



**REVIEW OF VARIOUS BILLS TABLED BY THE GOVERNMENT OF BELIZE AT  
THE SITTING OF THE HOUSE OF ASSEMBLY ON APRIL 25, 2008**

The Bar Association of Belize has prepared this paper in an effort to help the people of Belize understand what the proposed amendments to the Constitution, Freedom of Information Act and Referendum Act, mean and also how the proposed changes will impact their rights.

***1. Belize Constitution (Sixth Amendment) Bill, 2008***

**Preliminary Comment**

There are several proposed amendments to the Belize Constitution, Chapter 4 of the Laws of Belize.

The Belize Constitution is the Supreme law of the land. The power of the legislature to amend it, whether or not a government has a 'super-majority', is not to be undertaken lightly. The Bar Association recommends a number of amendments in order to promote and protect the fundamental tenets enshrined in the Constitution. Further, the Bar Association will also identify areas where as a matter of policy amendments to the Bill should be considered.

**Section 5–Protection of Right to Personal Liberty**

Section 5(1) of the Belize Constitution provides that a person shall not be deprived of his personal liberty save as may be authorized in the cases listed. Some of these are already familiar to the public e.g. in consequence of an order of the Supreme Court or upon a reasonable

suspicion of a person having committed, or being about to commit, a criminal offence under any law.

Importantly, section 5(2) affords all persons who are arrested or detained, the following rights:

- (i) to be informed promptly or at least within 24 hours of such arrest of the reasons for the arrest or detention, and if not released, to be brought before the courts within 48 hours;
- (ii) to communicate without delay and in private with a legal practitioner of his choice and for minors with his parents or guardians to give instructions to a practitioner of his choice;
- (iii) to be informed immediately upon his arrest of his rights;
- (iv) to the right of habeas corpus for determining the validity of his detention.

The scheme is that although a person may be deprived of his liberty in accordance with law, any such person is guaranteed the right to know the reason for the detention, to have access to legal advice and representation and to go to court to challenge the detention or arrest. The Court is at all times available to the individual, and retains the power to set persons free if they are not lawfully detained or arrested.

The amendments would add two more instances under which a person can be deprived of his or her liberty. These are as follows:

- “(k) under a law which makes reasonable provisions for the protection of children from engaging in criminal activities or other anti-social behavior; or**
- (l) under any law relating to the detention of persons who are suspected on reasonable grounds of being involved in the commission of, or being likely to commit, a serious crime,”**

Therefore under (k) children can be detained as a protective measure to stop them from engaging in criminal conduct or anti-social behavior. Under (l) a person can be detained if they are suspected on reasonable grounds of being involved in the commission of or likely to commit a serious crime. "Serious Crime" is defined by the amendments as murder, armed robbery, the offence of belonging to a criminal gang, and terrorism". Both (k) and (l) require that supporting legislation be passed.

The amendments introduce into the Constitution the concept of preventative detention of children and of persons suspected of being "likely to commit" a serious crime. This concept sanctions a fundamental interference with the personal liberty of the persons concerned. Given the obvious importance of personal liberty and that powers of detention are open to and are often in fact abused, it is critical that if such detention is to be constitutional, appropriate safeguards against possible abuse be built into the Constitution itself and not left to enacting legislation. No safeguards whatsoever are proposed, but instead have been left entirely to enacting legislation. The obvious disadvantage of the approach adopted is that if any safeguards are later introduced against the abusive exercise of the power to detain, any such safeguards will not enjoy the benefit of constitutional entrenchment.

However, the proposed amendments instead of adopting the enshrined safeguards against possible abuse, go on to do away with those safeguards by providing for the insertion of a new Section 5A, in the following terms:

**"[(5A)] Subsections (2) and (3) of this section shall not apply to a person who is detained under a law referred to in paragraphs (k) and (l) of subsection (1) of this section:**

**Provided that no person shall be detained under a detention order made under a law referred to in paragraph (1) of subsection (1) of this section for a period longer than seven days, but the initial detention**

order may be extended for a further period not exceeding one month by a Judge of the Supreme Court in Chambers on an ex parte application made on that behalf.”

By making section 5(2) inapplicable to persons deprived of their personal liberty under the proposed limbs (k) and (l), the proposed section 5A goes against fundamental tenets enshrined in the Constitution to guarantee due process to persons deprived of personal liberty pursuant to law.

