claimant then pushed a pamphlet toward my face and repeated that the meeting was public. I was not able to read the pamphlet but recall seeing the word "public" on it. I informed the Claimant that I did not know about the pamphlet or who prepared it, but that I understood from UB that the function was for University students and staff only and that he would not be allowed to go into the gymnasium where the address was being held.*

20. *I and other Officers pleaded with the Claimant for him to behave himself, as his conduct appeared to be causing the crowd to advance further toward us and become increasingly militant and we not want the situation to escalate. Despite our pleas, the Claimant persisted in very rowdy conduct and struggled to get around the Police who were blocking his path with their bodies.*
21. *At one point I called the commissioner of Police and informed him that there would likely be problems on the Campus based on my observations of the mood of the persons gathered and the manner in which they were acting. I felt that there would have been a breach of the peace out there if there was no proper security or reinforcements in place.*
22. *At this, the Claimant said to me, "Mr. Wade if I have to come out from here, you going with me too" and he held on to my body and clothing and was dragging me. I informed him that he was assaulting me and he said that if I had to arrest him then I must go ahead and arrest him.*
23. *By this time, the Public Order Unit had arrived. Mr. Faber thereafter managed to pass us and he ran behind a building on the University compound where he was chased and restrained by two persons from the Public order Unit. While this was occurring, other Police officers were attempting to control the crowd which became incensed when Mr. Faber began to run from the Police.*
24. *We were taking all efforts to restore calm and normalcy to the area and removing those persons who had breached the Police barriers during the confrontation with the Claimant.*
25. *Two members of the Public Order Unit had to carry Mr. Faber behind the building as he was sitting on the ground and I saw that the officers, while carrying Mr. Faber, fell to the ground with him whilst crossing a walkway.*
26. *On my instruction Mr. Faber was taken to the Belmopan Police Station and charged with aggravated assault.*

27. *To the best of my recollection, the Police were very tolerant with the Claimant, and force was only used when he ran past the barriers and was pursued and physically carried away from the scene. In particular, I did not see any police officer punch the Claimant.*
28. *The arrest of Mr. Faber was a decision taken by myself as the Officer in charge based on what occurred and what I saw and because I feared that had Mr. Faber not been removed from the scene the situation could have further escalated and gotten completely out of order.”*

25. I had at paras. 11, 17 and 18 of this judgment outlined how, from the evidence, the police came to be present outside the Belmopan campus of the University of Belize, manning a barrier.
26. What is indisputable in all of this is what the encounter between Mr. Faber and the police in the afternoon of 28th April 2005, led first, to his temporary detention and later to his subsequent arrest and his being taken to the Belmopan Police Station where he was charged with **aggravated assault**.
27. Mr. Faber has therefore complained in these proceedings that the actions of the police in the circumstances constituted violations of his constitutional rights as stipulated in sections 5, 10 and 12 of the Belize Constitution. Mr. Faber seeks declarations from this court to this end, as well as damages for the violations of his constitutional rights and costs.

The Constitutional Rights Claimed to be violated

28. I should state categorically that the courts take seriously any alleged violation of a citizen’s constitutional rights, especially the provisions relating to the Protection of Fundamental Rights and Freedoms stated in Part II of the Belize Constitution. This court is enjoined by section 20 of

the Constitution to afford protection to any person who alleges a breach of any of its provisions in section 3 to 19 inclusive.

29. I now turn to a consideration of Mr. Faber's claims in the light of the provisions of the Constitution alleged to have been breached and the evidence which I have at some length recounted above as contained in the several witness statements in this case for a determination of his claims.

A. *Did the actions of the Police in detaining and arresting Mr. Faber on 28th April 2005 constitute a violation of his constitutional rights as provided in section 5 of the Belize Constitution?*

30. Section 5 of the Constitution is the anchor of personal liberty of the individual in Belize. It provides so far as is material as follows:

“5(1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:”

There then follow from paragraphs (a) to (j) ten instances when personal liberty may be held in check.

