

IN THE SUPREME COURT OF BELIZE, A.D. 2022

Claim No. 66 of 2017

IN THE MATTER OF an application pursuant to Section 20 of the Belize Constitution

AND

IN THE MATTER OF SECTIONS 2, 3, 5, 6, 17 and 68 of the Belize Constitution

BETWEEN

CARIBBEAN INVESTMENT HOLDINGS LIMITED **Claimant**

AND

THE ATTORNEY GENERAL OF BELIZE **Defendant**

AND

Claim No. 77 of 2017

IN THE MATTER OF an application pursuant to Section 20 of the Belize Constitution

AND

IN THE MATTER OF SECTIONS 2, 3, 5, 6, 12, 15, 17 and 68 of the Belize Constitution

BETWEEN

COURTENAY COYE LLP **Claimant**

AND

THE ATTORNEY GENERAL OF BELIZE **Defendant**

BEFORE The Honourable Madam Justice Geneviève Chabot

Date of Oral Hearing: May 3, 2017 (before Benjamin CJ)

Rehearing on Paper: By agreement of the parties dated February 25, 2022. Trial Bundle filed on March 9, 2022. Transcript of oral hearing filed on March 16, 2022.

Appearances

Iliana N. Swift, Counsel for the Claimants

Samantha Matute-Tucker, Counsel for the Defendant

JUDGMENT

Overview

1. On January 27, 2017, the Government of Belize introduced two Bills in the House of Representatives: the *Crown Proceedings (Amendment) Act, 2017* (“CPAA”) and the *Central Bank of Belize (International Immunities) Act, 2017* (“CBBIIA”) (together, the “Acts”). Both Bills were passed by the Senate on January 30, 2017. The next day, the Bills received the Governor General’s assent, were gazetted, and became law.
2. The CPAA amends the *Crown Proceedings Act*¹ by introducing a new criminal offence aimed at preventing the enforcement, or attempt to enforce, in or outside of Belize, of a foreign judgment which has been determined by a court in Belize to be unlawful, void, or otherwise invalid.
3. The CBBIIA amends the *Central Bank of Belize Act*² by declaring the immunity of the Central Bank of Belize from the jurisdiction of the courts or other tribunals of any foreign States, and creating a criminal offence for the institution of, or participation in, proceedings in a foreign State from which the Central Bank of Belize is immune. The CBBIIA also creates an offence related to reports or statements made with respect to such proceedings.
4. The Claimant in Claim No. 66 of 2017, Caribbean Investment Holdings Limited (“CIHL”), holds arbitral awards and foreign judgments against the Government of Belize. Lord Michael Ashcroft has business interests in CIHL. The Claimant in Claim No. 77 and 2017, Courtenay Coye LLP, is a firm of Attorneys-at-Law representing Lord Ashcroft and

¹ Chapter 167 of the Laws of Belize (Revised Edition 2011).

² Chapter 262 of the Laws of Belize (Revised Edition 2011).

business entities related to Lord Ashcroft in relation to the enforcement of arbitral awards and foreign judgments.

5. The Claimants allege that the Acts violate the Constitution of Belize in several ways. They allege that the Acts were enacted for the improper purpose of targeting Lord Ashcroft and business entities related to Lord Ashcroft, and are *ad hominem*. They also allege that the Acts deprive them of their property rights in the arbitral awards and judgments rendered in their favour, that the criminal offences created by the Acts offend core protections guaranteed under the Constitution of Belize, that the Acts deprive them of their rights to due process and equal protection of the law, that the *CBBIA* violates their freedom of expression, that the Acts encroach on Courtenay Coye LLP's right to work, and that the Acts contravene principles of international law.
6. The Respondent denies each and every one of these breaches. The Respondent argues that the Claimants have not discharged their burden to rebut the presumption of constitutionality which applies to the Acts.
7. This Court finds that parts of the *CPAA* and the *CBBIA* violate the Constitution of Belize. The Acts were not enacted for improper purpose and are not *ad hominem*. They do not deprive the Claimants of their rights to due process and equal protection of the law, and do not encroach on Courtenay Coye LLP's right to work. However, parts of the Acts deprive the Claimants of their property rights as they relate to the enforcement judgments rendered in the United States. In addition, the criminal offenses introduced by the Acts offend core protections guaranteed under the Constitution of Belize by creating a retroactive offence and violating the presumption of innocence. In addition, the *CPAA* violates the Claimants' freedom of expression, and the *CBBIA* contravenes principles of international law.
8. The *CPAA* is struck down in part. Portions of sections 29A, 29B(1), and 29B(3) are severed to bring these sections in compliance with the Constitution of Belize. Section 29B(4) is struck down.
9. The *CBBIA* is struck down in its entirety as the offending portions cannot be severed, and words cannot be read in, to bring the *CBBIA* in compliance with the Constitution of Belize.

Background

Procedural Background

10. These matters came to this Court by way of Fixed Date Claim Forms filed on February 3, 2017 (Claim No. 66 of 2017) and February 8, 2017 (Claim No. 77 of 2017). The Fixed Date Claim Form in Claim No. 77 of 2017 was amended on March 17, 2017.

11. Both matters were consolidated and an oral hearing took place before then Chief Justice Benjamin on May 3, 2017. The Chief Justice reserved his decision. However, no decision was rendered.
12. These matters were assigned to the undersigned on January 18, 2022. Both parties agreed to proceed via a rehearing on paper. The parties filed an Agreed Court Bundle for this Court's consideration on March 9, 2022. The transcript of the May 3, 2017 oral hearing was subsequently filed on March 22, 2022.

The Impugned Legislation

13. The *Crown Proceedings (Amendment) Act, 2017* amends the *Crown Proceedings Act* by introducing a new criminal offence aimed at preventing the enforcement, or attempts to enforce, a foreign judgment which has been determined by a court in Belize to be unlawful, void, or otherwise invalid. The impugned provisions are the following:

29A. No execution shall issue on the enforcement or attempted enforcement, whether in or outside of Belize, and whether by the institution of proceedings or otherwise, of a foreign judgment against the Crown, where the foreign judgment has been declared unlawful, void or otherwise invalid, by any court in Belize.

29B. - (1) Where it has been determined, by a court in Belize, that a foreign judgment is unlawful, void or otherwise invalid, a person who, whether in or outside of Belize, and whether by the institution of proceedings or otherwise, enforces or attempts to enforce the foreign judgment, commits an offence.

(2) A person who commits an offence under subsection (1) above is liable on summary conviction,

(a) in the case of an individual, to a fine not exceeding one hundred and fifty thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment;

(b) in the case of a legal person (whether a body corporate or unincorporate or other entity), to a fine not exceeding two hundred and fifty thousand dollars.

(3) An application shall lie to the Supreme Court to issue an injunction against a person restraining the person from commencing, intervening in or continuing any proceedings for enforcement of a foreign judgment, whether in or outside of Belize, on the basis that a competent court in

Belize has declared such foreign judgment unlawful, void or otherwise invalid.

(4) Where an offence under this section is committed by a legal person (whether a body corporate or unincorporate or other entity), every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of the legal person, whether as shareholder, partner, director, manager, advisor, secretary or other similar officer, or was purporting to act in any such capacity, is regarded as having committed that offence and is liable to be punished pursuant to subsection (2) (a), unless he adduces evidence to show that the offence was committed without his knowledge consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

14. The *Central Bank of Belize (International Immunities) Act, 2017* amends the *Central Bank of Belize Act* by declaring the immunity of the Central Bank of Belize from the jurisdiction of the courts or other tribunals of any foreign States, and creating a criminal offence against whomever institutes, intervenes, or seeks the conduct of, or make a false report or statement with respect to, proceedings in a foreign state from which the Central Bank of Belize is immune. The relevant provisions of the Act are the following:

3. – (1) In the interest of greater certainty, and notwithstanding any law to the contrary, it is hereby declared that -

(a) the Bank, by virtue of its status as an autonomous body corporate established with the public purpose objectives specified in subsection (3), is, subject only to express waiver by the Bank immune from the jurisdiction of the courts or other tribunals of any foreign State;

(b) the activities of the Bank are to be regarded as being done by it in the exercise of sovereign authority by Belize; and

(c) subject only to express waiver or statement to the contrary by the Bank, the property of the Bank, wherever situated, is to be treated as being held in use, or intended for use, for purposes connected with the exercise of sovereign authority by Belize, and not for commercial purposes or other purposes, and is thus immune from proceedings for attachment, arrest or execution being instituted, intervened in or otherwise acted upon in any foreign State.

(2) This section applies without limiting the effect of any other existing basis under law for immunity of the Bank from proceedings in a foreign State.

(3) The public purpose objectives referred to in subsection (1) are those of fostering monetary stability, especially as regards stability of the exchange rate, and promoting credit and exchange conditions conducive to the growth of the economy of Belize, while, within the context of the economic policy of the Government of Belize, providing economic advice to the Government, and as banker to the Government of Belize, supervising and regulating Belize's financial system.

4. - (1) A person commits an offence who, whether in Belize or outside of Belize, and whether in respect of a matter occurring before or after the coming into operation of this Act –

(a) has instituted, intervened in or sought the conduct of proceedings in any foreign State, being proceedings from which the Bank or the property of the Bank would, by virtue of section 3, be immune;

(b) knowingly makes a false report or public statement to the effect that the Bank or the property of the Bank has been subjected to proceedings from which the Bank or its property would, by virtue of section 3, be immune.

(2) Any person who contravenes subsection (1) (a) commits an offence and is liable on summary conviction,

(a) in the case of an individual, to a fine not exceeding one hundred and fifty thousand dollars, or to imprisonment for a term not exceeding two years, or to both the fine and imprisonment;

(b) in the case of a legal person (whether a body corporate or unincorporate or other entity), to a fine not exceeding two hundred and fifty thousand dollars.

(3) Any person who contravenes subsection (1) (b) commits an offence and shall be liable on summary conviction,

(a) in the case of an individual, to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding one year, or to both or to both the fine and imprisonment;

(b) in the case of a legal person (whether a body corporate or unincorporate or other entity), to a fine not exceeding one hundred and fifty thousand dollars.

(4) Where an offence under this section is committed by a legal person (whether a body corporate or unincorporated or other entity), every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of the legal person, whether as shareholder, partner, director, manager, advisor, secretary or other similar officer, or was purporting to act in any such capacity, is regarded as having committed that offence and is liable to be punished pursuant to subsection (2) (a) or (3) (a), as the case may be, unless he adduces evidence to show that the offence was committed without his knowledge consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances

The Arbitral Awards

15. The Claimants allege that the Acts were passed by the Government of Belize as a direct response to four arbitral awards which have been issued against the Government of Belize, and were subsequently recognised and enforced in the United States. They also allege that the Government's response to these awards stem from Lord Ashcroft's connection with some of the corporate entities who are the beneficiaries of these arbitral awards.
16. One of the Claimants in these proceedings, CIHL, is the beneficiary of two arbitral awards against the Government of Belize. The first arbitral award, issued in the London Court of International Arbitration on August 18, 2009, awards BZ\$40,843,272.34 in damages, plus costs, to BCB Holdings Limited (as CIHL then was) against the Government of Belize on the basis of a Settlement Deed dated March 22, 2005 (and later amended) (the "BCB Holdings Award"). BCB Holdings Limited and the Belize Bank sought to enforce the BCB Holdings Award in Belize. Enforcement was denied at all levels of the Belize courts, up to and including the Caribbean Court of Justice³ ("CCJ") on the basis that it would be contrary to the public policy of Belize to permit enforcement of the award.
17. The BCB Holdings Award has been enforced in the United States. On July 1, 2015, the United States District Court for the District of Columbia entered a judgment in favour of BCB Holdings Limited and the Belize Bank against the Government of Belize,⁴ a decision that was upheld by the United States Court of Appeals for the District of Columbia Circuit

³ *BCB Holdings Limited and The Belize Bank Limited v The Attorney General of Belize*, [2013] CCJ 5.

⁴ *BCB Holdings Limited and The Belize Bank Limited v The Government of Belize*, Civil Action No. 14-1123 (CKK) (July 1, 2015).

on May 13, 2016.⁵ A Petition by the Government of Belize for a writ of *certiorari* was denied by the Supreme Court of the United States on January 9, 2017.

18. While these proceedings before the United States' courts were taking place, the Government of Belize sought injunctive relief before the Caribbean Court of Justice in order to prevent BCB Holdings Limited and the Belize Bank from enforcing or seeking to enforce the BCB Holding Award or any judgment upon that award in any jurisdiction. The application was dismissed for lack of jurisdiction.⁶ The Government then applied for the same injunctive relief to the Supreme Court of Belize, which was granted on an interim basis.⁷ In the United States, BCB Holdings Limited and the Belize Bank applied for, but were denied an anti-suit injunction against the Government of Belize. They were, however, successful in obtaining an order authorising them to enforce the judgment previously entered by the United States District Court for the District of Columbia.⁸
19. The second arbitral award, the "UHS Award", was issued in the London Court of International Arbitration on January 15, 2013. Based on a Loan Note, the Arbitrators awarded the Belize Bank BZ\$36,895,509.46, plus interests and costs, against the Government of Belize. The Belize Bank sought to enforce the UHS Award in Belize. The Supreme Court of Belize refused to enforce the award on the basis that it would be contrary to the public policy of Belize to do so.⁹ That decision was upheld by the Belize Court of Appeal.¹⁰ However, the Caribbean Court of Justice allowed the Belize Bank's appeal and granted it leave to enforce the UHS Award in Belize.¹¹
20. The Belize Bank also sought to enforce the UHS Award in the United States. On July 12, 2016, the United States District Court for the District of Columbia entered judgment in favour of the Belize Bank enforcing the UHS Award.¹² An appeal of this decision was dismissed on March 31, 2017 by the United States Court of Appeal for the District of Columbia Circuit.¹³
21. Two other arbitral awards are relevant as background to these matters: the "BSDL Award" and the "Newco Award". The BSDL Award involves an arbitral award issued on March 18, 2009 in favour of Belize Telemedia Limited against the Government of Belize. The

⁵ *BCB Holdings Limited and Belize Bank Limited v Government of Belize*, No. 15-7063

⁶ *BCB Holdings Limited and The Belize Bank Limited v The Attorney General of Belize*, Court Application No. BZCV2012/003.

⁷ Supreme Court Claim No. 62 of 2017.

⁸ *BCB Holdings Limited and The Belize Bank Limited v The Government of Belize*, Civil Action No. 14-1123 (CKK) (February 6, 2017).

⁹ *The Belize Bank Limited v The Attorney General of Belize*, Supreme Court Claim No. 418 of 2013.

¹⁰ *The Belize Bank Limited v The Attorney General of Belize*, Civil Appeal No. 4 of 2015.

¹¹ *The Belize Bank Limited v The Attorney General of Belize*, [2017] CCJ 18.

¹² *The Belize Bank Limited v Government of Belize*, Civil No. 1:14-cv-00659 (APM).

¹³ *Belize Bank Limited v Government of Belize*, No. 16-7083.

award was subsequently assigned to Belize Social Development Limited (“BSDL”). The Newco award was issued in favour of Newco Limited against the Government of Belize. Both of these awards have been recognised and enforced in the United States.

22. Since these matters were filed in this Court in 2017, other proceedings may have taken place with regard to the enforcement of these awards. The Court has not been updated on these proceedings. In any event, any further proceedings would be immaterial to the issues before this Court because these proceedings would have taken place well after the passing of the Acts at issue in these matters.