The proposed clause 5A means that persons and children detained under any of the new limbs of (k) and (l) may be deprived of the fundamental guarantees enshrined in 5(2) initially for up to seven (7) days. So for up to 7 days a person can be held and denied the ability to communicate with an attorney and be informed of his or her rights. A child can also be held for 7 days without his parents or guardians being so informed and being allowed to communicate with their child. Such parent or guardian would also not have a constitutionally guaranteed right to go to court to seek the release of their child during the defined period since the proposed amendment provides for the deprivation of a most sacred right to approach the courts by way of habeas corpus to challenge the legality of detention. The amendment therefore paves the way for enacting legislation to bar an application to the Court during a defined period to end a wrongful detention. If it is that it is unthinkable that enacting legislation would permit such a basic violation of human rights it should likewise be unthinkable that the Constitution should be amended to permit the enactment of such legislation.

To further compound matters the proposed clause 5A enables the authorities to make an application to a Judge in a private hearing in his chambers without the detained person or any representative of the detained person being informed or being present and request permission to continue holding the detainee for a further period of up to one month.

It must be emphasized that this applies equally to children who are regarded as “engaging in anti-social behaviour”. The parents of such children may conceivably not be permitted to go to court to have their child released even if the authorities are acting on incorrect information.

Bearing in mind that a detained person is presumed innocent until proven guilty in a court of law after a fair trial, and not every person detained by the police is in fact guilty of a crime, it is hard to accept that an innocent person could be deprived of their freedom for up to 38 days without having access to the courts or legal representation. Consider that under the new subsection (l) a person who on reasonable grounds is suspected as likely to commit a crime (i.e. no crime has in fact been committed) will be subjected to the same treatment.

What is the thinking behind the proposed clause 5A? The idea seems to be to empower the police to act upon reasonable suspicion and to detain a person likely to commit a crime, also, authorities suspecting a child of engaging in anti-social behaviour may also detain that child. But apart from sanctioning such types of detention a new dimension is introduced: that is, to put such persons beyond the protection of and access to courts for due process for an extended period.

The Bar Association strongly recommends that the proposed amendments introducing (k) and (l) be made expressly subject to existing constitutionally guaranteed safeguards against abuse enshrined in section 5(2) of the Constitution.

It is submitted that Section 5A should be deleted. The Bar sees no reason, compelling or otherwise, which can justify the abrogation of fundamental freedoms in the manner proposed. The Constitution already provides for persons to be deprived of their liberty upon reasonable suspicion. Such persons must at all times have the full protection of the law, however. It is essential that in Belize – a free and democratic society – basic human rights such as those enshrined in section 5(2) should always be constitutionally guaranteed to all.

## Section 17– Protection from deprivation of property

Section 17 of the Constitution provides protection from deprivation of property or acquisition of rights over property without compensation and thereby protects a private citizen's basic right to own property. Essentially it states that no property of any description is to be compulsorily taken and no interest in or right over property of any description shall be compulsorily acquired except under a law that prescribes principles of compensation. Section 17 goes on to enshrine a right of access to the courts for the reasons listed, including "establishing his interest or right (if any)" and "enforcing his right to any such compensation".

The Government is seeking to amend section 17 by taking away from private landowners the guarantees and protection of section 17 with respect to "petroleum, minerals and accompanying substances, in whatever physical state, located on or under the territory of Belize (whether under public, private or community ownership) or the exclusive economic zone of Belize".

The proposed amendment provides that the entire property in and control over petroleum, minerals and accompanying substances, in whatever physical state located on or under the territory of Belize (whether under public, private or community ownership) or the exclusive economic zone of Belize "are exclusively vested and shall be deemed always to have been so vested, in the Government of Belize."

The amendment therefore effectively abolishes the private ownership of petroleum, minerals and accompanying substances located on or under Belize save to the extent that the Government grants by contract title to or control over petroleum under Belize. It further denies the private landowner in whom any right to such petroleum may be vested any compensation as well as any right to seek compensation for the taking.

The proposed amendment permits the Government to grant by contract to a contractor, presumably an oil company, title to or control over petroleum or minerals found in Belize and in only such case section (1) of Section 17 will apply to petroleum and minerals. This means that such a contractor if deprived of that property will be able to avail itself of the protection of section 17 to secure compensation. This enures to the benefit of oil companies exploiting petroleum under Belize under contracts with the Government so to do.

