IN THE SUPREME COURT OF BELIZE A.D. 2010

CLAIM NO. 846 OF 2010

BETWEEN:

1.	**BELIZEANS FOR JUSTICE**	**1st Claimant**
2.	**CITIZENS ORGANISED FOR LIBERTY THROUGH ACTION (COLA)**	**2nd Claimant**

AND

THE PRIME MINISTER OF BELIZE	**1st Defendant**
ATTORNEY GENERAL OF BELIZE	**2nd Defendant**

GREGORY CHOC	**1st Interested Party**
ASSOCIATION OF PROTECTED AREAS MANAGEMENT ORGANIZATION (APAMO)	**2nd Interested Party**

Mr. Said Musa SC and Mr. Anthony Sylvester for the first claimant.
Mr. Richard Bradley for the second claimant.
Ms. Magali M. Perdomo for Attorney General.
No participation by the interested parties.

AWICH Chief Justice (Ag)

19.9.2011 **JUDGMENT**

1. *Notes:* *Constitutional Law; delegation by the National Assembly to the Prime Minister of the power to bring an Act into force on a future date; allegation that the Prime Minister has evinced intention never to bring the legislation into force; whether a legal duty is created between the Prime Minister and the public (including the claimants) or whether it is a matter between the Prime Minister and Parliament – continuing duty of the Prime Minister to*

consider from time to time when it will be appropriate to bring the legislation into force; separation of powers.

2. ***Background***

This is a claim by Belizeans for Justice, the claimant, against the Prime Minister and the Attorney General of Belize, the defendants, for several declarations that, "the refusal" by the Prime Minister to bring s: 7 of the Belize Constitution (Sixth Amendment) Act, No. 13 of 2008, was unlawful in the various ways stated in the declarations. Corollary to the declarations, Belizeans for Justice claims an order "directing the Prime Minister to bring [the section] into force." The claim was by a fixed date claim. It was commenced in some hurry on 2.12.2010, but the hurry has fizzled out.

3. Belizeans for Justice is a non-government and non-profit making corporate *persona* whose main objectives are: "to promote justice throughout Belizean societies … to provide a voice for Belizeans who face challenges in obtaining equitable and reasonable services from institution …, and to lobby government, non-governmental institutions to ensure that they fulfil their role …" Belizeans for Justice is interested in s: 7 of Act No. 13 of 2009 coming into force because the section adds an additional seat in the Senate, to be occupied by a nominee of non-government organisations.

4. A month and three weeks after the claim was filed, Belizeans for Justice, the only claimant at the time, returned to the commencement stage. It filed the second affidavit of Yolanda Schakron to supplement her first affidavit which initially supported the fixed date claim and had been filed with the claim. Schakron is the president of Belizeans for Justice.

5. There was some other development, another corporate *persona*, Citizens Organised for Liberty through Action - COLA, had filed an application seeking an order to be added as a claimant. But they were not ready on the first hearing date to present the application, they applied for adjournment so that they could obtain an attorney. The application was not opposed since Attorney General himself was not ready with affidavits in defence, and time allowed had not expired. Belizeans for Justice welcomed the application for joinder of COLA, and supported its application for adjournment.

6. On 11.3.2011, the application for joinder was moved. Attorney General did not oppose it. Although the addition of COLA did not add any new dimension to the claim, I allowed it on the basis that there was no opposition to the application which was appropriately made at case management conference, and additional costs was unlikely to be much. COLA too was a public spirited corporate *persona* and a non-government and non-profit making organisation. Generally R. 19.2(7) of the Supreme Court (Civil Procedure) Rules, 2005, allows addition of a party on application after case management conference only when it

has become necessary to add the party because of change in circumstances.

7. The claim of the two claimants remained exactly the same as originally formulated by Belizeans for Justice. In all, it was supported by affidavits of Yolanda Schakron and Jules Vasquez, a journalist. An affidavit by Moses Sulph was added when COLA was joined as the second claimant; his affidavit added nothing to the grounds of the claim. Attorney General filed an affidavit of Gian C. Gandhi in opposition to the claim. The claimants reacted by filing the second affidavit of Schakron and of Vasquez.

8. The two interested parties, Gregory Choc and Association of Protected Areas Management Organizations – APAMO, were served with the claim, but did not respond or participate in the proceedings.