31. It is the contention on behalf of the Mr. Faber that a perusal of the provisions of section 5 reveals no justification for the deprivation of his personal liberty on 28th April 2005. This is so, the written submissions by Mr. Faber's attorney asserts, because no evidence was offered by the defendants to suggest that the police had a reasonable suspicion that Mr. Faber had committed or was about to commit a criminal offence under any law.

32. It must be said however, that the lawfulness or constitutionality of a detention or arrest is almost invariably heavily dependent on its factual circumstances. That is to say, the lawfulness of an arrest or detention is highly fact specific. The detention and arrest in issue in this case is no exception.
33. It is fair to say that the factual and evidential matrix of Mr. Faber's detention and arrest, is copiously set out in the witness statements of Mr. Faber himself and those of other witnesses and in particular, for the defence, the witness statement of Mr. Eduardo Wade, the Assistant Commissioner of Police who was the police officer in charge of the police at the barrier just outside the Belmopan Campus of UB at the material time when Mr. Faber was detained and later arrested (see para. 24 of this judgment for the details in Mr. Wade's witness statement).
34. In fact, in the course of the proceedings the only factual and eye-witness' accounts of the detention and arrest of Mr. Faber came from Mr. Faber himself: see in particular, paras. 9, 10, 12, 14, 15, 16 and 17 of his witness statement; and Assistant Commissioner of Police Wade: see paras. 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27 and 28 of his own witness statement.
35. The essence of the defence filed on behalf of the defendants however, is that the physical restraint of Mr. Faber by the police was at all materials time lawful and was the result of his insistence on entering the campus of UB contrary to lawful police orders and efforts, and Mr. Faber's repeated attempts to infiltrate the police barrier installed to keep the assembled crowd at bay. It is also averred in the Defence that the presence of the police outside the university campus that day was necessary; and that since Mr. Faber is neither a student nor a member of UB, the refusal of access to him for the purpose of going to the forum at which the Prime Minister was speaking, was valid and lawful.

36. It is the contention on behalf of the defendants therefore that Mr. Faber's behaviour and actions on 28th April 2005, provided reasonable grounds for the police to believe and determine that a breach of the peace by him was likely. And that further the police officer in charge of crowd control had reasonable grounds to believe that a breach of the peace was a real possibility and he was therefore acting in the execution of his duty in taking action to prevent such a breach by arresting Mr. Faber.
37. It is manifest from a reading of the constitutional provisions on personal liberty that this liberty is not always absolute and immutable. Section 5(1) of the Constitution itself itemizes ten instances that would allow for a person's liberty to be interfered with. But, and I think this is important, **such interference must be authorized by or done under the authority of a law**: then and only then, would the interference be lawful.
38. In this case, it is submitted on behalf of the defendants that Mr. Faber's personal liberty was not infringed as his arrest and detention was effected in harmony with section 5((1)(e) of the Constitution.
39. The effect of section 5(1)(e) of the Constitution is, I think, that a person shall not be regarded as having been deprived of his personal liberty if by the authority of **any** law, he is so deprived
- “(e) upon a reasonable suspicion of his having committed, or being about to commit a criminal offence under any law.”*
40. The critical question therefore is: did Mr. Faber commit any criminal offence under any law on 28th April 2005, to warrant or justify his detention and arrest by the police?

