IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO. 151 of 2019

IN THE MATTER OF an application under Sections 95 and 20 of the Constitution

AND

IN THE MATTER OF the Special Agreement between Belize and Guatemala to submit Guatemala's Territorial Claim to the International Court of Justice dated the 8th December, 2008 ("Special Agreement") and as amended by the Protocol to the Special Agreement between Belize and Guatemala dated the 25th May, 2015 ("Protocol")

AND

IN THE MATTER OF SECTIONS 2 and 3 of the Referendum Act, Chapter 10 of the Laws of Belize

AND

IN THE MATTER OF the proposed referendum on the question of whether Belize should submit all legal claims of Guatemala against Belize, in respect to land and insular territories and to any maritime areas pertaining to these territories, to the International Court of Justice, scheduled to be held on the 10th April, 2019 ("Proposed Referendum")

BETWEEN: **MICHAEL ESPAT**
OSCAR REQUENA
RODWELL FERGUSON
JULIUS ESPAT
CORDEL HYDE
ANTHONY MAHLER **CLAIMANTS**

AND

PRIME MINISTER OF BELIZE
MINISTER OF FOREIGN AFFAIRS
ATTORNEY GENERAL OF BELIZE
CHIEF ELECTIONS OFFICER **DEFENDANTS**

In Court.

BEFORE: Hon. Chief Justice Kenneth Benjamin.

April 1 & 3, 2019

Appearances: Mr. Eamon Courtenay, SC, Mr. Kareem Musa, Mr. Anthony Sylvestre, Mr. Dean Molina, Ms. Iliana Swift and Mr. Gavin Courtenay with him for the Claimants
Ms. Lisa Shoman, SC, Mr. Elisa Montalvo, Solicitor General, Mr. Westmin James, Ms. Briana Williams, Crown Counsel, Ms. Agassi Finnegan, Crown Counsel with her for the Defendants

JUDGMENT

1. There is scheduled to be held in Belize on Wednesday, April 10, 2019, a referendum on the question of whether Belize ought to submit the Claim by the Republic of Guatemala in respect of its land, insular territories and maritime areas to the International Court of Justice for determination. The disputed Claim is of the highest national importance to the state of Belize.

2. Before this Court is an urgent application by the Claimants for an injunction to restrain the holding of the said referendum until the trial of the Fixed Date Claim originally filed on March 6, 2019. The single relief sought is the following order:

> *"That the Defendants be restrained whether by themselves their officers, agents, servants or otherwise howsoever from holding the proposed referendum as required by Article 7 of the Special Agreement to submit Guatemala's Territorial, Insular and Maritime Claim to the International Court of Justice until the trial of this Claim or further order of this Court."*

As is to be expected, time was abridged and upon evidence received by affidavit arguments were presented on both sides.

BRIEF BACKGROUND

3. The first to fifth Claimants are duly elected Members of the House of Representatives and the sixth Claimant is the Standard Bearer for the Opposition People's United Party. The first and second Defendants are the Prime Minister and Minister of Foreign Affairs of Belize respectively and are duly elected members of the House of Representatives. The third Defendant is the Attorney General, the principal legal advisor to the Government of Belize and is a member of the Senate of the National Assembly. The fourth Defendant is the Chief Elections Officer charged with responsibility for the conduct of elections in Belize.

4. There exists a long-standing dispute arising from a claim by the Republic of Guatemala to the territory of Belize dating back to prior to September 21, 1981 when Belize achieved its independence from the United Kingdom. The territory comprised in the sovereign state of Belize is the land and sea areas defined in Schedule 1 of the Belize Constitution and which constituted the colony of Belize prior to independence, as stated in Section 1 of the Belize Constitution. In as much as, the United Kingdom and subsequently Belize have consistently rejected the claims by Guatemala to its territory, the claims persist up to the present. Countless attempts to resolve the claim by the Republic of Guatemala have been to no avail.

5. The Claimants have filed a re-amended Fixed Date Claim Form on March 25, 2019. The said Claim and the Notice of Application being considered in these proceedings are supported by the evidence set out in the two affidavits of the first Claimant, Michael Espat. In response to the Notice of Application, affidavits have been filed by the Attorney-General, Michael Peyrefitte, and Josephine Tamai qua Chief Elections Officer as fourth Defendant, and by Mr. Emil Arguelles, Dr. Assad Shoman and Ambassador Alexis Rosado.

