IN THE COURT OF APPEAL OF BELIZE, A.D. 2008

CIVIL APPEAL NO. 17 OF 2008

BETWEEN:

THE PRIME MINISTER OF BELIZE **THE ATTORNEY GENERAL OF BELIZE**	**Appellants**
AND	
ALBERTO VELLOS **DORLA DAWSON** **YASIN SHOMAN** **DARREL CARTER**	**Respondents**

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**

Ms. Lois Young Barrow, S.C. for the appellants.
Ms. Lisa Shoman with Kevin Arthurs and Anthony Sylvestre for the respondents.

9 October 2008; 27 March 2009

MOTTLEY P

1. The respondents, as claimants below, filed an application for judicial review claiming the following relief:

   (i) A Declaration that the Prime Minister is acting in violation of, in a manner repugnant to, ultra vires of and inconsistent violation with section 2(2) (a) and section 3(1) of the Referendum Act by his failure to request that the Governor General issue a Writ of Referendum, in respect of a proposed amendment to section 5 of

the Belize Constitution (protection of right to personal liberty) by way of section 2 of the Belize Constitution (Sixth Amendment) Bill, 2008;

(ii) A Declaration that the Prime Minister is acting in violation of, in a manner repugnant to, ultra vires of and inconsistent violation with section 2(2) (a) and section 3(1) of the Referendum Act by his failure to request that the Governor General issue a Writ of Referendum, in respect of a proposed amendment to section 17 of the Belize Constitution (protection of deprivation of property) by way of section 2 of the Belize Constitution (Sixth Amendment) Bill, 2008;

(iii) An order of Mandamus requiring the Honourable Prime Minister to request the Governor General to issue a writ of Referendum pursuant to section 3(1) of the Referendum Act.

2. The grounds upon which the relief was sought were set out in the application. These are:-

(i) The specific issue of the amendment to and derogation from the fundamental rights and freedom contained in sections 5 and 17 of the Belize Constitution has been raised by way of the introduction and first reading of the Constitution (Sixth Amendment) Bill, 2008 in the House of Representative on 25th April, 2008.

(ii) Section 2(2) of the Referendum Act mandates that a referendum shall be held on an issue relating to the amendment to and derogation from any of the fundamental rights and freedom provisions guaranteed under Part II of the Belize Constitution.

(iii) Section 3(1) of the Referendum Act empowers the Prime Minister where a law provides for the holding of a referendum on a specific issue (section 2(2) (a) of the Referendum Act being such a law) to request a Governor General to issue a Writ of Referendum on that specific issue.

(iv) The Prime Minister has failed to request the Governor General to issue a Writ of Referendum in respect of the amendment to derogation from those fundamental rights guaranteed under section 5 and section 17 of the Constitution, notwithstanding the introduction and first reading of the Belize Constitution (Sixth Amendment) Bill, 2008 in the House of Representative.

(v) The Prime Minister has demonstrated an intention to not request the Governor General to so issue a Writ of Referendum having introduced into the House of Representative on 25th April, 2008 the Referendum (Amendment) Bill, 2008 which repeals section 2(2) (a) of the Referendum Act.

(vi) Section 2(2) (a) and section 3(1) of the Referendum Act, validly binds all public authorities, including the Prime Minister and the Attorney General

3. In his judgment, Chief Justice Conteh stated that, while there was much to commend the claimants' case, he, nonetheless, was unable to grant the declarations in the form sought. However, he went on to declare:
"that on the conclusion of the legislative processes on clauses 2 and 3 of the Sixth Constitutional Amendment Bill, 2008, these clauses of the said bill should be put to a referendum for the electorate to have their say"

4. The core issue in these proceedings as identified by the Chief Justice was whether the introduction in the House of Representatives on 25 April 2008 of the Belize Constitution (Sixth Amendment) Bill 2008, (the Sixth Constitutional Amendment Bill), by the Prime Minister at the same time as the Referendum (Amendment) Bill, 2008 unlawful in the sense that it did comply with the Referendum Act, Cap. 10.