41. I have earlier explained how the police came to be present at the University on that day. They were there expressly at the invitation of the university authorities to ensure that only the student and staff, the member of the university community would attend the forum that day and to provide security for the Prime Minister's visit as the presenter for that day (see in particular paras. 9, 14 and 15 of Mr. Anderson, the Provost of the university's witness statement).
42. From the evidence, it cannot reasonably be disputed that the police at the gate of the university on that day were acting in the line of duty. I am satisfied that they were there to ensure only persons entitled to attend the forum were allowed to do so and to provide security for the Prime Minister given the tense situation with the unions and to maintain law and order in the face of the milling crowd outside the university. It should be remembered this was at a time of some tension in the country.
43. Now section 38 of the Police Act – Chapter 138 of the Laws of Belize, Revised Edition 2000 makes it an offence for any person to **assault**, **resist** or **obstruct** any police officer or special constable in the execution of his duty. For this an offender is liable on summary conviction to a fine or imprisonment. The offence may, in the discretion of the magistrate be committed for trial to the Supreme Court.
44. Although, Assistant Commissioner of Police Wade said in his witness statement that Mr. Faber was, on his instructions, taken away from the area to Belmopan Police Station where he was charged with aggravated assault (of which he was later discharged), I am satisfied on the evidence that the conduct and behaviour of Mr. Faber at the police barrier where he forced his way through into the university compound and his sprinting away from the police in a dash towards the place the forum was being

held, may well be within the provisions of section 38(1)(a) of the Police Act.

45. Such conduct I find grounds his detention and therefore within the provisions of section 5(1)(e) of the Constitution in the light of section 38(1)(a) of the Police Act. He was without question, at the very least, obstructing the police.
46. Moreover, the offence of **aggravated assault** preferred against Mr. Faber, flowing from his encounter with the police, is clearly provided for in **section 45 of the Criminal Code**, Chapter 101 of the Laws of Belize, Revised Edition 2000, which accords with section 5(1)(e) of the Constitution.
47. Additionally, I find from the evidence that if the police had not tried to restrain Mr. Faber after they had made it clear to him that the forum was for members of the university community when he forced his way inside the barrier and sprinted away from the police who had to give chase as he ran towards the gymnasium where the forum was in progress, and that if he were allowed to get away with it, the crowd of mostly agitated, angry and noisy union members gathered on the outside of the barrier at the University entrance, would have followed Mr. Faber's example, as some of them did. If this had been allowed to happen, the ensuing bedlam and chaos could only be imagined. I have no doubt that the police were hard pressed by Mr. Faber's actions and conduct in the face of an agitated crowd of mostly union members. In fact, in cross examination, Assistant Commissioner of Police Wade stated that the crowd dispersed shortly after Mr. Faber's removal. The action by the police I have no doubt, prevented a general melee from ensuing that day between them and the crowd.

48. I find therefore that the police were justified to restrain and detain Mr. Faber who was acting clearly in breach of the peace. This I find, he was doing by his persistence and struggle with the police to get through the police barrier to attend the forum and forcing his way through.

I must say that it must have been a quite unexpected and remarkable to see Mr. Faber being chased by the police and being tackled and dragged or carried away in his desperate bid to get to the forum.

49. A primary duty of the police is to preserve the peace as stated in section 20(1) of the Police Act. The preservation of the peace undoubtedly would entail preventing a breach of the peace.

50. The concept of breach of the peace itself covers a rather wide spectrum with a host of cases on the subject. See for example **Piddington v Bates (1961) 1 WLR 162**; **Albert v Lavin (1982) AC 546**, **R v Howell (Errol) (1982) QB 416**; **Moss and others v McLachlan (1985) 1 IRLR 76** and for a more recent consideration, **R (Laporte) v Chief Constable of Gloucestershire (2007) 2 WLR 46**. In that case, the claimant was not arrested or charged for any offence but was in fact detained in the coach that was heading for Fairford where the demonstration was to take place. The coach was intercepted by the police and turned back towards London where the claimant was able to get off in a traffic jam. In those circumstances, the House of Lords held that he was unlawfully detained.