Claims and Reliefs Sought

Claim No. 66 of 2017

23. The Claimant in Claim No. 66 of 2017, CIHL, filed a Fixed Date Claim Form and supporting Affidavit on February 3, 2017. Additional Affidavits were filed on March 20, 2017, April 4, 2017, and May 2, 2017. The Respondent responded by Affidavit dated March 24, 2017.
24. The Claimant in Claim No. 66 of 2017 seeks the following reliefs:
 - (a) A Declaration that the *CPAA* and the *CBBIIA* are unconstitutional and void for the reason that they contravene the constitutional rights of the Claimant enshrined in sections:
 - i. 2; and/or
 - ii. 3(a), (b) & (d); and/or
 - iii. 5; and/or
 - iv. 6; and/or
 - v. 17; and/or
 - vi. 68 of the Constitution of Belize.
 - (b) A Declaration that the *CPAA* and the *CBBIIA* are unconstitutional and void for the reason that they contravene the doctrine of certainty enshrined in the Constitution;
 - (c) A Declaration that the *CPAA* and the *CBBIIA* are unconstitutional and void for the reason that they are *ad hominem* and enacted in bad faith for an improper purpose;
 - (d) An Order striking down the *CPAA* and the *CBBIIA* passed by the National Assembly;

- (e) Such other declarations and orders and such directions as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned Declarations and Order;
- (f) Further or other relief; and
- (g) Costs.

Claim No. 77 of 2017

- 25. The Claimant in Claim No. 77 of 2017, Courtenay Coye LLP, filed a Fixed Date Claim Form and supporting Affidavit on February 8, 2017. The Fixed Date Claim Form was amended on March 17, 2017. An additional Affidavit was filed on March 17, 2017. The Respondent responded by Affidavit dated March 31, 2017.
- 26. The Claimant in Claim No. 77 of 2017 seeks the following reliefs:
 - (a) A Declaration that the *CPAA* and the *CBBIIA* are unconstitutional and void for the reason that they contravene the constitutional rights of the Claimant enshrined in sections:
 - i. 2; and/or
 - ii. 3(a), (b) & (d); and/or
 - iii. 5; and/or
 - iv. 6; and/or
 - v. 12; and/or
 - vi. 15 of the Constitution of Belize.
 - (b) A Declaration that the *CPAA* and the *CBBIIA* are unconstitutional and void for the reason that they contravene the doctrine of certainty enshrined in the Constitution;
 - (c) An Order striking down the *CPAA* and the *CBBIIA*;
 - (d) Such other declarations and orders and such directions as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned Declarations and Order;
 - (e) Further or other relief; and
 - (f) Costs.

Analysis

First Issue – Whether the CPAA and the CBBIIA are ad hominem and contravene section 68 of the Constitution of Belize because they have been enacted for an improper purpose

27. Section 68 of the Constitution of Belize provides as follows:

68. Subject to the provisions of this Constitution, the National Assembly may make laws for the peace, order and good government of Belize.

The Claimants' Submissions

28. The Claimants submit that the *CPAA* and the *CBBIIA* were enacted for an improper purpose, in that they target a narrow group of entities which they refer to as the “US Judgment Beneficiaries”. The US Judgment Beneficiaries are comprised of CIHL, the Belize Bank, BSDL, and Newco Limited. As detailed above, all of these entities are the beneficiaries of arbitral awards against the Government of Belize that have subsequently been recognised and enforced in the United States.
29. The Claimants allege that this improper purpose is evidenced by four elements. The first element consists in the statements made by the then Prime Minister of Belize, the Honourable Dean Barrow, and other members of the National Assembly when introducing the Acts, against the backdrop of a long-standing campaign against “perceived” Lord Ashcroft interests which includes the repeated use of unconstitutional legislation and targeting of arbitration proceedings against the Government of Belize.
30. The Claimants entered into evidence a number of statements made by Prime Minister Barrow and other members of the National Assembly showing that the intent of the Acts is to specifically target Lord Ashcroft. These include a statement in a press release dated January 11, 2017 calling the awards “these Ashcroft awards”, as well as the following statements made by Prime Minister Barrow in the Belize House of Representatives on January 13, 2017:

I must make clear that it will take wild horses, it will take... Let me not get into the rhetoric. I am not prepared to pay those two awards. [...]

But I'm telling you, if they make any effort; I don't know, he's gotten his awards and Supreme Court has refused to intervene; I don't know if it was for accounting purposes, for pride purposes he's got them, can't collect on them here, if they make any effort to go after them in the states, go after our assets which we don't have, but just the fact of any attempt putting us to further litigation expense. I

want to say to the nation I will consider that an act of economic war. All options thereafter will be on the table.¹⁴

31. The Claimants also entered into evidence statements made by then UDP Senator and Attorney General of Belize, the Honourable Mike Peyrefitte, who in floor discussions about the *CBBIA* stated the following:

This piece of legislation is born out of the administration of 1998-2008 and the kleptocracy that that was. Senator Salazar would be nice, I prefer the raw truth. You see Mr. President, the stench that came from that period in our history was such that it attracted vultures and in particular one king vulture. If I really wanted to say what I wanted to say, I would say king vulture is too nice of a word for this person. The more appropriate word would be john crow. This is not against one person. This is against whoever may want to do it. But one person deserves honorable mention, because he is the leader and the king vulture.

[...]

We are dealing with an individual who does not respect us and has no care and love for us... So we have to make it clear in legislation that if you don't respect it, you will go to jail.¹⁵

32. In the same context, the Honourable Rufino Lin referred to the “Ashcroft Alliance” and the then Leader of the Opposition, the Honourable Johnny Briceño, stated that the legislation would be passed “to prevent this man [Lord Ashcroft] from coming after our assets [...]” and that “we can't allow this man who, from time to time, behaves like a predator coming after us”.¹⁶
33. The Claimants also draw the Court's attention to the following statement made by Prime Minister Barrow on January 27, 2017, the date the Acts were passed, confirming the Government's intention :

... we had thought it prudent to do this because of the fact that the Ashcroft Concerns, BSDL, BCB Holdings Ltd, which I gather is now trading —has changed its name to Caribbean Investment Holdings Ltd —and The Belize Bank Ltd have obtained final judgment in the United States on arbitral awards given

¹⁴ First Affidavit of Lyndon Guiseppi at paras. 20-21.

¹⁵ First Affidavit of Philip Osborne at paras. 42-43.

¹⁶ First Affidavit of Philip Osborne at paras. 44-45.

against the government of Belize and in favour of BSDL, Belize Bank Ltd and BCB Holdings Ltd.¹⁷

34. The Claimants allege that the Acts are part of an ongoing campaign by the Government of Belize against Lord Ashcroft, a campaign in the context of which the Government has previously sought to use legislation that has subsequently been determined to be unconstitutional. The Claimants invoke the nationalisation of Belize Telemedia Limited (“Telemedia”) in 2008. In that context, the Government of Belize had issued two statutory instruments that had the effect of nationalising the shares in Telemedia that the Government (wrongly) perceived to be owned by Lord Ashcroft, as well as loans owing to British Caribbean Bank Limited, which was at that time part of the CIHL group. The legislation was found to be unconstitutional by the Court of Appeal.¹⁸
35. The Claimants also raise two amendments to the *Supreme Court of Judicature Act* which were passed by the Government in 2010. The Claimants allege that these amendments were enacted in response to arbitration proceedings commenced against the Government of Belize arising out of the nationalisation of Telemedia. The purpose of the legislation was to criminalise acts by individuals or entities acting in contravention of a Belizean court order. At the time, certain entities were subject to a court order restraining them from pursuing arbitration proceedings against the Government. The Caribbean Court of Justice found sections of this legislation to be unconstitutional.¹⁹
36. The Claimants submit that the improper purpose behind the Acts is evidenced by a second element, which is the fact that the *CPAA* specifically provides that a “judgment”, enforcement or attempted enforcement of which it purports to restrict, “includes an award in proceedings on an arbitration”. According to the Claimants, this shows that the Government is seeking to frustrate ongoing enforcement proceedings to avoid compliance with arbitral awards issued against it.
37. The other two factors relied upon by the Claimants are the timing of the Acts, which they claim were introduced at a time when the Government was seeking to avoid compliance with the awards granted against it, and the fact that the *CPAA* provides a “special”, or alternative to the long existing regime in Belize for dealing with enforcement of foreign judgments.
38. According to the Claimants, the Government can legislate for (i) the “peace, order and good government of Belize” (section 68 of the Constitution of Belize), and (ii) the generality of its subjects. It is, however, impermissible to legislate for an improper

¹⁷ First Affidavit of Lyndon Guiseppi at para. 22.

¹⁸ *British Caribbean Bank Limited v The Attorney General of Belize and anor; Dean Boyce v The Attorney General of Belize and anor*, Civil Appeals Nos. 30 and 31 of 2010 (*British Caribbean Bank*).

¹⁹ *The Attorney General of Belize v Philip Zuniga et al.*, [2014] CCJ 2 (*Zuniga*).

purpose. If the legislation is clearly directed at a particular individual or group of individuals, it will be *ad hominem* and in breach of the principle of separation of powers enshrined in the Constitution.

39. The Claimants note that in *Building Construction Employees & Builders Labourers' Federation of NSW v Minister of Industrial Relations*,²⁰ the New South Wales Court of Appeal held that a clause similar to section 68 in the Australian Constitution does not confer unlimited legislative powers on the legislature. Rather, it is a “binding limit”, and “laws inimical to, or which do not serve, the peace, welfare and good government of our parliamentary democracy... will be struck down by the courts as unconstitutional”. The Claimants also rely on an excerpt from the CCJ’s decision in *Zuniga*, in which the Court confirms that the Legislature does not have *carte blanche* power to enact legislation, and that courts are entitled to examine the purpose of the law in order to determine whether there has been a breach of the doctrine of separation of powers or a violation of a fundamental right.
40. Because the Acts lack a public purpose and were designed as an attempt by the Government of Belize to reverse the outcome of proceedings in the United States, they are, according to the Claimants, arbitrary and not for the “peace, order and good government of Belize” as required by section 68 of the Constitution of Belize.
41. The fact that the Acts specifically target the US Judgments Beneficiaries also makes them *ad hominem* and a breach of the doctrine of separation of powers. Relying on Lord Pearce’s reasoning in *Liyanage v R.*,²¹ the Claimants assert that the Acts should be struck down as *ad hominem* for the following reasons:
 - a) The true purpose of the Acts is to avoid the liability of the Government in respect of arbitral awards recognised and enforced against it by the United States’ courts;
 - b) The situation to which the Acts are directed is an eleventh hour abuse of legislative process to obstruct the course of justice for political gain, as it directs the outcome of on-going proceedings. The *CBBIIA* expressly has retrospective effect;
 - c) The *CPAA* and *CBBIIA* are a common design, forming a single legislative regime, to intimidate individuals with the threat of criminal sanctions from pursuing specific proceedings abroad against the Crown;

²⁰ (1986) 7 NSWLR 372 (*Labourers’ Federation*).

²¹ [1967] 1 AC 25 (*Liyanage*).

- d) Section 3 of the *CBBIIA* purports to declare that Central Bank assets are always immune. Further, by section 29A, the *CPAA* prevents the courts from taking any action to execute certain foreign judgments against the Crown, and further at section 29B(1) of the *CPAA* attempts to seek such execution. The Acts therefore seek to direct the judiciary in a way which is incompatible with the courts' ability to exercise its discretion to take account of the US Judgment Beneficiaries' fundamental rights, and offends the separation of powers of judiciary from the executive and legislative branches.

The Respondent's Submissions

42. The Respondent submits that a court of law should not inquire whether any enactment duly passed by the National Assembly of Belize promotes peace, order, and the good government of Belize. Based on the doctrine of separation of powers, the National Assembly of Belize has a wide ambit and discretion in relation to introducing legislation, and it is not the function of the court to question whether it was passed for the peace, order, or good government of Belize. The Respondent relies on the Privy Council decision in *Hinds v R*²² and the Belize Court of Appeal's decision in *Philip Zuniga and others v The Attorney General of Belize*²³ in support of its position on this point.
43. The Respondent further submits that the *CPAA* and the *CBBIIA* were passed by the National Assembly and the language adopted was in general terms, and therefore the Acts should not be seen as targeting one particular group of persons. The Acts were passed to protect the assets of the Government and the Central Bank against any person who sought to enforce against those assets. In *Zuniga*, says the Respondent, the CCJ held that legislation drafted in general terms cannot be said to be *ad hominem*.
44. According to the Respondent, citing *Labourers' Federation and Ferguson v The Attorney General of Trinidad and Tobago and the Director of Public Prosecution*,²⁴ it is not sufficient that the conduct of certain individuals prompted the passage of the legislation, or that the Government intended to use the Acts to target those persons, to find a violation of the separation of powers principle.

Analysis

45. The Acts are not *ad hominem* to the point of breaching the doctrine of separation of powers. However, to the extent that the Acts encroach on the Claimants' fundamental rights under the Constitution of Belize, they have been enacted in breach of section 68.

²² (1975) 24 WIR 326.

²³ Civil Appeals Nos. 7, 9 and 10 of 2011.

²⁴ [2016] UKPC 2 (*Ferguson*).

46. In many respects, the questions this Court is asked to grapple with, the legislative provisions it is asked to examine, and the factual background of this constitutional challenge are similar to those faced by the CCJ in *Zuniga*. It is therefore appropriate to begin the analysis by reviewing this binding precedent.
47. The *Zuniga* case involves amendments to the *Supreme Court of Judicature Act* that create the offence of knowingly disobeying or failing to comply with an injunction (in particular an anti-arbitration injunction), prescribe severe penalties for persons convicted of this offence, including mandatory minimum penalties, and provide for a range of ancillary matters. Prior to passing these amendments, the Government of Belize had disavowed an agreement entered into in 2005 between Telemedia and the former Government. The agreement contained an arbitration clause, which Telemedia invoked. The Government filed a suit to obtain a permanent injunction preventing the shareholders of Telemedia from taking further steps in the arbitration process. The Government obtained an interim injunction to the same effect pending the hearing of the suit. However, Dunkeld International Investment Limited (“Dunkeld”), Telemedia’s majority shareholder (which the Government at the time believed was associated with Lord Ashcroft), ignored the injunction and proceeded with its arbitration and enforcement action in another jurisdiction. Dunkeld obtained an award that was subsequently assigned to Belize Social Development Limited. This is the award described above and referred to as the BSDL Award, which also forms part of the background in the present matter.
48. In *Zuniga*, the CCJ accepted evidence showing that the impugned amendments were enacted in the context of what the Government of Belize perceived as a “battle” between itself and Lord Ashcroft, a battle which took the form of a struggle for the control of the shares in Telemedia. The CCJ referred to statements made by the then Prime Minister specifically referring to Lord Ashcroft as evidence of this context. Dunkeld’s disregard for the interim injunction was a precipitating factor in the adoption of the amendments at issue in *Zuniga*.
49. Similar to the Claimants’ argument in the present matters, the claimants in *Zuniga* argued that the impugned amendments were unconstitutional as being *ad hominem*. They posited that the amendments introduced draconian, mandatory, and disproportionate punishments against Lord Ashcroft, and Dunkeld and its officers, which were coupled with special rules related notably to the reversal of the burden of proof. They also claimed that the preexisting law was sufficient to deal with any disregard for injunctions, and that the Attorney General was given the special power to invoke the new procedure. The *Zuniga* claimants relied on the Privy Council’s decision in *Liyana* to support their position that these measures contravened the doctrine of separation of powers and should be struck down. The Claimants in the present matters also rely on *Liyana*.

