

IN THE SUPREME COURT OF BELIZE, A.D.2011

CLAIM NO: 647 of 2011

IN THE MATTER OF AN APPLICATION PURSUANT TO PART 56 OF THE SUPREME COURT (CIVIL PROCEDURE) RULES

AND

IN THE MATTER OF SECTION 2(1)(b), 2(3), 2(4) AND SECTION 3 OF THE REFERENDUM ACT, CAP 10 OF THE LAWS OF BELIZE AS AMENDED BY ACT NO. 1 OF 2008

AND

IN THE MATTER OF THE PREAMBLE AND SECTIONS 1, 2, 3, 6, 20, 68, 69, 81 AND 95 OF THE CONSTITUTION OF BELIZE

BETWEEN

RICARDO EDMUNDO CASTILLO
VAUGHAN HARRISON GILL

CLAIMANTS

AND

THE PRIME MINISTER OF BELIZE
THE ATTORNEY GENERAL OF BELIZE
THE GOVERNOR GENERAL OF BELIZE
THE CHIEF ELECTIONS OFFICER

DEFENDANTS

AMENDED FIXED DATE CLAIM ~~(ORIGINATING MOTION)~~
FORM FOR AN ADMINISTRATIVE ORDER
(FOR RELIEF UNDER THE CONSTITUTION
AND A DECLARATION)

The Claimants **RICARDO EDMUNDO CASTILLO**, of Pitts Alley, Pickstock Constituency, Belize City, Belize and **VAUGHAN HARRISON GILL** of Gibnut Avenue, Belmopan Constituency, Belmopan City, Belize

Claim against

The Defendants, (1) **THE PRIME MINISTER OF BELIZE** of Sir Edney Cain Building, Belmopan, Belize, (2) **THE ATTORNEY GENERAL OF BELIZE** of East Block, Independence Hill, Belmopan, Belize; ~~and~~ (3) **THE GOVERNOR GENERAL** of Belize House, Belmopan, Belize; (4) **THE CHIEF ELECTIONS OFFICER of [XXX], Belmopan, Belize**

Pursuant to Rules 56.1(b) and (c) of the Supreme Court (Civil Procedure) Rules and the Belize Constitution for the following relief:

- (1) A Declaration that the Government is obliged to hold a referendum on the Belize Constitution (Ninth Amendment) Bill 2011;
- (2) A Declaration that such referendum should take place before bringing the Belize Constitution (Ninth Amendment) Bill 2011 into force;
- (3) A Declaration that the Governor General ~~should~~ **is under a legal obligation to** refer the Petition requesting a referendum on the Belize Constitution (Ninth Amendment) Bill 2011 to the Chief Elections Officer pursuant to Section 2(3) of the Referendum Act, Cap. 10 (as amended by Act No.1 of 2008); and once the Chief Elections Officer has produced a certificate under Section 2(4) of the Referendum Act issue a Writ of Referendum pursuant to Section 3(1) of the Referendum Act;
- (4) **An Order that the Governor General refers the Petition requesting a referendum on the Belize Constitution (Ninth Amendment) Bill 2011 to the Chief Elections Officer pursuant to Section 2(3) of the Referendum Act, Cap. 10 (as amended by Act**

No.1 of 2008); and once the Chief Elections Officer has produced a certificate under Section 2(4) of the Referendum Act issues a Writ of Referendum pursuant to Section 3(1) of the Referendum Act;

- (5) A Declaration that after receiving the Petition requesting a referendum on the Belize constitution (Ninth Amendment) Bill 2011 from the Governor General, the Chief Elections Officer is under a legal duty to proceed with due expedition to verify the signatures on the Petition and return the Petition to the Governor General as soon as practicable but no late than two months from the date of receipt of the Petition with a certificate pursuant to Section 2(4)) of the Referendum Act, Cap. 10 (as amended by Act No.1 of 2008).
- (6) An Order that after receiving the Petition requesting a referendum on the Belize constitution (Ninth Amendment) Bill 2011 from the Governor General, the Chief Elections Officer is under a legal duty to proceed with due expedition to verify the signatures on the Petition and return the Petition to the Governor General as soon as practicable but no late than two months from the date of receipt of the Petition with a certificate pursuant to Section 2(4)) of the Referendum Act, Cap. 10 (as amended by Act No.1 of 2008).
- (7) A Declaration that the Claimants who are registered electors and have signed a Petition for a referendum on the Belize Constitution (Ninth Amendment) Bill 2011 have a legitimate expectation that such referendum will be held prior to the enactment of the Belize Constitution (Ninth Amendment) Bill 2011;