5. The Sixth Constitutional Amendment Bill seeks to amend sections 5 and 17 of the Constitution of Belize. Clause 2 of the Bill which seeks to amend section 5 provides as follows:

2 Section 5 of the Constitution is hereby amended as follows:-

(1) in subsection (i) by adding the following new paragraph immediately after paragraph (j):

(k) under a law which makes reasonable provisions for the protection of children from engaging in criminal activities or other anti-social behaviour; or

(l) under any law relating to the detention of persons who are suspected on reasonable grounds of being involved in the commission of, or being likely to commit, a serious crime.

by inserting the following as new subsection (5A) immediately after subsection (5):-

"(5A) Subsection (2) and (3) of this section shall not apply to a person who is detained under a law referred to in paragraph (k) and (l) of subsection (1) of this section."

Provided that no person shall be detained under a detention order made under a law referred to in paragraph (1) of subsection (1) of this section for a period longer than (sic) seven days, but the initial detention order may be extended one month by a Judge of the Supreme Court in Chambers on an ex parte application made in that behalf";

By addition the following as new subsection (8) after subsection (7):-

"(8) For the purposes of this section, 'serious crime' means murder, armed robbery, the offence of belonging to a criminal gang and terrorism."

6. Clause 3 of the Sixth Constitutional Amendment Bill proposes amendments to section 17 of the Constitution. The clause provides as follows:

"3 Section 17 of the Constitution is hereby amended by adding the following as subsection (3) and (4) after subsection 2: (3) subsection (1) of this section does not apply to petroleum minerals and

accompanying substances, in whatever physical state, located on or under the territory of Belize (whether under public, private or community ownership) or the exclusive economic zone of Belize, the entire property in and control over which are exclusively vested, and shall be deemed always to have been so vested, in the Government of Belize.

Provided that the Government may be a contract for the prospecting and production of petroleum or minerals enable a contractor to acquire property in, title to, or control over any petroleum or minerals found in Belize, and in every such case, the provisions of subsection (1) of this section shall apply to all petroleum or minerals which may come into the possession or control of a contractor by virtue of such contract.

(4) For the purpose of subsection (3) above, the terms "petroleum and minerals" shall have the meanings as are or may be ascribed to them by any law."

7. Sections 5 and 17 of the Constitution relate respectively to the protection of the right to personal liberty and protection from deprivation of property and form part of Chapter II of the Constitution which deals with the Protection of Fundamental Rights and Freedom.

8. It is clear that clauses 2 and 3 of the Sixth Constitutional Amendment Bill are intended to derogate from the provisions of sections 5 and 17 of the Constitution. As such, section 2(2) (a) of the Referendum Act requires that the proposed amendment shall be submitted to a referendum. This requirement is mandatory (see section 58 of the Interpretation Act Cap 1).

9. Section 2 of the Referendum Act provides:

"2(1) Without prejudice to any law which provides for a referendum to be held on any specific issue, the National Assembly may by resolution passed in that behalf declare that a certain issue or matter is of sufficient importance that it should be submitted to the electors for their approval through a referendum.

(2) Notwithstanding subsection (1) above, a referendum shall be held on the following issues:-

(a) any amendment to Chapter II of the Constitution which derogates from the fundamental rights and freedoms guaranteed; and

(b) any proposed settlement with Guatemala for resolving the Belize/Guatemala dispute."

10. Under section 3 of the Referendum Act, the Governor General is required within thirty days of the passing of a resolution by the National Assembly pursuant to section 2 to issue a Writ of Referendum in a form similar to the Writ of Election. In the case where a law requires the holding of a referendum, the Governor General must also issue the Writ of Referendum within 30 days.

11. The principal changes which the Referendum (Amendment) Bill, 2008 sought to effect was the repeal of the expressed requirement in section 2(2) (a) of the Referendum Act for a referendum to be held on any amendment to Chapter 11 of the Constitution which derogates from the fundamental rights and freedoms as guaranteed in that Chapter.