51. In **Howell** supra, an appeal against conviction of the defendant (appellant) on a prosecution of violently resisting a lawful arrest for breach of the peace, at trial the defendant had submitted that there was no case to answer since the prosecution had failed to show that any violence had been used immediately preceding the arrest, that therefore no breach of the peace had been proved. And secondly, even if the defendant had

struck the constable, which was denied, he was acting lawfully in using reasonable force to resist an unlawful arrest. The recorder rejected the submission and convicted the defendant. The defendant's appeal was dismissed by the English Court of Appeal which held that a constable or a private citizen had the power of arrest without warrant where a breach of the peace was committed in the presence of the person making the arrest; where there was a threat of a breach of the peace being renewed, and where, although no breach had been committed, the person making the arrest reasonably and honestly believed that such a breach would be committed in the immediate future; that where an arrest was made for an anticipated breach of the peace it was sufficient that the constable stated that it was for "a breach of the peace" and, since the defendant knew he was being arrested or had prevented the constable from telling him the reason for the arrest, the arrest was valid.

52. In the instant case, it is reasonable to hold as a fact that Mr. Faber must have known why he was arrested – forcing his way through the barrier manned by the police even after being told the forum was for the university community, staff and students of which he was not one, and deliberately running away from the police in a dash for the forum. Surely he must have known he was acting in breach of the peace. As Watkins LJ stated in **Howell** at p. 427:

"We are emboldened to say that there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property, or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance. It is for this breach of the peace when done in his presence, or in the reasonable apprehension of it taking place that a constable or anyone else, may arrest an offender without warrant."

53. From the evidence, it is clear that Mr. Faber's belligerent and insistent behaviour and assault on Assistant Commissioner of Police Wade was sufficient to constitute a breach of the peace that would suffice to have warranted his arrest: see in particular paras. 16, 17, 18, 19, 20, 22 and 23 of Wade's witness statement. In fact, he was, as a result of his encounter with the police, charged with aggravated assault as he himself states at para. 18 of his witness statement – see para. 45 above.
54. A breach of the peace is a creation of the common law but it is now a concept too well established in the law and even though it may not as such be a criminal offence (see per Lord Bingham of Cornhill in **Laporte** supra, at para. 28). I do not think an arrest based on it sits at odds with the protection of personal liberty stipulated in section 5(1)(e) of the Constitution. An arrest based on it is not, in my view, outside the exception stated in paragraph (e) of sub-section (1) of section 5. See **Steel v United Kingdom (1998) 28 EHRR 603**, where the European Commission of Human Rights upheld the objection of the British Government that "a breach of the peace" was too ill-defined a concept to meet the requirements that the applicants' arrest was outside the provision 'prescribed by law' within the meaning of article 10(2) of the European Convention on Human Rights.
55. It is for all these reasons that I am unable to find or hold that Mr. Faber's arrest on 28th April 2005, violated his section 5(1) rights to personal liberty. I accordingly agree with the submissions of Ms. Banner for the defendants that Mr. Faber's arrest and detention by the Police was necessary and lawful.
56. I therefore refuse the declaration sought that his arrest and detention that day constituted a violation of his constitutional rights as provided in section 5 of the Constitution.

B. Did the action of the police in arresting Mr. Faber in order to prevent him from entering the recreation centre (the gymnasium where the forum for the 28th April 2005 was held) constitute a violation of Mr. Faber's constitutional rights provided in section 10 of the Belize Constitution?

57. Section 10 of the Constitution provides for the protection of freedom of movement for everyone within Belize. Sub-section (1) provides:

“10(1) A person shall not be deprived of his freedom of movement, that is to say, the right to move freely throughout Belize, the right to reside in any part of Belize, the right to enter Belize, the right to leave Belize and immunity from expulsion from Belize.”

58. The right to freedom of movement is undoubtedly a necessary corollary of the right to personal liberty provided for in section 5 of the Constitution. The two rights compliment and reinforce each other: the right to personal liberty would be almost empty and meaningless without the right to freedom of movement. The latter right would equally be inconceivable or of little utility without the former.

59. But like most fundamental rights (including the right to personal liberty), the right to freedom of movement is not absolute and immutable.

