IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 666 of 2010

IN THE MATTER of an application pursuant to section 95 of the Constitution

AND IN THE MATTER of sections 1, 2, 3, 6, 16, 100 and 101 of the Constitution

AND IN THE MATTER of a challenge to sections 15 and 16 of the Belize Constitution (Sixth Amendment) Act

THE BAR ASSOCIATION OF BELIZE	**CLAIMANT**
AND	
THE ATTORNEY GENERAL OF BELIZE	**DEFENDANT**
ELLIOT MOTTLEY	**INTERESTED PARTY**
C. DENNIS MORRISON	**INTERESTED PARTY**

Hearings
2013
25th March
19th April

Mr. Eamon H. Courtenay SC, Mr. Godfrey P. Smith SC, Mr. Andrew Marshalleck SC, Mrs. Jacqueline Marshalleck and Mrs. Magali Marin-Young for the claimant.
Mr. Michael Young SC and Ms. Illiana Swift for the defendant.

LEGALL J.

JUDGMENT

Preliminary matters

1. In this claim, the court is requested to pronounce on the constitutionality of sections 15 and 16 of the Belize Constitution (Sixth Amendment) Act 2008, No. 13 of 2008 (the Sixth Amendment) which amended subsection (1) of section 101, and subsection (1) of section 102 of the Constitution by the insertion of provisos to those subsections. In order to understand the amendments, the original subsections are given as follows:

> "101.-(1) The Justices of Appeal shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition, for such period as may be specified in the instrument of appointment.
>
> 102.-(1) Subject to the following provisions of this section, the office of a Justice of Appeal shall become vacant upon the expiration of the period of his appointment to that office or if he resigns his office."

2. The provisos inserted to the above subsections (1) by the Sixth Amendment are respectively as follows. In relation to subsection (1) of section 101, the proviso states:

> "Provided that where no period is specified in an instrument of appointment, such appointment shall be deemed to subsist until-
>
> (a) In the case of an instrument of appointment existing at the date of commencement of the Belize Constitution (Sixth Amendment) Act, 2008- one year after such commencement;
>
> (b) In the case of an instrument of appointment issued after the commencement of the Belize Constitution (Sixth Amendment) Act, 2008- one year after the date of issue of such instrument."

With respect to subsection (1) of section 102 the proviso reads:

> "Provided that where no period is specified in an instrument of appointment, the office of a Justice of Appeal shall become vacant upon the expiry of the period specified in the proviso to subsection (1) of section 101."

In general, the effect of the amendments is that where no period is specified in an instrument of appointment of a Justice of Appeal, the appointment shall be for one year after the commencement of the amendment, and the office shall become vacant on the expiration of the one year.

3. At the date of filing the claim in this matter, there were four persons appointed as Justices of Appeal to sit in the Court of Appeal of Belize,

namely, Elliot D. Mottley QC, President of the Court; Manuel Sosa CBE, SC; Cecil Dennis Morrison QC and Denys Barrow SC. The instruments of appointment of Mottley P and Morrison JA dated 31st May, 2004, did not specify any period of appointment; and since the Constitution did not state, as it did in relation to judges of the Supreme Court, that Justices of Appeal held office, subject to the Constitution, until reaching a specified age, it was urged that the Justices of Appeal whose instruments did not specify a period of appointment, held office, prior to the amendments, for an unlimited period of time or for life. The two other Justices of Appeal, Sosa and Barrow, held office, according to their instruments of appointment, for a specified period until they reached the age of sixty-two and seventy-five years respectively. The case for the claimants is that one effect of the amendments is that the instruments of appointment that were in operation at the date of commencement of the amendments – 12th April, 2010 – in which there was no specified period of appointment, as in the case of Justices Mottley and Morrison, were deemed by the amendments to have an appointment for a period of one year after the date of the amendment, that is to say up to 11th April, 2011, in accordance with the amendments to subsections (1) of sections 101 and 102 of the Constitution. The effect of the amendments, says the claimant, in relation to Justices Mottley and Morrison, was to put a limit on their appointments to one year, at the expiration of which the office of the Justices becomes vacant, according to the proviso to section 102(1) of the Constitution. The amendments therefore were, according to the claimants, targeted to the two Justices of Appeal, and not the other two. The amendments, it was urged also removed the security of tenure of Mottley P and Morrison JA and not the tenure of the other Justices of Appeal.