12. The appellants complained that the Chief Justice erred in law in finding that section 2(2)(a) of the Referendum Act gave rise to a legitimate expectation. The Chief Justice found that:

"..in introducing the two bills on the same day, there was a clear attempt to remove from consideration or deny an opportunity to the electorate of Belize to have a say on the propose changes to section 5 and 17 of the

Constitution. This I find unavailing because the relevant law provides for a referendum to be held on any relevant amendment."

The Chief Justice went on to hold that the claimants and the electorate have a legitimate expectation that, in accordance with the law at the time, a referendum on the proposed amendment would have been held.

13. It has been submitted that section 2(2)(a) of the Referendum Act did not create a legitimate expectation **In Council of Civil Service Unions et al v Minister for the Civil Service [1985] AC 374**, Lord Fraser of Tullybelton said at p. 401:

"But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law. This subject has been fully explained by my noble and learned friend, Lord Diplock, in **O'Reilly v. Mackman [1983] 2 A.C. 237** and I need not repeat what he has so recently said. Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue."

14. Section 2 2(a) of the Referendum Act requires that a referendum shall be held on the issue of an "amendment to Chapter 11 of the Constitution which derogates from the fundamental right and freedom therein". In my view, and for reasons stated later, the section must be given a purposive construction and therefore I construe the section to read any proposed amendment. Once the Government had decided that it intends to amend the provision of Chapter 11 in such a manner as to derogate from the fundamental rights and freedoms, the Prime Minister is under a duty to request the Governor General to issue a Writ of Referendum. See section 3(1) of the Referendum Act.

15. As the proposed amendments affect the whole of Belize, then any duly registered elector who is qualified to vote as an elector for the election of a member of the House of Representative in an election conducted under the Representation of People Act (section 4(a)), in my view, has **locus standi** to enforce the statutory duty placed upon the Prime Minister. The purpose of the referendum is to afford the electorate an opportunity to state whether it approves the proposed amendments to the Constitution. The duty placed upon the Prime Minister may, in my view, be enforced by any elector who is entitled to vote in a referendum. The respondents in their affidavits all state that they are duly registered electors qualified to vote as electors for the election of members of the House of Representatives in an election conducted under the Representation of the Peoples Act. Consequently, in my view legitimate expectation does not arise in this case. In my opinion, there can be no doubt that the claimants had a right to institute proceedings to enforce the duty placed on the Prime Minister under section 3(1) of the Referendum Act.

16. The appellants also complained that the Chief Justice fell into error by holding that, when the respondents commenced these proceedings on 9 May 2008, they had a substantive right to a referendum. In addition, they alleged that the Chief Justice also erred when he hound that after the repeal of section 2 (2) (a) of the Referendum Act, the right to institute Judicial Review was saved by section 28(1) of the Interpretation Act Cap 1.

17. The Chief Justice held that:

"59……the one inevitable fact is that at the material time of the introduction of the Sixth Constitutional Amendment Bill on 25 April 2008, there was extant and in force the Referendum Act, which clearly stipulates the holding of a referendum on precisely some of the measures contained in particular, in clauses 2 and 3 of the bill. In the absence of a clear indication in an amendment enactment, the substantive rights of the

parties to any civil legal proceedings fall to be determined by the law as it existed when the action commenced – **Re Royce (1985) CL 22 at p29 and Francis Bennion Statutory Interpretation 3rd Ed at p. 210**."

18. The Chief Justice further held that as the Constitutional Amendment Bill, 2008 included two clauses which involved derogation from the fundamental provision of Chapter 11 of the Constitution it should be submitted to a referendum for the decision of the electorate. He indicated that he came to this conclusion:

"61……by reason of the fact that on 25th April 2008 when these amendments were first introduced and by 9th May 2008 when these proceedings were commenced the relevant and applicable law provided for a referendum. This I find is so despite the would-be or imminent repeal of section 2(2) (a) of the Referendum Act."