9. The claim was stated as follows:

> "The claimant, Belizeans for Justice claims:
>
> (1) A Declaration that the Prime Minister's refusal to ever bring section 7 of the Belize Constitution (Sixth Amendment) Act 2010 (Act No. 13 of 2008) ("**the Act**") into force is ultra vires of, inconsistent with and repugnant to powers granted to the Prime Minister by section 23 of the Act.

(2) A Declaration that the Prime Minister's refusal to ever bring section 7 of the Act into force is unreasonable and arbitrary and contrary to the legislative intent of section 23 of the Act.

(3) A Declaration that the Prime Minister's refusal to ever bring section 7 of the Act into force and his public pronouncements are a breach of the Claimant's legitimate expectation that a thirteenth senator would be appointed shortly after the passage of the Act and that the Prime Minister as a public authority would uphold the rule of law.

(4) A Declaration that the Prime Minister's refusal to ever bring section 7 of the Act into force and his public pronouncements are in violation of the separation of powers doctrine and therefore unconstitutional and unlawful.

(5) An Order directing the Prime Minister to bring section 7 of the Act into force in order that the 1st Interested Party or any other nominee of the 2nd Interested Party, may take a seat in the Senate at the earliest possible time.

(6) Further or other relief;

(7) Costs."

10. ***The Material Facts***

The facts of the case are common to the parties except one fact, namely: the claimants say that the Prime Minister refused ever to bring into force s: 7 of the Belize Constitution (Sixth Amendment) Act, No. 13 of 2008; the defendants deny that the Prime Minister refused ever to bring into force the section, and say that the Prime Minister intends to bring into force s: 7 and 9 at an appropriate time; it is an established practice in Belize.

11. The material common facts are these. In its manifesto for the general elections in 2008, the United Democratic Party – UDP, the opposition party, declared that it would expand the Senate to thirteen members. It would do so by creating a thirteenth seat to be occupied by a person nominated by non-government organisations and appointed a member of the Senate by His Excellency the Governor General. The Senate is one of the two Houses of the National Assembly of Belize, the other is the House of Representatives. UDP won the 2008 elections with a majority large enough to change the Constitution of Belize. In August 2008, both the House of Representatives and the Senate passed a bill amending the Constitution, thereby the Government took step to put into law the intention to expand the Senate. However, a long time passed, one year and six months, until 30.3.2010, when His Excellency, the Governor General signed the bill assenting to it, and

the bill became the Belize Constitution (Sixth Amendment) Act, No. 13 of 2008.

12. Regarding the date of commencement, that is, the date on which the Act would come into force, the Act provides in s: 23 that: "This Act shall come into force on a day to be appointed by the Prime Minister by order published in the Gazette." Pursuant to s: 23 the Prime Minister made and published two Orders. By Statutory Instrument No. 34 of 2010, published in the Gazette of 10th April 2010, he issued an Order made the 8th day of April 2010. The Order brought into force Act No. 13 of 2008, except ss: 5, 6, 7 and 9. Later by Statutory Instrument No. 103 of 2010, published in the Gazette of 13th November, 2010, the Prime Minister issued an Order made the 11th day of November, 2010. The order brought into force ss: 5 and 6 of Act No. 13 of 2008.

13. The only sections of Act No. 13 of 2008, that have not been brought into force are ss: 7 and 9. They provide as follows:

> "7. Section 61 of the Constitution is hereby amended as follows:
>
> "(a) in subsection (1), by substituting the words "thirteen members" for the words "twelve members" occurring therein;
>
> (b) by repealing subsection (2) and replacing it by:

"(2) The Senators shall elect a person from outside their membership to be the President of the Senate in accordance with section 66";

(c) by repealing subsection (3) and replacing it by the following:

"(3) The President of the Senate shall not have a casting vote";

(d) in subsection (4) -

(i) by substituting the word "thirteen" for the word "twelve" occurring in the opening words;

(ii) by adding immediately after paragraph (e) the following new paragraph:

"(f) one shall be appointed by the Governor-General, acting in accordance with the advice of non-governmental organisations.";

(e) in subsection (5), by substituting the words **"paragraphs (c) to (f) of subsection (4)"** for the

words “paragraphs **(c)** to **(e)** of subsection (3)” occurring therein;

(f) in subsection (8), by deleting the words “pursuant to subsection (7) of this section” occurring therein;

(g) in subsection (9), by substituting the words **“paragraphs (c) to (f) of subsection (4)”**for the words “paragraphs **(c)** to **(e)** of subsection (3)” occurring therein.