4. A further consequence of the amendments, according to the claimant, is that since Justices of Appeal are appointed by the Governor-General, on the advice of the Prime Minister, after consultation with the Leader of the Opposition under section 101(1) of the Constitution ,the amendments in effect, enable a member of the executive, the Prime Minister, to cause the appointment of Justices of Appeal for one year terms, thus eroding security of tenure, and eroding provisions of the Constitution that safeguard and protect the independence and impartially of Justices of the Court of Appeal. The amendments, says the claimant, are therefore unconstitutional in that they are contrary to the Rule of law, the separation of power doctrine, and the basic structure doctrine of the Constitution. The claim form in this matter lists grounds why the amendments should be struck down as unconstitutional. Before considering the grounds, it seems useful to point out that Mottley P and Barrow JA have resigned from the Court of Appeal, and Morrison JA has been reappointed for a specific period of four years effective from 11th April, 2011.

5. The claimant has submitted elaborate grounds supported by authorities to prove that the amendments are unconstitutional and void. The heart of the case for the claimant though is that the separation of powers doctrine, the Rule of law; security of tenure of judges, and the requirement that a court prescribed by law for the determination of civil rights and obligations shall be independent and impartial, are principles of the Constitution of Belize; and since the amendments are contrary to, or violate those principles, the amendments are unconstitutional null and void.

Separation of Powers

6. The amendments in effect impose a limit on the appointment of Mottley P and Morrison JA until one year after the commencement of the amendments whereas prior to the commencement of the Amendments, their instruments of appointment did not have a limit in terms of their period of appointment. It is said that the one year term limit imposed by the amendments; and the power of the Executive to renew or not to renew the appointment, amount "to impermissible executive control of the judiciary and a violation of the separation of powers doctrine."

7. It is said by the French philosopher Montesquieu that tyranny pervades where there is no separation of powers and that there would be an end of everything, "were the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing public resolutions and that of trying the cause of individuals." In ***Hinds v. The Queen 1977 A.C. 1995 at page 212***, Lord Diplock says that it is taken for granted that the basic principle of separation of powers will apply to the exercise of their respective functions by the three organs of government, the executive, legislature and the judiciary … His Lordship says that it is well established as a rule of construction applicable to constitutional instruments under which the constitutional structure is adopted, that the absence of express words to that effect does not prevent the legislature, the executive and judicial powers of the new state being exercisable exclusively by the legislature by the executive and by the judicature respectively. There is no doubt that the doctrine of separation of powers is a basic or fundamental part of the Constitution of Belize.

8. Reliance is placed by the claimant on ***DPP v. Mollison 2003 2 AC 411*** to support the submission that the amendments violate the separation of powers doctrine. In ***Mollison*** a juvenile of age 16 was charged and convicted of murder and sentenced under section 29(1) of the Juvenile Act 1951 to be detained during the Governor-General's pleasure. One issue for the court was whether the sentence authorized by section 29(1) conferring on the Governor-General, as an officer of the Executive, the power to determine the measure of length of punishment to be inflicted on an offender, was consistent with the separation of powers doctrine of the Constitution of Jamaica. Lord Bingham in the Privy Council said that: "Thus while, in a case falling within section 29(1), the judge sitting in court passes sentence, it falls to the Executive to determine the measure of punishment which an individual detainee will undergo. It is clear that such determination is for all legal and practical purposes a sentencing exercise … a person detained during the Governor-General pleasure is deprived of his personal liberty, not in the execution of the sentence or order of a court, but at the discretion of the Executive." The Privy Council ruled that the challenge to section 29(1) was good because the section was incompatible "with the Constitutional principle that judicial functions such as sentencing must be exercised by the judiciary and not by the Executive."

9. The amendments do not confer on the Executive, judicial functions; and do not purport to carry out, or do not authorize the carrying out, of any judicial function by the Executive, conferred by the Constitution on the judiciary. To use the words of Montesquieu, the amendments do not confer on the Executive, the power of "trying the cause of individuals." The amendments do not show that the Executive is given the power to exercise judicial

functions, as was the case in ***Mollison***. For the above reasons, I am not satisfied that the amendments violate the separation of powers doctrine. But, as we shall see below, the amendments are clearly relevant to the issue of security of tenure and independence and impartiality of the Justices of Appeal.

