IN THE COURT OF APPEAL OF BELIZE AD 2015

CIVIL APPEAL NO 19 OF 2013

THE ATTORNEY GENERAL OF BELIZE **Appellant**

v

THE BAR ASSOCIATION OF BELIZE **Respondent**

ELLIOTT MOTTLEY **Interested Party**
C DENNIS MORRISON **Interested Party**

BEFORE
The Hon Madam Justice Minnet Hafiz- Bertram Justice of Appeal
The Hon Mr Justice Christopher Blackman Justice of Appeal
The Hon Mr Justice Murrio Ducille Justice of Appeal

M C Young SC along with R Gonzalez for the appellant.
G P Smith SC along with E H Courtenay SC and L Mendez for the respondent.

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15 June and 14 October 2015.

HAFIZ-BERTRAM JA

Introduction

[1] This appeal concerns the constitutionality of sections 15 and 16 of the Belize Constitution (Sixth Amendment) Act (2008) ('Sixth Amendment') which amended section 101 and section 102 of the Belize Constitution ('the Constitution'). 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, and the office shall become vacant upon the expiry of that period.

[2] By claim form dated 24 September 2010, the Bar Association of Belize ('the Association') commenced proceedings in the Supreme Court before Legall J, challenging the constitutionality of sections 15 and 16 of the Sixth Amendment. It sought a declaration that sections 15 and 16 are unconstitutional and attempts to amend the Constitution for the reasons that the amendments "contravene the Belize Constitution are contrary to the Rule of Law, violate the Separation of Powers Doctrine and are contrary to the Basic Structure of the Constitution and therefore contravene the constitutional rights of the Applicant enshrined in the Belize Constitution," and consequentially, an order striking down sections 15 and 16 of the Act.

[3] Legall J decided the matter on written submissions and on 19 April 2013 granted declarations that sections 15 and 16 of the Sixth Amendment are unconstitutional, null and void on three grounds, namely: (1) the sections are contrary to section 102 of the Constitution conferring security of tenure on Justices of Appeal; (2) the sections are contrary to section 6(7) of the Constitution which requires that the court shall be independent and impartial; and (3) the sections are contrary to the Rule of Law, a basic structure of the Constitution. The Attorney General has appealed the judgment of Legall J which was heard on 15 June 2015. The Court reserved its decision.

The background

[4] The claim was supported by two affidavits, one from each of the parties. Jacqueline Marshalleck, President of the Association swore to an affidavit on 24 September 2010 on behalf of the Association. Gian Gandhi (now deceased), who was the Director General of the International Financial Services Commission of Belize, swore to an affidavit on 30 November 2010 on behalf of the Attorney General. The deponents were not cross-examined.

[5] Both affidavits showed that on 25 April 2008, the Belize Constitution (Sixth Amendment) Bill ('the Bill') had its first reading in the House of Representatives. Clause 16 sought to amend section 101 of the Belize Constitution and clause 17 sought to amend section 102 of the Belize Constitution ('the Principal Act'). The Governor General assented to the Bill on 30 March 2010 after its passage through the National Assembly. Sections 15 and 16 came into force on 12 April 2010 by Statutory Instrument No. 34 of 2010.

[6] The Association did not support the amendments as shown by their paper exhibited to the affidavit of Mrs. Marshalleck. She deposed that sections 15 and 16 are significantly different from clauses 16 and 17 of the Bill and the Association was not aware that changes would have been made between the second and third reading of the Bill.

[7] At paragraphs 17 to 29 of her affidavit, Mrs. Marshalleck gave evidence as to the challenge by the Association to the Sixth Amendment. She deposed that there were four Justices serving on the Court of Appeal at the time and she exhibited the instruments of appointment for Justice Elliott Mottley who was President of the Court at the time, Justice Manuel Sosa, Justice C Dennis Morrison and Justice Denys Barrow. She further deposed that the instruments of Justices Mottley and Morrison did not specify any period of appointment and as such sections 15 and 16 of the Sixth Amendment applied to the instruments held by these Justices but, did not apply to the instruments held by Justices Sosa and Barrow. Mrs Marshalleck deposed that the effect of the Sixth Amendment Act was that the offices of Justices Mottley and Morrison became vacant on 11 April 2011. She then stated the grounds of their challenge as shown in the claim form.

[8] Mr. Gandhi deposed that he drafted the Bill for the Sixth Amendment on the instructions of the Prime Minister. The Bill after its first reading was published in the Belize Gazette on 26 April 2008. Thereafter, in accordance with the Standing Orders of the House of Representatives, the Bill was referred by the House to the Constitution

and Foreign Affairs Committee ('the Committee') for consideration and report. The Committee held country-wide consultations on the Bill to solicit the views of the public and at the end of the said process, it held a final meeting on 7 August 2008, at which it considered the various submissions and representations made by the public. Mr. Gandhi deposed that he was present at that meeting when the Committee proposed a number of amendments to the original Bill, including the amendments to sections 101 and 102 of the Constitution.

[9] On 22 August 2008, the Committee presented its report to the House containing the proposed amendments. Mr. Gandhi exhibited a copy of the report which showed that the Committee held extensive and fruitful consultations with persons and organizations of Belize in every district. The Committee made recommendations to delete clause 16 in the original bill and replace it with section 16 (which is now section 15) and delete clause 17 and replace it with clause 17 (which is now section 16). On the said day, the Bill was given its second reading and the amendments proposed by the Committee were adopted. The Bill was passed with the requisite ¾ majority without any further amendments.

[10] Mr. Gandhi deposed that on 9 October 2009, the Bill was taken back to the House of Representatives for reconsideration of clause 2 which dealt with petroleum rights and a proviso was added to clause 2, but no further amendment was made to the Bill. The Bill was accompanied by a Certificate of the Speaker certifying that it was passed with the requisite ¾ majority.

[11] At paragraph 14 of Mr. Gandhi's affidavit, he responded to Mrs. Marshalleck's evidence that sections 15 and 16 are significantly different from clauses 16 and 17 of the Bill and that the Bar Association was not aware that changes would have been made between the second and third reading of the Bill. He deposed that the procedure to amend the Constitution was entirely transparent and strictly in accordance with section 69 (3) of the Constitution. The amendments were in the public domain from 22

August 2008 when they were read in the House by the Chairman of the Committee while presenting his Report.

[12] Mr. Gandhi exhibited several instruments of appointment which show the history of appointments of Court of Appeal Judges in Belize.

The law before and after

The Original section 101 (1) and 102(1) of the Belize Constitution Act, Chapter 4

[13] The original sections state:

> "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."

Sections 15 and 16 of the Belize Constitution (Sixth Amendment) Act 2008

[14] The Sixth Amendment added provisos to sections 101(1) and 102(1). Section 15 addressed section 101(1) and section 16 addressed section 102 (1). The provisos are as follows:

<u>Section 101 (1) proviso</u>

> "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."

Section 102(1) proviso

"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."

The grounds upon which the Sixth Amendment was challenged before the trial judge

[15] As shown by the Claim Form, the Sixth Amendment was challenged on ten grounds as follows:

"1. By the Act the Legislature has sought to remove two sitting Justices of the Court of Appeal in a manner contrary to the provisions of the Constitution;

2. By the Act, the Legislature has undermined the security of tenure enjoyed by two sitting Justices of the Court of Appeal, being two out of the four justices of appeal, thereby removing the independence of the Court of Appeal which is an essential prerequisite for the existence of the Rule of Law;

3. The effect of the Act is to remove two sitting justices from the Court of Appeal and to accord to the Executive the power to decide whether the two sitting Justices of Appeal will be re-appointed as judges thereby violating the

Doctrine of the Separation of Powers which is the foundation of the Belize Constitution;

4. The effect of the Act is that the Legislature has effectively taken away the right, duty and jurisdiction of the Court of Appeal to hear and determine appeals pursuant to section 100 of the Belize Constitution independently and impartially; and thereby unconstitutionally changes the basic structure of the Belize Constitution;

5. The effect of the Act is that the two Justices of Appeal, for so long as they continue to sit, will be incapable of appearing to be fair and impartial and true to their solemn oath of office;

6. The Act is directed at and applies only to two Justices of the Court of Appeal, it is therefore *ad hominen* and contrary to the Rule of Law and unconstitutional;

7. The result of the Act is to operate in order to abolish the office of two Justices of the Court of Appeal contrary to section 101 of the Belize Constitution;

8. To the extent that the Act is likely to deprive and/or deprives the Applicant and other litigants of the right to independent and impartial hearings before the Court of Appeal it is anti-democratic and therefore contrary to the fundamental principles, beliefs and needs enshrined in the Preamble and section 1 of the Belize Constitution;

9. To the extent that the Act by implication seeks to afford security of tenure to two Justices of the Court of Appeal which said security of tenure is denied to the two other Justices of the Court of Appeal, the Act is discriminatory in itself and/or in its effect;

10. To the extent that the Legislature has arrogated unto itself the power to remove two Justices from the Court of Appeal, the Act violates **section 102(7)** of the Constitution and thereby violates the Doctrine of the Separation of Powers which is the foundation of the Belize Constitution.