…

9. Section 64 of the Constitution is hereby amended in subsection (2)(c) thereof by substituting the words **“paragraphs (c), (d), (e) and (f) of subsection (4)”** for the words “paragraph **(c)**, **(d)**, and **(e)** of subsection (4)” occurring therein.”

14. According to the affidavits filed for the claimants, non-government organisations have elected Gregory Choc, the first interested party, to take up the thirteenth seat created by Act No. 13 of 2008. He would be able to take up the seat after the Prime Minister would have brought into force s: 7 of the Act. The affidavits say that by bringing into force Act No. 13 of 2008, except s: 7, the Prime Minister has “evinced” an intention not to ever bring into force s: 7. Further, the affidavits say that

the Prime Minister gave an interview to a news-reporter in which he said he would never bring into force s: 7 of the Act. An affidavit of one Jules Vasquez exhibits an excerpt of the interview.

15. On the other hand, the affidavit of Gian Gandhi states that the excerpt of the press interview is unreliable, "the Prime Minister intends to bring the remaining sections 7 and 9 of the Act into force at the appropriate time …"

16. ***Determination***

The complaints of the claimants are that: the Prime Minister has, in "a public pronouncement", refused to ever bring s: 7 of Act No. 13 of 2008, into force; the "refusal is *ultra vires* and inconsistent with and repugnant to" s: 23 of the Act which gave the Prime Minister the power; it is "unreasonable, arbitrary and contrary to legislative intention"; it is a breach of the claimants' legitimate expectation that a thirteenth senator would be appointed shortly; it is a violation of the principle of separation of powers. The claimants then seek as relief court declarations adopting the statements of their last two complaints and, "an order directing the Prime Minister to bring into force", s: 7 of Act No. 13 of 2008. That order is an order of *mandamus* in nature.

17. In my respectful view, the questions of law in the complaints had been raised and answered clearly and settled by courts before, notably, in the case of **Regina v Secretary of State for Home Department, ex**

parte Fire Brigades Union and Others [1995] 2 A.C. 513, in the House of Lords, the final appeal court in the United Kingdom. See also **R v Secretary of State for the Environment ex parte, Greater London Council [1983] Times 2** December. The answers given by the law Lords in the **Fire Brigades Union** case are highly persuasive; I accept them. Based on those answers the claimants should have been advised that, their claim cannot succeed in court. Whether or not it may succeed as a matter of political argument or media topic is of course not the business of court.

18. The facts of the **Fire Brigades Union** case clearly posed the questions of law that arise when a Minister of Government who has been given power by Parliament (National Assembly in Belize) to bring into force a legislation fails or refuses to do so. Each of the five judgments provided clear answers to the questions. I summarise the facts of the case first.

19. The Government (UK) had a practice to pay *ex gratia*, compensation to victims of violent crimes on a case by case basis, calculated according to the common law principles of the Law of Torts. The practice was set out in a non statutory scheme, and payment was a matter of prerogative of the Executive. In 1988, the scheme was enacted in ss: 108 – 117 and a schedule thereto, of the Criminal Justice Act, 1988. Section 171(1) provided that ss: 108 – 117 and the schedule would come into force, "on such a day as the Secretary of State may by order made by statutory instrument appoint, and different days may be

appointed in pursuance of this subsection for different purposes of the same provisions." In the meantime, the *ex gratia* scheme which was the origin of the statutory scheme in the Act of 1988 continued to be applied.

20. Over time the Secretary of State changed his mind. He prepared a White Paper proposing another scheme based on fixed tariffs for similar injuries, and no longer based on the principles of the Law of Torts. Increase in the number of claims, soaring costs, simplicity of the fixed tariffs scheme and lower costs of administration were the reasons for his change of mind. In 1994, some five years later, he announced in Parliament that the scheme in the Act of 1988, would not be implemented, and would be repealed. In its place the proposed fixed tariffs scheme would be applied initially in a non-statutory form; and consideration would be given to putting it in a statutory form.