Tenure, Independence and Impartiality

10. There are provisions of the Constitution which provide for the security of tenure of Justices of Appeal. A Justice of Appeal may be removed from office only for inability to discharge the functions of his office, or for misbehavior; but he cannot be removed, except procedures laid down by the Constitution are followed. Section 102(2) states that a Justice of Appeal may be removed from office only for inability or misbehavior. The question of removal of the Justice of Appeal is to be referred by the Governor-General to the Belize Advisory Council, a body established by the Constitution, which shall sit as a tribunal and enquire into the matter, and advise the Governor-General whether the Justice of Appeal should be removed from office: see sections 102(3) and (4). Under the above provisions, a Justice of Appeal may be removed before the expiration of the period stated in his instrument of appointment only for cause, and therefore a Justice of Appeal is entitled to be heard before removal. The above provisions are the way in which security of tenure of Justices of Appeal is provided in the Constitution. The independence and impartiality of the judiciary depends to a significant extent on the security of tenure of judges. Where security of tenure of judges is lacking, the court could not reasonably be perceived as satisfying the requirements of independence and impartiality required by section 6 (7) of the Constitution which states as follows:

> "6(7) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time." (emphasis mine)

11. Security of tenure is connected to the independence and impartiality of the judges. It seems to me that an absence of security of tenure of judges is incompatible with judicial independence and impartiality. The essence of security of tenure is a tenure, whether until an age of retirement, or for a fixed term, or for a specific adjudicative task, that is secure against interference by the Executive or other appointing authority. The effect of the amendments is to impose a period of appointment of one year in relation to Mottley P and Morrison JA after which their offices become vacant, unless they are reappointed. The amendments impose upon these justices, and not the others, a reliance on the Executive for re-appointment, after the one year period, which the Executive may, for a variety of reasons, refuse to do. In such a situation, do these justices enjoy security of tenure?

12. A deponent for the defendant gave a reason for failure to specify a period of appointment in the instruments of Mottley P and Morrison JA, as "merely an error that went through unnoticed" and "through sheer inadvertence and not by design" and therefore the "appointment is defective." It was deposed for the defendant that an instrument of appointment of a Justice of Appeal without a specified period of appointment is "defective if not invalid," and that such an instrument does not confer security of tenure nor security for

life. "If no period is specified" says learned counsel for the defendant, "they were not appointed for any period and thus their appointments were void." The amendments, says the defendant, therefore assured and provided certainty of period of appointment and tenure, according to learned counsel for the defendant. The defendants further submitted that the "appointments were acts of nullity" because no period was stated therein and therefore the Justices of Appeal Mottley and Morrison had no tenure. The amendments, says the defendant, corrected this situation by stating a period of appointment and this ensured certainty of tenure." The deponent for the defendant swore that the amendments were made "ex abundanti cautella" and that "far from contravening the Belize Constitution serve to uphold the Constitution …"as the amendments "seek to ensure that the instrument of appointment of the Justices of Appeal are in keeping with the Constitution by specifying a period of appointment."

13. An examination of section 101(1) of the Constitution, in my view, shows that it is not mandatory that the period of appointment must be stated in the instrument of appointment; but it is in the discretion of the persons mentioned in the section to specify the period in the instrument. The section states that the Justice of Appeal shall be appointed for "such period as may be specified in the Instrument of Appointment." (emphasis mine) It does not say such period as is, or shall be, specified in the instrument of appointment. Section 58 of the Interpretation Act, Chapter 1 states that "may" shall be construed as permissive and empowering and "shall" as imperative. It seems that the appointment could be made for such period as may be specified in the instrument of appointment or otherwise, such as in legislation. But, in my view, the framers of the Constitution could not have intended that the period

of appointment could be specified by legislation, such as the amendments, some four years after the date of the instrument of appointment of Mottley P and Morrison JA. The Constitution must have intended that the appointee must know the period of his appointment either at the date of the appointment or reasonably soon thereafter, and certainly not four years after his appointment.

14. The appointment of Mottley P and Morrison JA were not appointments for life, but were appointments that did not, either in the instrument or by legislation, for about four years, specify a period of the appointment. It is unacceptable to say that the amendments sought to rectify the problem, for the simple reason that it could not be the intention of the framers of section 101(1) of the Constitution that the period of appointment could be specified in legislation four years after the instruments of appointment were made. Their appointments therefore maybe considered not in accordance with the intention of section 101 of the Constitution. The claim form in this matter has not expressly requested a ruling on the validity of the appointments of the Justices of Appeal. I make no such ruling. But I venture to think that a court would be reluctant to hold their appointments void, for the simple reason that the Justices of Appeal have made decisions in many cases since their appointments which have been acted upon, and therefore public policy, and the fact that they were judges de facto would prevent a court from holding that their appointments were void. We will return to this point below.