50. The *Liyanage* decision does not stand for the principle that every criminal legislation enacted with a particular situation in mind will inevitably encroach on the judicial power. According to the CCJ, “the true principle to be extracted from *Liyanage* is that Parliament may not interfere with the judicial process itself in the sense of compromising judicial discretion by prescribing or directing the outcome in specific and pending proceedings”.²⁵ In order to make a determination of interference, courts must consider factors such as the true purpose of the legislation, the situation to which it was directed, the existence of a common design, and the extent to which the legislation affects, by way of direction or restriction, the discretion or judgment of the judiciary in specific proceedings.²⁶
51. In *Zuniga*, although the amendments raised “red flags” because they were prompted by the actions of a particular individual or group, introduced steep mandatory penalties, and provided for rules to be made by the Attorney General, the CCJ found no breach of the doctrine of separation of powers:

There is absolutely no doubt that the legislation here is not *ad hominem* in relation to any precise proceedings. It does not direct the court on how it should deal with the challengers (or any member(s) of the two groups) in any particular proceeding. As Mendes JA pointed out, although it might be correct to characterize the Act as having been passed with the appellants and the interested parties in mind, it “is not expressed to apply to specific individuals, or to specific arbitrations, or to be applicable to any pending criminal or other proceedings. It is expressed in terms of general application”. Mendes JA also observed, quite properly, that apart from mandating the sentence to be imposed on anyone found guilty of a sub-section 1 offence (a matter which shall separately be considered), there is no direction to the judiciary as to how it should exercise the discretion bestowed upon it.²⁷

52. Similar red flags are raised in the present matters. There is ample evidence showing that the impetus for the Acts was the enforcement of arbitral awards which have been declared unlawful, void or otherwise invalid as against the public policy of Belize by business entities related to Lord Ashcroft, or perceived to be related to Lord Ashcroft, in the United States. The Acts introduce severe mandatory penalties for those who commit the offences created by the Acts.
53. However, the Acts do not undermine the decisional authority or independence of the judicial branch by compromising judicial discretion. The Acts are drafted in terms of general application. They do not apply to pending proceedings before the Belize courts.

²⁵ *Zuniga* at para. 44.

²⁶ *Liyanage* at 290.

²⁷ *Zuniga* at para. 43.

They do not direct the court on how it should deal with a specific individual or group in any particular proceedings. To the extent that section 4 of the *CBBIIA* has retroactive effect, it is equally drafted in general terms and does not apply to any specific proceedings. There is therefore no interference with the adjudicative process, no constraints on the courts in their application or interpretation of legal principles, and no breach of the doctrine of separation of powers.

54. Despite finding no breach of the doctrine of separation of powers, this Court is of the opinion that the Acts violate section 68 of the Constitution of Belize because they deprive the Claimants of their fundamental rights. In *Zuniga*, the CCJ held that while the expression “peace, order and good government” is not to be seen as words of limitation on Parliament’s law making power, courts may be concerned with the propriety or expediency of an impugned legislation where, for example, “the purpose of the law is a relevant issue in determining a breach of the separation of powers doctrine [...] or a violation of a fundamental right”.²⁸ This Court concludes, for the reasons set out in this decision, that the Acts violate the Claimants’ property rights, their right to the protection of the law, and their freedom of expression. As a result, the Acts were not passed for the peace, order and good government of Belize.
55. Beyond conformity with the Constitution, this Court declines to find embedded in the expression “peace, order and good government” any qualitative limits on Parliament’s law-making power. A similar argument was raised and rejected in *Zuniga*. According to the CCJ, “the words are to be regarded as a compendious expression denoting the full power of Parliament freely to engage in law-making subject only to the Constitution. Without more, it is not for the court to question the wisdom or appropriateness of an Act of Parliament to determine whether the Act is inimical to the peace, order and good government of Belize”.
56. The Claimants rely on *Labourers’ Federation*, a precedent from Australia, in support of their contention that section 68 establishes binding limits on Parliament’s legislative powers. While the Court did, in that case, refer to “limits” circumscribing the New South Wales Parliament’s legislation powers, that discussion must be placed in context. Many Commonwealth jurisdictions, including Australia, Canada, India, and Belize, are governed by a Constitution encompassing a “peace, order and good government” (or similar language) clause. This clause is generally understood and interpreted as delegating plenary powers to, and prescribing jurisdictional limits on, Parliaments’ legislative authority. In *Labourers’ Federation*, the question the New South Wales’ Court of Appeal had to grapple with related to the scope of the Parliament of New South Wales’ legislative authority under the *Constitution Act, 1902*, which was enacted under the authority conferred by the English

²⁸ *Zuniga* at para. 50.

Parliament via the *Colonial Laws Validity Act*, 1865. To the extent that the Court spoke of “limits” in the expression “peace, welfare and good government”, those limits were viewed as restricting the powers conferred to Parliament to the ““peace, welfare, and good government” of the body politic in respect of which the legislature is being established”.²⁹ In other words, Parliament’s legislative authority was considered to be plenary within its jurisdictional confines.

57. Of particular relevance to the present matters is the fact that the court in *Labourers’ Federation* declined to find that the impugned legislation’s alleged interference with the judicial process led to a breach of the “peace, order and good government” clause. According to the Court, “it is difficult to see any justification to support such a proposition. The legislation may well have been a regrettable interference with the judicial process of the Court, but that, standing alone, does not take it beyond the wide limit of the legislative field open to Parliament”.³⁰
58. The CCJ’s approach in *Zuniga* is therefore not “more conservative” than the approach of the New South Wales’ Court of Appeal in *Labourers’ Federation*, as suggested by the Claimants. These decisions deal with different aspects of the “peace, order and good government” clause. The present matters do not raise issues of scope or jurisdiction, but issues of propriety and expediency. There is therefore no reason to distinguish and depart from the CCJ’s decision in *Zuniga*.

Second Issue – Whether the CPAA and the CBBIIA deprive the Claimants of their property rights in contravention of sections 3(d) and 17(1) of the Constitution of Belize

59. Sections 3(d) and 17(1) of the Constitution of Belize together protect the right not to be deprived of property without compensation. Section 3(d) establishes the fundamental right not to be arbitrarily deprived of property:

3 - Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, [...]

(d) protection from arbitrary deprivation of property

²⁹ *Labourers’ Federation* at 383.

³⁰ *Labourers’ Federation* at 385.

60. Section 17(1) prescribes the manner by which property may be compulsorily acquired:

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

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

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

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

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

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

(iv) enforcing his right to any such compensation.

The Claimants' Submissions

61. The Claimants submit that the *CPAA* and the *CBBIIA* are unconstitutional as they deprive the Claimants of their property rights without a legitimate public purpose and without compensation in contravention of sections 3(d) and 17(1) of the Constitution of Belize.

62. The Claimants assert that arbitration awards and judgments are property. They also assert that litigation rights and claims, which include enforcement claims in respect of judgment debts, constitute property rights. In that regard, the Claimants note that the *Interpretation Act* defines "property" as including "(a) money, goods, choses in action and land; and (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition".

63. The Claimants cite the Privy Council's decision in *Société United Docks, Marine Workers Union and Others v Mauritius Marine Authority*³¹ in support on their contentions. In that case, the Privy Council found that legislation allowing the Attorney General of Mauritius

³¹ [1985] AC 1.

to object to the enforcement of arbitral awards issued against the Mauritius Port Authority violated property rights in the Constitution. The award beneficiaries were entitled to be paid compensation under the relevant provisions of the Mauritian Constitution. The Claimants also rely on the Belize Court of Appeal's decision in *Caribbean Consultants & Management Limited*,³² a decision which confirms that judgments are considered property within the meaning of section 3(d) of the Constitution of Belize.

64. The Claimants argue that the deprivation of their property rights was made without a “public purpose” as required by section 17(1) of the Constitution of Belize. They reiterate their position that the *CPAA* and the *CBBIIA* were enacted with the singular aim of preventing CIHL and related entities from taking execution steps on their arbitral awards and judgments obtained in the United States. The Claimants note that the Government of Belize participated in these proceedings, and that the effect of the impugned legislation is to secure an after-the-fact advantage in the litigation in favour of the Government. They argue that this “cynical” move is part of a pattern of enacting unconstitutional legislation in order to target Lord Ashcroft.
65. In response to the statement in the Affidavit of Samantha Tucker that any attachment against any asset of the state of Belize would have “devastating economic and social impacts on Belize”, the Claimants note that the Respondent failed to adduce any evidence to support the assertion.
66. The Claimants urge this Court to adopt the approach of the Court of Appeal in *British Caribbean Bank*, in which the Court of Appeal found legislation to be unconstitutional in similar circumstances where the Defendant had failed to present sufficient evidence of a broader public purpose against evidence that the legislation specifically targeted Lord Ashcroft.
67. The Claimants argue that the *CPAA* and the *CBBIIA* also violate section 17(1) of the Constitution of Belize because they fail to provide for the payment of compensation, or to provide for access to courts for establishing CIHL's right in property or securing compensation. They cite the Court of Appeal's decision in *British Caribbean Bank* for the principle that individuals should be entitled to a hearing before any act is done or taken by a public official or body which could prejudicially affected protected rights.
68. Finally, the Claimant in Claim No. 77 of 2017, Courtenay Coye LLP, advances that the Acts deprive it of its property rights in its intellectual expertise developed in arbitration, the enforcement of arbitral awards, and related matters, as well as “the pride and satisfaction of being able to provide legal services in this area to its client”. According to the Claimant, while the Constitution of Belize does not define “property”, courts in the

³² Civil Appeal No. 46 of 2011.

wider Commonwealth have declared that “property” within a constitutional context must be given its widest meaning. The Claimant relies on case law³³ in which intellectual property and business goodwill have been found to constitute “property”. By analogy, the Claimant invites this Court to find that its expertise, developed by labour and skills, constitutes “property” under the Constitution of Belize.

The Respondent’s Submissions

69. The Respondent submits that the court is vested with residual power under the common law to issue orders in cases where it appears that there is an arbitrary and oppressive use of its jurisdiction. In addition, section 27 of the *Supreme Court of Judicature Act* empowers the court to issue orders which can be made in the public interest. The court is the guardian of the Constitution.
70. The Respondent further submits that the issue of the violation of sections 3 and 17 of the Constitution of Belize does not arise because the awards the Claimants are seeking to enforce are contrary to the established legal order of Belize. There is no deprivation of property where the purpose and intention of the legislation is to deter a person from litigating a matter in circumstances where the final court has pronounced that the award is not enforceable as being contrary to the legal order of Belize. In addition, there is no evidence of unjust enrichment on the part of the Government of Belize.

Analysis

71. This Court finds that the Acts do not arbitrarily deprive the Claimants of their property rights as they relate to the enforcement of arbitral awards declared unlawful, void or otherwise invalid in Belize, or the legal expertise developed by Courtenay Coye LLP. The Acts however arbitrarily deprive the Claimants of their property rights as they relate to the enforcement judgments rendered in the United States, without a public purpose and without compensation, in violation of both sections 3(d) and 17(1) of the Constitution of Belize.
72. As a general rule, arbitral awards constitute property, the arbitrary deprivation of which would result in a breach of the rights protected under sections 3(d) and 17(1) of the Constitution of Belize.³⁴ The issue raised in these matters is whether an arbitral award that has been declared unlawful, void or otherwise invalid in Belize constitutes property at all. In its brief submissions, the Respondent says that “the issue of the violation of sections 3

³³ *Smith Kline & French v Secretary of Community*, (1990) 95 ALR 87; *Ulster Transport Authority v James Brown & Sons*, [1953] NI 79.

³⁴ *Société United Docks and others v Government of Mauritius*, [1985] AC 585; *Philip Zuniga et al. v The Attorney General of Belize*, Civil Appeal Nos. 7, 9 & 10 of 2011 at para. 127.

and 17 of the Belize Constitution ought not to arise because of the fact that the award that the Claimant is seeking to enforce is contrary to our established legal order”.

73. The term “property” is defined in general terms as the “right to possess, use, and enjoy a determinate thing”.³⁵ Section 3 of the *Interpretation Act*³⁶ does not offer a comprehensive definition of “property”, but provides a non-exhaustive list of matters which are considered to be “property” in the legal sense:

“property” includes—

(a) money, goods, choses in action and land; and

(b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition;

74. An arbitral award is a “chose in action”. A “chose in action” is defined in Black’s Law Dictionary as “a proprietary right *in personam*, such as a debt owed by another person”, or “the right to bring an action to recover a debt, money, or thing”.³⁷ It is defined in *Osborn’s Concise Law Dictionary*³⁸ as “a right of proceeding in a court of law to procure the payment of a sum of money [...]. A legal chose in action is a right of action which could be enforced in a court of law”. A “chose in action” is therefore a *legal right*. An arbitral award is a “chose in action” because it creates a legal right in favour of its holder to recover a debt from another person.
75. A declaration by a Belize court that an arbitral award is “unlawful, void or otherwise invalid” has the effect of extinguishing the legal right of the award’s holder to recover in Belize the debt created by the arbitral award. Once an arbitral award has been declared “unlawful, void or otherwise invalid”, it no longer constitutes a “chose in action”, and is therefore no longer considered “property” within the meaning of section 3 of the *Interpretation Act*. Therefore, to the extent that the *CPAA* applies to a “foreign judgment” (defined as including “an award in proceedings on an arbitration”) that has been “declared unlawful, void or otherwise invalid, by any court in Belize”, the *CPAA* does not deprive the Claimants of their property rights because the arbitral award no longer constitutes property in Belize. There can therefore be no violation of either sections 3(d) or 17(1) of the Constitution of Belize with respect to the enforcement of the arbitral award in Belize.

³⁵ *Black’s Law Dictionary*, 9th ed., Thomson Reuters, 2009 at 1336.

³⁶ Cap. 1, Revised Edition 2020.

³⁷ *Black’s Law Dictionary*, 9th ed., Thomson Reuters, 2009 at 275.

³⁸ 13th ed., 2013.

76. The *CPAA* however breaches the property rights of the Claimants as they relate to recognition and enforcement judgments obtained in foreign countries. Under the *New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards*³⁹ (which Belize is a signatory of and has domestically incorporated in Part IV of the *Arbitration Act*⁴⁰), the Claimants are entitled to seek recognition and enforcement of an arbitral award in any State party to the *New York Convention*. Just like courts in Belize, courts in State parties to the *New York Convention* may refuse to recognise and enforce an arbitral award on several grounds listed in Part V of the *New York Convention*.
77. Under the *New York Convention*, recognition and enforcement of an award can be refused by the domestic courts on several grounds, including that the arbitration agreement was not valid under the law to which the parties have subjected it or under the law of the country where the award was made; if the award has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; or if the award would offend the public policy of the country in which recognition and enforcement is sought. Recognition and enforcement of an arbitral award in a State party to the *New York Convention* is therefore not automatic. The party against which it is invoked has an opportunity, just like it has in Belize, to make submissions as to whether or not the arbitral award should be recognised and enforced in that country.
78. As discussed above, an arbitral award which has been denied recognition and enforcement no longer constitutes a “chose in action”, and therefore is no longer considered property within the meaning of section 3 of the *Interpretation Act*. On the other hand, an arbitral award that has been recognised and enforced in a foreign country crystallises the right of the holder to claim the debt created by the arbitral award in that country, and therefore constitutes a “chose in action”. To the extent that it applies to a foreign judgment recognising and enforcing an arbitral award abroad, the *CPAA* deprives the Claimants of their property rights in that judgment.
79. Is the deprivation of the Claimants’ property rights as they relate to a foreign judgment recognising and enforcing an arbitral award in that country “arbitrary”? The parties made no submissions on this point. In *Jeffrey J. Prosser et al. v The Attorney General of Belize*,⁴¹ this Court held that “limitation or extinction of property rights can, depending on the circumstances and facts of a particular case, in fact, amount to arbitrary deprivation thereof”. It also found that “the deprivation is arbitrary and [...] impermissible if it is without compensation and cannot be justified under any of the paragraphs of subsection (2) of section 17”. A failure to comply with the requirements of section 17 of the Constitution

³⁹ 10 June 1958 (the “*New York Convention*”).

