

---

# FRIENDS OF THE OROZCO/UNIBAM LITIGATION

---

THE REGIONAL LEGAL TEAM FOR OROZCO/UNIBAM ANSWERING SOME OF YOUR  
QUESTIONS

1. Why litigate: Litigation v Legislation.....	1
2. More about section 53 of the criminal code .....	4
3. The Litigants .....	5
4. History of this litigation .....	8
5. Chances of success .....	11
6. Key principles in the case .....	12
7. The Process of Litigation.....	15
8. Our role.....	15

## 1. WHY LITIGATE: LITIGATION V LEGISLATION

---

---

WHY CHALLENGE THE CONSTITUTIONALITY OF SECTION 53 OF THE CRIMINAL CODE  
DEALING WITH THE UNNATURAL OFFENCE IN COURT? ISN'T TRYING TO GET  
LEGISLATION PASSED REPEALING THIS SECTION BETTER THAN LITIGATION?

---

There had been talk in Belize for some time about decriminalizing consensual anal sex to strengthen the HIV response in respect of men who have sex with men. Indeed it appears that the National Aids Commission at some point recommended this and was hopeful that it would come to pass and other well placed civil servants appeared to have also recommended repeal. It is reasonable then to ask why bring a case, which can appear to antagonize the government, instead of working with the government to get the law repealed. The legal team for Orozco/UNIBAM gave very careful thought to the 'litigate vs legislate' question and sought advice on this question. We decided litigation was valuable for the following reasons:

---

Government likely to fear the political costs of repeal due to negative public opinion

---

It would be challenging to get government led law reform and the experience in the rest of the Caribbean strongly suggested this.

Across the Caribbean national HIV machineries and a few Ministers of Health and sometimes other cabinet ministers have supported decriminalization. However they have not been able to persuade their Cabinets to pursue law reform. Politicians are acutely aware of public opinion on homosexuality and very few are willing to risk alienating their 'base' by seeking law reform.

---

#### Would be difficult to achieve Cabinet consensus of the need for reform

---

Cabinet is the driver of law reform and consensus amongst Ministers would be difficult to achieve, even if there are supportive Ministers of Government, because Ministers have different personal positions. Furthermore, even if there was support for law reform, this would not be a priority for the government. Issues with economic or financial implications tend to be given priority.

In addition, translating the recommendation to law reform is challenging because government ministers sometimes think that because the law is not heavily enforced, it is not really harmful, and thus not a priority for reform. This is a terrible misunderstanding.

---

#### Cannot rely on support from the Opposition

---

The opposition might not be supportive, also because of the negative public opinion.

---

#### Litigation is more likely to get to the crux of the Issue than a process of law reform

---

Law reform is a 'majoritarian' process and that is generally a good thing. By 'majoritarian' we mean that it requires the support of most people. Technically this is shown through their representatives in Parliament. The difficulty is that this majoritarian process tends to expose and give effect to very crude public opinions on controversial issues like homosexuality.

Usually the public debate about the issue never gets to the crux of the question: should it be a crime for any adults, whether a man and a woman or a man and a man, to choose and agree to have anal sex? Let's be clear that to say it is a crime means the police should be able to arrest you and on conviction you should be liable to imprisonment for up to ten years. To go further, should the law not only criminalize sex freely chosen between adults, but also deem it 'unnatural' and fail to make any distinction between whether it is consensual or not and whether it is anal sex with an animal or a consenting human being.

---

#### THE EXPERIENCE FROM DEATH PENALTY DEBATES: PUBLIC OPINION IS MORE AMBIVALENT THAN WE THINK

---

A new study co-sponsored by the Faculty of Law UWI Rights Advocacy Project in Trinidad on the mandatory death penalty shows very clearly that initially almost everyone tells you they strongly support the death penalty (91%), but as more careful questions were asked only 26% supported the mandatory death penalty in its current form.