21. The Secretary of State proceeded to implement the non-statutory fixed tariffs scheme in the White Paper while sections 108 - 117 of the Act of 1988, which provided for the statutory scheme remained not bought into force, and not repealed. The Secretary of State even obtained the annual parliamentary approval of funds for the fixed tariffs scheme. .

22. The claimants, Fire Brigades Union and Others, considered that some of their members were disadvantaged under the fixed tariffs scheme, especially those who suffered very serious injuries which involved prolonged loss of earnings. They brought a judicial review claim for

judicial review of: (1) the continuing decision of the Secretary of State not to bring into force ss: 108 – 117 and the schedule, which would bring the statutory scheme into effect; and (2) the decision of the Secretary of State implementing instead the alternative fixed tariffs scheme in the White Paper.

23. A judge granted permission, but at the trial judicial review of the decisions of the Secretary of State was refused and the claim was dismissed. The Court of Appeal by majority reversed the decision of the trial court. On appeal to the House of Lords, the law Lords held by a majority of three to two that, the power given by Parliament to the Secretary of State for the Home Department *imposed a continuing obligation* on the Secretary of State to consider whether to bring into force sections 108 – 117 and the schedule, which enacted a scheme for compensating victims of serious crimes; and that the Secretary of State could not lawfully bind himself not to exercise the discretion conferred on him by Parliament, by introducing and implementing a different scheme.

24. The two minority law Lords took a far more strict approach based on the principle of separation of power. They decided that s: 171 of the Criminal Justice Act 1988 (UK), that gave power to the Secretary of State for the Home Department to bring into force certain parts of the Act did not create justiciable legal duty, and court had no power to decide the question of the refusal by the Secretary of State to bring the legislation into force. They also held that since there was no legal duty

owed to the public, court could not question the executive prerogative of the Secretary of State in implementing the fixed tariffs scheme. They however, accepted that court would in an appropriate case, look into questions of bad faith and irrationality in regard to administrative action, but the questions were not raised in the claim, and the evidence did not support the questions. They concluded that the introduction by the Secretary of State of a scheme which was different from those in sections 108 – 117 of the Act of 1988, could not be regarded as unlawful. They allowed the appeal of the Secretary of State and dismissed the cross-appeal.

25. The three majority law Lords decided that s: 171 which gave power to the Secretary of State to bring into force ss: 108 – 117, *created a continuing duty* on the Secretary of State to consider from time to time when he would bring the sections into force, and that if he considered appropriate not to bring the sections into force, he was required to put that view to Parliament which may repeal the sections. The three further decided that because the Secretary of state had a continuing duty to consider bringing the sections into force, he could not lawfully bind himself not to exercise his discretion by implementing the non statutory fixed tariffs scheme.

26. All the five law Lords agreed that, the commencement sections did not create a duty enforceable by court *order of mandamus*; they all refused to grant the order.

27. Lord Keith of Kinkel one of the two minority law Lord, summarised his view early in his judgment in the second paragraph on page 545 as follows:

> *"The first question for consideration is whether, by the terms of section 171(1) of the Criminal Justice Act 1988, Parliament has evinced an intention to confer upon the courts an ability to oversee and control the exercise by the Secretary of State of the power thereby conferred upon him to bring into effect sections 108 to 117 of the Act, at the instance of persons who claim an interest in that being done. I am clearly of opinion that this question must be answered in the negative. In the first place the terms of section 171(1) are not apt to create any duty in the Secretary of State owed to members of the public. In the second place any decision by the Secretary of State as to whether or not sections 108 to 117 should be brought into effect at any particular time is a decision of a political and administrative character quite unsuitable to be the subject of review by a court of law. The fact that the decision is of a political and administrative character means that any interference by a court of law would be a most improper intrusion into a field which lies peculiarly within the province of Parliament. The Secretary of State is unquestionably answerable to Parliament for any failure in his responsibilities, and that is the proper place, and the only proper place, for any possible failure in the present respect to be called in question.*

The position is not altered, in my opinion, by reason that the Secretary of State has announced that he does not intend to bring the statutory scheme into force. Given that the Secretary of State is under no duty owed to members of the public to bring it into force, it cannot be a breach of a duty to them to announce that he does not intend to do so. It may be a breach of a duty owed to Parliament, but that is a matter for Parliament to consider."