The Order made by Legall J

[16] The applicant succeeded on most of the grounds as shown by the three declarations granted by Legall J. The following order was made:

"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."

The grounds of appeal and relief sought

[17] The appellant, Attorney General appealed the decision of the trial judge on the following grounds:

“1A. The learned judge erroneously found [at Paragraph 17 of the decision that *“it could not be the intention of sections 101(1) and 102(2) of the Constitution that the appointment of Justices of Appeal could be made for one year*” when Section 101(1) (as originally worded) of the Constitution states that Justices of the court of appeal shall be appointed “*for such period as may be specified in the instrument of appointment”* without any minimum or maximum period of appointment.

1B. The learned trial judge erred in making the above finding on the additional ground that the claimant did not in its claim challenge section 101 of the Constitution as being contrary to the principle of separation of powers, or security of tenure of judges, or the requirements of an independent and impartial court, or any other provisions of the Constitution, or unconstitutional, or contrary to the Rule of Law, or the Basic Structure of the Constitution or unlawful or void in any respect;

2. The learned judge erroneously misdirected himself in reasoning as follows:

> “… 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."
(See paragraph 17 of the decision).

His Lordship thereby, with due respect, purported in effect to insert, limiting or qualifying language into the plainly worded section 101, which function is within only the province of the legislature and not the court.

3A. The learned judge wrongly rejected uncontroverted evidence of fact – that the reasons for the passing of sections 15 and 16 of the Belize Constitution (Sixth Amendment) Act (2008) ("the Amendments") were to (a) correct any invalidity in the appointments of Justices of Appeal Mottley and (b) to ensure the validity of future similar defective appointments if they were to occur.

3B. The learned judge erred in finding that "*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."*(See paragraph 26 of the decision). As a matter of law the appointments of Justices of Appeal Mottley and Morrison may well have been defective and as a matter of fact the reason for the amendments were as stated in the above ground.

4. The Respondent's contention before the Court was fallacious and based on a wrong premise in that it included as a fundamental plank – "*The Executive power to appoint justices of the Court of Appeal of one year disfigures this judicial edifice*" when under section 101(1) as originally worded Justices of the Court of Appeal could be appointed for periods of one year.

5. The learned trial judge misdirected himself in finding that "*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.*"

6. The learned trial judge erred in law in holding that under section 101(1) of the Constitution, 'it is not mandatory that the period of appointment must be stated in the instrument of appointment but that it is the discretion of the persons mentioned in the section to specify the period in the instrument' (para 13 of the decision); and in so holding, the learned judge -

    (a) failed to appreciate that in the context in which the word "may" is used in section 101(1), the exercise of power to specify the period of appointment is obligatory and not discretionary;

    (b) failed to hold that on its true construction, the word "may" in section 101(1) refers to the specification of the length of period of appointment and not to the specification of the period of itself;

    (c) failed to follow a cardinal rule of statutory construction that an interpretation which may lead to an absurdity ought to be avoided;

    (d) contradicted himself by stating at other places in the judgement that as the instruments of Mottley P and Morrison JA did not specify a period of appointment, 'their appointments therefore may be considered not in accordance with the intention of section 101 of the Constitution' (paragraph 14 of the judgment).

7. The learned judge wrongly assumed that the 'basic structure doctrine' is a part of the law of Belize; and in so holding, the learned judge –

(a) failed to give full effect to section 69 of the Constitution which prescribes the procedure for amending the Constitution, including the entrenched provisions;

(b) failed to take into account the uncontroverted evidence that section 69 of the Constitution was duly complied with in the course of enactment of the Sixth Amendment Act;

(c) failed to appreciate that the provisions of section 69 of the Constitution are all inclusive and exhaustive and that there is no other limitation, whether substantive or procedural, on the power of the National Assembly to alter the Constitution;

8. Even assuming (but without admitting) that the basic structure doctrine is part of the law of Belize, the learned trial judge erred in applying the said basic structure doctrine to the facts of the instant case; and in so doing the learned judge –

(a) failed to give effect to his own finding that the appointments of Justices Mottley and Morrison were not appointments for life and that their appointments could have been rectified by issuing new instruments of appointment (paras 14, 16, and 22 of the decision);

(b) failed to hold that the issue of basic structure doctrine did not arise on the facts of this case;

(c) in any event, erroneously held that the Amendments were contrary to the Rule of Law and the so-called basic structure doctrine.

[18] The relief sought on the above grounds was the setting aside of the orders made by the learned trial judge.

Preliminary matters

Objection made at the hearing of the appeal

[19] At the hearing of the appeal, the respondent requested that the Court record its objection that since Justice Ducille was appointed for one year, he should not have been part of the panel as he does not have security of tenure. The objection was noted and the Court proceeded to hear the appeal.

Interested Party

[20] President Mottley (as he was then) and Justice of Appeal Morrison (as he was then) were made interested parties to the Claim. The process by which they were so named does not appear to be in accordance with the requirements of the Supreme Court (Civil Procedure Rules) 2005. We are constrained to observe that it is highly irregular to join a person as a party to an action without their consent, in the manner prescribed by R. 19. 3 (4) of the CPR. There is no evidence that they took part in the proceedings or were served with the Claim Form. Counsel undertook to give the Court a copy of the affidavit of service. To date the Court has not obtained the same.

Grounds 1 A & B

Whether the trial judge erred in finding that *"it could not be the intention of sections 101(1) and 102(2) of the Constitution that the appointment of Justices of Appeal could be made for one year*".

[21] The learned trial judge at paragraph 17 of his judgment found that there was no security of tenure in an appointment of a Justice of Appeal for one year. The judge regarded the Sixth Amendment as a provision for the removal of the two Justices in question. The appellant had argued before Legall J that the Sixth Amendment secured the tenure of Justices of Appeal to one year, in a situation where their appointments were arguably defective which the amendments cured. Legall J, as seen at paragraph

17 of his judgment stated that the Constitution provides for tenure of Justice of Appeal by the provisions in relation to the removal of such Justice as contained in section 102 of the Constitution. Further, that the Constitution provides that a court prescribed by law for the determination of civil rights or obligation "shall be independent and impartial". The judge thereafter addressed the intention of sections 101(1) and 102(1). He said that *"it could not be the intention of sections 101(1) and 102(2) 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 …*".

[22] The appellant submitted that the wording of section 101(1) and section 102(2) prior to the Amendment Bill was the same as it was upon the attainment of Independence in 1981. The appellant relied on the affidavit evidence of Mr. Gandhi which showed that "*the constitutional history of Belize shows that ever since Independence, the Justices of Appeal were invariably appointed for specific periods (save in the isolated cases of Justice Mottley and Justice Morrison)."*

[23] The appellant referred to paragraph 48 of the written submissions of the Association which was made before Legall J, and contended that their submissions "obliquely but definitely impales its own claim". At the said paragraph, the Association submitted:

> "It will be seen that section 101(5) makes clear provisions for the appointment of temporary justices on the Court of Appeal to meet the exigencies of the Court. Such appointees do not become substantive justices of the Court they merely serve "*temporarily as justices. Interestingly,*

such appointee shall hold office until his appointment is revoked by the Governor General."This raises serious constitutional questions which fall outside the scope of this appeal.