⁴⁰ Cap. 125, Revised Edition 2020.

⁴¹ Claim No. 338 of 2005, cited with approval in *Caribbean Consultants & Management Limited v Attorney General et al.*, Civil Appeal No. 46 of 2011.

of Belize for the compulsory taking of property can therefore by itself constitute an arbitrary deprivation of that property. In the circumstances of this particular case, this Court finds that the deprivation of the Claimants' property rights in the recognition and enforcement judgments obtained in the United States is arbitrary because it is made without a public purpose and without compensation.

80. No evidence has been adduced to support a public purpose for the deprivation of the property rights of the Claimants, as required by section 17(1)(b)(ii) of the Constitution of Belize. In her First Affidavit in support of the Respondent's position, Samantha Tucker merely states the following:

There are several claims pending outside the jurisdiction against the Government of Belize for the enforcement of arbitral awards and I am informed by the Financial Secretary and verily believe that if any enforcement of the award is granted and any subsequent attachment against any asset of the state of Belize, it could have devastating economic and social impacts.

81. Section 3(3) of the *CBIA* aims at preempting the issue of public purpose by providing for that purpose directly in the legislation in the following terms:

3(3) The public purpose objectives referred to in subsection (1) are those of fostering monetary stability, especially as regards stability of the exchange rate, and promoting credit and exchange conditions conducive to the growth of the economy of Belize, while, within the context of the economic policy of the Government of Belize, providing economic advice to the Government, and as banker to the Government of Belize, supervising and regulating Belize's financial system.

82. It is most unfortunate that the Respondent did not consider it necessary to comment on the meaning and import of section 3(3) of the *CBIA*, or to provide any evidence supporting the stated public purpose. As noted by the Belize Court of Appeal in *British Caribbean Bank*, section 17(1)(b)(ii) of the Constitution of Belize prescribes "a means whereby government's stated public purpose can be interrogated by the court with a view to ascertaining that the taking of property was carried out for a public purpose".⁴² This task cannot, and should not be carried out without proper, or indeed any, evidence, regardless of whether that public purpose has been provided for in the legislation. In the present matters, in the absence of any evidence it is this Court's opinion that the Defendant has not discharged its burden of proving a public purpose for the deprivation of the Claimants'

⁴² *British Caribbean Bank* at para. 10.

property rights as they relate to the recognition and enforcement judgments obtained in the United States, making that deprivation arbitrary.

83. In addition, the Acts do not provide for compensation for the taking of property rights in foreign judgments recognising and executing arbitral awards. This fact is not in dispute and the Respondent has made no attempt at justifying the lack of provision for compensation in the Acts. There is therefore a clear violation of section 17(1)(a) of the Constitution of Belize compounding the arbitrariness of the impugned provisions.
84. Before turning to the next issue, this Court will address the discrete argument raised by Courtenay Coye LLP, namely whether the Acts deprive it of its property rights in its intellectual expertise developed in arbitration, the enforcement of arbitral awards, and related matters, as well as “the pride and satisfaction of being able to provide legal services in this area to its client”.
85. This Court declines to make a finding that “expertise” constitutes “property” within the meaning of section 17 of the Constitution of Belize. Although the Court agrees with the Claimant that constitutional provisions should be given a liberal interpretation, there is no support for its position that the term “property” could bear the meaning the Claimant wants to ascribe to it. As discussed above, the term “property” is defined in the *Interpretation Act* as including “money, goods, choses in action and land”. A “choses in action” is a legal right allowing its holder to bring an action in order to recover either a debt, money, or a thing. The Claimant’s expertise does not give rise to a legal right, and therefore does not constitute a “choses in action”, nor does it constitute money, a good, or land.
86. The definition of “property” in section 3 of the *Interpretation Act* is however not exhaustive, as the use of the term “including” implies. Under the *ejusdem generis* principle, this Court can consider whether the “expertise” asserted by the Claimant is a thing of the same kind as “money, goods, choses in action and land” such that it could by association be encompassed in the definition of “property”. Beyond making a parallel with other non-tangible assets such as intellectual property, business goodwill, and trade secrets, the Claimant has provided no rationale to support such a finding. In fact, the case law submitted by the Claimant in support of the analogy is less than helpful to their position. Indeed, in *Smith Kline & French v Secretary of Community*,⁴³ the court quite clearly stated that it seemed “clear enough that knowledge per se is not proprietary in character” and that jurisdiction to grant relief for an actual or threatened abuse of confidential information lied in equity and not in a pre-existing proprietary right.

⁴³ (1990) 95 ALR 87 at 135.

87. In that same decision, the court cites the House of Lords’ ruling in *National Provincial Bank Ltd. v Ainsworth*,⁴⁴ in which Lord Wilberforce stated that “before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in nature of assumption by third parties, and have some degree of permanence or stability”. This pronouncement is helpful as it reveals the threads holding the things enumerated at section 3 of the *Interpretation Act* together.
88. Even assuming that Courtenay Coye LLP’s expertise in certain areas of the law is definable, identifiable by third parties, and has some degree of permanence or stability, which the Court makes no pronouncement on, it is readily apparent that this expertise cannot be assumed by third parties, as by nature this expertise can only be developed and used by Courtenay Coye LLP. Legal expertise is nothing more than knowledge. Of course, that knowledge can be used to acquire property such as money, goods, choses in action, and land. But the source of that property, Courtenay Coye LLP’s expertise, is not a thing of the same kind as those mentioned at section 3 of the *Interpretation Act*, and cannot therefore be read in the definition through the doctrine of *ejusdem generis*. By contrast, intellectual property,⁴⁵ business goodwill,⁴⁶ and trade secrets⁴⁷ are things that may be assumed by third parties as they are things that can be sold, transferred, assigned, licensed, or otherwise devolved by operation of law. The Claimant’s argument that it has been deprived of “property” as a result of its inability to use its intellectual expertise developed in arbitration, the enforcement of arbitral awards, and related matters must therefore fail.

Third Issue – Whether the criminal offences created by the CPAA and the CBBIIA contravene sections 5 and 6 of the Constitution

89. The Claimants argue that the criminal offences created by the Acts breach the protections offered under sections 5 and 6 of the Constitution of Belize. Section 5 provides as follows:

5.- (1) A person shall not be deprived of his personal liberty save as may be authorised by law [...]

⁴⁴ [1965] AC 1175.

⁴⁵ For a general overview, see World Intellectual Property Organization, *Intellectual Property Handbook* (2004), online: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_489.pdf

⁴⁶ This term is defined in *Ulster Transport Authority v James Brown & Sons* [1953] NI 79 as “a ready formed connection of customers whose custom is of value because it is likely to continue”. In other words, this term refers to a party’s book of business.

⁴⁷ *Smith Kline & French v Secretary of Community*, (1990) 95 ALR 87 at 135.

90. Section 6, in its relevant parts, provides as follows:

6.- (1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

[...]

(3) Every person who is charged with a criminal offence-

(a) shall be presumed to be innocent until he is proved, or has pleaded, guilty; [...]

(4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

[...]

(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

(a) subsection (3)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts.

The Claimants' Submissions

91. The Claimants contend that the Acts offend core protections guaranteed under the Constitution of Belize in relation to criminal offences, namely that criminal sanctions must not be imposed for an act that is not clearly ascertainable, that individuals are presumed innocent until proven guilty, and that a person shall not be guilty for an offence that did not constitute an offence at the time it took place.

92. The Claimants argue that the offences created by the Acts are so vague and confusing that the acts that might be caught by them are not clear and ascertainable. With respect to section 29(B)(1) of the CPAA, the Claimants first note that there is no clear legal basis for ascertaining when a Belize court can make an order that a foreign judgment is "unlawful, void or otherwise invalid". The Claimants express the ambiguities raised in these terms:

a) A foreign judgment would normally only come to be considered by the Belize court where a party seeks to enforce it in Belize. Does the "finding"/

"determination" by the Belize court that the judgment is unlawful, void or otherwise invalid need to be given in particular proceedings, is there broader jurisdiction than enforcement proceedings, and what is the scope of the Belize court's jurisdiction?

- b) Will a court refusing to enforce a foreign judgment on "public policy" grounds be considered to be the court finding that the judgment is unlawful, void or otherwise invalid?
- c) Does the court need to have specifically said in a judgment or similar that the foreign judgment is "void", "unlawful" or "invalid"?
- d) If the court has found a foreign judgment to be unenforceable but has not used the words "void", "unlawful" or "invalid", can this be implied such that the foreign judgment is one to which this offence applies? If so, in what circumstances?

93. Second, the Claimants submit that the phrase "whether by the institution of proceedings or otherwise" is unclear because it is not obvious at what point the "institution of proceedings" begins: is it when a person commences the claim which ultimately may reach the point where enforcement is available, or when the person institutes execution proceedings? It is also unclear in what circumstances such "otherwise" methods of enforcing or attempting to enforce will lead to the commission of the offence.
94. With respect to sections 29B(4) of the *CPAA* and 4(4) of the *CBBIIA*, the Claimants argue that the use of the expression "acted in an official capacity" is also not clear and ascertainable.
95. Finally, with respect to section 4(1)(b) of the *CBBIIA* the Claimants argue that the offence created is so unclear that it is impossible to understand when a person will or will not commit it. They explain their position in these terms:
- a) If the Central Bank in fact "has been subjected to proceedings", then what "false" report or public statement can be made? What is "false" in these circumstances? It seems strange to create this offence to prevent someone making a statement that the Central Bank is subject to (or its property is the subject of) proceedings when it is not the case.
 - b) What is the meaning of the language "would... be immune"? The imprecision in the language of the offence means its meaning is unclear.

- c) Is the intention actually to prevent a statement being made that the Central Bank is liable, or property of the Central Bank is available to remedy liability? If this is the intention, and the circumstance in which someone may face prosecution under this offence, then this is not what the provision says and so would not be clearly and ascertainably an offence to those reading it.
96. In the Claimants' view, the offences contained in the Acts are so broad and nonsensical that they cannot stand. In addition, these offences are linked with other provisions which are poorly drafted and uncertain to such a degree that the Acts as a whole should be struck down.
97. The Claimants further argue that sections 29B(4) of the *CPAA* and 4(4) of the *CBBIIA* infringe on the presumption of innocence because these sections include a reverse burden for officers of the legal entities, which is contrary to the principle of presumption of innocence enshrined in section 6(3)(a) of the Constitution of Belize. The Claimants note that the Government of Belize is well aware that the wording of these sections is unconstitutional since almost identical wording has been held to be unconstitutional by the CCJ in *Zuniga*.
98. Finally, the Claimants state that section 4 of the *CBBIIA* should be struck down as it creates a retrospective offence in contravention of section 6(4) of the Constitution of Belize. Section 4 of the *CBBIIA* criminalises the action of a party who "whether in respect of a matter occurring before or after the coming into operation of this Act", either "has instituted, intervened in or sought conduct of" certain proceedings, or knowingly makes a "false report or public statement" on certain matters. These provisions are directed retrospectively at actions already taken, and in any case are directed at existing matters. Further, the Claimants note that in *Thomas v Baptiste*,⁴⁸ the Privy Council held that due process requires that any legislation to amend the domestic law must not be done retrospectively so as to affect existing applications.

The Respondent's Submissions

99. The Respondent argues that the criminal provisions as formulated by the National Assembly and found in the Acts accord with the general standards and formulations in relation to the creation of criminal offences. The power of punishment is vested in the Legislature, and not in the judiciary. As such, it is the Legislature, and not the courts, which defines a crime and ordains punishment. The Respondent maintains that there is nothing vague, uncertain or arbitrary about the provisions of the Acts. The sections are very explicit in who commits an offence and the penalty to be imposed. The Respondent

⁴⁸ [2000] 2 AC 1, 24.

cites excerpts of *The Composition of Legislation*⁴⁹ by Elmer A. Driedger in support of their position on this point.

100. With respect to the argument that the Acts offend the presumption of innocence, the Respondent argues that the situation at hand falls within the exception as outlined in section 6(10) of the Constitution of Belize. The presumption of guilt can be rebutted if, on a balance of probabilities, evidence is adduced to show that an accused person has no knowledge or was not part of any effort to seek to move on the assets of the State. In *Zuniga*, the CCJ confirmed that the Constitution of Belize permits the State to impose on an accused “the burden of proving particular facts”. The imposition must be reasonable and proportionate, and a balance must be struck between the importance of what is at stake and the rights of the defence. In *de Freitas v The Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing and Others (Antigua and Barbuda)*,⁵⁰ the Privy Council, in interpreting the requirement that a limitation on the right to freedom of expression must be “reasonably justifiable in a democratic society”, adopted the following three prong test: (i) whether the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) whether the measures designed to meet the legislative objectives are rationally connected to it; and (iii) whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective. According to the Respondent, the effect of a party having to adduce evidence is reasonably required against the backdrop of why these measures were taken by the State, and to protect the assets of the State through the *Crown Proceedings Act*, especially in circumstances where the final court of Belize has pronounced that the award would be against the legal order of Belize.
101. Finally, the Respondent submits that section 4(1) of the *CBBIA* does not violate section 6(4) of the Constitution of Belize because it does not usurp any judicial function. The effect of the legislation is to capture any criminal activity before the coming into effect of the law and does not seek to take away any penalty that might have been imposed. The provision addresses any person who may have moved on assets before the passage of the law with a view to protecting the assets of the Crown and the Central Bank of Belize. The Respondent cites the Privy Council’s decision in *Ferguson* in support of their contention on this point.

Analysis

102. This Court finds that while the provisions at issue are not unconstitutionally vague and ambiguous, sections 29B(4) of the *CPAA* and 4(4) of the *CBBIA* violate the presumption of innocence and must therefore be struck down. In addition, this Court concludes that to

⁴⁹ Elmer A. Driedger, *The Composition of Legislation (Legislative Forms and Precedents)*, 2nd ed., 1976.

⁵⁰ [1998] UKP 30.

the extent that it creates a retroactive offence, section 4(1) of the *CBIIAA* is also unconstitutional.