15. It ought to be noted that the period of appointment of Justices of Appeal, whether specified by instrument or otherwise, has to be a period consistent with security of tenure, and independence and impartiality as required by

the Constitution. I have difficulty in agreeing with the submission that Mottley P and Morrison JA had no tenure because their appointments were defective. This ignores the point, that the Justices were judges de facto for four years and therefore had some level of tenure. Moreover, I am not persuaded that the amendments ensured certainty of tenure when the amendments provided that the appointments of Justices Mottley and Morrison subsist for one year. It seems to me a contradiction in terms to consider that a one year appointment amounts to security or certainty of tenure, especially in circumstances where the other two justices of Appeal of the same court had appointments for periods of more than ten years.

16. The defendant also submitted, that if no expiration date is set in his appointment, a Justice of Appeal so appointed "serves during the pleasure of Her majesty," but that such an appointment would be contrary to the Constitution and defective. Then learned counsel for the defendant seems to suggest that the court should treat "the defective appointment as a temporary appointment" under section 101(5) of the Constitution. Apart from the view that it is strange that a court would treat a defective appointment of a judge as a temporary appointment, section 101(5) does not really authorize the court to do so. The subsection authorizes the Governor-General, acting on advice, to appoint temporarily a Justice of Appeal. The defendant also urged that the appointments were not permanent or for life. There is merit in the submission that it was not an appointment for life: it was simply an appointment of the Justices de facto in which no period was stated at the time of the appointments.

17. The defendant further submits that the Constitution places no limit on the period of appointment of Justices of Appeal, and therefore it is permitted by the Constitution to provide periods of appointment of Justice of Appeal without any minimum or maximum limit. After all the Constitution states that the appointment of Justice of Appeal shall be for such period as may be specified in the instrument. The amendments, the defendant argues, secured the tenure of the Justices of Appeal to one year, in a situation where their appointments were arguably defective which the amendments cured. It must not be forgotten that the Constitution provides for tenure of Justice of appeal as we saw above, by the elaborate provisions in relation to the removal of Justice of Appeal as contained in section 102 of the Constitution. It must also be noted that the Constitution provides that a court prescribed by law for the determination of civil rights or obligation "shall be independent and impartial." Bearing these matters in mind, it could not be the intention of sections 101(1) and 102(1) of the Constitution that the appointment of Justices of Appeal could be made for one year, because that would be inconsistent, in my view, with the constitutional requirement of security of tenure of Justices of Appeal and inconsistent with the constitutional principles of independence and impartiality. There is no security of tenure in an appointment of a Justice of Appeal, or any judge, for one year. If section 101(1) is given its literal interpretation, it would mean that a Justice of Appeal could be appointed for one day, or one week, in which case, it seems to me, it would be unreasonable to hold that such a justice would, by that appointment, have security of tenure. Moreover, I do not think that a reasonably well informed observer, would come to the view that the constitutional principles of security of tenure and independence and impartiality were consistent with an appointment for one

year. I think it is implied, after considering sections 6(7) and 102 of the Constitution, that an appointment under section 101(1) should be for such period as is consistent with the constitutional requirements of security of tenure and independence and impartiality. The difficult question is: What is that period? I think it ought to be a period until the Justice of Appeal reaches an age of retirement, an age not exceeding seventy-five. I think this would be consistent with the intention of the provisions of the Constitution, including section 101(1), when it is considered that justices of the Supreme Court can, under section 98(1) of the Constitution continue in office until they have attained an age not exceeding seventy-five years.

18. The importance of tenure, independence and impartiality of judges were considered in the Canadian case of ***Valenti v. The Queen 1985 SCR 673*** where the court was called upon to interpret section 11 of the Canadian Charter of Rights and Freedoms which stated:

> "11 Any person charged with an offence has the right …
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."