There can be no doubt that the purpose of these sections is to enable the appointment of justices, with full status, for a very short duration in order to allow the Executive to decide whether or not to keep that Judge on the Court of appeal. It is not designed to meet the needs of the Court as that is covered by section 101(5)."

[24] The appellant contended before this Court that the difficulty the Association faces with the above position is that with the original wording of sections 101(1) and 102(1), the Executive had the legal power and authority to make an appointment of short duration since 1981 and the Sixth Amendment makes no difference in this regard.

[25] The Association before this Court submitted that the presumption that one year appointments were sanctioned since 1981 under the Constitution seriously underestimates or overlooks the fact that section 101, in its original wording, vested the Executive with a discretion to determine the period of appointment in a given instrument and that discretion may only be lawfully exercised in a manner which seeks to attain its legislative objective. It referred to paragraph 15 of Legall J's judgment where he said that *'the period of appointment of Justices of Appeal, whether specified or otherwise, has to be a period consistent with security of tenure, and independence and impartiality as required by the Constitution.*' The Association said that in this way section 101 could be allowed to co-exist with sections 6(7) and 102 of the Constitution. Further, that the constitutional offence that is created by sections 15 and 16 amendments is simply that the mandated one-year period of appointment cannot co-exist, constitutionally, with an independent and impartial judiciary. The Association further submits that Legall J arrived at his conclusion after a considered view of the Constitutional framework and principles as shown at paragraph 17 where he applied the purposive approach in interpreting the sections.

[26] In reply to this point, the appellant submitted that their position on one year appointments were not based on a "presumption." It is based on the plain and clear meaning of section 101(1) as originally worded. The matter of the "lawful" exercise of the power is a different issue and does not at all arise on the facts of this matter, which challenges the validity of the amending enactment, that is, the Sixth Amendment.

[27] The Claim brought by the Association in the Court below was to challenge the Sixth Amendment. It sought a declaration that sections 15 and 16 of the Sixth Amendment Act are unconstitutional because the amendments "contravene the Belize Constitution are contrary to the Rule of Law, violate the Separation of Powers Doctrine and are contrary to the Basic Structure of the Constitution and therefore contravene the constitutional rights of the Applicant enshrined in the Belize Constitution." The Association inter alia, sought an order striking down sections 15 and 16 of the Act. There was no challenge to the original wording of sections 101(1) and 102(1). The one year appointment under the Sixth Amendment was the gravamen of the challenge as shown by the grounds in support of the Claim. This is the provisos to section 101(1) and 102(1). Legall J nevertheless, considered sections 101(1) and 102(2) in its original wording and found that the one year appointment was inconsistent with the constitutional requirement of security of tenure of Justices of Appeal and inconsistent with the constitutional principles of independence and impartiality.

Test for determining whether a Court is independent and impartial

[28] The general question which has to be considered under this ground of appeal is the meaning of an independent and impartial court within the meaning of section 6(7) of the Belize Constitution. Section 6(7) provides:

> "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 added).

[29] Legall J relied on two cases in looking at the importance of tenure, independence and impartiality of judges, namely (1) **Valente v The Queen [1985] SCR 673** and (2) **AG v Linda Lippe [1991] 2 SCR 114.** (**Valente** was relied upon heavily by both parties). In **Valente,** the general question raised by the appeal was the meaning of an independent tribunal in section 11(d) of the Canadian Charter of Rights and Freedoms. The specific issue, that is, the constitutional question raised in the appeal was whether a provincial judge sitting as the Provincial Court (Criminal Division) in Ontario in December 1982 was an independent tribunal within the meaning of section 11(d), which provides:

> "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."

[30] Le Dain J addressed the **<u>concepts of "independence" and "impartiality</u>**" at paragraph 15 of the judgment in **Valente.** (Legall J quoted the said para 15 at paragraph 21 of his judgment when he discussed the case of **R v Lippe).**Le Dain J addressed whether the test applied by the Court below was an appropriate and sufficient test for the requirement of independence. He stated:

> "…Although there is a close relationship between independence and impartiality, they are nevertheless separate and distinct values or requirements. **Impartiality r**efers 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**" in s. 11(d) 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."

[31] Lamer CJ in **R v Lippe** referred to the said principles in **Valente** on independence and impartiality. Further, at page 138 of the judgment he said that in relation to the concept of "government" he did not intend to limit same to the executive or legislative branches. Legall J quoted what Lamer CJ said on this concept. Lamer CJ said:

> "By "government" in this context, I am referring to any person or body, which can exert pressure on the judiciary through authority under the state. 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 had been granted some authority over the judges; for example, members of the Court must enjoy judicial independence and be able to exercise their judgment free from pressure or influence from the Chief Justice."

[32] In **Valente**, Le Dain J also referred to the case of Reference **re Territorial Court (Northwest Territories) 1997**, where Vertes J at page 146 discussed the concepts of independence and impartiality:

> "Until relatively recently the concepts of independence and impartiality were regarded as inseparable. Recent jurisprudence has recast these concepts as separate and distinct values. They are nevertheless still linked together as attributes of each other. Independence is the necessary precondition to impartiality. It is the *sine qua non* for attaining the objective of impartiality. Hence there is a concern with the status, both individual and institutional, of the decision maker. The decision-maker could be independent and yet not

be impartial (on a specific case basis) but a decision-maker that is not independent cannot by definition be impartial (on an institutional basis)."

[33] One of the issues raised in **Valente** was the relationship of the judges and the Provincial Court to the Executive Government of Ontario and in particular, the Ministry of the Attorney General. There is no specific issue raised in the instant claim as to the relationship of Court of Appeal judges and the Government of Belize.

Test for independence - tribunal to be perceived as independent

[34] In **Valente**, Le Dain J considered the requirement in the test applied by the Court of Appeal that the **status of relationship of judicial independence for purposes of 11(d) be one which a reasonable, well informed person would perceive as sufficient.** He said at para 22:

> "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 test for independence should include that perception.** The perception must, however, as I have suggested, be a perception of whether the tribunal enjoys the essential objective conditions or guarantees of judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees."

[35] The test for independence for the purposes of section 6(7) of the Belize Constitution, applying the principles in **Valente**, should be whether the Court of Appeal may be reasonably perceived as independent by a reasonably well informed observer. The Court should be perceived as independent, as well as impartial, and the test for independence should include that perception.

[36] Legall J was cognisant of this requirement in the test for independence. Legall J said that as **Valente** 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.* The question is whether he correctly applied the test to the facts of the instant appeal. Legall J said, *"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."* Legall J before making this finding had not adverted his mind to the standard of judicial independence in Belize as was done in the case of **Valente** where the court considered the standard of judicial independence in Canada. I will address the issue of perception later in the judgment (discussed by Legall J at paragraph 20 of his judgment) after discussing the three essential conditions of judicial independence.

<u>The three essential conditions of judicial independence</u>

[37] In **Valente**, Le Dain J articulated three essential conditions for judicial independence, that is, (1) **security of tenure**; (2) **financial security** and (3) **institutional independence of the court.**

[38] In the case at bar, neither the issue of financial security or any specific issue of institutional independence was raised. The primary role of the judiciary is adjudication and at the trial and at the hearing of the appeal, no submission was made that the Attorney General representing the Executive in this matter, interfered in any way with the sittings of the court, its lists or the adjudicative function of the judiciary. The essential condition to be addressed in this appeal is therefore security of tenure. The

specific issue being whether there was *a* lack of security of tenure to the appointments of the two judges whose period of appointments were for one year as a result of the Sixth Amendment.

Was there a lack of security of tenure?

[39] Legall J at paragraph 10 of his judgment said that 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.

[40] Further, at paragraph 17 of his judgment, Legall J said that there is no security in one year appointment and if section 101(1) is given its literal *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 …*". When the judge made this statement, he failed to consider that an appointment for one day or for one week could be made by the Executive under section 101(5) which provides for temporary appointment for a specific purpose. The Court is not required in this appeal to consider temporary appointments. The focus is the Sixth Amendment to the Belize Constitution.