19. The Referendum (Amendment) Bill, 2008 which sought to repeal section 2(2) (a) of the Referendum Act had its first reading in the House of Representatives on 25 April 2008. At the same sitting of the House of Representatives the Constitution (Sixth Amendment) Bill also had its first reading. On 25 April after its first reading the Constitution (Sixth Amendment) Bill was referred to the Constitution and Foreign Affairs Committee. The Referendum Amendment Act 2008 was passed on 25 May 2008. However it does not appear that the Act has received the assent of the Governor-General. At any rate, this Act had not been enacted by 9 May 2008 when these proceedings were commenced.

20. The National Assembly is empowered by Section 69(1) of the Constitution to alter any of the provisions of the Constitution provided it is done in accordance with the provisions set out in that section. Section 69(5) provides as follows:

> "A Bill to alter any of the provisions of this Constitution referred to in subsection (3) of this section shall not be submitted to the Governor

General for his assent unless there has been an interval of not less than ninety days between the introduction of the Bill in the House of Representatives and the beginning of the proceedings in the House on the second reading of the Bill."

The provisions of the Constitution referred to in section 69(3) are section 69 itself, Schedule 2 to the Constitution and the provisions of the Constitution specified in that Schedule 2 which include the fundamental rights and freedom which are guaranteed by Chapter 11 of the Constitution.

21. The Referendum Act provides for the holding of a referendum in three circumstances. The first is where the National Assembly passes a resolution declaring that a particular matter or issue is of sufficient national importance that a referendum should be held to obtain the approval of the electorate. Secondly, when it is intended to amend the provisions stated in Chapter 2 of the Constitution in such a way as to derogate from the fundamental rights and freedoms guaranteed in that chapter. Thirdly, a proposed settlement which resolves the Belize Guatemala dispute. In these circumstances, the legislature has decided that the policy or decision of the Government above is not sufficient, but that the views of the electorate should be taken into consideration.

22. The purpose of a referendum is to place before the public an issue to be voted upon by the electorate. The referendum seeks to obtain the view of the public by way of its approval or disapproval on an issue of national importance. In my view, the referendum may either be part of a consultative process or a legislature process. It is part of a consultative process when the referendum is held to ascertain views or approval of the public in respect of proposed policy changes e.g. the abolition of the death penalty or the legislation regarding homosexuality. On the other hand it may be part of the legislative process. An example of this is to be found in

the judgment of Lord Bingham of Cornhill in **Independent Jamaica Council for Human Rights (1998) Limited & Others v Hon. Syringa Marshall-Burnett and The Attorney General of Jamaica**, Privy Council Appeal No. 41 of 2004 where at paragraph 10 his Lordship said:

> "To alter some provisions of the Constitution, which may be described as "deeply entrenched", section 49(3) and (4) of the Constitution require the bill effecting the alteration to be introduced in the House of Representatives, require a period of at least six months to elapse between the introduction of the bill into the House and its passing by that House, require the bill to be passed in each House by the votes of not less than two-thirds of all the members of that House and require the bill to be approved by a majority of the electorate."

Under this process the Bill does not become law until it is approved by a majority of the electorate in a referendum.

23. The referendum to be held under the Referendum Act, in my view, is part of a consultative process designed to ascertain the approval of the electorate on the proposed amendments set out in the Sixth Constitutional Amendment Bill. It is not part of the legislative process. This is contrasted to the provisions found in a Constitution such as the Constitution of Jamaica which requires that in order for a bill which purports to amend the Constitution of Jamaica to become law it must be approved by both Houses of Parliament and must be approved by a majority of the electorate. Unless the bill is approved by the electorate, it will not come into force even though it has been passed by both Houses of Parliament. The referendum in this case, in my view, is not part of a legislative process as set out in the Constitution of Jamaica.

24. At what stage should a referendum be held under the Act? The Act is silent as to the time when it should be held. The Chief Justice declared

"that on the conclusion of the legislative processes on clauses 2 and 3 of the Sixth Constitutional Amendment Bill 2008, these clauses of the said bill should be put to a referendum for the electorate to have their say."

25. The Referendum does not contain any provision relating to the holding of a referendum when the proposed referendum is to be held in respect of a matter falling within the ambit of section 2(a) of the Act. In order to ascertain when such a referendum is to be held it is necessary to examine the provisions of section 2(2)(a) in the light of the other provisions under the Act relating to the holding of referendum.