19. The issue before that court was whether judges sitting in the provisional Court of Ontario were an independent tribunal within the meaning of the above section, when the salaries and pension of the judges were determined by the executive branch of the Government, and not by the legislature, in that the salaries and pension were not a charge in the Consolidated Fund, but

subject to annual appropriation. LE Dain J, in commenting on the principles of independence and impartiality said:

> "Although judicial independence is a status or relationship resting on objective conditions or guarantees, as well as a state of mind or attitude in the actual exercise of judicial functions, it is sound, I think, that the test for independence for purposes of s. 11(d) of the Charter should be, as for impartiality, whether the tribunal may be reasonably perceived as independent. Both independence and impartiality are fundamental not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice. Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is therefore, important that a tribunal should be perceived as independent, as well as impartial, and that the tests for independence should include that perception."

20. An independent judiciary is a judiciary, in relation to its judicial functions, that is free from control of the executive power of the State. Independence entails that a judge should be free from governmental and political pressure likely to affect, or perceived to affect the judge in the exercise of his judicial functions. I apprehended that a judge who previously had his appointment without any limitation period or specific period stated in his instrument of appointment, subsequently finds out that the Executive made a decision by

their majority in the Legislature that his said appointment would subsist for only one year after the commencement of the legislation, would be perceived, by a reasonably well informed observer, that the Executive pressure was being put on the judge and to that observer, the judge may reasonably be perceived as not independent and impartial. In such a case, the judge, especially in circumstances where he may not be in a position to enjoy a similar standard of living outside the judiciary, may feel political and governmental pressure, in order to get an extension of his appointment after a one year period, to comply with the dictates or wishes of the Executive especially in a situation where the one year period is applicable to him, and not to his brother judges of the same court. I venture to think that a lot would depend on the personality, character and financial standing of the judge in question; but as ***Valenti*** shows, the test is whether a reasonably well informed observer would perceive a lack of independence or impartiality on the part of the judge due to the amendments. I have no doubt that a reasonably well informed observer, on the basis of the amendments, would perceive a lack of independence and impartiality on the part of the judges in question.

21. In the ***AG v. Linda Lippe 1991 2 SCR 114***, the question was whether the right to a fair hearing before an independent and impartial tribunal guaranteed under the Canadian Charter and Rights, was violated by legislative provisions which allowed part time judges to continue practicing law. The court held that the system of part time municipal court judges who were allowed to practice law did not infringe the guarantee of judicial impartiality. The court gave its views on independence and impartiality.

Rothman JA said that "Impartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. The word impartial connotes absence of bias, actual or perceived. The word independent reflects or embodies the traditional constitutional value of judicial independence. As such it connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the Executive Branch of Government, that rests on objective conditions or guarantees": see P136 ***Lippe***. His Lordship proceeded to say that by "Government" he was "referring to any person or body, which can exert pressure on the judiciary through authority under the State. His Lordship continued: "This expansive definition encompasses, for example, the Canadian Judicial Council or any Bar Society. I would also include any person or body within the judiciary which has been granted some authority over judges for example, members of the court must enjoy judicial independence and must be able to exercise their judgment free from pressure or influence from the Chief Justice": see p138 ***Lippe.***

22**.** For the reasons above, I think the effect of the amendments is that the reasonably well informed observer would, on the basis of the amendments, perceive a lack of independence and impartiality of the justices. It was said that the failure to specify a period in the instrument of appointment was a mere mistake implying that it was not intended; but when it is considered that almost all the appointments of Justices of the Court of Appeal since January 1995 to 2004, and almost all the appointments of Mottley P since January 1999 to 2004, had periods of appointment stated in their respective instruments of appointment, it is possible that the omission in Mottley P and

Morrison JA instruments was "sheer inadvertence, … an error that went through unnoticed." As the deponent for the defendant swore, a new instrument of appointment "could have been done to rectify the instruments of appointment of Mottley and Morrison dated 31st May, 2004." This sadly was not done. The amendments may have resulted in Mottley P's resignation on 31st December, 2010. Morrison JA, whose appointment was to 12th April, 2011, was granted four years extension from 12th April, 2011.

23. Section 101(1) raises a further issue in relation to the constitutional requirement of independence and impartiality of Justices of Appeal. For convenience, I repeat section 101(1) as follows:

> "101.-(1) The Justices of Appeal shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition, for such period as may be specified in the instrument of appointment."