103. The criminal offences created by the Acts are not vague and ambiguous to the point of violating the Claimants' right to the protection of the law. It is a fundamental principle that penal statutes should clearly and certainly guide the conduct of those who are subject to them. As stated by the CCJ in *Zuniga*,

Penal statutes should be clear, certain, coherent and fair in the consequences they pose for those who risk falling foul of them. Failing this, the *rule of law*, yet another fundamental, albeit at times, implicit feature of the Constitution, is placed in jeopardy.⁵¹

104. While the law must be certain, the applicable standard does not require *absolute* certainty. As Lamer J. of the Supreme Court of Canada noted in *Reference re ss. 193 and 195.1(1)(C) of the criminal code (Man.)*,⁵² “the vagueness doctrine does not require that a law be absolutely certain; no law can meet that standard”. What is required is for the law to give fair notice of the conduct that is contemplated as criminal:

[...] a law that does not give fair notice to a person of the conduct that is contemplated as criminal, is subject to a s. 7 [of the *Canadian Charter of Rights and Freedoms*] challenge to the extent that such a law may deprive a person of liberty and security of the person in a manner that does not accord with the principles of fundamental justice. Clearly, it seems to me that if a person is placed at risk of being deprived of his liberty when he has not been given fair notice that his conduct falls within the scope of the offence as defined by Parliament, then surely this would offend the principles of fundamental justice.⁵³

105. In the subsequent decision of *R v Nova Scotia Pharmaceutical Society*,⁵⁴ the Supreme Court of Canada expanded on the notion of vagueness, noting that vague provisions breach fundamental rights not only by failing to provide fair notice to the citizens, but also by preventing any limitation of discretion in enforcement:

A vague provision does not provide an adequate basis for legal debate, that is for reaching a conclusion as to its meaning by reasoned analysis applying legal criteria. It does not sufficiently delineate any area of risk, and thus can provide neither fair notice to the citizen nor a limitation of enforcement discretion. Such a provision is not intelligible, to use the terminology of previous decisions of this

⁵¹ *Zuniga* at para. 36.

⁵² [1990] 1 SCR 1123 at 1156.

⁵³ *Ibid.*

⁵⁴ [1992] 2 SCR 606.

Court, and therefore it fails to give sufficient indications that could fuel a legal debate. It offers no grasp to the judiciary.

106. The test for vagueness developed in the Canadian context has been endorsed by the CCJ in *Quincy Mc Ewan et al. v The Attorney General of Guyana*,⁵⁵ a decision examining the constitutionality of the offence of “wearing female attire in a public place for an improper purpose”. At issue in *Quincy Mc Ewan* was whether section 153(1)(xlvii) of the *Summary Jurisdiction (Offences) Act* of Guyana breached the constitutional guarantee of protection of the law because the words “improper purpose”, “female attire”, and “male attire” were impermissibly vague and uncertain. The CCJ struck down the law as unconstitutionally vague on its face because it failed to give an individual fair notice with sufficient particularity as to how their conduct can ensure conformity with the provision, and it facilitated arbitrary enforcement by public officials.
107. The impugned provisions in the present case are not similarly vague. They provide fair notice to the Claimants, and other persons who may be subject to them, of the impermissible conduct. Section 29B(1) of the *CPAA* sufficiently delineates the “area of risk”. Section 29B(1) applies only where it has been determined by a court in Belize that a foreign judgment is “unlawful, void or otherwise invalid”. There is therefore a clear condition precedent for the application of section 29B, which is the existence of a decision from this Court. That decision must find that a “foreign judgment” (a term defined in the *CPAA* as meaning a “judgment of a foreign court” which, in turn, is defined as including “an award in proceedings on an arbitration”) is “unlawful, void or otherwise invalid”. The phrase “the institution of proceedings or otherwise” is not as vague as the Claimants argue it is. The word “institution” denotes that legal proceedings seeking enforcement would be captured under section 29B(1) from their very inception.
108. While the Claimants point to certain ambiguities in section 29B(1), such as whether the decision of the court in Belize must *specifically* use the words “unlawful”, “void”, or “invalid” for section 29B(1) to apply, or what the word “otherwise” means when read against “institution of proceedings”, the Supreme Court of Canada, in *Reference re ss. 193 and 195.1(1)(C) of the criminal code (Man.)*, recognised the role of the courts in giving meaning to legislative terms:

In addition, the role of the courts in giving meaning to legislative terms should not be overlooked when discussing the issue of vagueness. The Ontario Court of Appeal in *R. v. Morgentaler, Smoling and Scott*, *supra*, said the following at p. 388:

⁵⁵ [2018] CCJ 30 (*Quincy Mc Ewan*).

In this case, however, from a reading of s. 251 with its exception, there is no difficulty in determining what is proscribed and what is permitted. It cannot be said that no sensible meaning can be given to the words of the section. Thus, it is for the courts to say what meaning the statute will bear.

Also, as the Ontario Court of Appeal has held in *R. v. LeBeau* (1988), 41 C.C.C. (3d) 163, at p. 173, "the void for vagueness doctrine is not to be applied to the bare words of the statutory provision but, rather, to the provision as interpreted and applied in judicial decisions".

The fact that a particular legislative term is open to varying interpretations by the courts is not fatal. As Beetz J. observed in *R. v. Morgentaler*, [1988] 1 S.C.R. 30, at p. 107, "[f]lexibility and vagueness are not synonymous".

109. It is this Court's opinion that any ambiguities noted by the Claimants with respect to section 29B(1) of the *CPAA* can be resolved through an exercise in judicial interpretation.
110. Similarly, sections 29B(4) of the *CPAA* and 4(4) of the *CBBIIA* are not impermissibly vague as they relate to whom is considered to be acting in an "official capacity" for the purpose of the offences they create. The sections provide several examples of positions that are captured by this expression, and those who are not specifically mentioned can be identified through the doctrine of *ejusdem generis*. There is, however, ambiguity with respect to the requirement that the person must have been acting in an official capacity "at the time of the commission of the offence". We will return to this ambiguity in the context of the discussion on the presumption of innocence.
111. The offence created by section 4(1)(b) of the *CBBIIA* is not vague or ambiguous. The elements of the offence are clearly set out. The "report" or "public statement" must be made knowingly, must be false, and must relate to the proceedings described at section 4(1)(a) of the *CBBIIA*. While the Claimants are entitled to question the rationale for the provision, an issue we will come back to later in this decision, for the purpose of the analysis under section 6 of the Constitution of Belize, section 4(1)(b) of the *CBBIIA* is not impermissibly vague.
112. None of these sections facilitate arbitrary enforcement by public officials. Specific criteria must be met before enforcement procedures can be taken, starting with a decision of this Court. In contrast with the expression "improper purpose" in *Quincy Mc Ewan*, none of the words used in the impugned provisions are capable of arbitrary interpretation.
113. The Claimants' arguments in relation to the presumption of innocence and the retroactivity of the offence created by the *CBBIIA* are more persuasive. In *Zuniga*, the CCJ examined

the constitutionality of a provision strikingly similar to sections 29B(4) of the *CPAA* and 4(4) of the *CBBIIA*. The provision at issue read as follows:

Where an offence under this section is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as shareholder, partner, director, manager, advisor, secretary or other similar officer, or was purporting to act in any such capacity, shall be guilty of that offence and punished accordingly, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance.

114. In *Zuniga*, the challengers argued that the provision contravened section 6(3)(2) of the Constitution of Belize because it violated the presumption of innocence. The CCJ agreed and struck down the provision. In its discussion on the issue, the CCJ elaborated on the notion of presumption of innocence in the following terms:

We agree with the conclusion reached by the court below that the sub-section contravenes the principle of the presumption of innocence. The analysis must begin with the fundamental duty of the prosecution in a criminal case. The basic principle is that the prosecution must prove every essential ingredient of a criminal offence. It is this principle that is reflected in section 6(3)(a) of the Constitution; a provision that must be construed generously in favour of the individual. The burden on the prosecution does not extend to every conceivable fact in issue. Section 6(3)(a) is not infringed by a law requiring a defendant to establish a particular matter of fact or law. Section 6(10)(a) of the Constitution actually permits the State to impose on an accused “the burden of proving particular facts”. But the imposition must be reasonable and proportionate. A balance must be struck between the importance of what is at stake and the rights of the defence. Since section 6(10)(a) is a derogation from a right that is to be generously construed, the derogation must be construed strictly.

[...]

If an accused is required to establish on a balance of probabilities the absence of an important element of the offence in order to avoid conviction the presumption of innocence is unjustifiably violated because a conviction is possible in spite of a reasonable doubt as to guilt.⁵⁶

115. The same concerns as those raised by the CCJ in striking down the provision at issue in *Zuniga* are present in this case. First, the “web of guilt” is extensive. Just like the provision

⁵⁶ *Zuniga* at para. 71.

at issue in *Zuniga*, sections 29B(4) of the *CPAA* and 4(4) of the *CBBIIA* apply to anyone who acted for the legal entity in an official capacity at the time of the offence. Second, the phrase “at the time of the commission of the offence acted in an official capacity for or on behalf of the legal person” is unclear. As the CCJ mused, must the person have acted in some official capacity *in the legal person’s commission of the offence*? Is the requirement satisfied if the accused was acting in an official capacity but took no step, in that capacity, in relation to the legal person’s commission of the offence? Or must the capacity in which the person acted actually be linked to the commission of the offence?

116. Third, once the prosecution has proven the commission of the offences at sections 29B(4) of the *CPAA* or 4(1) of the *CBIIA*, those persons acting in a legal capacity for the legal person at the time of the offence are presumed to be guilty of the offence unless they adduce exculpatory evidence. It is worth stopping here to note an important difference between the provision at issue in *Zuniga* and sections 29B(4) of the *CPAA* and 4(1) of the *CBIIA*. The provision at issue in *Zuniga* allowed an accused person to exculpate themselves by adducing “evidence to show that the offence was committed without his knowledge, consent or connivance”. The CCJ found this requirement to offend section 6(3)(a) of the Constitution of Belize as the section was framed in such a way as to relieve the prosecution of the onus of proving *mens rea*, which was the vital element of the offence targeted by the provision. As the CCJ noted:

The accused does not have to show some positive exculpatory act on his part but rather is put in the unenviable position of having to establish a negative, namely that he did not consent to or connive at the disobedience to the injunction. If the sub-section is to be construed in a manner that widens the blanket of guilt beyond those captured by sub-section 4, it comes perilously close to legislating guilt by association.⁵⁷

117. Not only do the provisions at issue in the present case impose on the accused the same burden of establishing a negative, namely that “the offence was committed without his knowledge consent or connivance”, but they *add* to that burden by requiring the accused person to prove, *in addition*, that she or he “exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstance”. As stated by the CCJ in *Zuniga*, section 6(10)(a) of the Constitution of Belize permits the State to impose on an accused “the burden of proving particular facts”. However, that imposition must be reasonable and proportionate. It is hard to understand how the Government of Belize, having the benefit of the CCJ’s guidance in the *Zuniga* decision, not only decided to reenact a provision that has previously been struck down as unconstitutional on the basis that it violated the

⁵⁷ *Zuniga* at para. 73.

presumption of innocence by requiring an accused to prove a negative, but double-downed by adding to that requirement the extra burden of proving that the accused person also exercised “all such diligence to prevent the commission of the offence”. This Court can reach no conclusion other than that sections 29B(4) of the *CPAA* and 4(1) of the *CBIIA* are entirely unreasonable and disproportionate and must therefore be struck down.

118. Furthermore, to the extent that it creates a retroactive offence, section 4(1) of the *CBIIA* is also unconstitutional. Section 6(4) of the Constitution of Belize provides that “a person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence”. Yet, section 4(1) of the *CBIIA* applies to matters “occurring before or after the coming into operation of” the *CBIIA*. There is therefore a clear violation of section 6(4) of the Constitution of Belize.
119. The *Ferguson* decision is of no assistance to the Respondent. The *Ferguson* decision deals with the issue of whether the retrospective legislation at issue in that case breached the doctrine of separation of powers. It is in that context that the excerpt cited in the Respondent’s submissions must be read. The separation of powers issue has been addressed earlier in this decision. The *Ferguson* decision does not touch on the issue of whether the legislation breached the Claimants’ right to protection of the law.

Fourth Issue – Whether the CPAA and the CBBIIA deprive the Claimants of their rights to due process and equal protection of the law

120. Section 61(1) of the Constitution of Belize provides as follows:

6.- (1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

The Claimants’ Submissions

121. The Claimants argue that the Acts deprive them of their right to due process. The Constitution of Belize secures the protection of the “rule of law” and the “protection of the law”. The “protection of the law” has been recognised as including the right to due process. In *Thomas v Baptiste*,⁵⁸ the Privy Council held that the right to due process is breached where the outcome of any pending appellate or other legal process is pre-empted by executive action.
122. The Claimants argue that the CCJ has endorsed a broad approach to the interpretation of due process rights. In support of their contention on this point, they cite the CCJ’s decision in *Zuniga*, in which the CCJ stated:

⁵⁸ [2000] 2 AC 1.

[63] Section 6 of the Constitution guarantees to everyone the right to equal protection of the law. The constitutional protection afforded by this right goes well beyond the detailed provisions found in the section itself. In *The A.G. of Barbados v Joseph & Boyce de la Bastide* P and Saunders J observed that, “the right to the protection of the law is so broad and pervasive that it would be well-nigh impossible to encapsulate in a section of a constitution all the ways in which it may be invoked or can be infringed.” In the same case, Wit J went further and drew attention to the inextricable link between the protection of the law and the rule of law, with the latter embracing concepts such as the principles of natural justice and “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.”⁵⁹

123. The Claimants submit that the Acts contravene their due process rights because they preempt the proceedings for the enforcement of arbitral awards in the United States. The Acts constitute an eleventh-hour intervention in order to deprive CIHL of its right to take execution steps in order to gain advantage for the Government that does not exist as a matter of law in the United States.
124. In addition, the Claimants argue that the Acts deprive them of the equal protection of the law under section 6(1) of the Constitution of Belize. In their view, the Acts create a method by which the Government, and only the Government, can avoid its contractual and other legal obligations where CIHL and all others would have to comply with those commitments. The Acts include provisions which are exclusively for the benefit of the Government and Central Bank assets, including:
 - a) Providing that the Court is not allowed to issue any execution on the enforcement or attempted enforcement of certain foreign judgments against the Crown (section 29A of the *CPAA*);
 - b) Making it an offence to enforce or attempt to enforce certain foreign judgments against the Crown (sections 29B(1) and 29B(4) of the *CPAA*);
 - c) Providing that an application may be made to the Supreme Court to issue an injunction against a person restraining them from commencing, intervening in or continuing any proceedings for enforcement of certain foreign judgments against the Crown (section 29B(3) of the *CPAA*);

⁵⁹ *Zuniga* at para. 63.

- d) Making it an offence to institute, intervene in, or seek the conduct of proceedings in any foreign State relating to proceedings against the Central Bank or Central Bank assets (sections 4(1) and 4(4) of the *CBBIA*);
- e) Providing that an application can be made by the Attorney General, Central Bank or other person with a sufficient interest for an infringing proceedings order to stop proceedings relating to the Central Bank or Central Bank assets (section 5 of the *CBBIA*); and
- f) Providing that the Court can make orders prohibiting persons instituting, continuing or intervening in proceedings in any foreign State relating to proceedings against the Central Bank or Central Bank assets (section 6 of the *CBBIA*).