26. By section 2(1) of the Act, the National Assembly is empowered to pass a resolution declaring an issue or matter is considered to be of sufficient national importance that it should be submitted to the electors for their approval. In other words, it must be submitted to the electorate for their sanction. It must be submitted to the electorate for their sanction. If the issue or matter which is being submitted to the electorate under section 2(1) for their approval will eventually require a change either by way of enacting new legislation or amending existing legislation, it would not be unreasonable to expect that the referendum will be held before any bill is introduced into the National Assembly dealing with the particular issue or matter. It is noted that there is nothing in the Referendum Act which prevents a Government from proceeding with an issue or matter which does not obtain the approval of the electorate. Nonetheless, it must be recognized that the sanction is political – to be dealt with by the electorate at the next general election.

27. Section 2(2)(b) deal with any proposed settlement with Guatemala which is intended to resolve the dispute between Belize and Guatemala. This is recognized as being of the utmost importance to the citizens of Belize, that the Government is required to submit to the electorate not the settlement

which has been reached but rather the "proposed" settlement (emphasis mine). It is the "proposed" settlement which is to be submitted to the electorate for their approval. The word "proposed" cannot be ignored and must be given full effect.

28. It is against this background that I intend to construe the provision of section 2(2)(a). I consider it necessary to have regard to the Act as a whole since it does not contain any Long Title, Preamble, Purpose, Clause or Recitals. In my view for section 2(2)(a) to be meaningful and to be in keeping with the scheme under the Act for the holding of referendum, I consider that sub-section 2(2)(a) should be read as though it provided for any proposed amendment. In my view what is required to be submitted to the electorate for their approval under section 2(2)(a) is any proposed "amendment to Part II of the Constitution which derogate from the fundamental rights and freedoms guaranteed in that Chapter.

29. Section 2(2)(a) does not state at what stage a referendum is to be held. It follows from what I have said above that, once the Government has decided that it intends to amend the Constitution in such a way as to derogate from the provisions of the fundamental rights and freedoms which are guaranteed under Chapter II of the Constitution, the proposed (emphasis mine) amendment must be submitted to the electorate for its approval. This, in my view, ought to be done before the Bill intended to amend the Constitution is introduced in the National Assembly.

30. Parliament could not have intended that a bill which purports to amend the Constitution would have gone through the process as required by section 69 of the Constitution and then before it is submitted to the Governor-General for his assent it should then be submitted to a referendum for the approval of the electorate. To construe the Act in this way would in my view be absurd or illogical or pointless. (see In R (an application of Edison First Power Ltd) v Central Valuation Officer & Another [2003] UK HL, 20.

31. To construe section 2(2(a) as meaning that Parliament intended that the bill should pass through all its stages in the legislature in accordance with section 69 and before it is sent to the Governor-General for his assent the bill is then to be submitted to the electorate for its approval is a construction which could give rise to difficulties. Such a consideration may in my view be said to be adding an additional requirement to the legislative process before the bill is enacted. Such a construction is fraught with difficulties and ought to be avoided.

32. It follows from what I have said that the Prime Minister ought to have submitted to the electorate for their approval the proposed amendments contained in the Sixth Constitutional Amendment Bill which are intended to amend the fundamental rights and freedoms under the Constitution before the bill is introduced into Parliament. Nonetheless, not having done so, the Bill must now be submitted to the electorate. For the reasons stated above it is not the ideal situation, but under the Referendum Act the electorate is entitled to be afforded the opportunity to state whether they approve the proposed amendments.

33. For the reasons stated the appeal must be dismissed. The appellants are ordered to pay the costs of the appeal, such costs to be taxed if not sooner agreed.