28. Lord Mustill, the other minority law Lord, concluded his judgment on page 568 with an equally powerful reminder about the need to observe the principle of separation of power of a State. He stated:

"This prompts one final observation. It is a feature of the peculiarly British conception of the separation of powers that Parliament, the Executive and the Courts have each their distinct and largely exclusive domain. Parliament has a legally unchallengeable right to make whatever laws it thinks right. The Executive carries on the administration of the country in accordance with the powers conferred on it by law. The Courts interpret the laws, and see that they are obeyed. This requires the Courts on occasion to step into the territory which belongs to the Executive, to verify not only that the powers asserted accord with the substantive law created by Parliament but also that the manner in which they are exercised conforms with the standards of fairness which Parliament must have intended. Concurrently

with this judicial function Parliament has its own special means of ensuring that the Executive, in the exercise of delegated functions, performs in a way which Parliament finds appropriate. Ideally, it is these latter methods which should be used to check executive errors and excesses; for it is the task of Parliament and the Executive in tandem, not of the Courts, to govern the country. … [S]ome of the arguments addressed would have the Courts push to the very boundaries of the distinction between Courts and Parliament established in, and recognised ever since, the Bill of Rights 1689 (1 Will. & Mary, sess. 2, c. 2). 300 years have passed since then, and the political and social landscape has changed beyond recognition. But the boundaries remain; they are of crucial significance to our private and public lives; and the Courts should I believe make sure that they are not overstepped."

29. In this claim, section 23 of Act No. 13 of 2008, which is at the centre of the claim states simply this:

> "23. This Act shall come into force on a day to be appointed by the Prime Minister by order published in the Gazette."

30. The provision in the section is one of several usual provisions used where the National Assembly intends to postpone commencement date of an Act – see **ss: 18 and 19 of the Interpretation Act, Cap. 1, Laws of Belize**. The provision in s: 23 of Act No. 13 of 2008, gives wide

discretion to the Prime Minister as to when he may bring the Act into force. It does not limit him to a time deadline; it does not limit the factors that he must take into consideration when he decides when to bring the Act into force; it does not state and limit the reasons for which the National Assembly decided to delay the coming into force of the Act, and the reasons for which it gave the discretion to the Prime Minister.

31. It has, however, been established in the **Fire Brigades Union** case as the law that, in such a provision the discretion given is not without limit. There is limitation on the authority to whom the power has been given, in this claim the Prime Minister, in the exercise of his discretion. The first limitation is that the authority must from time to time give consideration to when he will bring the Act into force. The second limitation is that his decision to bring the Act into force or not to bring it into force in the meantime, must be made in good faith. The two limitations are in the nature of duties imposed on the authority, the Prime Minister.

32. Both sides in this claim seem to agree in their written submissions that a commencement provision such as in s: 23 of Act No. 13 of 2008, imposes a duty. But they do not agree on the nature of the duty. The submission for the defendants is that s: 23 creates a duty owed to the National Assembly, and not to the public and therefore not to the claimants; the duty is not justiciable, so the claimants cannot enforce it by a court claim.

33. The claimants' submission is that, a legal duty is created, "which binds the Prime Minister to appoint a day for the coming into force of the entire Act including s: 7." They argue that the Prime Minister acted *ultra vires* and "repugnant" to s: 23. They quote in support, a passage in the judgment of Thomas Bingham MR, in the Court of Appeal, in the **Fire Brigades Union** case, which at page 893 posed and answered a question as follows: *"Did Parliament intend to give the Secretary of State complete freedom to decide whether these provisions should ever come into force? I cannot think so. The suggestion that it did, in my view, gives too little weight to the significance of parliamentary process and to the different roles of Legislature and Executive. Parliament makes the law … It is then for the Executive to carry the law into effect. I confess to surprise at the suggestion that Parliament having formally enacted legislative provisions, should intend to entrust to a member of the Executive a complete and unfettered discretion as to whether those provisions should take effect."*