To understand what is happening here it is necessary to know some of the history of the legislation concerning petroleum and minerals in Belize. An examination of the historical evolution of laws in Belize pertaining to petroleum and minerals reveals that a good argument could be made that private landowners in Belize under whose property petroleum is found is entitled to ownership of such petroleum and should be compensated under the Constitution for the taking of that petroleum or rights in or interest over it by the Government. There is no dispute that Government may in accordance with section 17 enact a law to expropriate such petroleum in the public interest. The real question is what if anything should be paid for such an expropriation.

Section 31(4) of the Petroleum Act, Chapter 225 of the laws of Belize provides that the owner of any private land beneath which a petroleum reservoir is located shall receive from Government 5% of the royalty payable in respect of any petroleum taken from underneath their land presumably in recognition of the fact that such petroleum was expropriated from private landowners. If it can be successfully argued that the expropriation of private petroleum rights effected by the Petroleum Act is in violation of section 17 of the Constitution the compensation payable to landowners would be significantly greater than the mere 5 per cent provided for in the Act, since any calculation under section 17 must have regard to the value of the petroleum taken.

One also needs to take into consideration the recent case of *Arelio Cal (in his own behalf and on behalf of the Maya Village of Santa Cruz)* and

*others v. The Attorney General of Belize and the Minister of Natural Resources and the Environment*, in which the Supreme Court found that the Mayans in that case had an indigenous right to the land and what lies underneath, be it petroleum or minerals.

Government's solution is to amend the Constitution to say that all property rights in petroleum and minerals are for the Government of Belize and people of Belize. So the right of the Government to petroleum and mineral rights would now be enshrined in the Constitution. The amendments further provide that it shall be deemed always to have been so vested and Section 17 which provides that no property should be taken without compensation does not apply in this case. The Government post amendment would be able to argue that a person is not entitled to be compensated in respect of the acquisition of or deprivation of any property, rights and interests in or over petroleum and minerals.

The amendments do not provide that the Petroleum Act or the provision which provides for the 5% royalty payment is being repealed and so arguably until this is done the Government will continue to be liable to pay the 5%. The point here is that it is up to Government whether or not it will pay private landowners and how much it will pay.

The amendment to Section 17 has good and well as bad elements. From a nationalistic perspective it can be argued that the vesting of all petroleum and minerals in the Government is commendable. The consequence would be that the oil and minerals wherever found will be for the Government and by extension for the good of all the people of Belize and no landowner can lay any special claim, monetary or otherwise, to it.

However, by amending the Constitution in this manner, any right of private landowners of this country to compensation for the expropriation of petroleum found under their land has been taken away. Additionally, the right of access to the Courts guaranteed by section 17(2) is being taken away. Once again, the amendment seeks to deny Belizeans basic



constitutional right of access to the court for a fair hearing, in this case in respect of property rights.

Whilst the Bar does not offer any opposition to the vesting of petroleum and minerals in the Government of Belize, it does not support the denial of access to the courts to determine the existence of rights and interests in relation thereto, and the right, if any, to compensation for acquisition of property rights and interests relating to petroleum and other minerals.

### **Section 37 – The Prime Minister**

Section 37 establishes the office of the Prime Minister. The amendment seeks to limit the term of office of the Prime Minister to 3 parliamentary terms, “either consecutively or in the aggregate”. A person will not be able to be prime minister for more than three terms of whatever duration.

The Bar approves of this proposed amendment and feels that such a change would provide additional support for the democracy of our nation.

### **Section 56 – Composition of House of Representative**

Section 56 currently provides that the House of Representatives shall consist of 29 members. The suggested amendment seeks to increase the number to 31 to reflect the current composition of the House. This is a necessary change.

### **Section 58 – Disqualification for election as member**

Section 58(1) of the Constitution prohibits or disqualifies certain persons from being a member of the House of Representatives e.g. persons to have been found bankrupt or insane, convicted of an offence relating to elections.

Section 1(d) disqualifies persons who have a sentence of death imposed against them by a court in the Commonwealth or a person serving a sentence of imprisonment exceeding 12 months imposed by a court of competent jurisdiction or a person under a sentence or imprisonment which has been suspended.