6. A convenient factual starting-point is the date of November 19, 2007 when following direct negotiations between Belize and Guatemala being rendered fruitless, the Secretary General of the Organisation of American States ("OAS") formally recommended to both countries that the dispute be submitted for judicial adjudication by the International Court of Justice ("ICJ").

7. Thereafter, the State Parties negotiated and signed on December 8, 2008 "The Special Agreement to submit Guatemala's Territorial Insular and Maritime Claim to the International Court of Justice" ("the Special Agreement"). The Special Agreement was signed on behalf of Belize by the Minister of Foreign Affairs. In their affidavit evidence, both sides agree that by the Special Agreement both Belize and Guatemala are legally bound to implement its terms in good faith.

8. It is agreed by Article 1 of the Special Agreement that Belize and Guatemala submit to the ICJ the following dispute:

> *"The Parties request the Court to determine in accordance with applicable rules of international law as specified in Article 38(1) of the Statute of the Court any and all legal claims of Guatemala against Belize to land and insular territories and to any maritime areas pertaining to these territories, to declare the rights therein of both Parties, and to determine the boundaries between their respective territories and areas."*

By Article 5, the Special Agreement states that:

> *"The Parties shall accept the decision of the Court as final and binding, and undertake to comply with and implement it in full and in good faith".*

Article 5 also makes provision for a mechanism for the demarcation of the border between Belize and Guatemala as per the decision of the ICJ. Article 3 sets out a two-stage procedure with a timeline for the parties to file their pleadings.

9. Of the most relevance to the present proceedings is Article 7 of the Special Agreement by which each contracting state is legally bound to complete all the legal and other procedures to bring the dispute to the ICJ for final settlement, the first requirement being to submit for the approval of the electors of Belize and Guatemala by referendum the bringing the dispute to the ICJ, for final settlement.

Article 7 (1) states:

> *"The Parties commit themselves to undertake the procedures set forth in their respective national systems to submit to referenda the decision to bring to the International Court of Justice the final settlement of the territorial dispute."*

The question to be submitted for approval by referendum is set out in Article 7(3):-

> *"Do you agree that any legal claim of Guatemala against Belize relating to land and insular territories and to any maritime areas pertaining to these territories should be submitted to the International Court of Justice for final settlement and that it determine finally the boundaries of the respective territories and areas of the parties."*

The original Special Agreement provides at Article 7 (2) for referenda to be held in both countries simultaneously, which did not occur. This was later addressed on May 25, 2015 when Belize and Guatemala signed a Protocol to the Special Agreement between Belize and Guatemala to submit Guatemala's Territorial, Insular and Maritime Claim to the International Court of Justice ("the Protocol").

Article 7 (2) was thereby amended to read: *"The referendum will be held simultaneously or separately on the dates most convenient to the Parties."*

10. The Protocol also amended Articles 3 and 8 of the Special Agreement to provide for separate notification of the results of each referendum to the ICJ and for time to begin to run for the filing of Memorials only after both countries have notified the ICJ of approval by referendum to submit the dispute to its jurisdiction.

11. The Special Agreement and the Protocol were introduced before the Senate by two resolutions on November 30, 2016. The Senate debated, voted on and passed both resolutions authorizing ratification by Belize. This was done pursuant to section 61A of the Belize Constitution which confers upon the Senate the following function and power:-

> *61 A (2)(a) " authorizing the ratification (including adhesion or accession) of any treaty by the Government of Belize, including any treaty of the settlement of the territorial dispute between Belize and the Republic of Guatemala."*

This provision became law by Action No. 13 of 2008 which was gazetted on April 1, 2010 subsequent to the assent of His Excellency the Governor General on March 30, 2010.

12. For completeness, it needs to be iterated as stipulated in the affidavit evidence from both Michael Espat and Assad Shoman that the Special Agreement and the Protocol have not been tabled or debated in the House of Representatives prior to or subsequent to signing by the Minister of Foreign Affairs nor has any legislation pertaining to these two treaties been introduced in the House of Representatives.

13. It is the evidence that a re-registration exercise has been carried out throughout Belize during 2018 by the Elections and Boundaries Department. Any and all persons qualified to be electors were required to register or re-register.