34. If the claimants extended the quotation by three sentences, they would have included the following two sentences: *"In my opinion the effect of s: 171(1) was to impose a legal duty on the Secretary of state to bring the provisions into force as soon as he might properly judge it to be appropriate to do so. In making that judgment he would be entitled to have regard to all relevant factors."*

35. My observation is that the House of Lords agreed with the views of Bingham MR, except one; they rejected the view that a legal duty

enforceable by court was created. They held that *an order of mandamus* could not issue to compel the Secretary of State to bring the legislation into force. The majority decided that the appropriate order in regard to the implementation of the fixed tariff scheme despite the continuing duty of the Secretary of State to consider bringing into force ss: 108 – 117 of the Act of 1988, was a declaratory order.

36. So, whereas a power given to an authority, the Prime Minister in this claim, imposes a continuing duty on the Prime Minister to consider when to bring a legislation into force, the power also gives him the discretion to consider relevant facts in deciding when it will be appropriate to bring the legislation into force. In this claim s: 23 of Act No. 13 of 2008, did nor prescribe the matters to be considered; it is upto the Prime Minister to decide what matters are relevant provided he acts *bona fide*. In my view, even a political factor cannot be irrelevant so as to render the consideration *mala fide*, given that Act No. 13 was founded on a political consideration. Moreover, the law accepts that it will be proper for the Prime Minister if he considers that because of change in circumstances, including political circumstances, the Act is no longer desireable, to go back to Parliament and ask for it to be repealed.

37. The reason in the **Fire Brigades Union** case for not bringing into force ss: 108 – 117 of Act of 1988 (UK) was much clearer and completely unequivocal. The Secretary of State made up his mind and rejected the statutory scheme, and he announced in White Paper in Parliament

that he intended to have the statutory scheme repealed. The **Fire Brigades Union** case was a much clearer and stronger case of the authority (the Executive) defying the will of Parliament than has been alleged in this claim. Yet it was decided based on the principle of separation of power, that the claimants' case against the Secretary of State must fail. On the same principle this claim of Belizeans for Justice and Citizens Organised for Liberty through Action must fail.

38. As a matter of deference to learned counsel for the claimants, I shall deal with the rest of the points raised.

39. It was argued that because the Prime Minister brought into force all the sections of Act No. 13 of 2008, except s: 7, it must be concluded that he evinced an intention never to bring section 7 into force. Section 9 was also not brought into force; it is merely complementary to s: 7. Reference to s:7shall therefore include s:9.

40. The law is of course that even if the Prime Minister had that intention, the duty created is a matter between the Prime Minister and Parliament, and not between the Prime Minister and the public (including Belizeans for Justice and COLA); and court cannot inquire into it and compel the Prime Minister by *an order of mandamus* at the request of Belizeans for Justice and COLA. It is also the law that bad faith in the sense of irrelevant motive or irrationality may be considered in regard to action which binds the authority not to exercise its discretion. Further, it is the law (according to the majority law Lords)

that the authority cannot lawfully take action which binds itself not to exercise its discretion. I think the view of the minority which stops at the question of duty will eventually prevail. If the matter is one between Parliament and the Executive not to be inquired into, then any inconsistent act of the Executive should be regarded as part of the matter between Parliament and the Executive not to be inquired into.

41. I do not accept the argument that because the Prime Minister has brought other sections of Act No. 13 of 2008, into force, he has evinced an intention not to bring s: 7 into force. It is in affidavit for him that he has not evinced that intention. So the evidence is balanced evenly; it is for the claimants to establish a balance of probability in their favour. A further consideration is that some of the factors that the Prime Minister takes into consideration regarding bringing into force s: 7 may not be the same as those he takes into consideration in regard to bringing into force the other sections. It would be for the claimants to prove that the Prime Minister had no good reason to delay bringing into force s: 7. It would not be for the Prime Minister to disclose the reason for not bringing s: 7 into force, when the National Assembly has not demanded the reason. Moreover, the claimants did not, in their claim, demand the reasons.

42. Thirdly, s: 19 of the **Interpretation Act, Cap. 1, Laws of Belize**, authorises that, *"a power to appoint a commencement date for an Act, may, unless the contrary intention appears, be exercised at any time after the passing of the Act so far as may be necessary or expedient for*

the purpose of bringing the Act into operation." The section confirms the wide discretion permissible in deciding when to bring into force a legislation.