125. In support of their position on this point, the Claimants cite the Constitutional Court of South Africa's decision in *Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another*,⁶⁰ in which the Court held that a section of the *South African State Liability Act* providing that "no execution, attachment or like process shall be issued against a defendant or a respondent in any such action or proceedings or against the property of the state" was incompatible with the constitutional requirement of equality before the law set out at section 9(1) of the South African Constitution. In that decision, the Court also held that the section created an unjustifiable differentiation between a judgment creditor who obtained judgment against the state and a judgment creditor who obtained a judgment against a private litigant. In so finding, the Court rejected the respondent's argument that the limitation was reasonable and justifiable because it served to protect essential state assets from being attached.
126. According to the Claimants, the approach taken by the Constitutional Court of South Africa is consistent with the approach taken by the Privy Council in *Gairy v The Attorney General of Granada*.⁶¹ In that decision, the Privy Council held that the appellant was entitled to an order of *mandamus* against the Minister of Finance requiring him to make prompt payment of the balance of unpaid compensation arising out of the unlawful confiscation of his property by the State. In coming to its decision, the Privy Council found that the *Crown Proceedings Act*, which provided for an exclusive procedure for enforcing money orders against the Crown, did not cover claims for constitutional redress and inhibited effective enforcement.
127. In the same way, the Claimants argue that the Constitution of Belize has primacy and the *CPAA* and the *CBBIA* must yield to fundamental protections secured by it, including the

⁶⁰ [2008] ZACC 8.

⁶¹ [2001] UKPC 30.

equal protection of the law. Putting the State effectively above the law by allowing it to avoid its obligations is a clear breach of section 6(1) of the Constitution of Belize.

The Respondent's Submissions

128. The Respondent made no written submissions on this point. In oral submissions, the Respondent reiterated its point that the Claimants are seeking to enforce in Belize arbitral awards that have been deemed to be against the legal order of the country. There is a “collision” between the Claimants’ argument that they are deprived of the right to equal protection of the law and the fact that what they are seeking goes against the fundamental principle of the rule of law. Respect for the rule of law includes respecting decisions of the courts.

Analysis

129. The Claimants’ right to due process has not been violated. The right to due process is generally understood as protecting rights of a procedural nature, including the right to a fair trial and the right to procedural fairness.⁶² The Claimants rely on the Privy Council’s decision in *Thomas v Baptiste* for the proposition that the right to due process is breached where the outcome of any pending appellate or other legal process is pre-empted by executive action. There is no difference between the Claimants’ argument under this head and their argument under section 68 of the Constitution, which is the first issue examined in this decision. Indeed, *Thomas v Baptiste* was interpreted in *Ferguson* as being concerned with the separation of powers between the executive and the judicial branches of government. Citing *Thomas v Baptiste*, the Court, in *Ferguson*, held that “what is comprised in due process has never been exhaustively defined. But it has always been taken to include the resolution of justiciable issues by courts of law without interference by the executive or the legislature”.⁶³

130. The issue of interference has already been addressed in this decision. For the reasons previously laid out, this Court finds that there is no impermissible interference by the Executive because the Acts do not undermine the decisional authority or independence of the judicial branch by compromising judicial discretion. Apart from the issue of interference, the Claimants raised no other breach of their right to due process. This argument must therefore be dismissed.

131. The Claimants’ argument that they are deprived of their right to equal protection of the law is misconceived. As explained by the CCJ in *The Maya Leaders Alliance v The Attorney*

⁶² *Commissioner of Prisons and Anor v Seeperad and Anor*, [2021] UKPC 13 at para. 30 (*Seepersad*); *Thomas v Baptiste*, [2000] 2 AC 1 at 22.

⁶³ *Ferguson* at para. 18.

General of Belize,⁶⁴ the protection of the law is grounded in the notions of justice and the rule of law:

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

132. The constitutional guarantee of protection of the law therefore protects against the arbitrary or unfair exercise of power by the State. It also guarantees the right to have access to a court of justice for the purpose of obtaining relief.⁶⁵ In *Attorney-General of Trinidad and Tobago v McLeod*, the Privy Council held that an individual is not deprived of the protection of the law because a statute has been adopted in breach of the Constitution, so long as that individual is afforded a procedure by which that statute can be reviewed.⁶⁶
133. The Claimants suggest they are deprived of their right to *equal* protection of the law because the Crown is conferred remedies and protections to resist enforcement against it without those remedies and protections being extended to any other persons. Apart from the issue of judgment debts, which is dealt with below, the Claimants have provided no authority in support of the proposition that individuals must be treated on the same footing as the Crown under the laws and the Constitution of Belize. The legal nature and position of the Crown is distinct from that of its subjects. The Constitution of Belize protects those subjects from the arbitrary and unfair exercise by the Crown of its sovereign powers.

⁶⁴ [2015] CCJ 15 (*Maya Leaders*).

⁶⁵ *Seepersad* at para. 49, citing *Attorney-General of Trinidad and Tobago v McLeod* [1984] 1 WLR 522 (*McLeod*).

⁶⁶ *McLeod* at 531.

Section 6(1) of the Constitution requires the Crown to treat its subjects equally and without discrimination in the exercise of those powers, but does not require equal treatment between the Crown and its subjects.

134. The Claimants have taken advantage of the procedure available to them to review what they consider to be arbitrary and unfair action by the State. The present decision deals with the constitutionality of the Acts and grants remedies to the Claimants for the breaches the Court identifies. The Claimants' right to the protection of the law has not been breached.
135. The issue of judgment debts is dealt with later in this decision as a separate issue because it involves principles of international law. The Constitutional Court of South Africa's decision in *Nyathi v Member of the Executive Council for the Department of Health, Gauteng and Others* is distinguishable because it deals with a provision conferring Crown immunity against the execution and attachment by individuals in the domestic realm. The provision at issue in the *CBIIAA* provides for the immunity of the Central Bank of Belize "from the jurisdiction of the courts or other tribunals of any foreign State", and therefore raises issues of sovereign immunity which are in the international realm.

Fifth Issue – Whether the CBIIAA violates the Claimants' freedom of expression under sections 3(b) and 12 of the Constitution

136. The Constitution of Belize contains two provisions pertaining to freedom of expression. Section 3(b) of the Constitution of Belize provides as follows:

3 - Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely- [...]

(b) freedom of conscience, of expression and of assembly and association;

137. Section 12(1) provides as follows:

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 interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

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

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

(b) that is required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the administration or the technical operation of telephone, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(c) that imposes restrictions on officers in the public service that are required for the proper performance of their functions.

The Claimants' Submissions

138. The Claimants contend that section 4(1)(b) of the *CBBIIA* interferes with their right of freedom of expression. Section 4(1)(b) creates a criminal offence against those who “knowingly make a false report or public statement to the effect that the [Central] Bank or the property of the Bank has been subjected to proceedings from which the bank or its property would, by virtue of section 3, be immune”.

139. The Claimants state that the interference cannot be justified by any of the narrow limitations set out in section 12(2) of the Constitution of Belize because:

- a) Limiting the right to freedom of expression is not required in the interest of defence, public safety, public order, public morality or public health;⁶⁷
- b) Exercising the right to freedom of expression in this context would not adversely affect the reputation, rights and freedoms of other persons;
- c) Exercising the right to freedom of expression in this context would not adversely affect the private lives of persons concerned in legal proceedings, nor would it be disclosure of information received in confidence; and

⁶⁷ The Claimants rely on the Privy Council’s decision in *Benjamin and others v Minister of Information and Broadcasting and another*, [2001] 1 WLR 1040 in support of their interpretation on this point.

- d) Limiting the right to freedom of expression is not required to maintain the authority and independence of the courts.

- 140. The Claimants note that no explanation has been provided by the Respondent as to why this restriction of freedom of expression is imposed, and considering that the purpose of the Acts is primarily to avoid execution and attachment of the Crown and the Central Bank's assets, there is no reasonable justification for this limitation.
- 141. Further, the provision has extraterritorial effect because it extends to a false report or public statement made by an individual "whether in or outside of Belize". The provision seeks to create a worldwide ban, without limitations, on statements made that reference a particular subject matter that the Government of Belize has deemed sensitive.

The Respondent's Submissions

- 142. The Respondent argues there is no evidence to support the Claimants' contention that the Acts seek to limit, without justification, their right to freely communicate ideas and information. The Respondent further argues that the impugned provision is reasonably required and is proportionate, and falls under the expressed exceptions as outlined in section 12(2) of the Constitution of Belize.
- 143. Citing *Zuniga*, the Respondent notes that this Court is empowered to sever provisions of the law that may be offensive, but only if the legislative intent is maintained.

Analysis

- 144. This Court finds that section 4(1)(b) of the *CBBIA* limits the Claimants' freedom of expression, and that the Respondent failed to discharge its burden of proving that the limitation on the Claimants' right is justified under one of the exceptions in section 12(2) of the Constitution of Belize. As such, section 4(1)(b) is unconstitutional.
- 145. As elegantly expressed by the CCJ in *Quincy Mc Ewan*, freedom of expression is fundamental in a democratic society:

[75] Because it underpins and reinforces many of the other fundamental rights, freedom of expression is rightly regarded as the cornerstone of any democracy. A regime that unduly constrains free speech produces harm, not just to the individual whose expression is denied, but to society as a whole. On the one hand, the human spirit is stultified. On the other, social progress is retarded. The fates of brilliant persons like Galileo, and Darwin, and countless others, sung and unsung,

betray a familiar pattern in the history of humankind. Today's heresy may easily become tomorrow's gratefully embraced orthodoxy.⁶⁸

146. Given the fundamental nature of speech, courts have ascribed to the word "expression" a very wide meaning. In *Irwin Toy Ltd. v. Quebec (Attorney General)*,⁶⁹ the Supreme Court of Canada defined "expression" as encompassing any activity conveying or attempting to convey meaning, irrespective of the content or meaning being conveyed. In the Court's words, "if the activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of the guarantee". Section 12(1) of the Constitution of Belize specifically recognizes several forms of expression, including the "freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons)".
147. Section 4(1)(b) of the *CBBIIA* limits the Claimants' freedom of expression by preventing any person from "knowingly mak[ing] a false report or public statement to the effect that the Bank or the property of the Bank has been subjected to proceedings from which the Bank or its property would, by virtue of section 3, be immune". To the extent that it conveys a meaning (specifically, ideas and information), a report or public statement constitutes expression, whether that report or public statement is true or false. The expression targeted by section 4(1)(b) of the *CBBIIA* is therefore protected speech under section 12(1) of the Constitution of Belize.
148. Section 12(2) of the Constitution of Belize provides for limited exceptions to the freedom of expression guaranteed under section 12(1). As noted by the CCJ, "like other rights [...] freedom of expression is subject to the reasonable limitations imposed by the Constitution. These limitations must be established by law and be demonstrably justified in a free and democratic society".⁷⁰ The burden falls on the Respondent to satisfy the Court that the limitation on expression imposed by section 4(1)(b) of the *CBBIIA* falls within one of the exceptions provided for under section 12(2) of the Constitution of Belize.
149. The Respondent did not discharge its burden of establishing that the expression being limited falls within one of those exceptions. The Respondent did not provide any substantial argument, let alone lead evidence, to show that any of the section 12(2) exceptions apply in the circumstances of this case to justify the limitation imposed on the Claimants' freedom of expression. As a result, this Court is unable to agree with the Respondent's contention that section 4(1)(b) of the *CBBIIA* is reasonably required and proportionate, and falls under the exceptions in section 12(2) of the Constitution of Belize.

⁶⁸ *Quincy Mc Ewan* at para.75.

⁶⁹ [1989] 1 SCR 927 at 968-969.

⁷⁰ *Quincy Mc Ewan* at para. 78.

Sixth Issue – Whether the CPAA and the CBBIIA encroach on the Claimants’ right to work in contravention of section 15 of the Constitution

99. Section 15 of the Constitution of Belize provides as follows:

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

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

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

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

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

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

The Claimant’s Submissions

150. The Claimant in Claim No. 77 of 2017, Courtenay Coye LLP (“CCLLP”), is a firm of Attorneys-at-law. The Claimant submits that the CPAA and the CBBIIA fetter its right to freely choose or practice its profession in violation of section 15 of the Constitution.

151. In his Affidavits, Christopher Coye, a partner at CCLLP, deposes that CCLLP is a firm whose specialization includes civil litigation and arbitration law. CCLLP has, on several occasions, provided legal advice and representation regarding arbitral awards and enforcement of arbitral awards and foreign judgments. CIHL and the Belize Bank are longstanding clients of CCLLP and they have expressed a preference in having CCLLP representing them in legal matters for which CCLLP has developed an expertise. These include CCJ Appeal No. CV 7 of 2012, Supreme Court Claim No. 62 of 2017, and Civil Appeal No. 4 of 2015, all of them relating to the arbitral awards referred to in this decision.

152. According to the Claimant, section 29B(1) of the *CPAA* makes it a criminal offence to seek to enforce a foreign judgment that has been declared unlawful, void or otherwise invalid by a court in Belize. Section 29B(4) deems a legal advisor liable if they provide legal advice to an individual who commits a criminal offence contrary to section 29B(1). Section 4(4) of the *CBBIIA* is similarly worded and has the same effect. For the Claimant, these sections create a legal prohibition against the right of a law firm and its attorneys to freely pursue their profession by engaging in any trade or business and accepting any work they freely choose.
153. Relying on this Court’s decision in *H.T.A. Bowman Limited v The Attorney General et al.*,⁷¹ the Claimant argues that section 15 of the Constitution of Belize protects the right of individuals not to be denied the opportunity to work in the field which they chose. The Claimant also cites the CCJ’s decision in *Juantia Lucas and Celia Carillo v The Chief Education Officer et al.*⁷² in which the CCJ interpreted the right to work as follows:

[48] The right to work is an important socio-economic right that has found expression in the 1966 Human Rights covenants adopted by the United Nations. However, the scope of that right must vary from country to country dependent on a State’s economic well-being. Thus, the Belize Court of Appeal has properly concluded that the right to work is not a guarantee of employment but merely an opportunity to earn a living. No legislative or administrative fetter or regulation may be placed on that right. An unmarried female may not be deprived of the opportunity to work on the ground of pregnancy as in *Maria Roches*. Membership of an association cannot be placed as a pre-condition to obtaining a statutory licence to be a commercial hauler of petroleum products as occurred in *Belize Petroleum Haulers Association v Daniel Habet et al.* Nor should a person be deprived of work contrary to the provisions of the Constitution (*Inniss v Attorney General*) and *Fraser v Judicial and Legal Services Commission* (cases involving summary termination of a yearly contract without providing the protections guaranteed by the Constitution).

154. According to the Claimant, the operation and effect of sections 29B(4) of the *CPAA* and 4(4) of the *CBBIIA* is to prohibit the Claimant from providing legal advice to anyone who seeks to enforce a foreign judgment against the Crown or the Central Bank in or outside of Belize, and to therefore deprive the Claimant and its attorneys of the opportunity to gain a living. In addition, because the offences are retrospective, the Claimant can be liable even if at the time of providing the advice the judgment was not declared “unlawful, void or otherwise invalid”.

⁷¹ Claim No. 730 of 2009 (*H.T.A. Bowman*).

⁷² [2015] CCJ 6 (*Lucas and Carillo*)

155. The Claimant adds that the provisions are disproportionate as the Government has provided no reasons for limiting the Claimant's right to work. The Claimant argues that the limitation of the right to work is in no way connected to the legislative objective, and is therefore not necessary to accomplish the objective.