14. On April 30, 2018, the Prime Minister announced that a referendum would be held on April 10, 2019. It is a matter of public record that there are ongoing sensitization campaigns by the Government, political parties, interest groups and individuals aimed at informing Belizeans about the Claim, its history and matters pertinent to the referendum.

15. In her first affidavit, the fourth Defendant, the Chief Elections Officer, has stated that on February 25, 2019, acting pursuant to Section 3 (1) (c) of the Referendum Act, Cap. 10 of the Substantive Laws of Belize, the Governor General has issued a Writ of Referendum for each of the 31 electoral constituencies in Belize, as a result of a request made on January 28, 2019 by the Prime Minister.

16. The deponents for the Defendants, namely, Michael Peyrefitte, Assad Shoman and Emil Arguelles have all deposed that as duly registered electors in Belize and entitled to vote in the referendum, they have a legitimate expectation that the referendum will be held on April 10, 2019 and that they will each be given the opportunity to exercise their franchise to vote.

The Law

17. The power of the Supreme Court to grant injunctive relief is provided for in Section 27 (1) of the Supreme Court of Judicature Act, Chapter 91 of the Substantive Law of Belize. The Supreme Court is conferred with original jurisdiction to hear and determine any application by any person arising from the contravention or threatened contravention of any of the fundamental rights and freedoms protected by Sections 3 to 19 of the Belize Constitution. The Claimants in their Re-amended Fixed Date Claim Form have referenced Sections 1,2,3,6,68 and 69 and Schedule 1

of the Belize Constitution. There is no demur that in its role as a Constitutional Court, the Supreme Court is at liberty to craft such appropriate relief, as it deems fit[1], even on an interim basis.[2]

18. The test to be applied in applications for the grant of interim relief in cases involving constitutional rights has been that applied by the Supreme Court of Canada and approved by the Judicial Committee of the Privy Council ("JCPC") in ***Seepersad (a minor) v Ayers- Caesar et al***[3]. The dictum of the JCPC reads as follows:

> *"12. In Summary, the appellant argues that the Court of Appeal should have adopted the tri-partite test to the grant of interim relief in cases involving constitutional rights applied by the Supreme Court of Canada in Manitoba (Attorney General) v. Metropolitan Stores Ltd [1987] 1 SCR 110 and RJR-MacDonald Inc v Canada (Attorney General) [1994] 1 SCR 311: first, there should be a preliminary assessment of the merits to see whether there was a serious issue to be tried (adopting the less stringent merits test laid down by the House of Lords in American Cyanamid Co v Ethicon Ltd [1975] AC 396); second it must be determined whether the applicant would suffer irreparable harm if the application were refused; and third, an assessment must be made as to which of the parties would suffer the greater harm from the granting or refusal of the remedy pending a decision on the merits…*
>
> *15. The Board agrees that the tri-partite test n* ***RJR–MacDonald*** *is appropriate when considering interim relief in constitutional cases."*

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[1] ***Fraser v Judicial and Legal Services Commission*** *[2008] UKPC 25;* ***Innis v Attorney General of Saint Christopher and Nevis*** *[2008] UKPC 42*

[2] *Seepersad (a minor) v. Ayes-Caesar amd others [2019] UKPC 7*

[3] *Ibid. paragraphs 12 and 15*

I am content to adopt the three-pronged test and indeed, the arguments on both sides followed the said test.

Is There a Serious Issue to be Tried?

19. The issues commended to the Court by the Claimants as serious enough for consideration of whether or not the interim injunction ought to be granted are concisely set out in paragraph 5 of the Re-amended Fixed Date Claim. It reads:

> *"The Claimants question the power of the Minister of Foreign Affairs to enter into the Special Agreement and Protocol without being first authorized by the National Assembly. Further, they question whether a referendum can lawfully be held under the Referendum Act to satisfy the requirement of the Special Agreement."*

These matters are directly referable to the reliefs sought in the Re-amended Fixed Date Claim Form.

A Is the Executive competent to enter into the Special Agreement and the Protocol without Parliamentary Approval?
Is the holding a referendum pursuant to the Special Agreement and Protocol without legislative authority from the National Assembly unconstitutional and in breach of the separation of powers doctrine?