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MOTTLEY P

SOSA JA

34. I have read the judgment of Mottley P and consent in the reasons for judgment, and the orders proposed, in it.

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SOSA JA

CAREY, JA:

35. This appeal raises a matter of high constitutional importance. The government proposes to amend the Constitution by a Bill entitled the Belize Constitution (Sixth Amendment) Bill 2008. Two clauses in this Bill have roused the ire of certain citizens and electors, the claimants in the originating proceedings. The first, (clause 2) proposes to amend section 5 of the Constitution to extend the period of detention of persons and the second (clause 3) proposes to exempt petroleum, minerals and other substances from the protection against deprivation of property as provided in section 17 of the Constitution. It was also sought to have enacted the Referendum (Amendment) Bill 2008 which would remove the express requirement for a referendum on any amendment to chapter 11 of the Constitution which derogates from the fundamental rights and freedoms guaranteed therein as provided in section 2(2)(a) of the Referendum Act. I am indebted to the Chief Justice for this background material which I have taken the liberty of using. What I have borrowed succinctly encapsulates the grouse, so to speak, of these concerned citizens.

36. They were moved to initiate judicial review proceedings seeking declarations, (again I am very much indebted to the Chief Justice) "for what they claim is an omission or failure by the Prime Minister to request the Governor General to issue a Writ of Referendum contrary to section 3(1) of the Referendum Act in respect of proposed constitutional amendments contained in the Belize Constitution (Sixth Amendment) Bill 2008." The claimants seek declarations that such failure is unlawful and or *ultra vires* sections 2(2)(a) and 3(1) of the Referendum Act. The claimants seek as well, an order of mandamus to compel the Prime Minister to request the Governor General to issue a Writ of Referendum in respect of the proposed constitutional amendments.

37. In the event, the Chief Justice declined to grant the declarations or the mandamus prayed for, but he made an order in the following terms:

> "That on the conclusion of the legislative processes on clauses 2 and 3 of the Sixth Constitutional Amendment Bill 2008, these clauses of the said Bill should be put to a referendum for the electorate to have their say."

The appeal is taken by the Attorney General against this order and judgment of the Chief Justice. We heard rival submissions from Ms. Young, S.C. on behalf of the appellant and Ms. Shoman on behalf of the respondents on 16 October when we intimated that we would take time for consideration.

38. Ms. Young, S.C. was granted leave to argue the following amended grounds of appeal:

1. The learned trial judge erred in law and misdirected himself in finding that section 2(2)(a) of the Referendum Act gave rise to a legitimate expectation.

2. The learned trial judge having found the following:

   (i) that the Constitutional (Sixth Amendment) Bill was first introduced into the House of Representatives on the 25th April 2008 and had not yet been brought back to the House for a second reading. (paragraph 16) and

   (ii) that a bill effecting any amendment to section 69 itself and any of the provisions of Schedule 2 of the Constitution can only "be lawfully regarded as amending any of these provisions"…"after an interval of ninety days after its first introduction in the House and with the support of the votes of not less than three-quarters of all the members of the House and its final reading" (paragraph 53); and

   (iii) that that is "the material time when the referendum requirement statutorily provided for in section 2(2)(a) of the Referendum Act, comes into play" (paragraphs 53 and 56)

   erred in finding that when the Respondents commenced their proceedings on the 9th May 2008 a substantive right to a referendum existed (paragraphs 59 and 61)

3. The learned trial judged fell into further error when he found that even after the repeal of section 2(2)(a) of the Referendum Act, this was a right which was saved by section 28(1) of the Interpretation Act, chapter 1 of the Laws of Belize (paragraphs 59, 60, 61, 63 and 64)

4. The learned trial judged misdirected himself in not including as part of the legislative process necessary to effect an amendment to the law, the requirements in the Constitution for the Senate's consent and the Governor General's assent. (paragraph 53, 54, and 56)

5. As a result the learned trial judge erred when he defined the legislative processes as he did (paragraph 54), in finding that there was a failure or omission to engage the referendum requirements which was not in 'conformity with the relevant law at the time' (paragraph 60) and thus in declaring that 'on the conclusion of the legislative processes'…'these clauses of the said bill should be put to a referendum for the electorate to have their say'. (paragraphs 60,61, 66 and 68)
6. The findings and declarations are contrary to the weight of the evidence.