- (8) A Declaration that the Governor General may assent to the Belize Constitution (Ninth Amendment) Bill 2011 only after the referendum on the Bill has been held;
- (9) A Declaration that the enactment of the Belize Constitution (Ninth Amendment) Bill 2011 without first holding a referendum will constitute a violation of Sections 1, 2, 68, 69 and 81 of the Belize Constitution and be contrary to the normative values pronounced at clauses (c), (d) and (f) in the Preamble that underpin the Belize Constitution;
- (10) A Declaration that the refusal of the Prime Minister to hold a referendum before the Belize Constitution (Ninth Amendment) Bill 2011 comes into force would be unlawful and would violate the Claimants' rights to the protection of the law guaranteed by sections 3 and 6 of the Constitution;
- (11) ~~A Declaration that the Government should~~ A Declaration that the Defendants whether by themselves or by their servants or agents are under a legal obligation to take all necessary steps to hold the referendum on the Belize Constitution (Ninth Amendment) Bill 2011 in an expeditious manner;
- (12) An Order that the Defendants whether by themselves or by their servants or agents are under a legal obligation to take all necessary steps to hold the referendum on the Belize Constitution (Ninth Amendment) Bill 2011 in an expeditious manner;
- (13) An injunction restraining the Defendants whether by themselves or by their servants or agents from taking any steps (including presenting the Bill to the Governor General for his signature, or

the Governor General giving his assent to the Bill) to bring the Belize Constitution (Ninth Amendment) Bill 2011 into force until a referendum is held;

- (14) ~~(10)~~ Such other declarations and orders and such directions as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned Declarations and Orders;
- (15) Any other relief that the Court deems just and equitable;
- (16) Liberty to the Claimants to apply for further or consequential relief, if necessary; and
- (17) Costs.

A draft of the order that the Claimants seek is attached. This fixed date claim form is supported by the Affidavits of Ricardo Edmundo Castillo and Vaughan Harrison Gill sworn on 17 October 2011 and filed on 17 October 2011.

The Claimant and the Defendants

1. The Claimants are Ricardo Edmundo Castillo of Pitts Alley Pickstock Constituency, Belize; and Vaughan Harrison Gill of Gibnut Avenue, Belmopan Constituency, Belize. They are citizens of Belize and electors registered on the approved voters' list by numbers 300846 and 154462 respectively and are signatories to the Petition presented to the Governor General on 12 October 2011 (the "Petition") requesting that a referendum be held in relation to the Belize Constitution (Ninth Amendment) Bill, 2011 (the "Ninth Amendment"). Consequently, they are personally and directly affected by the Defendants' actions in relation to bringing the Ninth Amendment into force.

2. The Defendants are: (1) the Prime Minister of Belize who has been assigned Cabinet responsibility for the Parliamentary matters of the Government by the Governor General acting pursuant to Section 41 of the Constitution; (ii) the Attorney General of Belize in whose name all civil proceedings against the State must be brought pursuant to Section 42(5) of the Constitution; ~~and~~ (iii) the Governor General of Belize who by Section 81 has the power to give or withhold his assent to Bills passed by the National Assembly; (4) the Chief Elections Office who is the person responsible for the registration of electors and the conduct of elections in Belize.

The grounds for the relief sought

3. On 22 July 2011, the Government introduced the Ninth Amendment.
4. Among other things, the Ninth Amendment, if enacted, would give a two-thirds or three-quarters majority of members of the House of Representatives and a simple majority of the Senate the power to make any amendment to the Belize Constitution without any person having the right to challenge the constitutionality of such an amendment in the Supreme Court of Belize.
5. The Ninth Amendment if enacted, would radically change the democratic political system of Belize which is based on the principle of constitutional supremacy (as confirmed in Section 2 of the Belize Constitution). Such a fundamental change to the Constitution destroys the separation of powers inherent in the Constitution and fundamental to democracy in Belize and undermines the protections afforded by the Constitution against the abuse of public power.

Statutory obligation to hold a referendum

6. By Section 2(1)(b) of the Referendum Act, Cap. 10 (as amended by Act No.1 of 2008) (the “Referendum Act”), there is a statutory obligation on the Government to hold a referendum:

“a referendum shall be held ... 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 existing at the time of presentation of the petition ... praying that in their opinion a certain issue or matter is of sufficient public importance that it should be submitted to the electors for their views through the referendum.”
(emphasis added)

7. The Referendum Act imposes a legal obligation on the Government to hold a referendum. This obligation is legally enforceable. The Government has made plain that it will not hold a referendum. The refusal of the Government to hold a referendum violates the Referendum Act and is unlawful.