24. The above section confers on political figures, the authority to decide who shall be appointed Justices of Appeal, and the period of such appointment. In cases where the appointments are for periods of between six months and three years, as the overwhelming evidence of previous appointments of Justices of Appeal shows, the political figures have in their hands the power to decline an extension of those appointments resulting in the removal of a judge without following the procedures under section 102; and that, in itself, would put executive pressure on the judge who desires an extension

of his appointment. Politicians, whether on the government or opposition sides, should have no legislative authority, in the process of the appointment of judges, because such authority can be perceived by a reasonably well informed Belizeans to have some effect on the independence and impartiality of judges. Perhaps the time has arrived for the National Assembly to revisit sections 97(1) and (2) and 101(1) of the Constitution. As in some democratic Constitutions of the Independent Commonwealth Caribbean, the authority for advising the appointment of judges in Belize, should be conferred on an independent body comprised of independent persons drawn from such organizations that can be considered as independent. It is true that most Belizeans vote at General Elections, and therefore have political opinions, but I cannot reasonably accept that Belizeans, as members of that body, are incapable of making objective decisions with respect to the appointment of judges.

25. In this case before me, the claim form does not seek an order or declaration on the constitutionality of section 101(1,) and I make no such order or declaration. As the claimants pointed out, that where there is some flaw in the appointment of a judge, the acts of the judge may be held to be valid, even though his appointment is invalid. This is so because of the desirability of upholding the acts of the judge under the general supposition of the competence of the judge to perform the acts. He is in such a situation a judge de facto as opposed to a judge de jure: see ***Wade & Forsyth Administrative Law 9th Edition at p286***; and ***Scadding v. Laurent 1851 3 HLC 418***. Moreover, public policy I think would prevent a court from declaring section 101(1) unconstitutional on the said basis that judges

appointed under the section have made decisions which affected the lives and liberty and property of countless individuals over many years.

RULE LAWS

26. The rule of law has, over the centuries, acquired several meanings; but at its core it means that governmental power must be exercised according to law. A corollary of this is that disputes as to the legality of acts of government are to be decided by judges who are independent of the executive. The root of the Constitution of Belize – the Preamble – states that "the people of Belize … recognize that men and institutions remain free only when freedom is founded upon … the rule of law." The rule of law is a basic feature of the Belize Constitution. The amendments in effect deem the appointment of Mottley P and Morrison JA to subsist for one year and provide that the appointment becomes vacant upon the expiry of the one year. This is inconsistent with the requirement of the rule of law that legality of acts of government are to be decided by judges who are independent and impartial and have security of tenure. This independence and impartially would be illusory, where judges are appointed for such short periods of time. The independence of judges is a part of the rule of law which forms part of the basic structure of the Constitution of Belize. In Supreme Court claims, namely ***British Caribbean Bank Limited v. AG No. 597 of 2011***; ***Dean Boyce v. AG No. 646 of 2011***, the court considered the basic structure doctrine in some detail. I may however be permitted to mention briefly that the basic structure doctrine holds that the fundamental principles of the Preamble of the Constitution have to be preserved for all times to come and that they cannot be amended out of existence, though a reasonable abridgment of fundamental rights could be effected for the

public safety or public order as fundamental rights provisions of the Constitution of Belize recognize. There is though a limitation on the power of amendment by implication by the words of the Preamble and therefore every provision of the Constitution is open to amendment, provided the foundation or basic structure of the Constitution is not removed, damaged or destroyed. The Constitutional requirement of security of tenure, and the independence and impartiality of judges are fundamental structures of the Constitution of Belize; and, in my view, the National Assembly is not possessed of the legal power to remove in relation to judges the availability of those structures. The amendments remove with respect to the two Justices of Appeal, their security of tenure and their right to independence and impartiality contrary to the Constitution.

Conclusion

27. For all the above reasons I make the following orders:

(1) A declaration is granted that sections 15 and 16 of the Belize Constitution (Sixth Amendment) Act 2008, No. 13 of 2008 are unconstitutional, null and void on the ground that the said sections are contrary to the provisions of section 102 of the Constitution conferring security of tenure on Justices of Appeal.

(2) A declaration is granted that sections 15 and 16 of the Belize Constitution (Sixth Amendment) Act 2008 NO. 13 of 2008 are unconstitutional, null and void on the ground that the said sections 15 and 16 are contrary to section 6(7) of the Constitution which requires that the court shall be independent and impartial.

(3) A declaration is granted that sections 15 and 16 are contrary to the Rule of Law, a basic structure of the Constitution of Belize.

(4) The parties are to bear their own costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
19th April, 2013