The two questions are co-extensive and were quite rightly deal with as one issue. It was at the outset accepted that the Executive arm of the State, by virtue of the *"well-established prerogative powers of the Crown to enter into and withdraw from treaties"* is empowered to and thus the Minister of Foreign Affairs can enter into treaties that are binding of Belize under international law. The crux of the Claimants' argument is that there are limitations on the exercise of this power, one such limitation being that the treaty cannot alter domestic law. It was urged that

the Special Agreement purported to amend the Belize Constitution, thus violating the separation of powers doctrine by encroaching on the authority of the National Assembly. It was said that the effect of the Special Agreement and Protocol by Articles 2, 5, 6 and 7 was to initiate a process that, subject to the referendum, is irreversible and assumes a life of its own. Further, in the light of the approval by the electorate of Guatemala by referendum, should the Belize electorate vote "yes", the process would be triggered. It was said that by virtue of the referral, the ICJ would demarcate the boundaries by setting coordinates.

20. Learned Senior Counsel for the Claimants cited the judgment of the Supreme Court of India in ***Maganbhai Ishwarbhai Patel v. Union of India and others***[4]. The case was concerned with whether an award setting a boundary dispute between India and Pakistan required a constitutional amendment for its implementation. It was first held, inter-alia, that since the award did not purport to or operate as giving rise to an obligation on the part of India to cede territory a constitutional amendment was not necessary. It is to be noted that similar to Schedule 1 of the Belize Constitution, the territory of India is defined in Article 1 and First Schedule of the Constitution of India. The following is extracted from the headnote (at paragraph 5-6):-

> *"Per Shah J (i) The Constitution of India makes no provision making legislation a condition of the entry into an international treaty in times of war or peace. The executive is qua the State competent to represent the State in all matters international and mar incur obligations, which in International Law are binding upon the State. There is a distinction between the formation and the performance of the obligations constituted by a treaty. Under the Constitution the obligations arising under the agreement or treaties are not by their own force binding upon Indian nationals or others. The power to legislate in respect of treaties lies with Parliament and making of*

[4] *[1969] All India Reports 783*

law under that authority is necessary when the treaty or agreement operates tp restrict the rights of citizens or others or modifies the laws of the State. If the rights of the citizen and others which justiciable are not affected, no legislative measure is needed to, give effect to the agreement or treaty. [D-F]"

21. Reliance was also placed on ***R (on the application of Miller and another) v. Secretary of State for Exiting the European Union***[5] and Re: ***UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill***[6], both being decisions of the United Kingdom Supreme Court . In short, it was urged that, if there is a "Yes" vote and the matter goes on to be determined by the ICJ, the rights of citizens may be restricted, curtailed or modified; hence legislative approval is required. In his affidavit evidence, Michael Espat swore that as a resident and landowner in the Toledo District, he was at risk of losing his established livelihood. In this regard, it was said that the process was irreversible and it is not open to the Defendants to say that Belize was not obliged to implement the result of the ICJ, as a matter of good faith.

22. In response, the Defendants submitted that the Court did not have jurisdiction to determine the Constitutionality of the Special Agreement and the Protocol as treaties since the Executive enjoyed the authority to enter into the same without the legislative approval of the National Assembly. The principle of dualism was invoked to highlight that the Special Agreement and the Protocol are in the realm of international law and do not form part of domestic law. The Court was reminded of the dictum of the Caribbean Court of Justice in ***Joseph and Boyce v. The Attorney General of Barbados***[7] [2006] CCJ 1 (AJ) at paragraph 55:-

"The classic view is that, even if ratified by the Executive, international treaties form no part of domestic law unless they have

[5] *[2017] UKSC 5*
[6] *[2018] UKSC 64*
[7] *[2006] CCJ 1 (AG)*

been specifically incorporated by the legislative. In order to be binding in municipal law, the terms of a treaty must be enacted by the local Parliament. Ratification of a treaty cannot ipso facto add to or amend the Constitution and laws of a State because that is a function reserved strictly for the domestic Parliament. Treaty-making on the other hand is a power that lies in the hands of the Executive. Municipal Courts, therefore, will not interpret or enforce the terms of an unincorporated treaty. If domestic legislation conflicts with the treaty, the courts ignore the treaty and apply the Local law: See: The Parliament Belge".