[41] The Sixth Amendment, the provisos to section 101(1) and 102(1) addressed appointments of Justices of Appeal in the event where no specific period is stated in the Instrument of Appointment. Mottley P and Morrison JA had appointments which had no specific period. When the Sixth Amendment came into force, the one year applied to their appointments. The Sixth Amendment is a general legislation and did not specifically address the appointments of the two judges in question but, in fact set a period of one year to their appointments since there was none stated in their Instrument. The duration of their appointment is therefore the crux of the complaint by the Association which they consider as a removal after one year.

[42] In **Valente,** the Court said that because of the importance that has traditionally been attached to security of tenure, it must be regarded as the first of the essential conditions of judicial independence for purposes of s. 11(d) of the Charter. In that case the provision concerning security of tenure was up to the age of retirement. The Court after considering the arguments of both sides held at paragraph 31:

> "In sum, I am of the opinion that while the provision concerning security of tenure up to the age of retirement which applied to provincial court judges when Sharpe J. declined jurisdiction falls short of the ideal or highest degree of security, it reflects what may be reasonably perceived as the essentials of security of tenure for purposes of s. 11(d) of the Charter: that the judge be removable only for cause, and that cause be subject to independent review and determination by a process at which the judge affected is afforded a full opportunity to be heard. **The essence of security of tenure for purposes of s. 11(d) is a tenure, whether until an age of retirement, for a fixed term, or for a specific adjudicative task, that is secure against interference by the Executive** or other appointing authority in a discretionary or arbitrary manner." (emphasis added)

<u>Provisions for security of tenure in the Belize Constitution for Court of Appeal Judges</u>

[43] Justices of the Court of Appeal of Belize are appointed pursuant to section 101(1) of the Belize Constitution 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. Section 101(5) provides for the appointment of temporary Justice of Appeal. The essence of the nature of security of tenure enjoyed by a Justice of Appeal, is that he cannot be victimized for exercising his powers, functions and duties during the period of his appointment, whatever that period may be. Consequentially, the office of a Justice of Appeal only becomes vacant upon the expiration of the period of his appointment, or if he resigns his office (section 102(1), or is removed from office for inability or misbehavior (section

102(2)). Section 102(2) provides that a Justice of Appeal may be removed from office only for inability or misbehavior. Such removal is therefore for cause and section 102 subsections (3), (4) and (5) adequately address the procedure for such removal. The above provisions show that the Belize Constitution has addressed security of tenure for Justices of Appeal by making appointments for a fixed period and the judge may be removed only for cause.

[44] In the instant appeal, in relation to the appointment of Justices of Appeal, the essence of security of tenure for the purposes of section 6(7) of the Belize Constitution is a tenure for a fixed term which is secured against interference by the Executive. A fixed term is sanctioned in **Valente.** Section 101(1) provides for a fixed term and section 102 provides for the process of removal. The Sixth Amendment addressed appointments where there was/is an omission to state a duration of the period of appointment. It is not a removal provision and can only be used to interpret an Instrument of Appointment which has or had no period stated.

[45] Legall J was cognisant of the above sections providing for security of tenure as shown at paragraph 10 of his judgment. However, he equated the one year appointment by way of the Sixth Amendment as a removal and that the amendments impose on the Justices in question a reliance on the Executive for re-appointment. At paragraph 11 of his judgment he said:

> "…The effect of the amendments is to impose a period of appointment of one year in relation to Mottley and Morrison JA after which their offices become vacant, unless they are re-appointed. The amendments impose on these justices, and not the others, a reliance on the Executive for re-appointment, after 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?

[46] The Association in their claim had contended that the Sixth Amendment has sought to remove two sitting Justices of the Court of Appeal contrary to the provisions of

the Constitution. As previously stated, the Sixth Amendment provides for a period where none is or had been stated. This is not a removal provision.

[47] The appellant had argued before Legall J that the Sixth Amendment secured the tenure of Justices of Appeal to one year, in a situation where their appointments were arguably defective which the amendments cured. In answer to this argument, Legall J, as seen at paragraph 17 of his judgment stated that the Constitution provides for tenure of Justice of Appeal by the provisions in relation to the removal of such Justice as contained in section 102 of the Constitution. Further, that the Constitution provides that a court prescribed by law for the determination of civil rights or obligation "shall be independent and impartial". The judge thereafter addressed the intention of sections 101(1) and 102(1). He said that *"it could not be the intention of sections 101(1) and 102(2) 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…"*

[48] The original wording of section 101(1) which was not amended states that "The Justices of Appeal shall be appointed …. for such period as may be specified in the instrument of appointment." Section 101(1) which provides for appointment of a specific period reflects what may be reasonably perceived as the essentials of security of tenure. Section 101(1) did not make provision for any minimum or maximum period. The Executive had a discretion in setting the period. This is shown by the affidavit evidence of Mr. Gandhi who deposed as to constitutional history of appointments of Justices of Appeal.

<u>Constitutional history of Judicial appointments in Belize</u>

[49] At paragraph 17 of his affidavit, Mr. Gandhi deposed that the constitutional history of Belize shows that Justices of Appeal were invariably appointed for specific periods. He gave 26 examples of appointments commencing from 1994, 1995, 1997, 1998,

1999, 2000, 2001, 2002 and 2004. These examples show that Justices of Appeal were appointed for periods ranging from a particular session only, one year, 2 years, 3 years and 'until further notice'. In the case of Justice Sosa, he was appointed in 1999 'until he reaches 62 years'. Most of the appointments were made pursuant to section 101(1) and this included appointments for a particular session. Temporary Justices were appointed pursuant to section 101(5) in the case where another Justice was unable to attend to a particular session.

One year appointments pursuant to section 101(1)

[50] Justice P.T. Georges was appointed for a period of one year with effect from 1 December 1996. Dr. Nicholas Liverpool was appointed for a period of one year with effect from 1 January 1998.

[51] Justice Rowe was appointed as President for a period of one year from 1 June 2000. On 30 December 2000, he was appointed to President of the Court of Appeal up to 30 May 2002.

Session appointments pursuant to section 101(1)

[52] Justice Rowe was appointed for the October 1998 session. Justice Kenneth George was appointed President for the March 2000 session. Justice Mottley was appointed in separate instruments for the February 1999 session, June 1999 session, November 1999 session and March 2000 session. (Justice Mottley was appointed for a period of two years with effect from March 2000. Thereafter he was appointed for a period of three years as Justice of Appeal with effect from 20 March 2002).

No period stated

[53] Justice Mottley was appointed to acting President with effect from March 2004 until such time as some other person is appointed as President of Court of Appeal. (no period stated). In May 2004, Justice Mottley was appointed President of the Court of

Appeal and there was no period stated. Justice Morrison was appointed on 31 May 2004 as Justice of the Court of Appeal and no period was stated.

Until further notice

[54] Justice Carey was appointed by an Instrument dated 20 December 2004 as a Justice of Appeal with effect from 1 January 2005 until further notice**.** On 14 December 2009, Justice Carey was given a new instrument which stated that it was necessary to specify a period of his appointment. It states:

> "AND WHEREAS, by Instrument of Appointment dated 20th December 2004, the Honourable Mr. Justice Boyd Carey was appointed as a Justice of Appeal with effect from 1st January 2005 until further notice.
>
> AND WHEREAS, it is necessary to specify the period of his appointment in accordance with the aforesaid section 101(1) of the Belize Constitution. I, COLVILLE YOUNG … Governor-General … do hereby specify that the period of appointment of the Honourable Mr. Justice Boyd Carey as a Justice of Appeal shall be from 1st January 2005 to 31 March 2010."

Power of Executive to make appointments for one year

[55] Based on the evidence which shows the constitutional history in appointments of Justices of Appeal and the constitutional provisions providing for security of tenure, the appellant, in my opinion, rightly submitted that the Executive had the legal power and authority to make appointments of short duration from in 1981 and the Sixth Amendment makes no difference in this regard.