Subsection (2) speaks specifically to 58(1)(d) and offers further elucidation on the nature of the imprisonment.

The proposed amendment would simply add a new Subsection (3) as follows:

“(3) Where a by-election is held to fill the vacancy caused by the recall of a member of the House of Representatives under any law providing for the recall of elected representatives, the member so recalled or who resigned in consequence of a petition for his recall shall be ineligible to stand as a candidate for the seat to be filled in such by-election.”

Section 59 would also be amended to provide that the tenure of a person elected to the House would end when he has been recalled.

The Bar has not yet seen the law which would set out the procedures that would apply in the case of the recall of a duly elected representative. The Bar urges the publication of the law before the second reading of the Bill to amend the Constitution. The Bar reserves its final comments on this issue until it has studied the law.

From a preliminary point of view however, it is difficult to understand why a person who has been duly elected should be deprived of the right to run in a by-election. The following scenario is likely. At a regular general election two candidates fight a hotly contested battle and candidate ‘A’ wins with say 52% of the vote. Candidate B may be able to organize a successful recall in mid-term, by convincing less than a majority of the

voters in the constituency to support the recall, and thereby eliminate a formidable opponent in a by-election.

### Sections 61 and 66 – The Senate

Sections 61 through to 66 of the Constitution pertain to The Senate. Some of the amendments are as follows:

1. To increase the number of senators from 12 to 13;
2. Under the present Subsection 2, a person who is not a senator could be selected President of the Senate and by virtue of such appointment of President would be an additional senator so that the composition is 13, but this will be repealed and replaced with a provision that “the Senators shall elect a person from outside their membership to be the President in accordance with section 66”.
3. The replacement of the old sub-section (3) means that the President will no longer have the casting vote;
4. Section 61(4) currently provides that the Government can nominate 6 senators, the Opposition can nominate 3 senators, the Belize Council of Churches and Evangelical Association Churches can appoint 1, the Belize Chamber of Commerce and Industry and the Belize Business Bureau can appoint 1 and the National trade Union Congress and the Civil Society Steering Committee can appoint 1, which total twelve. The addition of a new 61(4) (e) adds a thirteenth senator to be appointed by non-governmental organizations. This is why subsection (2) would have to be repealed.

We support these amendments, which take away a casting vote from a Government appointed official and which will bring new voices to the Senate.

There are further proposed amendments to Section 61. Section 61A of the Constitution sets out the powers and functions of the Senate and there are some critical amendments here. The Senate will continue to be empowered to ratify treaties, including any treaty for the settlement of the territorial dispute with Guatemala and it will continue to be able to approve the establishment of any new military base in Belize.

However, the Senate will no longer be empowered to approve:

[61A (2) (a)] “any Bill to alter any provision of the Part II of the Constitution in accordance with Subsection (5A) of Section 69 of this Constitution.”

Part II of the Constitution sets out the Fundamental Rights and Freedoms of every person in Belize e.g. the right to life, liberty and protection of the law. To change Part II requires the approval of a simple majority of the Senate. Section 61A(2)(a) was an additional protective mechanism to ensure that the rights of the people are not easily altered.

The Bar does not support this amendment. It is submitted that there is no need to remove it and it is critical that it remain in order to allow input and commentary from the citizens of Belize and to protect the Constitution against arbitrary amendments and changes by an all powerful House of Representatives.

If the proposed amendments are accepted, the Senate will no longer be empowered to approve the appointment of an Ambassador, a High Commissioner, the Chief Justice, Justice of the Supreme Court, a Justice of the Court of Appeal. Such an amendment would prevent key bodies such as the Chamber and Trade Unions from voicing their opinions in relation to the appointments of persons to the highest offices of Belize. The Bar does not support this amendment.