60. Sub-section (2) of section 10 expressly provides that”

“Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.”

61. From the evidence in this case and my findings in the preceding section, the police had to restrain Mr. Faber on that day and arrest him thereby preventing him from entering the gymnasium where the forum was held. There is overwhelming evidence that Mr. Faber was not expected or invited to be present for the forum; and that the police abundantly made this clear to him. But he forced his way through the police barrier and made a dash for it. He was by his conduct not only obstructing the police but also inviting them to arrest him. I have found that in the circumstances, his arrest and detention was lawful and was not, in accordance with sub-section (2) of section 10, inconsistent with or in contravention of Mr. Faber's freedom of movement.
62. Freedom of movement is not a licence for trespass or going where one is clearly told he is not invited.
63. Accordingly, I am unable to grant the declaration sought that there was a contravention of Mr. Faber's constitutional rights as provided in section 10 of the Constitution.
- C. Did the arrest and detention of Mr. Faber by the police on 28th April 2005 constitute a violation of his section 12 rights on freedom of expression?
64. Section 12 of the Constitution provides for the protection of freedom of expression and sub-section (1) provides in terms:

“12(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and

information without inference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.”

65. Again, like other fundamental rights and freedoms provided for in the Constitution, the rights provide for in section 12(1) compendiously called “freedom of expression” are not absolute and immutable. Sub-section (2) provides instances when under the authority of a law, this freedom may be limited or interfered with, but then reasonably.
66. Freedom of expression is, today, undoubtedly the life-line of any functioning democracy. But there may be practical limitations on this freedom and as Lord Slynn of Hadley explained in the Privy Council case of **Benjamin v Minister of Information and Broadcasting (2001) 1 WLR 1040**, a case from Anguilla:

“There are obviously limits to the exercise of this freedom even without a law falling within section 11(2) of the Constitution. (The provisions of the Anguillan Constitution on this being similar to the Constitution of Belize). Thus no one has a right in all circumstances to insist on holding a meeting in another individual’s house or in the middle of a highway in a way which impedes traffic or in using language intended to stir up violence or a breach of the peace. But the circumstances of each case have to be looked at.” (Emphasis added), at p. 1049 para. 32.

67. It does need a critical look at the circumstances of the instant case to conclude that the actions of the police on that day in relation to Mr. Faber cannot in any meaningful sense or reasonable view be said to have deprived him of or interfered with his freedom of expression as contemplated and provided for in section 12(1) of the Constitution.

Indeed, **a propos** Lord Slynn in **Benjamin** supra, I would with respect venture to say that no one has the right, in the name or guise of freedom of expression, to demonstratively insist on attending a meeting or gathering to which he is clearly not invited especially after being expressly so informed by police officers or others controlling attendance thereat.

68. From the circumstances of this case as detailed in the evidence, Mr. Faber could not reasonably complain that his freedom of expression was interfered with by the police on that day. It was made clear to him in no uncertain terms that the forum on 28th April 2005 with the Prime Minister, was for the staff, students and university community. Yes, this may be “a class of persons” within section 12(1) of the Constitution; but I do not think that this confers a right to all and sundry to attend. Otherwise anyone can walk off the street and insist on attending any gathering or meeting without being invited. One might even insist, in the name of freedom of expression, to attend any classes at the University of Belize!

69. I am therefore not convinced or persuaded that in the circumstances of this case Mr. Faber’s constitutional right to freedom of expression was violated by the police when he was restrained and arrested and thereby prevented from entering the gymnasium of the University of Belize for the student-organized forum with the Prime Minister on 28th April 2005; I accept the submissions of Ms. Banner for the defendants in this respect.

Conclusion

70. I am, for the reasons stated in this judgment, accordingly unable to grant any of the relief sought by Mr. Faber in these proceedings.

A. O. CONTEH
Chief Justice

DATED: 30th October 2009.