No uniform standard of judicial independence

[56] The learned trial judge had not considered the standard of judicial independence in the Court of Appeal in Belize as shown by the constitutional history. Instead he

sought to compare the Supreme Court with the Court of Appeal and applied one standard across the board. There is no uniform standard of judicial independence as shown in the case of **Valente.**

[57] At paragraph 26 of the judgment in **Valente,** the Court said that counsel for the Provincial Court Judges Association submitted that there should be a uniform standard of judicial independence under s. 11(d) and that it should be essentially the one embodied by ss. 99 and 100 of the Constitution Act, 1867. The Provincial court judges contended that they should have the same constitutional guarantees of security of tenure and security of salary and pension as superior court judges. The Court said that, "*Whatever may be the merits of this contention from the point of view of legislative or constitutional policy, I do not think that it can be given effect to in the construction and application of s. 11(d). To do so would be, in effect, to amend the judicature provisions of the Constitution.* ***The standard of judicial independence for purposes of s. 11(d) cannot be a standard of uniform provisions. It must necessarily be a standard that reflects what is common to, or at the heart of, the various approaches to the essential conditions of judicial independence in Canada."***
(emphasis added).

[58] Legall J in the case at bar failed to address his mind to the affidavit evidence of Mr. Gandhi which shows that one year appointments under sections 101(1) and 102(1) was common to the judicial independence in Belize. In Belize, the Executive has a discretion to state the period, which is a fixed term. The concept of a fixed term is not inconsistent with security of tenure as shown by **Valente** at paragraph 31, where the Court said that "The essence of security of tenure for purposes of s. 11(d) is a tenure, whether until an age of retirement, **for a fixed term**, or for a specific adjudicative task, that is secure against interference by the Executive. Accordingly, I respectfully disagree with the argument of the Association that sections 15 and 16 of the Act violates the essential requirement of security of tenure.

[59] The Association relied on ***Inter-American Commission on Human Rights, Fifth Report on the Situation of Human Rights in Guatemala, Chapter IV, Administration of Justice*** at paragraph 44, which "*expressed concerns where terms of judicial office are unduly brief and shares the position of the United Nations Special Rapporteur on the independence of judges and lawyers, that a five year term is inadequate. The Special Rapporteur opines that 'a fixed term of five years with the possibility of re-election provided under articles 208 and 215 of the Constitution does not provide the requisite security of tenure and may be inconsistent with the principles of judicial independence as provided in article 203 of the same Constitution and principle 12 of the United Nations Basic Principles on the Independence of the Judiciary.'*"

[60] The Association contended that section 101(1) (b) and 102(1) as amended is a potent threat to the independence of the judiciary, especially in light of Mr. Gandhi's affidavit. It further argued that the purposes of the Sixth Amendment is to enable substantive appointments, with full status, for a very short duration in order to allow the Executive to decide on a regular basis whether or not to keep the Judge. As such the sections are colourable devices to enable the Executive to circumvent the protection provided by section 102.

[61] In my view, the purpose of the Sixth Amendment is not a colourable device for some other purpose. It is a provision which has to be used to interpret the Instruments of Appointment of Court of Appeal Judges where there is no period stated. The argument that the Sixth Amendment is a colourable device is misconceived.

[62] In relation to the position as stated in the "Fifth Report on the Situation of Human Rights in Guatemala" relied upon by the Association, the position is very different from Belize. Judges of the Supreme Court are appointed for more than five years. In fact, they are appointed for a term which expire when they attain the age of 65 years. Justices of the Court of Appeal are appointed for fixed terms without any minimum or maximum parameters.

Reasonable well informed observer perception point and re-appointment issue

[63] Ground 5 which deals with the perception point will be addressed under this heading along with the re-appointment issue as it is key to a finding of security of tenure. The appellant under ground 5 submitted that the learned trial judge misdirected himself in finding that "*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."***They contended that the reasonably well informed observer would not perceive any lack of independence and impartiality once and when he understands the position that Justices of Appeal could be appointed for one year under section 101, as originally worded.

[64] Legall J at paragraph 20 of his judgment said that:

> "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 of 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 [e] 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."

[65] Legall J then quoted Lamer CJ as shown at paragraph 31 above. Thereafter at paragraph 22, Legall J said:

> 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 lack of independence and impartiality of the judges. 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."

[66] Legall J thereafter addressed section 101(1) and stated that this section confers on political figures, the authority to decide who shall be appointed Justices of Appeal

and the period of such appointment. He said that in cases where the appointments are for periods of between six months and three years, the political figures have the power to decline an extension of those appointments resulting in the removal of a judge without following the procedures under section 102. He further stated that this would put executive pressure on the judge who desires an extension of his appointment. Legall J said that:

> "Politicians, whether on the government or opposition sides, should have no legislative authority, in the process in the appointment of judges, because such authority can be perceived by a reasonable well informed Belizeans to have some effect on the independence and impartiality of judges.

[67] The judge thereafter advised that the time has come for the National Assembly to revisit sections 97(1) and (2) and 101(1) of the Constitution. Further, that the appointment of judges in Belize should be done by an independent body. He said that, "*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."*

[68] The Association submitted that there is a real risk that a well-informed observer would perceive that a judge serving a one year term, at the instance of the Executive, might be influenced by his hopes and fears of re-appointment, of getting a longer term or being re-appointed. Further, that it is reasonable that a well-informed observer would regard a judge serving for one year as being dependent on the Executive for advancement. They relied on **The Territorial Court Act.**

[69] The Association further submitted that viewed objectively, a reasonable person assessing the institutional arrangement characterised by justices of appeal serving, at the discretion of the Executive, on one-year terms as provided for in section 102(1) of the Constitution, would conclude that it lacks the appearance of impartiality and independence. They relied on **Valente** at paras 22, 23 and 31.

[70] There had been no suggestion of bias or partiality by the Association nor the appellant on the part of Mottley P and Morrison JA so a fair-minded and informed observer would not conclude that there was a real possibility that the said judges were not independent and impartial. The one year appointment is the crux of the matter. In relation to the perception of the reasonable well informed Belizean, the question that arises is what information can properly be attributed to the observer. I do not accept the position of Legall J that politicians should have no legislative authority in the appointment of judges as this can be perceived by a reasonable well informed Belizean to have some effect on the independence and impartiality of judges. In my view, the reasonably well informed Belizean must be treated as having been aware of the facts which are in the public domain. These facts would include the Constitutional provisions for appointment of Court of Appeal Judges, temporary appointments and appointments for fixed periods. (s 101(1) which provides that 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).

[71] The reasonable well informed Belizean must be regarded as well as being aware of the purposes of the Sixth Amendment which is also in the public domain. Further, the said informed Belizean must be aware of the history of the appointment of Court of Appeal Judges. The Court of Appeal sits by sessions and there are resident judges and non-resident judges. The non-resident judges work in other jurisdictions, either in private practice or are judges in other jurisdictions. Further, as the evidence shows, the non-resident judges are normally appointed by sessions or from one year to three years appointment. Morrison JA was in fact given four years appointment after the expiration of the one year appointment (by virtue of the Sixth Amendment). The reasonably well informed Belizean must be taken to be aware of these constitutional provisions and the history of the appointments of non-resident judges. Further, that Judges take an oath upon their appointments.

[72] Accordingly, it is my opinion, that the reasonable well informed Belizeans having considered the reasons for the Sixth Amendment and the provisions of section 101 and 102, (the objective safeguards) would have concluded that Mottley P and Morrison JA had security of tenure and presented an appearance of independence and impartiality. Therefore, there could not be a perception that there was a breach of section 6(7) of the Belize Constitution.

[73] On the issue of **re-appointment**, Mottley P and Morrison JA had security of tenure during their one year appointment and there was no need for Legall J to consider re-appointment of the judges and political pressures. There was a satisfactory framework in place to secure the independence and impartiality of these judges. The judge regarded section 101(1) in its original wording as unconstitutional but, could not declare on the constitutionality of section 101 since it was not an order sought by the Association. The judge said that paragraph 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."* The Association in their written submissions had in fact accepted that there is security of tenure for all levels of the judiciary. They were challenging only the Sixth Amendment and not section 101(1) in its original wording. Regretably, the trial judge sought to consider an issue which had not been put before him, and not surprisingly, was unable to make a declaration in that respect.