See [http://www.deathpenaltyproject.org/fulltexts/49/original/11.02.23\\_SUMMARY\\_EDITED\\_PO\\_REPORT\\_REVISED\\_23\\_FEB1.pdf?1298482044](http://www.deathpenaltyproject.org/fulltexts/49/original/11.02.23_SUMMARY_EDITED_PO_REPORT_REVISED_23_FEB1.pdf?1298482044)

We strongly suspect that a similar distinction in public opinion exists in relation to homosexuality. That a very high percentage of the population disagrees with homosexuality and that many of that number would use religious arguments to explain why they strongly object. However different answers might arise if other questions were asked. For example, if your brother is gay, do you think there should be a law that allows the police to arrest him and a judge to imprison him for having anal sex with his partner? Or if it turns out that a married couple who are close friends of yours have anal sex from time to time, should that be considered a crime? Put this way, there is likely far less support for section 53 as currently formulated than is assumed to be the case.

---

Litigation requires lawyers and judges to address their minds precisely to the issues at stake

---

In public debates about the law, it is difficult, as seen now in Belize, to get to the heart of the question at stake. Constitutional litigation takes the issue out of the hands of the public and its crude opinion. The Constitution is the supreme law of Belize and it sets the standard which ordinary laws must meet. Independent and impartial judges will make the assessment as to whether this law meets the standard set by the 1981 independence constitution. The arguments about whether section 53 is consistent with the constitutional values and norms will much more *precisely* ask and answer the questions that ought to matter to every Belizean and *should*, but rarely, *dominate* public debates. We will outline some of those questions below.

---

Litigation has less political risks for progressive politicians and bureaucrats who support law reform

---

If there is quiet or partial support for decriminalization amongst some progressive politicians, this provides an incentive, not a disincentive, to litigate. So the question is not, why litigate if legislation is possible? Since we know that legislation will be very difficult to execute, even if there is some political support for it, litigation allows the right outcome but with less political cost to those progressive politicians. That partial or quiet support in fact creates a more favorable environment for litigation.

Even though it will be seen as hypocrisy that 'supportive' politicians stay quiet or keep neutral, it is key for ordinary Belizeans who are their constituents to ensure that they understand that this case has been brought by Belizeans and matters deeply to them and that they expect some sort of support, even if it is to maintain neutrality.

---

#### IS THIS CASE INTRODUCING A 'NEW LAW' TO BELIZE?

---

One of the points raised by opponents of the litigation is that it is seeking to introduce a *new law* or *new standard* to Belize. Neither is the case.

Orozco/UNIBAM has taken a very old colonial law, providing for the ‘unnatural offence’, that was enacted in very different times, by colonial elites and measures it up against the standard that Belizeans themselves have established as their supreme law, the 1981 Independence Constitution.

## 2. MORE ABOUT SECTION 53 OF THE CRIMINAL CODE

---

### WHAT DOES IT SAY?

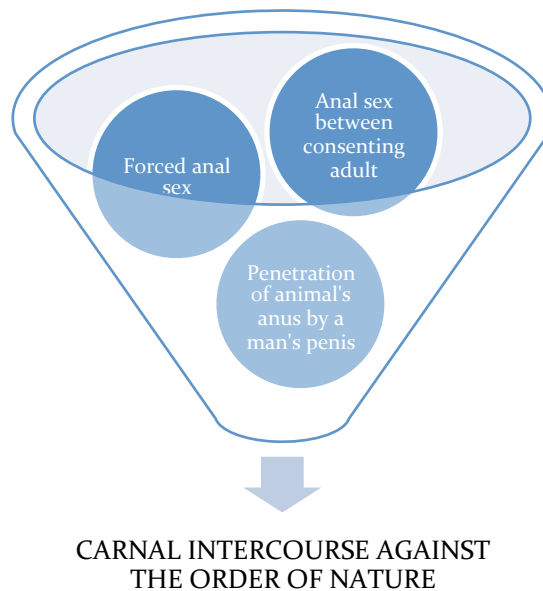
---

Section 53 of the Criminal Code 1981 states that ‘every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.’ The Code does not specify the ‘penetrating’ object, but the common law indicates that the ‘penetrating’ object is the male sexual organ. There is no requirement for lack of consent or use of force.

### WHAT EXACTLY IS THE UNNATURAL CRIME?: AN ABJECT CONFLATION

---

It is anal sex involving a man and woman and a man and a man and a man and an animal. Notice the abject conflation of consensual sex, sex with an animal and non consensual sex as the same crime.



Later laws in other countries separated ‘bestiality’ (animals) from ‘buggery’ (persons). But Belize did not introduce these reforms.