Further authority was turned up in the advisory opinion of the Constitutional Court of Slovenia with respect to the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia. The following paragraphs were cited:

"[18] The formation and cessation of states and the questions of the state territory and state borders are questions which are primarily in the domain of international law. It is in the nature of the matter that state borders concern two or more states and are in general a result of their mutual agreement. State borders exist as de facto effective demarcation lines between sovereign states, when determined at the level of international law, either by a treaty, by a decision of an international body, or by exercising de facto authority which a neighbouring state does not oppose. In the Republic of Slovenia, the state borders are also regulated in national law, namely in Section II of the BCC; also Article 4 of the Constitution refers to the state territory. State borders, as established in national law, do not bind other states and do not have international law effects in and of themselves. Thus, regarding the state borders of the Republic of Slovenia one must distinguish between international law and

national law positions. These concern two separate legal systems, however when interpreting national law one must proceed from international law, as state borders are by nature a question of international law. The formation of a new state is in international law to a great extent a question of fact,[8] however, its recognition and acceptance by the international community also depend on the fact whether the state respected the rules and principles of international law upon its formation. Especially the rules and principles of international law which refer to the formation of new states following the dissolution of a common state, as was the case of the former SFRY, are relevant. Such concern the rules and principles of international law which regulate fundamental relations between newly established and already existing neighbouring states or between newly established states themselves, especially concerning their territory and state borders.

[19] In order for a state border to be justified under international law, it is of key importance that a state demonstrates legal title (iustus titulus). International law titles (French titre) on which the course of the state borders is based have two functions. Firstly, legal title is a basis for exercising state sovereignty[9] and indicates from where a state draws legal entitlement to its territory and sovereignty. Secondly, legal title demonstrates and protects also the specific course of the border demarcated in nature.[10]

[32] From the viewpoint of national law, with the adoption of the BCC the Republic of Slovenia became a sovereign and independent state. The BCC was adopted on 25 June 1991 as the fundamental constituting state act of the Republic of Slovenia. With its adoption the Republic of Slovenia definitively broke its ties with the SFRY and established itself as a sovereign state.[30] Section I of the BCC declared that the Republic of Slovenia is a sovereign and

independent state and determined that the Constitution of the SFRY ceased to be in force for the Republic of Slovenia and that the new state assumed all rights and duties which under the republic or federal constitution were transferred to the authorities of the SFRY. An essential element of statehood is also a territory in which the state is the highest legal and de facto authority. The territory of the Republic of Slovenia was defined by Section II of the BCC, and namely so that it defined its state borders. As an internal act, the BCC did not have direct effects at the level of international law, even though its influence at the international level cannot be denied. With its adoption, the state declared to the world that it had met the international law criteria for the existence of a state, which was important for recognition by other states. The aim of the BCC was thus to constitute at the constitutional level and to declare at the international level a new sovereign state, which would be an equal subject in the international community.

[60] On the basis of the joint effect of the above-mentioned provisions of the Agreement, it is clear that the Agreement does not determine the course of the state borders between the Parties to the Agreement. The Agreement as such is an instrument whose purpose is to establish a mechanism for the peaceful settlement of the border dispute, as the states cannot by themselves agree on the course of the common state border. The peaceful settlement of disputes is a duty of states at the international level, and in the preamble to the Agreement the Parties to the Agreement even refer to Article 33 of the UN Charter, which enumerates the peaceful means for the settlement of disputes.[51] The aim of the Agreement is to establish the Arbitral Tribunal, define its tasks, determine the rules for its deciding and the legal effects of its decision, and to determine the procedure for its operation. As the provisions of the

Agreement which regulate these issues are not unconstitutional, the Constitutional Court decided that the reviewed provisions of the Agreement are not inconsistent with Article 4 of the Constitution in conjunction with Section II of the BCC.

[62] The fact that the state borders are protected at the constitutional level in the Republic of Slovenia, whereas the course of the land and maritime border demarcated in nature will be determined by the Arbitral Tribunal, call for a caution from the Constitutional Court. At this very moment it is not possible to predict where the Arbitral Tribunal will determine the course of the state border. Due to the fact that in doing so it will not be bound by the constitutional law of the Republic of Slovenia (nor by law of the Republic of Croatia), but will perform its task on the basis of the rules and principles of international law, which are in and of themselves not unconstitutional, it is indeed possible that the Arbitral Tribunal will determine the course of the border differently than proceeds from Section II of the BCC. This would not change the fact that the Agreement is not unconstitutional, as it is an instrument which only determines the path towards the resolution of this problem; furthermore, this would not entail that the award of the Arbitral Tribunal would be unconstitutional or even that it could be a subject of the review before the Constitutional Court. The award of the Arbitral Tribunal will entail an extraordinary legal situation, as this decision will be a legal instrument which will only exist in the sphere of international law and therefore it will not at all be possible to speak of its unconstitutionality in the sense of the inconsistency of national regulations with the Constitution."