8. The Referendum Act imposes explicit obligations also on the Governor General and the Chief Elections Officer:

Pursuant to Section 2(3) and (4):

“(3) Where a petition is presented to the Governor-General ..., the Governor-General shall forthwith refer the petition to the Chief Elections Officer for verification of the signatures of the petitioners, and for certification that at least ten percent of the registered electors in the entire country ... have in fact appended their signatures to the petition.

(4) On receipt of the petition from the Governor-General, the Chief Elections Officer shall proceed with due expedition to verify the signatures on the petition and return the petition to the Governor-General as soon as practicable but no later than two months from the date of receipt of the petition.

with a certificate as to whether or not the petition has been duly signed by the requisite number of electors as specified in subsection (3) above.” (emphases added)

Pursuant to Section 3(1):

“The **Governor-General shall within thirty days of the receipt of the certificate from the Chief Elections Officer pursuant to Section 2(4) above, verifying that the petition has been duly signed by the requisite number of electors as specified in section 2(3) issue a Writ of Referendum...**” (emphasis added)

9. Consequently, the Referendum Act stipulates that the Governor General and the Central Elections Officer are obliged to perform the specified actions within the set time limits. The Referendum Act does not grant the Governor General and the Central Elections Officer any discretion in this respect.
10. On 12 October 2011, the Governor General was presented with a petition signed by the Claimants along with more than 21,000 other registered electors (that is more than 10% of all the registered electors), requesting that a referendum be held on the Ninth Amendment. However, the Governor General refused to comply with his statutory obligation and did not refer the Petition to the Chief Elections Officer.

Legitimate Expectations

11. The long title to the Referendum Act states that it is:

*“An Act to amend the Referendum Act, Chapter 10 of the Laws of Belize Revised Edition 2000-2003, to **enable the general public to call for a referendum on any issue of public importance** and to provide for matters therewith and incidental thereto.” (emphasis added)*

12. Additionally, the Government of Belize has made a specific promise to consult the Belizean people on the Ninth Amendment and be bound by the

outcome of the consultation process. Having announced a public consultation process following the introduction of the Ninth Amendment in the House of Representatives, the Prime Minister specifically stated in his open letter to the Belizean people of 29 July 2011 that: *“the Government will consider itself bound by the outcome of the public consultation process.”* Beyond doubt, the Petition by more than 10% of all registered electors in Belize initiating a referendum is the clearest articulation of the Belizean people’s opinion and the most measurable outcome in the public consultation procedure. The promise by the Prime Minister therefore creates a further, independent, legitimate expectation of the Claimants, that the Government would consider itself bound by this outcome, and that a referendum would therefore be held before the Ninth Amendment is enacted and becomes law.

13. The decision by the Government to proceed with passage and enactment of the Ninth Amendment without first holding a referendum breaches the promise and denies the legitimate expectation of the Claimants that they would be able to participate in a referendum on the Ninth Amendment before it is enacted.

Unlawfulness and Unreasonableness

14. The exercise of legislative power by the National Assembly pursuant to Sections 68, 69 and 81 of the Constitution is an exercise of power on behalf of the people of Belize and can only be legitimately exercised in accordance with the will of the people which is the basis of government in a democratic society.
15. The purpose of the Referendum Act is to enable registered electors to express the will of the people and to participate directly by way of a referendum in the democratic life of Belize leading to the passing of the Ninth Amendment.

16. By Section 3(1) of the Referendum Act the Governor General is required to issue a Writ of Referendum if 10% of the registered electors sign a petition, praying that in their opinion a certain issue or matter is of sufficient public importance that it should be submitted to the electors for their views through a referendum. The Claimants along with more than 21,000 other registered electors have signed such a petition requesting that a referendum be held on the Ninth Amendment.
17. The Government, notwithstanding the fact that the Claimants and 21,000 other registered electors have signed the Petition and presented it to the 3rd Defendant, has made clear that it will proceed to pass the Ninth Amendment and will not hold a referendum.
18. The Government has no mandate to pass the Ninth Amendment as such a proposal did not form part of its manifesto presented during the election campaign for General Elections in 2008.
19. Clauses (c), (d) and (f) in the Preamble to the Belize Constitution affirm that whereas the people of Belize:

(c) believe that the will of the people shall form the basis of government in a democratic society in which the government is freely elected by universal adult suffrage and in which all persons may, to the extent of their capacity, play some part in the institutions of national life and thus develop and maintain due respect for lawfully constituted authority;