The Respondent's Submissions

156. The Respondent submits that section 15 of the Constitution empowers a citizen with the "opportunity to gain his living by work", which must be one "he freely chooses or accepts". In order for an individual to be denied the right to work, the individual must be restrained by some legislation or statutory instrument from gaining his living by work he wishes to engage in. The extent of the restraint must be that he is not working or unemployed in the work he desires.
157. The Respondent relies on a number of authorities in support of its interpretation of section 15 of the Constitution. In *Fort Street Tourism Village Ltd. v The Attorney General et al.*,⁷³ Motley J.A., distinguishing the Court of Appeal's decision in *Belize Petroleum Haulers Association v Daniel Habet and others*,⁷⁴ held that section 15 protects the opportunity to work:

Section 15 (1) provides that "no person shall be denied the opportunity to gain his living by work he freely chooses or accepts..." The Constitution speaks of a denial of the "opportunity to work". It is the opportunity that must not be denied to the citizen. If that opportunity is denied then fundamental right as guaranteed by the Constitution is infringed. While it is often referred to as the right to work what is in fact guaranteed is not the right to work but the opportunity to work. The erection of the wall on the boardwalk with or without permission, prevented the passenger from directly accessing the business premises of the claimant from the premises of FSTV. Passengers are required to exit the premises of FSTV on to the road and, from there, gain access to the several businesses of the claimants. In order for section 15(1) to be breached in so far as a denial of the opportunity to work is concerned, legislation or some statutory instrument would have to provide that the claimants were not entitled to engagement in any business or in a particular type of business.⁷⁵

158. According to the Respondent, that position was adopted by the CCJ in the case of *Lucas and Carillo*, on which the Claimant also relies.

⁷³ Civil Appeal No. 4 of 2008 (*Fort Street Tourism Village*).

⁷⁴ Civil Appeal No. 20 of 2004 (*Petroleum Haulers*).

⁷⁵ *Ibid* at para. 47.

159. The Respondent argues that the Acts in no way deny the Claimant the opportunity to gain a living. The Acts do not seek to impede legal practitioners from providing professional advice to their clients. The Claimant is not restrained from practicing the profession as legal practitioners in any way. The Claimant can continue to carry on the practice of law unimpeded and continue to gain a living.
160. The Respondent contends that the Claimant cannot attempt to enlarge and impose a right the framers of the Constitution did not contemplate. The right only alludes to the opportunity to gain a living by work that the person freely chooses; it does not create a *carte blanche* right to work. The Respondent notes that in *Attorney General and another v Goodwin and others*,⁷⁶ the Court of Appeal of the Eastern Caribbean rejected the idea that the right to life is to be equated with the right to work. The Respondent also highlights precedents supporting its view that constitutional provisions should be interpreted in accordance with the language and context of the right.

The Attorney General's Letter

161. In the First Affidavit of Samantha Tucker, filed in support of the Respondent's response in Claim No 77 of 2017, reference is made to a letter dated March 10, 2017 informing the Claimant that the Acts are not interpreted by the Respondent as applying "to a person advising or representing an entity in such proceedings in their professional legal capacity". The letter is not attached to the Affidavit and no mention is made of it in the Respondent's written submissions. However, in oral arguments, counsel for the Respondent confirmed the Respondent's interpretation that the Acts are not to apply to legal practitioners.
162. In response, Counsel for the Claimants argued that the letter "provides little if any comfort to the Claimants" since under the Constitution of Belize it is the Director of Public Prosecutions, and no one else, who has jurisdiction to institute criminal proceedings. What is offered in the letter is only the subjective interpretation of the language of the Acts by the Executive.
163. This Court agrees with Claimants' Counsel. In addition, while the Attorney General's letter may reflect the Executive's interpretation of the import of the Acts at one point in time, governments come and go and that interpretation may not carry over to subsequent governments. Therefore, any assurances the letter may have provided in 2017 when the letter was issued may not reflect the current or future Executive's view. As a result, this Court has given no weight to the March 10, 2017 letter in its analysis.

⁷⁶ [2001] 2 LRC 1.

Analysis

164. This Court finds no violation of section 15 of the Constitution of Belize. The Claimant has not been denied an opportunity to gain a living through work it freely chooses or accepts.
165. It is common ground that section 15 of the Constitution protects not an absolute right to work, but the right not to be deprived of an *opportunity* to gain a living through work that is freely chosen and accepted. The parties differ on the question of whether the limits imposed by the Acts on the ability of the Claimant to advise its clients with regard to the enforcement of foreign judgments deny the Claimant the right protected by section 15 of the Constitution.
166. Section 3 of the *CPAA* amends the *Crown Proceedings Act* by adding section 29B which, as we have seen, creates in its first paragraph a criminal offence against any person who seeks to enforce or attempts to enforce a foreign judgment that has been determined to be unlawful, void or otherwise invalid by a court in Belize. Where a legal person is involved, section 29B(4) extends liability to every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of the legal person, including as “advisor”. Similarly, section 4(4) of the *CBBIIA* extends liability to the “advisor” of a legal person committing the offence created at section 4(1) of the *CBBIIA*, which, as described above, proscribes the carrying out in foreign states of proceedings from which the Central Bank of Belize would be immune.
167. While this Court agrees with the Claimant that sections 29B(4) of the *CPAA* and 4(4) of the *CBBIIA* can both be read as applying to a legal advisor acting in an official capacity for or on behalf of a legal person in the commission of the offences created by sections 29B(1) of the *CPAA* and 4(1) of the *CBBIIA*, this finding must be nuanced. This Court does not read these provisions as applying to a legal advisor providing services to a legal person for the purpose of obtaining advice on the interpretation, applicability, and import of the *CPAA*, the *CBBIIA*, or the main Acts. For liability to be found, the advice must be provided in the context of the commission of an offence. In other words, legal advisors are not prevented from doing *any* work related to the enforcement of foreign judgments against the Crown and the Central Bank of Belize. They can still provide advice. However, it is fair to say that the provisions change the nature of the advice that can be given and restrict legal advisors in their ability to offer the full range of services they previously could offer in this area of the law.
168. The case law does not recognise a quantitative dimension to the right protected under section 15 of the Constitution of Belize. Indeed, the word “opportunity” in section 15 protects the right to have *access* to work, not the right to benefit from a certain amount of work. In both *H.T.A. Bowman* and *Petroleum Haulers*, the courts found violations of section 15 where a licensing scheme prevented individuals from having *any* access to the

exercise of their chosen profession or to a market for their products. In *Lucas and Carillo*, the CCJ refers to cases where an unmarried woman is “deprived of the opportunity to work” (*Maria Roches v Clement Wade*),⁷⁷ where membership in an association is a pre-condition to obtaining a statutory licence (*Petroleum Haulers*), and where a person is removed from office contrary to the provisions of the Constitution (*Innis v The Attorney General of Saint Christopher & Nevis*⁷⁸ and *Horace Fraser v Judicial and Legal Services Commission*⁷⁹). In all of these examples, a denial of access to *any* work was the impetus for the finding of violation of the right to work.

169. By contrast, courts have never found a violation of section 15 where an individual’s ability to work was limited but not denied. In *Lucas and Carillo*, the CCJ found no violation of the claimant’s right to work as a result of a suspension which prevented her from performing her duties for a temporary period. Similarly, in *Fort Street Tourism Village*, the Court of Appeal declined to find a violation of section 15 as a result of the claimant’s loss of business caused by the construction of a wall making it less convenient for tourists to access the claimant’s business premises.
170. While the relevant provisions of the *CPAA* and the *CBBIIA* may be interpreted as restricting the Claimant in its ability to provide the full range of services it previously offered in the area of enforcement of foreign judgments, the Claimant is not prevented from engaging in any legal work. The Claimant and its licensed attorneys-at-law continue to have access to the legal profession and to engage in the business they freely chose.
171. The case law also does not ascribe a qualitative dimension to the right to work, as suggested by the Claimant. According to the Claimant, its ability to “freely pursue their profession” and to accept “any work they freely choose” is curtailed by the relevant provisions in the Acts. In other words, within its chosen profession the Claimant claims an inalienable right to choose the type of work it wishes to accept.
172. As noted by the CCJ in *Lucas and Carillo*, “the right to work is an important socio-economic right that has found expression in the 1966 Human Rights covenants adopted by the United Nations”. Section 15 of the Constitution of Belize mirrors the language in section 6 of the *International Covenant on Economic, Social and Cultural Rights*,⁸⁰ which states as follows:

⁷⁷ Supreme Court Claim No. 132 of 2004, upheld by the Court of Appeal in Civil Appeal No. 5 of 2004.

⁷⁸ [2008] UKPC 42.

⁷⁹ [2008] UKPC 25.

⁸⁰ General Assembly resolution 2200A (XXI) (16 December 1966).

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

173. In its General Comment No. 18,⁸¹ the United Nations Committee on Economic, Social and Cultural Rights (the “UN Committee”) explains that the right to work forms an inseparable and inherent part of human dignity:

The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.

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

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

175. Section 15 of the Constitution of Belize does not protect an absolute right to choose one’s work. It protects the rights of the citizens of Belize to have access to dignified work, work which they can freely choose to enter into, for which they receive adequate remuneration, and from which they are safe from harm.
176. This Court is aware of the CCJ’s advice in *Lucas and Carillo* that “the scope of [the right to work] must vary from country to country dependent on a State’s economic well-being”. In this Court’s view, the UN Committee’s interpretation of the protection offered by section 6 of the *International Covenant on Economic, Social and Cultural Rights* constitutes the minimum standards acceptable in Belize. Belize’s economic well-being

⁸¹ United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, Thirty-fifth session, *General Comment No. 18*, GE.06 -40313 (E) 080206 (24 November 2005).

may eventually lead to the adoption of higher standards. However, this Court has been provided with no evidence that section 15 protects more than the minimum standards recognised by the international community.

177. As a legal person, the Claimant does not enjoy a right to human dignity. Its Attorneys-at-law do. Despite the limits imposed by the *CPAA* and the *CBBIIA*, they continue to have access to, and exercise their freely chosen profession and to engage in meaningful, safe, and adequately remunerated work. This Court therefore finds no violation of section 15 of the Constitution of Belize.

Seventh Issue – Whether the CPAA and the CBBIIA contravene the principles of international law regarding the execution of judgments

The Claimants’ Submissions

178. The Claimants submit that the *CPAA* and the *CBBIIA* violate Belize’s international obligations and international law. As such, these Acts are inconsistent with the rule of law and the protection of the law guaranteed under section 3(a) of the Constitution of Belize.
179. The Claimants submit that the *CPAA* and the *CBBIIA* contravene the principles of international law because they target execution steps which could be taken in furtherance of judgments rendered in the United States in the courts of that country. By doing so, the *CPAA* and the *CBBIIA* purport to exercise extra-territorial power and to interfere directly with the jurisdiction of foreign courts by criminalising in Belize actions taken outside the jurisdiction that would be lawful in that foreign jurisdiction. As a result, those subject to Belize jurisdiction are effectively prevented from exercising their rights which exist in international law and in foreign law to execute on a foreign judgment.
180. In support of their position on this point, the Claimants rely on the House of Lords’ decision in *Soci t  Eram Shipping Co Ltd v Cie Internationale de Navigation*,⁸² in which the Lords opined that “the execution of judgment is an exercise of sovereign authority”. They also rely on the United Kingdom Supreme Court’s decision in *Perry (and ors) v Serious Organised Crime Agency*⁸³ regarding the power of recovery under the *Proceeds of Crime Act 2002*. In *Perry*, the Court held, with regard to the provisions of Part 5 of the *Proceeds of Crime Act* related to property outside of the jurisdiction, that:

Asserting *in personam* jurisdiction over the holder of such property, or of associated property, has, as I have said, no precedent in international law. It would not be reasonable to expect the holder of the property, or any person holding associated property or claiming to own the property, to submit to the

⁸² [2003] UKHL 30.

⁸³ [2012] UKSC 35 (*Perry*).

jurisdiction of a United Kingdom court when neither they nor the property had any connection with that jurisdiction.⁸⁴

181. The Claimants note that this principle of international law is recognised and reinforced by Article 13 of the *United Nations Convention on Jurisdictional Immunities of States and Their Property*, which provides as follows:

Article 13
Ownership, possession and use of property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

- (a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;
- (b) any right or interest of the State in movable or immovable property arising by way of succession, gift or bona vacantia; or
- (c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.

The Respondent's Submissions

182. The Respondents made no submissions on this point.

Analysis

183. This Court concludes that insofar as it confers on the assets of the Central Bank of Belize blanket immunity from the jurisdiction of the courts or other tribunals of any foreign State, section 3 of the *CBBIIA* violates principles of customary international law, and therefore deprives the Claimants of their right to protection of the law. The remaining provisions of the *CPAA* and the *CBBIIA* do not breach any of the Claimants' constitutional rights.

184. Aside from section 3 of the *CBBIIA*, which is addressed below, none of the provisions of the *CPAA* or the *CBBIIA* violate principles of international law. Under international law,

⁸⁴ *Perry* at para. 70.

States have wide discretion to enact legislation having extraterritorial application. In the case of the *S.S. Lotus*,⁸⁵ the International Court of Justice held that:

Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

185. The extra-territorial provisions in both the *CPAA* and the *CBBIIA* seek to assert Belize's "prescriptive" jurisdiction over persons having a connection with Belize. "Prescriptive" jurisdiction "concerns a State's power to regulate or prescribe conduct, usually through the passage of laws or regulations and the interpretation of such rules by domestic courts or tribunals".⁸⁶ A State's prescriptive jurisdiction is not limitless. States are under a general obligation not to interfere with another State's domestic affairs, and the State seeking to assert extra-territorial prescriptive jurisdiction must have some genuine and effective link to the persons or events being regulated. Such links include the nationality of the persons being regulated, and the injurious effects of the conduct being regulated on a State's nationals (the "passive personality principle") or on the State itself (the "protective principle").⁸⁷
186. Section 29A of the *CPAA* asserts jurisdiction over persons taking steps to enforce or attempt to enforce, "whether in or outside of Belize", a foreign judgment against the Crown that has been declared unlawful, void or otherwise invalid by a court in Belize. Section 29A applies to the conduct of "persons" abroad, and therefore does not impermissibly interfere with another State's domestic affairs. The conduct sought to be regulated provides the required link with Belize. While section 29A of the *CPAA* does not apply only to citizens of Belize, it applies to persons having commercial ties with, and the benefit of a foreign judgment against, Belize. Given their economic implications, these ties call upon the exercise of Belize's prescriptive jurisdiction over conduct that may have an injurious effect on Belize's nationals, or Belize itself.
187. Similarly, section 4(1) of the *CBBIIA* asserts jurisdiction over persons who, "whether in Belize or outside Belize", institute, intervene, or seek the conduct of proceedings in any foreign State from which the Central Bank of Belize would be immune under the *CBBIIA*, or knowingly make a false report or public statement to the effect that the Central Bank of Belize has been subjected to proceedings from which the Bank or its property would be

⁸⁵ *The Case of the S.S. "Lotus" (France v Turkey)* (1927), PCIJ (Ser A) No. 10 at para. 46.

⁸⁶ John Currie, *Public International Law*, 2nd ed., Irwin Law, 2008 at 334.

⁸⁷ *Ibid* at 341-349.

immune under the *CBBIIA*. Like section 29A of the *CPAA*, section 4(1) of the *CBBIIA* does not apply only to citizens of Belize, but applies to persons having commercial ties with Belize. These ties call upon the exercise of Belize’s prescriptive jurisdiction.