However, the Senate will also acquire powers under the proposed amendments. The Senate would be empowered additionally as follows:

- (i) it will continue to be able to approve the appointments of the Contractor General and Ombudsman and it will also now be able to approve the appointments of the Election and Boundaries Commission and a member of the Integrity Commission;
- (ii) it can institute and conduct inquiries and investigations of public importance, including inquiries into mismanagement or corruption by persons in the central government or public statutory bodies;
- (iii) it can receive, review and report on annual reports and reports of the Auditor General, Contractor General and Ombudsman and it can institute and conduct hearings in relation thereto;
- (iv) it can require the attendance before it of the Auditor General, Contractor General and Ombudsman generally in relation to the discharge of their duties and functions;
- (v) it can require the attendance of any Chief Executive Officer in a Ministry in respect of any matter of which he has knowledge in relation to his office and duties;
- (vi) it can require the attendance before any Committee of the Senate of any Minister of Government.

The Bar Association supports the expansion of the powers of the Senate, which we hope will support good governance. Interestingly, public servants will be required to appear before the full Senate but the Ministers will only appear before Committees of the Senate. Such Committee meetings are generally held in private so that the people will not have the satisfaction of hearing from the Ministers directly.

The further amendments to Section 66 are as follows:

- 1 Section 66(1) would be amended to require that when the Senate meets after the general elections it shall elect a person to be president "from among persons who are not members of either House" to be President.
2. The President and Vice President are currently required under Section 66(3) to be above the age of 30, but this would be amended to reduce the age to 24.
3. Previously under Section 66(3), the President or Vice President may have been elected from amongst the Senators who are not ministers or from among persons who are not members of either house, but now it would be mandatory that such person be elected from amongst persons who are not members of either House.
4. Section 66(4) sets out the circumstances under which a person shall vacate the office of the President or Vice President. The amendments to this Section are necessary in light of the amendment requiring that the President or Vice President must be elected from amongst persons who are not members of either House.

#### **Section 69(5)A - Amendments to the Constitution**

The amendments propose that Section 69(5)A be repealed. This would take away the requirement that a simple majority of the Senate approve any changes to Part II of the Constitution before such changes would be deemed passed.

This amendment does not have the support of the Bar Association.

### Section 79(6) – Restrictions on powers of Senate as to Bills other than money Bills

The proposed amendment requires that Section 79(6) be repealed. Section 79 imposes a restriction on the powers of the Senate on Bills other than money bills. Essentially, Bills other than money Bills need not receive the assent of the Senate to be passed into law. The Senate can reject such Bills but they can still be sent on to the Governor General for his or her assent if the House so wishes.

However, there is an exception or caveat in that this section is still subject to Section 69(5)A of the Constitution. It is to be recalled that Section 69(5)A requires that amendments to Section II of the Constitution must have the support of a Simple Majority of the Senate. So by repealing 69(5)A and repealing 79(6), if a Bill other than a money Bill and which relates to a change of Part II of the Constitution is passed by the House, such a Bill to change the Constitution need not receive the assent of the Senate.

This amendment does not have the support of the Bar Association.

### Section 89 – Electoral divisions

Section 89 currently provides that there are 29 electoral divisions in Belize. There are in fact 31, and an amendment is proposed to change 29 to 31.

There Bar Association finds no problem with such an amendment.

### Section 96– Reference of constitutional questions to Supreme Court

Section 96 provides for the referral of constitutional questions which arise in any court other than the Court of Appeal, Supreme Court and court martial to the Supreme Court, save where the Constitution has specifically said that the same shall not be open to review by the Courts

e.g. the question of whether or not a deputy governor general has conformed to or observed any law, or where the Governor General is required to perform any function under the Constitution. The amendment is proposed to change 54(15) to 54(18) and this is just a correction necessary as a result of past amendments. Section 54(15) provides that the Belize Advisory Council may make regulations for regulating and facilitating the performance of its functions under the Constitution". Section 54(18) provides that "The question of whether or not the Council has validly performed any functions conferred or imposed on it by this Constitution or any other law shall not be enquired into in any court of law".

So properly Section 96 should include 54(18) and not 54(15) and we support this amendment.

#### **Section 101 and 102 – Appointment and Tenure of Justices of Appeal**

Section 101(1) currently provides that Justice of Appeal shall be appointed by the Governor General acting on the advice of the Prime Minister after consultation with the Leader of the Opposition, for such period as is provided in the instrument of appointment.

The proposed amendment to this Section would add a proviso that "where no period is specified in an instrument of appointment, such instrument of appointment shall be deemed to subsist until further notice by the Governor General."

This will now be the case even for instruments of appointment already in existence.