(d) man and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law

(f) desire that their society shall reflect and enjoy the above mentioned principles, beliefs and needs and that their Constitution should therefore enshrine and make provisions for ensuring the achievement of the same of Belize

20. The holding of a referendum promotes the ideals and normative values that are pronounced in the Preamble. To disregard those voters who voiced the need and their will to directly participate in the Belizean democratic process relating to the adoption of the Ninth Amendment through a referendum would be contrary to the normative values that underpin the Belize Constitution.
21. Section 1 of the Constitution of Belize defines Belize as a “democratic” State. A referendum is a fundamental institution of participative democracy. No reasonable government would in the circumstances proceed without taking into account the will of the people to hold a referendum as expressed in the Petition. An enactment of this Bill into law without holding a referendum that has been validly requested by the people of Belize would constitute an illegitimate and immoral encroachment on the democratic process in Belize, would constitute unreasonable governmental action and would be contrary to Section 1 of the Constitution of Belize.
22. A decision by the Government to procure the passage of the Ninth Amendment by the National Assembly and to cause the Ninth Amendment to come into force without first holding a referendum will be illegitimate and in violation of Sections 1, 2, 3, 6, 68, 69 and 81 of the Constitution of Belize and contrary to the fundamental principles of Belizean democracy expressed in the Constitution, including clauses (c), (d) and (f) of the Preamble.
23. Accordingly, on the above stated grounds, the Claimants seek an administrative order for relief under the Constitution and declarations to clarify the legal obligations on the Government to hold a referendum before the Ninth Amendment comes into force.

This claim is filed by Godfrey Smith SC, Marine Parade Chambers, Attorneys-at-Law for the Claimants whose address for service is Marine Parade Chambers, Cor Gaol Lane and Marine Parade, PO Box 1861, Belize City, Belize.

CERTIFICATE OF TRUTH

I certify that I believe that the facts stated in this fixed date claim form are true.

DATED 11 November 2011


RICARDO CASTILLO

RICARDO CASTILLO on behalf of himself and Vaughan Gill, Claimants herein

NOTICE TO THE DEFENDANT

The first hearing of this claim will take place at [*Hon. C. J. Benjamin*
] on *Tuesday*
[*13th*] day [*December*] 2011, at [*9*] a.m./~~p.m.~~

If you do not attend at that hearing, judgment may be entered against you in accordance with the claim.

If you do not attend, the judge may –

(a) deal with the claim; or

give directions for the preparation of the case for a further hearing.

2. A statement of claim or an affidavit giving full details of the claimants' claim

should contact the court office immediately.

3. You should complete the form of acknowledgement of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14/28 days of service of this claim form on you. The form of acknowledgement of service may be completed by you or a legal practitioner acting for you.
4. You should consider obtaining legal advice with regard to this claim. See the notes on the back of this form or on the next page.
5. This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.
6. Dated *17th March, 2011* [SEAL]
7. The court office is at Treasury Lane, Belize City, Belize, telephone number 227-7377, fax 227-0181. The office is open between 8.00 a.m. and 12.00 a.m. and from 1.00 p.m. to 5.00 p.m. except on public and bank holidays.
8. The Claimants' address for service is:

Godfrey Smith SC
Marine Parade Chambers,
Cor Gaol Lane and Marine Parade,
PO Box 1861,
Belize City, Belize

NOTES FOR DEFENDANT (FIXED DATE CLAIM)

The claimant is seeking an order from the court as set out in this claim form on the basis of the facts or evidence set out in the statement of claim or affidavit served with it. The claimant will not be entitled to enter judgement against you without a hearing.

You may:

A. *Admit the claim*

If so, you should complete and return the form of acknowledgement of service to the court office within 14/28 days stating this. You may attend the first hearing if you wish to do so.

B. *Dispute the claim*

If so, you should complete and return the form of acknowledgement of service as under A. You should also file at the court office and serve on the claimants' legal practitioner (or the claimant if the claimant has not legal practitioner):

a defence if the claim form was accompanied by the claimants' statement of claim,

▪ OR

an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant

within 28/42 days for the day on which the claim form was served on you. Your defence or affidavit must set out briefly ALL the facts on which you rely to dispute the claim made against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

C. *Make a claim against the claimant*

If so, you should complete and return the form of acknowledgement of service as under A. You must file a statement of claim (a counterclaim) setting out full details of what you claim against the claimant and the facts on which you will rely. This must be done within 28/42 days of the date on which the claim form was served on you. The statement of claim should set out ALL the facts on which you rely in disputing any part of the claimants' claim against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.