[74] The Association at the hearing of the instant appeal relied heavily on the case of **Starrs v Ruxton** and **Ruxton v Starrs [2000] JC 208** which illustrated that one year appointments cannot reasonably be perceived as providing justices with security of tenure or institutional independence. Further, that such appointments are likely to create the impression that justices may be influenced by their hopes as to their reappointments and so become susceptible to pressures of the Executive. It contended that judges appointed pursuant to section 101(1) (b), without periods mentioned in their instruments of appointment and thereafter for a period of one year, lack independence and will never be perceived as independent. Further, that the nature of the appointment of the judges in question revealed that they do not "enjoy the

essential objective conditions or guarantees of judicial independence" as articulated in **Valente**.

[75] The Association further submitted that it was held in **Starrs** that one year term "*suggests a reservation of control over the tenure of office by the individual, enabling it to be brought to an end within a comparatively short period. This reinforces the impression that the tenure of office by the individual temporary sheriff is at the discretion of the Lord Advocate. It does not, at least prima facie, square with the appearance of independence*." They contended that the court regarded the one year limit as a critical factor as in determining that the temporary sheriff was not an independent and impartial tribunal as there "*is a real risk that a well-informed observer would think that a temporary sheriff might be influenced by his hopes and fears as to his prospective advancement."*

[76] In my view, the **Starrs** case is distinguishable from the instant case as the issue of independence was considered in the context of the particular facts of that case. It concerns the appointment of a temporary sheriff under the Sheriff Courts (Scotland) Act 1971 and was done without adequate legislative provisions. In the instant case, the appointment of Mottley P and Morrison JA were made pursuant to Constitutional provisions, the Sixth Amendment which provides for a term of one year, which is a fixed period and is sanctioned by section 101(1) (in its original wording) which gives security of tenure for a fixed term. In **Starrs** the Secretary of State was not empowered by section 11 to impose any term or condition. The Solicitor General was unable to give any reason as to how the one year period was selected. It was in that context that Lord Justice Clerk *suggests a reservation of control over the tenure of office by the individual, enabling it to be brought to an end within a comparatively short period."*

[77] Further, in **Starrs** the tenure of office by the individual temporary sheriff was at the discretion of Lord Advocate who applied restrictions in determining whether a temporary sheriff qualifies for reappointment. The restrictions being (a) minimum period of work (b) age limit of 65. Neither is sanctioned by statute and are matters of

ministerial policy. This is the basis on which the temporary sheriff security of tenure rest. There is also a provision for recall. For those reasons, Lord Justice Clerk found that the Lord Advocate acted incompatible with the right of the accused under Article 6(1) of the Convention to fair trial by 'an independent and impartial tribunal' within the meaning of the article. The matter was then referred to a permanent sheriff for hearing. In the instant case, the position is quite the opposite. The Belize Constitution provides for security of tenure – section 101(1) and section 102(2). The Sixth Amendment does not take away the right of security of tenure.

[78] The **Starrs case** was a challenge to a judicial appointment. In the instant case, the challenge is to an enactment (the Sixth Amendment) and not the appointment of the two Justices in question. Further, the issue was the incompatibility of the exercise of a power of appointment pursuant to s**ection 11(2)** of the **Sheriff Courts (Scotland) Act 1971** and Article 6 of the Convention. Section 11(2) ought not to have been in contravention of Article 6, the superior law, which provides that in the determination of any charge, everyone is entitled to a fair and public hearing by an independent and impartial tribunal. The power of recall under section 11(4) of the **Sheriff Courts (Scotland) Act 1971** was also a principal basis for holding that the appointment was incompatible with the appearance and independence of the sheriff.

[79] In the instant case, the Belize Constitution is the supreme law and the challenge is to an enactment within the Belize Constitution itself, that sections 15 and 16 of the Belize Constitution (Sixth Amendment) is contrary to section 6(7) of the Constitution which requires that the court shall be independent and impartial. The appellant rightly pointed out that it was the same framers who included the assurance of an independent and impartial court that provided for appointment of Judges of the Court of Appeal at section 101 "*for such period as may be specified in the instrument of appointment."* In the **Starrs** case, the Secretary of State was not empowered to impose any term or condition. In the instant case, there is an obligation to impose a term of the appointment pursuant to section 101. The Sixth Amendment addresses situations where no period of appointment is stated.

Practice and tradition

[80] Learned Counsel, Mr. Smith referred the Court in oral submissions to the **Starrs** case where it was stated by Lord Reed that practice or tradition are insufficient to support independence on their own. I am in agreement with that statement. Practice and tradition cannot be sufficient. There must be a statutory framework such as section 101(1) and 102 for appointment of Justices of Appeal and a procedure for their removal. The Sixth Amendment covers those instruments which have no fixed period.

[81] I think it is necessary that I look at the context in which the practice and tradition was discussed in **Starrs** by Lord Reed who relied on the **Valente** case. In **Valente**, Le Dain J discussed the practice and tradition which was discussed in the court below. Sharpe J had declined jurisdiction on the ground that the Attorney General had, during his seven years in office, always acted with respect to re-appointments on the recommendation of the chief judge of the provincial court in question. That was a practice or "tradition" to which Sharpe J had objected to when he declined jurisdiction. But, this practice or tradition applied only to post-retirement appointment at pleasure. Howland C.J.O. had placed considerable emphasis on the role of tradition as an objective condition or safeguard to judicial independence. Le Dain J quoted Howland C.J.O. who quoted several learned commentators on the importance of tradition. See paragraph 34. Le Dain J after considering the discussion said at para 36:

> "Tradition, reinforced by public opinion, operating as an effective restraint upon executive or legislative action, is undoubtedly a very important objective condition tending to ensure independence in fact of a tribunal. That it is not, however, regarded by itself as a sufficient safeguard of judicial independence is indicated by the many calls for specific legislative provisions or constitutional guarantees to ensure that independence in a more ample and secure measure. …
>
> Indeed, a constitutional requirement of judicial independence such as that in s. 11(d) of the Charter presupposes that it does not automatically exist by reason of tradition alone. Important as tradition is as a support of judicial

independence, I do not think that reliance on it should go as far as to treat other conditions or guarantees of independence as unnecessary or of no practical importance. …It is a question of the relative importance that one is going to attach to tradition in a particular context as ensuring respect for judicial independence despite an apparent or potential power to interfere with it. Moreover, while tradition reinforced by public opinion may operate as a restraint upon the exercise of power in a manner that interferes with judicial independence, it cannot supply essential conditions of independence for which specific provision of law is necessary.

[82] Le Dain J said that the time when Sharpe J declined jurisdiction, the legislature has expressly provided for two kinds of tenure – one which a judge may be removed from office only for cause and the other under which a judge of the same court holds office during pleasure. His opinion was that the second class of tenure could not be perceived as meeting the essential requirement of security of tenure for purposes of s. 11(d). The reasonable perception is that the legislature has in the case of one category of judges, reserved to the Executive the right to terminate the holding of office without any justification. As such, he was of the view that those judges who held office during pleasure could not be an independent tribunal within the meaning of section s. 11(d) of the Charter. This conclusion by Le Dain J did not affect Sharpe J. personally since he did not hold office under a post-retirement appointment.

[83] Lord Reed in the **Starrs** case agreed with the approach taken by Le Dain J. in **Valente** and, in particular, with his description of judicial independence as *'a status or relationship resting on objective conditions or guarantees', whi*ch he believed to be equally applicable to the concept of independence contained in article 6 of the Convention. He said that,

> "As the Supreme Court of Canada has subsequently explained, the requirement that there be objective guarantees follows from the fact that **independence is a question of status: the objective guarantees define that status** (*Ref. re: Public Sector Pay Reduction Act (P.E.I.), s. 10*, at p.79

> per Lamer C.J.C.). Viewed in this way, the objective guarantees and the appearance of independence are not two entirely distinct concepts: rather, the objective guarantees must be such as to ensure an appearance of independence (ibid, per Lamer C.J.C.). I also agree with the observation in *Valente* (at p.694e) that 'Security of tenure, because of the importance that has traditionally been attached to it, must be regarded as the first of the essential conditions of judicial independence', and with the observation (at p.698e–f) that *'The essence of security of tenure … is a tenure, whether until an age of retirement, for a fixed term, or for a specific adjudicative task, that is secure against interference by the executive or other appointing authority in a discretionary or arbitrary manner."*

More recently, in *Ref. re: Territorial Court Act (N.W.T.), s. 6(2)* Vertes J., observed (at p.141, paragraph 20):

> 'The good faith and integrity of the participants in the administration of justice, the **practice or tradition**, are insufficient to support independence on their own. That is not the test of constitutionality.'