Ruling on First Issue

23. The principle that the Executive has the competence to enter into treaties on behalf of and binding upon the State is unassailable and, indeed, is challenged by neither party. However, the Claimants urged and the Defendants tacitly accepted, that such treaty could not add to or amend the Constitution and/or domestic laws of the State as this is within the province of the legislative arm of the State, that is to say, the National Assembly. The fundamental question then is whether the Special Agreement and its Protocol operate to alter or amend the Constitution or domestic law. As I see it, there must be first a "Yes" vote by a simple majority of the electorate by referendum. Of that, there is no certainty until the referendum has been held and the votes counted. Further, even in the event of a "Yes" vote, the final decision of the ICJ may result in an affirmation of the existing borders of Belize recognised by Section 1 and Schedule 1 of the Belize Constitution. In my view, it is of no moment that such affirmation may be expressed by reference to coordinates. In such case, as is the view held by Assad Shoman, there would be no de facto amendment to the Constitution. Put another way, there would be no ceding of territory. It is not for the court to assume jurisdiction on speculation or a mere speculation.

24. I accept the contention on behalf of the Defendants for the Court to challenge the Special Agreement and the Protocol, as a matter of domestic law, it would be acting prematurely. At this stage, it is not known whether a constitutional amendment would be required in futuro. The Court must eschew the temptation to indulge in speculation. Accordingly, I hold that on the first issue, there is no serious issue to be tried.

B The Referendum Point: Whether the Prime Minister lacks authority to request the issue of a Writ of Referendum? Whether the request to the Governor-General is void? Whether the writs issued by the Governor General are null and void?

25. The Referendum Act, Chapter 10 provides at Section 2 (1) as follows:

"2. (1) subject to the provisions of this Act, a referendum shall be held in any of the following circumstances.

a) Where the National Assembly passes a resolution declaring that a certain issue or matter is of sufficient national importance that it should be submitted to the electors for their view through a referendum;

b) where a petition is presented to the Governor General signed by at least ten percent of the registered electors in Belize whose names appear in the approved voters' list ...

c) Where any law provides for the holding of a referendum on any specific issue or matter; or

d) on any proposed settlement with the Republic of Guatemala for resolving the Belize/Guatemala border dispute."

26. As previously pointed out, Article 7 of the Special Agreement as amended by the Protocol commits the parties to undertake the procedures set forth in their respective national systems to submit to referenda to take place simultaneously or separately on the dates most convenient to the parties. Plainly, it is contemplated that the referendum would be undertaken pursuant to domestic law. The said Article 7 goes on to set out the wording of the question to be submitted to referendum.

27. Section 2(1) of the Referendum Act[8] sets out the circumstances under which a referendum shall be held. It cannot be gainsaid that, of the 4 categories, paragraph (d) is the most likely category given that there is no evidence that there has been resolution passed by the National Assembly, or a petition presented to the Governor General or any law identified for a referendum as countenanced by Article 7 of the Special Agreement.

[8]*Supra para. 25*

28. Exhibited to the second Affidavit of Josephine Tamai is the letter dated January 28, 2019 written by the Prime Minister to the Governor General. The complete body of the text reads:

> *"In accordance with the Referendum Act, Chapter 10 of the Laws of Belize and Act No. 1 of 2008, I hereby request that you issue a Writ of Referendum to cause a countrywide Referendum to be held on April 10, 2019. The Referendum is for voters to decide whether or not to take the dispute arising from Guatemala's Claim to Belize's land and insular territories, and to the maritime areas pertaining to them, to the International Court of Justice (ICJ) for final settlement. It is in accordance with the Special Agreement and its Protocol that the Government of Belize chose the date of Wednesday 10th April, 2019 for the holding of the Referendum".*

Pursuant to this letter of request, the Governor General issued a Writ of Referendum dated February 25, 2019 to the Returning Officer for each of the 31 Constituencies in Belize. Each Writ in its recitals, makes reference to Section 2 (1)(d) of the Referendum Act and to the Prime Minister's request for the holding of a referendum on a proposed settlement with the Republic of Guatemala for resolving the Belize/Guatemala border dispute.