188. This Court therefore concludes that sections 29A of the *CPAA* and 4 of the *CBBIIA* do not violate principles of international law.
189. Section 3 of the *CBBIIA* is different in nature and therefore requires a separate analysis. Section 3(1)(a) of the *CBBIIA* declares that the Central Bank of Belize, as an “autonomous body corporate” established for public purpose objectives, is “immune from the jurisdiction of the courts or other tribunals of any foreign states”. Section 3(1)(b) provides that the activities of the Bank are to be regarded as being done by it in the exercise of sovereign authority by Belize. Section 3(3) establishes the public purpose objectives of the immunity declared at section 3(1)(a), which include “fostering monetary stability”, “promoting credit and exchange conditions conducive to the growth of the economy of Belize”, “providing economic advice to the Government”, and “supervising and regulating Belize’s financial system”.
190. Section 3(1)(a) of the *CBBIIA* does not conform with customary international law, and is therefore unconstitutional. Section 3(1)(a) provides blanket immunity to the Central Bank of Belize’s assets, regardless of the circumstances under which these assets are sought to be taken. However, customary international law recognises exceptions to a State immunity from measures of constraint. Some of these exceptions are codified in the *United Nations Convention on Jurisdictional Immunities of States and Their Property*⁸⁸ and have been recognised by the International Court of Justice.
191. The starting point in the analysis of the *Convention on Jurisdictional Immunities* is Article 21, which provides for the immunities applying to certain categories of property. Article 21(1)(c) provides that the “property of the central bank or other monetary authority of the State” [...] “shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (c)”. As a general rule, therefore, the property of the central bank of a State is immune from measures of constraint because that property is considered to be in use for government non-commercial purposes.
192. However, Article 21(2) provides that Article 21(1) is “without prejudice to article 18 and 19, subparagraphs (a) and (b)” of the *Convention on Jurisdictional Immunities*. Articles 18 and 19 concern State immunity from pre- and post-judgment measures of constraint.

⁸⁸ A/RES/59/38 (“*Convention on Jurisdictional Immunities*”). The Court notes that while the *Convention on Jurisdictional Immunities* is not currently in force, some of its provisions are considered as codifying customary international law. This includes a portion of section 19 of the *Convention on Jurisdictional Immunities*, as discussed below.

Article 19 is relevant to the issues raised in the present matters. Article 19 of the *Convention on Jurisdictional Immunities* provides as follows:

Article 19

State immunity from post-judgment measures of constraint

No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.

193. Portions of Article 19 of the *Convention on Jurisdictional Immunities* codify customary international law. In *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*,⁸⁹ Germany argued that Article 19 codifies, in relation to the issue of immunity from enforcement, the existing rules under general international law. While it considered unnecessary to decide whether all aspects of Article 19 reflect current customary international law, the International Court of Justice recognised the existence of the following exceptions to state immunity against measures of constraint:

118. Indeed, it suffices for the Court to find that there is at least one condition that has to be satisfied before any measure of constraint may be taken against property belonging to a foreign State : that the property in question must be in use for an activity not pursuing government non-commercial purposes, or that the State which owns the property has expressly consented to the taking of a measure of

⁸⁹ Judgment, I.C.J. Reports 2012, p. 99 (*Germany v Italy*).

constraint, or that that State has allocated the property in question for the satisfaction of a judicial claim.⁹⁰

194. Under customary international law, therefore, the property of the central bank of a State is generally immune from measures of constraint because it is not considered as property specifically in use or intended for use by the State for other than government non-commercial purposes (Article 21(1)(c)). However, measures of constraint can be taken against the property of the central bank of a State if it is established that the State has expressly consented to the taking of measures of constraint (Article 19(a)) or has allocated or earmarked property for the satisfaction of a claim (Article 19(b)).
195. Section 3(1)(a) of the *CBBIIA* violates principles of customary international law by removing a party's ability to prove that the State of Belize has expressly consented to the taking of post-judgment measures of constraint. Section 3(1)(a) only provides for an express waiver given by *the Bank itself*, and is therefore narrower than customary international law. In addition, section 3 of the *CBBIIA* provides no exception in cases where "the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding", also in contradiction with the principles of customary international law.
196. Customary international law is a source of law that is binding on States,⁹¹ including Belize. In *Maya Leaders*, the CCJ held that the right to protection of the law encompasses the international obligations of a State, including customary international law:

[52] It also bears note that the right to protection of the law encompasses the international obligations of the State to recognize and protect the rights of indigenous people. A recognized sub-set of the rule of law is the obligation of the State to honour its international commitments. This ideal was expressed by the late Lord Bingham, delivering the Sixth Sir David Williams lecture in 2007. Recognising the inherent elusiveness that attends any definition of the rule of law, Lord Bingham proposed a list of eight sub-rules which can be derived from the rule of law, the last of which posits that "the existing principle of the rule of law requires compliance by the state with its obligations in international law, the law which whether deriving from treaty or international custom and practice governs the conduct of nations."⁹²

⁹⁰ *Germany v Italy at 148*.

⁹¹ *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, I.C.J. 1969 I.C.J. 3 at para. 77. See also Article 38(1)(b) of the Statute of the International Court of Justice.

⁹² *Maya Leaders* at para. 52.

197. By failing to comply with customary international law, section 3 of the *CBBIIA* violates the rule of law and therefore, the Claimants’ protection of the law under sections 3(a) and 6(1) of the Constitution of Belize.

Reliefs

198. Having found that some of the impugned provisions in the *CPAA* and the *CBBIIA* breach the Constitution of Belize, this Court now turns to the appropriate reliefs in the present matters.

199. Under section 2(1) of the Constitution of Belize, a law that is inconsistent with the Constitution of Belize is void “to the extent of the inconsistency”. Section 2(1) provides as follows:

2.-(1) This Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

200. Section 2(1) of the Constitution of Belize has been interpreted by the CCJ in *Zuniga*. According to the CCJ, under the Constitution of Belize the mandated approach is to sever legislative provisions which are repugnant to the Constitution of Belize while preserving those which are not, to the extent possible:

[88] In mandating that a law inconsistent with the Constitution is void to the extent of its inconsistency, the Constitution sanctions the principle of severance and encourages its exercise where possible. When faced with a statute that contains material that is repugnant to the Constitution the court strives to remove the repugnancy in order, if possible, to preserve that which is not. As long as the constitutional defect can be remedied without striking down the entire law, the court is obliged to engage in severance. In some cases it is not difficult to do this. But in other cases it is necessary to invalidate an entire Act so that, if it wishes, Parliament can have another go at the legislation. The court will do this because, broadly speaking, what remains after judicial surgery is incoherent or so impairs the legislative object that the constitutionally valid part cannot be said to reflect what Parliament originally intended.⁹³

201. In determining whether the otherwise valid provisions in the *CPAA* and the *CBBIIA* should stand, this Court must consider whether what remains is coherent and fulfills the legislative object of the Acts. On this point, the CCJ in *Zuniga* provides further guidance, explaining:

⁹³ *Zuniga* at para. 88.

[90] In performing the exercise of severance the court has no remit to usurp the functions of Parliament. Assuming severance is appropriate, the aim of the court is to sever in such a manner that, without re-drafting the legislation, what is left represents a sensible, practical and comprehensive scheme for meeting the fundamental purpose of the Act which it can be assumed that Parliament would have intended. The court is entitled to assess whether the legislature would have preferred what is left after severance takes place to having no statute at all. If it can safely be assessed that what is left would not have been legislated, then severance would not be appropriate. As Demerieux notes, severance involves speculation about parliamentary intent. The court seeks to give effect, if possible, to the legitimate will of the legislature, by interfering as little as possible with the laws adopted by Parliament. Striking down an Act frustrates the intent of the elected representatives and therefore, a court should refrain from invalidating more of the statute than is necessary.

202. Armed with its scalpel, this Court now considers whether it can surgically remove from the *CPAA* and the *CBBIIA* the offending provisions without striking down the entire legislation.

CPAA

203. The *CPAA* contains three sections. Sections 1 and 2 of the *CPAA* provide for a short title and amendments to definitions in the *Crown Proceedings Act*. These sections comply with the Constitution of Belize and will not be disturbed.
204. Section 3 of the *CPAA* contains the substantive amendments to the *Crown Proceedings Act*. Section 3 introduces sections 29A and 29B to the main Act. Section 29A prohibits the enforcement or attempted enforcement, whether in or outside of Belize, of a foreign judgment against the Crown where the foreign judgment has been declared unlawful, void or otherwise invalid by a court in Belize. This section offends sections 3(d) and 17(1) of the Constitution of Belize because it arbitrarily deprives the Claimants of their property rights as they relate to the enforcement judgments rendered in the United States, without a public purpose and without compensation. The remaining portion of the section is however valid as it relates to execution steps taken within Belize.
205. The offending portion of section 29A can be severed without the need to strike down section 29A in its entirety. Using the CCJ's method in *Zuniga*, for the avoidance of doubts this Court will show the severing of the offending portion of section 29A by using strikethroughs:

29A. No execution shall issue on the enforcement or attempted enforcement, ~~whether in or outside of Belize, and~~ whether by the institution of proceedings or

otherwise, of a foreign judgment against the Crown, where the foreign judgment has been declared unlawful, void or otherwise invalid, by any court in Belize.

206. Section 29B contains four subsections. Section 29B(1) creates an offence for the taking of the enforcement steps prohibited at section 29A. For the same reason as section 29A, the portion of section 29B(1) prohibiting the enforcement or the attempt to enforce a foreign judgment which has been determined by a court in Belize to be unlawful, void or otherwise invalid “outside of Belize” is severed:

29B. - (1) Where it has been determined, by a court in Belize, that a foreign judgment is unlawful, void or otherwise invalid, a person who, ~~whether in or outside of Belize, and whether~~ by the institution of proceedings or otherwise, enforces or attempts to enforce the foreign judgment, commits an offence.

207. Section 29B(2) has not been challenged in these proceedings, and shall therefore remain.

208. While section 29B(3) has not been directly challenged in these proceedings, portions of it must also be severed to bring consistency with the other provisions of the *CPAA*. Section 29B(3) empowers the Supreme Court of Belize to issue an injunction against the taking of the enforcement steps prohibited at section 29B(1), “whether in or outside of Belize”. For the reasons previously discussed, the portion of section 29B(3) applying outside of Belize must be severed:

(3) An application shall lie to the Supreme Court to issue an injunction against a person restraining the person from commencing, intervening in or continuing any proceedings for enforcement of a foreign judgment, ~~whether in or outside of~~ Belize, on the basis that a competent court in Belize has declared such foreign judgment unlawful, void or otherwise invalid.

209. Section 29B(4) must be struck down in its entirety. Section 29B(4) offends section 6 of the Constitution of Belize by violating the presumption of innocence and creating a retroactive offence. This Court finds that no portion of this section can be saved through the doctrine of severance. In *Zuniga*, the CCJ struck down in its entirety a similar provision in the *Supreme Court of Judicature (Amendment) Act, No. 18 of 2010*.

210. There is no need to strike down the *CPAA* in its entirety as what remains after severance can stand on its own. The remaining portions of the *CPAA* carry out the legislative intent to prohibit the enforcement or the attempt to enforce, in Belize, of a foreign judgment that has been declared unlawful, void or otherwise invalid by any court in Belize. While removing section 29B(4) limits those who can be prosecuted under the *CPAA*, striking down this section does not entirely deprive the remaining portion of the *CPAA* of its effect.

CBBIIA

211. The *CBBIIA* is struck down in its entirety. Section 3 of the *CBBIIA* cannot be saved by either the doctrine of severance or by “reading in” words into the section. The remaining sections of the *CBBIIA* are inextricably bound with section 3, and must therefore suffer the same fate.
212. Section 3 provides for the international legal immunity of the Central Bank of Belize and its property. This section violates principles of customary international law, and therefore deprives the Claimants of the protection of the law under section 6 of the Constitution of Belize. Section 3, as presently drafted, cannot be saved by the doctrine of severance, as the Court is unable to sever any portion of section 3 in order to bring it into compliance with the principles of customary international law regarding the immunity of central bank assets.
213. Nor is the Court able to “read in” words to cure the constitutional defect. Like severance, “reading in” is a remedy available to courts to bring offending legislative provisions within the ambit of the Constitution. While severance entails removing offending words, “reading in” entails adding words to legislative provisions:

In the usual case of severance the inconsistency is defined as something improperly included in the statute which can be severed and struck down. In the case of reading in the inconsistency is defined as what the statute wrongly excludes rather than what it wrongly includes. Where the inconsistency is defined as what the statute excludes, the logical result of declaring inoperative that inconsistency may be to include the excluded group within the statutory scheme. This has the effect of extending the reach of the statute by way of reading in rather than reading down.⁹⁴

214. “Reading in” is unavailable if relying on this remedy would interfere with the objective of the legislation, as it appears from the text of the legislation itself or the evidence adduced at trial.⁹⁵ The *CBBIIA* is designed to shield the assets of the Central Bank of Belize from any pre- or post-judgment measures of constraint. This appears from section 3(1)(b), which states that “the activities of the Bank are to be regarded as being done by it in the exercise of sovereign authority by Belize”, and section 3(1)(c), which provides that the property of the Bank “is to be treated as being held in use, or intended for use, for purposes connected with the exercise of sovereign authority by Belize, and not for commercial purposes or other purposes”. Under section 3(1)(a), only the Central Bank of Belize is able to waive the immunity conferred by the *CBBIIA*.

⁹⁴ *Schachter v Canada*, [1992] 2 SCR 679 at 698.

⁹⁵ *Ibid* at 707.

215. As previously noted, in customary international law the assets of central banks are not immune from the jurisdiction of foreign courts where the State has expressly consented to the taking of measures of constraint, or has allocated or earmarked property for the satisfaction of a claim. In this Court's view, "reading in" words in section 3 to include the exceptions to immunity available in customary international law would defeat the very objectives the Legislature sought to accomplish by enacting section 3 of the *CBBIIA*. Section 3 must therefore be struck down in its entirety.
216. Sections 4, 5, and 6 of the *CBBIIA* must also be struck down in their entirety. Section 4 creates an offence, and provides for sanctions, for the institution, intervention in, or the conduct of proceedings, or the making of a false report or public statement in relation with proceedings, "from which the Bank or the property of the Bank would, by virtue of section 3, be immune". Section 5 allows certain persons to apply to the Supreme Court for an infringing proceedings order in relation to the offence created at section 4. Section 6 provides for the powers of the Supreme Court in relation to the application mentioned at section 6. Sections 4, 5, and 6 are inextricably bound with section 3 and must therefore suffer the same fate. Without section 3, the remaining provisions of the *CBBIIA* do not create a scheme that is coherent and compliant with the legislative intent. As a result, the *CBBIIA* is struck down.

Costs

217. The parties did not make any submissions with regard to costs. Since the Claimants have largely been successful in these proceedings, they are entitled to prescribed costs.

THIS COURT THEREFORE DECLARES AND ORDERS

- 1) The *Crown Proceedings (Amendment) Act, 2017* breaches sections 3(a), 3(d), 6, 17(1), and 68 of the Constitution of Belize.
- 2) The following sections of the *Crown Proceedings Act, Cap. 167*, as amended by the *Crown Proceedings (Amendment) Act, 2017*, are modified as follows:
 - a. The words "whether", "or outside of", and "and" are severed from section 29A;
 - b. The words "whether", "or outside of", and "and whether" are severed from section 29B(1);
 - c. The words "whether" and "or outside of" are severed from section 29B(3);

- d. Section 29B(4) is struck down.
- 3) The *Central Bank of Belize (International Immunities) Act, 2017* breaches sections 3(a), 3(b), 6, 12, and 68 of the Constitution of Belize and is struck down.
- 4) Costs are awarded to the Claimants.

Dated July 25, 2022

Geneviève Chabot
Justice of the Supreme Court