Section 102 shows why it is critical that every such appointment of a Justice of Appeal be for a fixed period. Under Section 102 if a fixed period is stated in the Instrument of appointment, the office of that Justice will only become vacant when the period expires or he resigns.



The proposed amendment would add at the end of this Section the following:

“or, if no period of appointment is specified, when his appointment is revoked by the Governor General pursuant to the Proviso to subsection (1) of section 101.”

The impact of these proposed amendments is that, if no date is stated in an instrument of appointment of a Justice of Appeal they essentially serve at Her Majesty’s pleasure. For all practical purposes, this means the Cabinet. This gives the Executive a certain measure of power over such judicial appointments in that a Justice who has not been given a specific period to act is at the mercy of the Executive. This is repugnant to basic tenet of the independence of the judiciary. It is also not ideal from the standpoint of knowing with any certainty the period when such a justice is entitled to act. Security of tenure is what allows our judges to do their jobs without fear or favour. The Bar Association does not support this amendment.

The preferred approach is to provide a compulsory retirement age for all Judges of the Court of Appeal. Once this age is set, then all persons who are appointed shall serve, subject to removal as already provided for misbehaviour in office or inability to perform their functions, until retirement. Appointments for periods as stated in the instrument of appointment should be abolished.

Those judges currently serving pursuant to instruments of appointment with no specified term would then serve until they reach the age of compulsory retirement.

### Section 107 – Appointment etc of permanent secretaries and certain other officers

Section 107 provides for the manner of appointment of permanent secretaries and other public officers such as the Commissioner of Police and Commandant of the Belize Defence Force. The amendment would add the Commandant of the Belize National Coast Guard Service to the list. This amendment has the support of the Bar.

### Section 109 – The Auditor General

Section 109 provides that the Auditor General can only be removed for inability or failure to perform the function of his office (howsoever arising) or misbehavior. The amendment proposes that wording be added to specifically provide that “any failure or undue delay by the Auditor general to submit a report as required by Section 120 shall be treated as a failure to perform the functions of his office”.

We would certainly agree that failure and undue delay to submit the reports required by the Constitution should be cause for removal, however in fairness to the Auditor General it is suggested that the words “without reasonable cause” be built into the wording.

### Section 110D – Belize National Coast Guard

This proposal seeks to recognize the creation of the Belize National Coast Guard. All amendments required in this regard are made.

### Section 110E – Judicial and Legal Services Commission

The proposed amendment seeks to make the Chief Justice and not the Head of the Public Service Commission, the Chairman of the Judicial and Legal Services Commission (“JLSC”).

This is a positive and welcomed amendment which allows the Chief Justice who is daily involved with the administration of the judiciary and instead of someone unfamiliar with the workings of the judicial and legal communities to have greater input in the workings of the JLSC.

However, the further amendments go on to undermine the new post granted to the Chief Justice. At the moment the JLSC is comprised of the Chairman of the Public Services Commission, the Attorney General, the Chief Justice and the President of the Bar Association. In the event of any tie in the voting the Chairman has a casting vote, which has historically been to the benefit of the Executive. The further proposed amendments take away the casting vote from the Chairman and increase the number of the JLSC to five with the appointment of a Government appointed senior attorney-at-law, after consultation with the National Trade Union Congress of Belize and the employer's organizations.

If the amendments are to be meaningful, then the fifth member should not be a Government appointee.

### **Section 120 – Audit of Public Accounts**

Section 120(4) provides that the Auditor General shall submit every report made to the Minister responsible for Finance who shall not later than 7 days after the House of Representatives first meets after he has received the report, lay it before the House. Subsection (5) goes on to provide that if the Minister fails to lay the Report before the House in accordance with the provisions of subsection (4) then the Auditor General shall transmit copies of the report to the Speaker who shall as soon as practicable, present them to the House.

The proposed amendment to subsection (5) requires that the Auditor General transmit the copies of the report not to the Speaker, but to the Clerk of the National Assembly who shall as soon as practicable present them to both the House and the Senate.

The amendments further require that if the Auditor General fails to lay the report in accordance with subsection (5) he may be required to appear before the Senate to answer to his failure. The Senate upon hearing all the circumstances of the case may grant an extension of time for the submission of the report. A failure to lay the report in the period of extension may be deemed a failure by the Auditor General in the due performance of his duties for the purpose of removal and the Senate shall forward a report on the matter to the Prime Minister with such recommendations as the Senate may consider fit.