GROUND

39. Ms. Young in this ground challenges the holding of the Chief Justice that – "the claimants and indeed, the electorate, had a legitimate expectation that in conformity with the relevant law at the time a referendum would be held" The "relevant law" is a Referendum Act 2003.
Section 2 of the Act reads as follows:

> "2(1) Without prejudice to any law which provides for a referendum to be held on any specific issue, the National Assembly may by resolution passed in that behalf declare that a certain issue or matter is of sufficient importance that it should be submitted to the electors for their approval through a referendum.
>
> (2) Notwithstanding subsection (1) above, a referendum shall be held on the following issues:
>
> (a) any amendment to chapter 11 of the Constitution which derogates from the fundamental rights and freedoms guaranteed therein and

(b) any proposed settlement with Guatemala for resolving the Belize/Guatemala dispute".

Also of relevance is section 3(1) which provides (so far as is material).

> "3(1) Within thirty days of the passing of the resolution by the National Assembly pursuant to section 2 above (or where a law provides for the holding of a referendum on a specific issue within thirty days of a request made to that effect by the Prime Minister), the Governor General shall issue a Writ of Referendum in a form…"

Ms. Young contended that these provisions cannot create a legitimate expectation. She reasons that a statute is the result of legislative action, not executive action unless and until a member of the Executive acts on the basis of the statute in such a way as to create an expectation. She cited *O'Reilly v. Mackman [1983] 2 A.C. 237* but it is far from clear how this case advanced her cause when that case was concerned with the distinction between public and private law in relation to the appropriate procedure for redress. There was no question in the instant case that the redress sought was by invoking public law. She also referred to *C.C.S.U. v. Minister for Civil Service [1985] A.C. 374* where Lord Fraser observed:-

> "…Legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue…"

Reliance was placed on this dictum to advance the view that no member of the Executive e.g. the Prime Minister made any promise which could lead to the legitimate expectation that he would hold a referendum in the circumstances particularized in the Referendum Act (section 2(2)(a)).

40. On the other hand, Ms. Shoman's opening volley was that section 2(2)(a) and 3(1) of the Referendum Act conferred on the respondents, as voters, a public law right to the holding of a referendum. She says this must be so because the sections place a statutory duty on the Prime Minister to request the issue of the Writ of Referendum in the circumstances mandated by the statute. That, she noted, was the situation in the instant case. But she confronted frontally the argument by Ms. Young relating to the doctrine of legitimate expectation by showing the nexus between the rule of law and legitimate expectation. She visited the preamble to the Constitution of Belize which states:

> "WHEREAS the people of Belize –
> recognize that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and upon the **rule of law"** [Emphasis supplied]

and moved to section 1(1) of the Constitution, where it is provided that "Belize shall be a sovereign democratic state of Central America in the Caribbean".

Reinforcement for her submission was provided in *The State v. Abdool Rachid Khoyratty (unreported) 22 March 2006* a Privy Council decision from Mauritius relating to a similar provision of the Mauritius Constitution and the Board was of the opinion that a democratic state is constitutionally based on the rule of law. We were referred to *academia*, where Dr. Albert Fiadjoe in his admirable work Commonwealth Caribbean Public Law 2nd ed. Pp 121-122 stated:

> "In West Indian public law it is submitted that the rule of law has come to mean the exercise of State power according to law and the subjugation of state power to the Constitution. The phrase 'rule of law' is thus a useful compendium to define the bundle of citizens'

rights or legitimate expectations to hold the State accountable for its actions"

She submitted as her helpful skeleton arguments show that the adherence of a public authority in a democratic state to the rule of law is the regular practice which a citizen is entitled to rely upon to found a legitimate expectation in terms of Lord Fraser's dictum in *CCSU v. Minister of the Civil Service (supra)*. She arrived at the conclusion that when the "issue" of the amendment of the Constitution arose, the respondents had a legitimate expectation that the Prime Minister would comply with sections 2(2)(a) and 3(1) of the Referendum Act and request the Governor General to issue a Writ of Referendum as respects that issue.