[84] In the instant case, there is legislative provisions for appointment and security of tenure of judges of the Court of Appeal, as discussed previously. It is not based on mere practice or tradition. Justices of the Court of Appeal are appointed pursuant to section 101(1) of the Belize Constitution 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. The offices of the said Justices of Appeal shall become vacant upon the expiration of the period of his appointment or if he resigns his office. - See section 102(1). This is subject to section 102(2) which provides that a Justice of Appeal may be removed from office only for inability or misbehavior. Such removal is therefore for cause and sections 102 adequately addressed the procedure for such removal.Pursuant to section 102(3) and (4) a Justice of Appeal may be removed before the expiration of the period stated in his instrument of appointment only for cause and entitled to be heard before removal.

The above provisions show that the Belize Constitution has addressed security of tenure of Justices of Appeal by making appointments for a fixed period and the judge may only be removed for cause. The Judge would be given full opportunity to be heard before such removal.

Conclusion

[85] For these reasons, the appellant succeeds on grounds 1A, 1B and Ground 5. The Justices of the Court of Appeal enjoy constitutional guarantees of security of tenure and judicial independence with one year appointments. The learned trial judge erred in finding that it could not be the intention of sections 101(1) and 102(2) of the Constitution that the appointment of Justices of Appeal could be made for one year. Further, there was no challenge by the Association to section 101(1) of the Belize Constitution.

Ground 2: Whether the trial judge wrongly inserted limiting language into section 101(1).

[86] The learned trial judge found at paragraph 17 of his decision that, "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."

[87] The appellant contended that the trial judge purported in effect to insert, limiting or qualifying language into the plainly worded section 101, which function is within only the province of the legislature and not the Court.

[88] The Association submitted that the trial judge engaged in a wholly permissible judicial exercise of giving a reasoned interpretation of provisions of the constitution that conflict with each other. Further that sections 15 and 16 conflict with the pre-existing and fundamental provisions of the Belize Constitution and courts are allowed to read words into legislation in order to avoid its constitutionality. Furthermore, even if His Lordship erred in interpreting the section, the respondent's case is not that Justices of Appeal should hold office for a period until the age of retirement. It's primary contention is that 'one year appointments' do not ensure Justices of Appeal the Constitutional guarantees of security of tenure and judicial independence.

[89] The argument by the Association that the trial judge engaged in a permissible judicial exercise and gave a reasoned interpretation of provisions of the constitution which they argued conflict with each other cannot be accepted. There is no conflict with any of the constitutional provisions that are in issue in this matter. It has been determined under ground 1, that Justices of Appeal enjoy the constitutional guarantees of security of tenure and judicial independence with one year appointments. There was no basis for the learned trial judge to imply that an appointment under section 101(1) for a Justice of Appeal should be until age of retirement, not exceeding seventy-five years. The arguments of the appellant in their written submissions (para 49 – 53) show the flaw in the finding by the learned trial judge. The intent of the Constitution is manifestly clear for the appointment of Supreme Court Judges and Justices of Appeal. An age limit was deliberately inserted for Supreme Court Judges but no maximum age limit was inserted for Court of Appeal Judges. I am in agreement with the appellant that Legall J purported in effect to insert, limiting or qualifying language into section 101, which function is within only the province of the legislature and not the Court. There is no uniform standard for judicial independence. See **Valente**. The appellant therefore succeeds under this ground.

Grounds 3A and 3B: Whether the trial judge wrongly rejected evidence which shows the purpose of the Sixth Amendment

[90] The appellant submitted that the learned judge wrongly (A) rejected uncontroverted evidence of fact that the reasons for the passing of sections 15 and 16 of the Sixth Amendment were to (a) correct any invalidity in the appointments of Justices of Appeal Mottley and Morrison; (b) to ensure the validity of future similar defective appointments if they were to occur; and (B) erred in finding that the amendments remove with respect to the two Justices of Appeal, their security of tenure and their right to be independence, and impartiality contrary to the Constitution.

[91] The appellant further submitted that as a matter of law the appointments of Justices of Appeal Mottley and Morrison may well have been defective and as a matter of fact the reason for the amendments were to (a) correct any invalidity in the appointments of Justices of Appeal Mottley and Morrison (b) to ensure the validity of future similar defective appointments if they were to occur. They referred to the evidence of Mr. Gandhi which shows that the process included public consultation and consideration of views emanating from that exercise and recommendations for changes to the proposed amendments to the Sixth Amendment Bill.

[92] The Association submitted that the use of the word "may" in section 101(2) is plainly permissive so that there were obviously no defects in the appointments and say that the defects identified are but part and parcel of the entire scheme devised to undermine the independence of the Court. They further submitted that even if there was a problem with the instruments of appointment, it does not follow that the office and decisions of the office-holders were impaired. See Administrative Law (10th Ed.) Wade & Forsyth pp 241 – 243. It further submitted that this case is not about the challenge to the validity of the 2004 instruments of appointment of Justices Mottley and Morrison. It is about the challenge to the Sixth Amendment.

[93] The Association pointed out what could have been done to fix the defects in the appointments of the two Justices in question. They said that "if it was true that the Government was of the view that the said 2004 instruments issued to Justices Mottley and Morrison were defective, all that needed to be done was to point this out to the Judges and issue new ones to them. An amendment to the Constitution would not have been necessary. The judges would, however, have had to be convinced of the defect in order to accept new limited appointments." They submitted that this is the reason the amendment option was in fact pursued.

[94] I have no difficulty with the submission that new Instruments could have been issued to the two Justices in question. The evidence from the appellants show that this was in fact done with a prior appointment, Justice Boyd Carey, who had a new instrument issued to him as the previous instrument stated 'until further notice'. This avenue was not pursued by the appellant in the case of the two Justices. Mr. Gandhi at paragraph 22 of his affidavit explained the reason why this was not done. He said:

> "I verily believe that the same could have been done to rectify the said instruments of appointment of Justices Mottley and Morrison dated 31 May 2004 which had failed to specify the period of their appointment. New instruments of appointment could have been issued specifying the period of their appointment without even amending the Constitution. The amendments to sections 101 and 102 of the Constitution were made*ex abundanti cautela* and also to address any future similar errors which might be made in the instruments of appointment."

[95] The evidence of the Association is that prior to the Sixth Amendment, Justices Mottley and Morrison enjoyed full lifetime tenure as Justices of the Court of Appeal and since the 12 April 2010 when the Amendment came into force they sat without the security of tenure. Further, that they regarded the Amendment as a removal of the Justices from their offices as Justice of the Court of Appeal.

[96] The argument by the Association that the two Justices in question had full lifetime security is misconceived. Their instruments of appointment had no period stated so it cannot be implied that it was full lifetime security. A period had to be made known to the appointees by the appointer and this was not done. It has been determined under ground 1 that Mottley P and Morrison JA had security of tenure during their one year appointment and the Sixth Amendment is not a removal provision. The issue that has to be considered under this ground is the effect of the omission to include a period in the Instruments of Appointment. It is my view, that the omission to state the period was a defect. When sections 101 and 102 are read together it is imperative that a period should have been made known to the appointees, in this case, Justices Mottley and Morrison. The evidence shows that the period is normally stated in the Instruments of appointment. Since this was not done for the two Justices, the appellant was obliged to make known to the Justices the period of their appointment.