This amendment has the support of the Bar Association. Note however that there is no requirement that the Prime Minister act in accordance with the recommendations of the Senate.

## **2. The Freedom of Information (Amendment) Bill, 2008**

Under Part III of the Freedom of Information Act, every person shall have a right to obtain access in accordance with the Act to a document of a Ministry of prescribed authority other than an “exempt” document. What is an exempt document is defined in Part IV of the Act and includes documents the disclosure of which would be contrary to the public interest, in that disclosure would prejudice the security, defence or international relations of Belize or communications from another country sent in confidence.

The proposed amendments to this Act would provide as follows:

1. no public document shall contain a provision to the effect that the contract shall be kept confidential;
2. every secrecy provision in a public contract or other document which prohibits or restricts its disclosure to the public, shall be wholly void and of no effect and the public contract or document shall be read and construed for all purposes as if such secrecy provision did not exist; and

3. every principal officer of a Ministry or Department or prescribed authority who refuses or neglects without cause to provide access to public documents in accordance with the Act shall be guilty of an offence against discipline and liable to a fine not exceeding \$1,000 by the authority responsible for exercising disciplinary control over that officer or such other penalty as that authority may consider appropriate in all the circumstances of the case.

The above proposed amendments have the full support of the Bar Association.

3. *Referendum (Amendment) Bill, 2008*

Section 2 of the Referendum Act, Chapter 10 of the laws of Belize, revised edition 2000, currently provides as follows:

“(1)Without prejudice to any law which provides for a referendum to be held on any specific issues, the National Assembly may by resolution passed in that behalf declare that a certain matter or issue is of sufficient national importance that it should be submitted to the electors for their approval through a referendum.

(2)Notwithstanding subsection 1 above, a referendum shall be held on the following issues:-

- (a) any amendment to Part II of the Constitution which derogates from the fundamental rights and freedoms guaranteed therein; and
- (b) any proposed settlement with Guatemala for resolving the Belize/Guatemala dispute.”

The proposed amendments to Section 2 of the Referendum Act provide that "Subject to the provisions of this Act, a referendum shall be held in any of the following circumstances" and goes on to list the following:

- (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 views through a referendum;
- (b) where a petition is presented to the Governor General signed by at least 10% of the registered electors in Belize, or if the referendum is to held in any specific district of Belize, 25% of the registered electors of that district or area praying that in their opinion a certain issue a matter of public importance that it should be submitted to the electors for their views through a referendum;
- (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.

The proposed amendments lend clarity to the actual working of a referendum, and this is welcomed. The main issue that arises from the amendment is the deletion of the requirement in the current Act that any amendment to Part II of the Constitution which derogates from the fundamental rights and freedoms guaranteed therein must go to a referendum.

The question for the public is whether or not it feels comfortable with the knowledge that it need not be consulted by the House of Assembly to make such fundamental changes to the Constitution. In particular changes which would derogate from the fundamental rights and freedoms enshrined within the Constitution. If the proposed amendments

are passed into law, the House of Representatives when making future amendments to the Constitution could decide that a referendum is not needed because it has the mandate of the people to make such important changes. Should this come to pass and the citizens of Belize do not rouse themselves in sufficient time and in sufficient numbers to present the stated petition to the Governor General, then any changes to the Constitution would pass into law without a referendum.

Of concern to the Bar Association is the underlying premise that people care more about the border dispute with Guatemala than the derogation of their fundamental rights and freedoms. The current Referendum Act and the proposed amendments thereto both specifically require that any settlement of the Belize/Guatemala border dispute must go to referendum. Why should changes which derogate from the fundamental rights and freedoms guaranteed therein not go to a referendum?

It is respectfully submitted that the Constitution itself should be amended to provide that any change to Part II of the Constitution which derogates from the fundamental rights and freedoms guaranteed therein, be sent to a referendum. This would provide the ultimate protection to the people in the event that a House of Representatives with the requisite majority decides to derogate from their rights and freedoms. This change is also critical in light of the fact that the current amendments to the Constitution seek to eliminate the required approval of a simple majority of the Senate to make changes to Part II of the Constitution.

**BAR ASSOCIATION OF BELIZE**  
**May 19, 2008**