41. In my view, there is much merit in these submissions. The learned authors of DeSmith, Woolf & Jowell on Judicial Review of Administrative Action expressed the opinion that legitimate expectation is founded upon the basic principle of fairness that legitimate expectations ought not to be thwarted. "The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in government's dealings with the public". The approach of Ms. Young, S.C. was to treat the dictum of Lord Fraser as a statute and to interpret it literally. I venture to think that when the state enacts legislation stating how it will act in certain circumstances, that, is an express promise given on behalf of the state and the citizen is entitled to believe that living as he does, in a democratic sovereign state, the rule of law will prevail. I cannot therefore agree with Ms. Young, that some member of the Executive must make some promise or have acted in such a way as to create an expectation. The phrase "actions of the state" is, in my view, wide enough to include acts of the State in its legislative capacity. I can see no reasonable explanation for excluding actions of this manifestation of the State. Ms. Young, S.C., with all respect, to her submissions did not proffer any reason. I would reject this ground.

GROUNDS 2, 3, 4 AND 5

42. The remaining grounds may be grouped and taken together because they relate to the question – when did a cause of action arise or accrue and whether that right was saved by operation of section 28(1) of the Interpretation Act after the repeal of the relevant section of the Referendum Act? Ms. Young identified the error of the judge in finding that when the Respondents commenced their action on 9 May 2008, a right to a referendum existed and that even after the repeal of section 2(2)(a) of the Referendum Act, there was a right which was saved by the Interpretation Act.

43. Section 2(2)(a) of the Referendum Act provides the mandate for the holding of a referendum in the circumstances prescribed in the provision. It would follow that the "*punctum temporis*" when any "right" would accrue, would be when the bill is proposed in the National Assembly. At that point in time, the citizen would become aware of the serious intent of this state to take the obligatory legislative steps required. That date, according to the evidence, was 25 April 2008. In that regard I regret I must differ from the Chief Justice who said this (para 53):

> "In Belize, it is after an interval of ninety days after its first introduction in the House and with the support of the votes of not less than three-quarters of all the members of the House on its final reading can a bill effecting any amendment to section 69 itself and any of the provisions of Schedule 2 of the Constitution be lawfully regarded as altering or amending any of these provisions. This, I find, is the material time when the referendum requirement statutorily provided for in section 2(2)(a) of the Referendum Act, comes into play. It is the final vote in the House that determines whether or not the proposals in the bill will qualify as an amendment. It is on this amendment that the Prime Minister is

required to request a writ of referendum from the Governor General who shall issue it within thirty days of the request".

Seeing that there is no challenge to this finding, I am content to comment briefly. I would have thought that the presumed *raison d'etre* of a referendum is to garner input from the populace to inform the proposed amendment. It is not clear what benefit could be gained by having a referendum when the amendment is a *fait accompli*. It is akin to closing the barn door after the horse has long gone. The question of the triggering of the request for a referendum is an altogether different question from when does the right to seek redress for an anticipated or threatened disappointment of the citizen's legitimate expectation for the holding of a referendum crystallizes. By the Chief Justice's rationalization, the right would have accrued upon the passing in the House of the Referendum (Amendment) Act 2008, that is on 25 May 2008. The respondents filed proceedings on 9 May 2008. The Amending Act, it should be noted, is not yet the law of the land: it has not received the Governor General's assent. It is perfectly plain that when the respondent's claim was filed, their right to do so had accrued. Thus, I am not able to appreciate why section 28 of the Interpretation Act is at all relevant to this matter. I venture to suggest that no issue of saving accrued rights arises.

44. Once the conclusion is reached that when proceedings were lodged, there was a right to do so, then all of grounds 2 and 3 must fail and the rest are, as the respondents, submit otiose. The Chief Justice would be entitled to make the order which he did. In my view, it seems apparent that the time at which the clauses to be put viz. "on the conclusion of the legislative processes"- has long passed. Legislative process in the context of the Chief Justice's judgment means, after the bill was passed by the Senate.

45. I would dismiss the appeal with costs to the respondents to be taxed, if not agreed.

CAREY JA