43. On the facts, I am not persuaded that the Prime Minister has made up his mind to refuse to bring s: 7 of Act No. 13 of 2008, into force. The claimants rely on the fact that he gave an interview reported on TV news, in which he said he would not bring s: 7 into force. These days the public knows that news reporting is not reporting the bible. The public have come to accept that in journalism nowadays there are such things as spin, agenda, propaganda, financial interest and even political preference and ambition. I prefer to assess news reports in context, and to take into account prevailing circumstances.

44. One very important circumstance is the following: Section 7 of Act No. 13 of 2008, is about a very important national matter, one would expect a serious "activist" to formally write to the Prime Minister to confirm what the Prime Minister was reported to have said, or to get the matter raised in the National Assembly, at least as a matter of parliamentary question. For example, in the **Fire Brigades Union** case, the matter had been raised in Parliament. In this claim, there has been no explanation why the claimants did not take formal action. The burden of proof is on the claimants to provide proof at the standard of a balance of probabilities that, the Prime Minister has abandoned his continuing duty to keep the matter of bringing s:7 into force under review. This has not been accomplished.

45. It was submitted that the "refusal" was *ultra vires*, inconsistent with and repugnant to s: 23 of Act No. 13 of 2008. *Ultra* vires is about exceeding power given in a legislation. Section 23 gives to the Prime Minister the power to bring the Act into force. The question that arises is failure to carry out statutory duty, not exceeding power. Similarly the question of inconsistency does not arise. How repugnancy arises was not explained in the submission for the claimants.

46. Regarding legitimate expectation, the **Fire Brigades Union** case provided the answer that legitimate expectation could not arise in a claim by a member of the public alleging that an authority has failed to bring legislation into force, the matter was between the authority and Parliament. It is the case here and the same law applies.

47. Legitimate expectation was developed in the **Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374**. It was established in the case that judicial review on the ground of legitimate expectation was applicable to a decision of the Executive taken under prerogative power, and a decision taken under statutory duty. Further, that a decision which affects legitimate expectation may be subject to judicial review even if a legal right has not breached, legitimate expectation is based on fairness.

48. The principle of legitimate expectation has extensively developed. For example, in **R v Office of the Prime Minister, 2. Secretary of State of Foreign and Commonwealth Affairs and 3. Speaker of the House**

of Commons, ex parte Wheeler [2008] EWHC 1409 (Adm.), it was held that there could be no legitimate expectation where: the promise by the Prime Minister to hold a referendum was subject to Parliament authorising the referendum, or in a matter that has to be determined by a political rather than a legal judgment; and where no detriment to the claimant is proved. The claimant failed in a claim for an *order of mandamus* to compel the Prime Minister to hold a referendum as he had promised before a treaty was adopted by legislation into the laws of the United Kingdom.

49. In this claim, the manifesto promise was a political decision and promise, and depended on the National Assembly enacting the promise. Legitimate expectation could not arise on a matter for political decision – see **the Prime Minister ex parte Wheeler** case. The National Assembly enacted the manifesto promise, but has suspended commencement. If it did not enact the promise legitimate expectation would not arise and court would not inquire into the matter. The National Assembly has since not complained about delay by the Prime Minister in bringing the Act into force. It is still a matter for the National Assembly whether the Prime Minister has delayed to the extent that he has not lived upto his continuing duty.

50. The claim is dismissed in entirety. Belizeans for Justice and Citizens Organised for Liberty through Action must pay the costs of the Attorney General. I have considered that their claim was prompted by their interest in public matter. But they have a duty to give serious

consideration to bringing a claim in court. If they bring baseless claim which put others to expense the claimants must pay the expense.

51. No order for costs is made against Mr. Gregory Choc and APAMO. They were invited to participate in the claim, but did not.

52. I remind the claimants that they have a right of appeal; they may file notice of appeal within 21 days from the date the order in this judgment is drawn. I direct the claimants to draw the order and file for approval of court within five days. If the claimants fail, Attorney General is to draw and file the order within five days.

53. **Delivered this Monday the 19th day of September 2011**

At the Supreme Court

Belize City

SAM LUNGOLE AWICH
Acting Chief Justice