29. It was noted by the Claimants in their submissions that no reference was made in the Prime Minister's letter to any specific provision in the Referendum Act although the Special Agreement and its Protocol are specifically mentioned. By contrast, the Writs of Referendum refer to section 2 (1)(d) of the Referendum Act but do not mention the Special Agreement. The letter speaks of taking the dispute arising from Guatemala's Claim to the ICJ for final Settlement whereas the Writs speak of holding a referendum on a proposed settlement with the Republic of Guatemala for resolving the Belize/Guatemala border dispute.

30. The Claimants were astute to point out that they are unaware of the terms of any "proposed settlement" in existence. Accordingly, they say that, firstly, the Prime Minister's request lacks authority and secondly, that the said request and the Writs flowing therefrom are void as being outside the ambit of section 2(1) of Referendum Act. The Court is therefore being asked to determine the legal effect or otherwise of the proposed referendum.

31. It was also urged that both the Court of Appeal and the Privy Council in the **Vellos' case (Prime Minister of Belize & Attorney General v. Albert *Vellos et al.*[9]** decided that the Referendum Act only provides for advisory referenda and there is no provision for binding referendums to be held.

32. The Defendants initial response was on procedural grounds on the basis that the issue not constitutional and ought properly to engage the court's attention in judicial review proceedings. The short answer to this contention is to be found in the Court of Appeal decision of **Belize Bank Ltd. et al v. Prime Minister & Minister of *Finance et al*[10].**

33. The Defendants' further response both in written submissions and in oral argument was less than robust and persuasive. It was insisted that the Government is obligated to hold a referendum pursuant to the Special Agreement. Of that, there is no doubt but the Claimants are entitled to inquire of the Court whether the referendum is being launched on a legal fooling. This brings into sharp focus the purport and meaning of "proposed settlement." The Court must embark upon an exercise in statutory interpretation guided by the approach laid down by the CCJ in **Smith v. Selby**[11]. I disagree that with the points raised in the second issue are misguided and hopeless.

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[9] *[2010] UKPC 7*
[10] *Civil Appeal No. 18 of 2007*
[11] *[2017] CCJ 13 (AJ)*

34. In the premises, I hold that the second issue amounts to a serious issue to be tried.

Whether the Claimants would suffer irreparable harm if the application is refused?

It is undeniable that damages would not be a suitable remedy in the present proceedings. The first Claimant says that his national identity and property are at stake if territory is ceded. However, the referendum itself, whether it results in a "Yes" or "No" does not by itself determine the dispute or deprive the Applicants of any rights. The potential harm is that a "Yes" vote would trigger the dispute settlement mechanism set out in the Special Agreement.

Balance of Convenience – What is the greater harm?

35. The Court must make an assessment as to which of the parties would suffer the greater harm from the granting or refusal of the remedy, pending a decision on the merits. In conducting this weighing exercise, the Court must consider the evidence adduced as to the circumstances affecting either side.

36. The Defendants say that inconsiderable expenses have been outlaid and the opportunity to have the disputed claim by Guatemala may be lost for potentially many years. This prognosis was termed "hyperbolic" and "cataclysmic" by learned Senior Counsel.

37. As I see it, it would be most beneficial and an exercise in good sense for the Court to be allowed to examine the legal effects of the arrangements thus far for the referendum. It would be far more beneficial for these matters to be resolved prior to rather than after the referendum with the attendant financial outlay.

38. In the premises, it is ordered that the prayer for an interim injunction be granted in term of paragraph 2 of the Notice of Application until the hearing of the

determination of the substantive Re-amended Fixed Date Claim Form. The first hearing being now fixed for directions on April 8, 2019.

39. On the question of costs, I am content to simply say that costs shall be in the cause as I am quite perturbed by the manner in which the Court was moved on an urgent basis and this ought to be a factor in the awarding of costs.

Dated this 3rd day of April, 2019

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KENNETH A. BENJAMIN
Chief Justice