[97] The appellant sought to rectify the omission by way of the Sixth Amendment. The fact that it was done four years later is inexcusable because of the lengthy delay. Nevertheless, the Sixth Amendment rectified the omission and will do so in the future if there is an omission of a fixed period of appointment. The evidence of the appellant is that the amendments to section 101 and 102 of the Constitution were made *ex abundanti cautela* and also to address any future similar errors which might be made in the instruments of appointment." Legall J should have considered this evidence which shows the purpose of the amendment and to use same to interpret the Instrument of Appointment of the two judges in which there was an omission to specify a fixed period of appointment. In my opinion, the Sixth Amendment cured the defect of the instrument of appointments. As mentioned above, the argument that the two Justices were removed by the Sixth Amendment is misconceived. The evidence shows that Justice Morrison was re-appointed as Justice of Appeal for a further period of four years with effect from 12 April 2011 (after the one year appointment by way of the Sixth Amendment had expired). Justice Mottley whose tenure of President was to last until 12 April 2011 (by way of the Sixth Amendment) resigned as President effective 31 December 2010. The trial judge wrongly rejected evidence showing the purpose of the

Sixth Amendment and erred in finding that the amendments removed with respect to the two Justices of Appeal, their security of tenure and their right to be independence, and impartiality contrary to the Constitution. The appellant succeeds on this ground also.

Ground 4: Whether one year appointment disfigures judicial edifice

[98] The appellant submitted that the respondent's contention before the Court was fallacious and based on a wrong premise in that it included as a fundamental plank – "*The Executive power to appoint justices of the Court of Appeal of one year disfigures this judicial edifice*" when under section 101(1) as originally worded Justices of the Court of Appeal could be appointed for periods of one year. They contended that the power to appoint for one year is clearly provided for in the original wording of section 101 which had been used over decades. This has been in existence for over 30 years and cannot disfigure an amendment which makes no difference except that it fills the loophole where there is a defective appointment.

[99] The Association submitted that the Executive power to appoint Justices of the Court of Appeal for such a term disfigures the judicial edifice and submits that the effect of sections 15 and 16 of the Act is to unconstitutionally authorise the Executive to remove Court of Appeal Justices after one year. Further, their appointment is devoid of security not only because of the shortness of the duration of the appointment, but also because it effectively denies the constitutional protections against removal guaranteed by section 102(2) – (7) of the Constitution.

[100] The Association in their arguments under this ground relied on (1) **Hinds v R [1976] 1 All ER 353,** per Lord Diplock at page 365 who underscores the degrees of security of tenure enjoyed by the different levels of judiciary and (2) **Fraser v Judicial and Legal Services Commission [2008] UKPC** 25, at para 14, which shows that fixed terms were found permissible when dealing with the lower judiciary. The Association in their written submissions accepted that in Belize, all qualified magistrates, Justices of

the Supreme Court and the Court of Appeal enjoy constitutionally mandated security of tenure except for appointments under the Sixth Amendment.

[101] I do not find it necessary to address the differing degrees of security of tenure enjoyed by Magistrates, Justices of the Supreme Court and the Justices of the Court of Appeal (101 as originally worded) since the Association has no quarrel with the security of tenure that they enjoy. The bone of contention is the Sixth Amendment. As shown above, the Amendment is a rule of interpretation, where Justices of Appeal are given Instruments of Appointment without a fixed term. It is not a provision for removal of Justices of the Court of Appeal so it is misconceived to say that the Sixth Amendment which fixes a period of appointment denies the constitutional protections against removal guaranteed by section 102(2) – (7) of the Constitution. I am fortified in my view because Justices of the Court of Appeal could be appointed for periods of one year under section 101(1) as originally worded. I therefore, accept the argument by the appellant that one year terms does not and cannot disfigure the judicial edifice.

Ground 6: Whether it is mandatory that the period of appointment be stated in the Instrument of Appointment

[102] The appellant under this ground submitted that the learned trial judge erred in law in holding that under section 101(1) of the Constitution, 'it is not mandatory that the period of appointment must be stated in the instrument of appointment but that it is the discretion of the persons mentioned in the section to specify the period in the instrument'.

[103] Legall J under the heading of 'Tenure, Independence and Impartiality', and at paragraph 13 construed the word 'may' used under section 101(1). He said:

> "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 <u>may</u> 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" 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.

[104] Legall J cannot be faulted for saying the word 'may' is discretionary. However, he recognised that the appointee must know the period of his appointment and has acknowledged that the period of appointment could be specified in legislation. The use of legislation (Sixth Amendment) serves that purpose. The trial judge also said this should not be done four years after the appointment, as was done in the instant case. It was for this reason that Legall J said in paragraph 14 that:

> "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….."

[105] The trial judge as shown above, had recognised that an issue could arise as to the validity of an appointment without a period stated in the instrument of appointment or elsewhere. In my view, the four years lapse is no reason not to correct the defect in the instruments whether by legislation or a new instrument. The period of appointment had to be made known to the appointee one way or another despite four years had elapsed. The evidence in this case shows that the period is normally stated in the instrument itself but since this was not done for the two Justices in question, the appellant cannot be faulted for doing so by legislation. The learned trial judge said 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. Certainly, this could not be the intention as on appointment it would be expected that the appointee would be informed of the duration of his appointment. It is precisely the reason why the omission had to be addressed. Therefore, although the word may was used in section 101(1), it was obligatory and not discretionary that the length of period of appointment be specified in the instrument of appointment.

Grounds 7 and 8: The Basic Structure Point

[106] The appellant contended that the basic structure doctrine is not part of the laws of Belize or if it does the trial judge misapplied it to the claim. Legall J granted a declaration that sections 15 and 16 are contrary to the rule of law, a basic structure of the Constitution. At paragraph 26 of the judgment he said:

> "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 21 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."

[107] The appellant submitted that Legall J wrongly assumed that the 'basic structure doctrine' is a part of the laws of Belize and in so holding, he -

> "(a) failed to give full effect to section 69 of the Constitution which prescribes the procedure for amending the Constitution, including the entrenched provisions;
>
> (b) failed to take into account the uncontroverted evidence that section 69 of the Constitution was duly complied with in the course of enactment of the Sixth Amendment Act;
>
> (c) failed to appreciate that the provisions of section 69 of the Constitution are all inclusive and exhaustive and that there is no other limitation, whether substantive or procedural, on the power of the National Assembly to alter the Constitution;"

[108] The appellant further submitted that even if it is assumed that the basic structure doctrine is part of the laws of Belize, Legall J erred in applying the said doctrine to the facts of the case, and in so doing he -

> "(a) failed to give effect to his own finding that the appointments of Justices Mottley and Morrison were not appointments for life and that their appointments could have been rectified by issuing new instruments of appointment (paras 14, 16, and 22 of the decision);
>
> (b) failed to hold that the issue of basic structure doctrine did not arise on the facts of this case;
>
> (c) in any event, erroneously held that the Amendments were contrary to the Rule of Law and the so-called basic structure doctrine."

[109] The Association in response submitted that this Court has pronounced against the applicability of the basic structure doctrine to the laws of Belize in **The Attorney**

General of Belize and Another v The British Caribbean Bank Limited and **The Attorney General v Dean Boyce, Civil Appeal Nos 18, 19 and 21 of 2012.**

[110] The present position is that the basic structure doctrine is not part of the laws of Belize. Legall J therefore erred when he granted a declaration that sections 15 and 16 are contrary to the rule of law, a basic structure of the Constitution.

[111] For the sake of argument, even if the doctrine was part of the laws of Belize, it has been shown under ground 1 that Justices of the Court of Appeal enjoy constitutional guarantees of security of tenure and judicial independence with one year appointments. Legall J therefore, erred in finding that 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.

Disposition

[112] For these reasons the appeal is allowed and the Order made by Legall J is set aside. The parties are to bear their own costs in this court and the court below.

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HAFIZ-BERTRAM JA

BLACKMAN JA

[113] I have had the opportunity of reading in draft, the judgment of my learned sister. I agree with her reasons for allowing the appeal and the orders proposed.

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BLACKMAN JA

DUCILLE JA

[114] I have had the benefit of perusing the judgment of my learned sister and am in full agreement. For those reasons, I agree that the appeal should be allowed and with the orders proposed.

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DUCILLE JA