### DOES IT MAKE MALE HOMOSEXUALITY A CRIME?

---

Sometimes people minimize the impact of the law by saying it does not criminalize homosexuality only certain sexual acts.

No, it does not explicitly but it does unduly criminalize the lives of homosexual men. What is censured are not simply forms of sexual acts, since these criminal laws control personal relationships and deal with 'status, moral citizenship and a sense of self-worth' as one South African judge put it.

---

SINCE SECTION 53 IS RARELY ENFORCED AGAINST MEN ENGAGED IN CONSENSUAL  
ANAL SEX, DOES THAT MEAN IT IS NOT HARMFUL?

---

Non enforcement is not an answer, especially when there is no stated policy that the police will not enforce the law against gay men engaged in consensual sex. In other words, gay men still live in fear that they may be arrested or will be harassed or blackmailed because the law still exists.

Professor Ryan Goodman of NYU Law School conducted a very highly respected study in South Africa where the sodomy laws at that time were still on the books but not enforced. He found that the individuals were empowered by the law to harass and carry out acts of aggression against gays and lesbians and supported attackers' inspiration to punish homosexuality with violence. Those who had less economic resources and lower socio-economic status faced greater risks and injuries. He also noted that the existence of the laws served to disempower gays and lesbians in many contexts far removed from their sexuality and causes them to heavily self regulate their actions because of a fear of being on the wrong side of the law. He also discovered that many gays and lesbians feared the police and did not report crimes committed against them especially if it would be perceived as 'gay-related'.

---

### 3. THE LITIGANTS

---

---

WE HAVE HEARD OF SO MANY PARTIES IN THIS CASE AND ARE NOW CONFUSED. WHO  
BROUGHT THIS CASE?

---

It is quite natural to be puzzled by how many 'parties' seem to be involved in this case. This case was filed by **Caleb Orozco** and **UNIBAM** in **July 2010**, who remain the principal litigants.

---

ON WHAT BASIS DID THEY BRING THIS CASE?

---

The Constitution guarantees to 'every person in Belize ... the fundamental rights and freedoms of the individual'. The key provision is section 20. It says that 'if any person alleges' that any of their fundamental rights 'has been, is being or is likely to be contravened in relation to him' they 'may apply to the Supreme Court for redress'.

It is well accepted that both individuals and organizations fall within these provisions and both Orozco and UNIBAM are arguing that some of their rights have been contravened by section 53 'in relation to them'.

In every case that citizens challenge the constitutionality of legislation, the Attorney General must 'respond' to the case. So the original claim brought was Orozco & UNIBAM (applicants) v Attorney General of Belize (respondent). The burden of proving the law was unconstitutional rests entirely on Orozco and UNIBAM and their legal team.

---

#### TELL US MORE ABOUT THE INTERNATIONAL PARTIES INVOLVED IN THE LITIGATION?

---

Almost a year after the case was filed by Orozco and UNIBAM, three international organizations made an application to be joined as 'interested parties'. They are the International Commission of Jurists, the Commonwealth Lawyers Association (CLA) and the Human Dignity Trust (HDT).

The ICJ is a very well respected body dedicated to implementing international law and principles that advance human rights and the rule of law. Its Honorary Members include Sir Shridath Ramphal, former Secretary General of the Commonwealth and Prof. Bertrand Ramcharan of Guyana.

The CLA is also a well established organisation that exists to promote and maintain the rule of law throughout the Commonwealth by ensuring there is an independent and efficient legal profession. It has regular conferences for lawyers that are well attended by lawyers from across the Caribbean region.

The HDT was recently created to support and undertake litigation that challenges the continued existence of laws that criminalize same sex sexuality. Its patrons include Sir David Simmons former Chief Justice of Barbados and Sir Shridath Ramphal.

---

#### ARE THEY IN CHARGE OF THIS CASE OR HAVE THEY TAKEN OVER THE CASE?

---

The principal litigants in this case continue to be the Belizeans: Orozco and UNIBAM.

These organizations have been allowed to join as secondary parties who have an 'interest' in the case. They are secondary because unlike Orozco and UNIBAM, they don't have to prove they are personally affected by section 53, nor do they have the burden or responsibility of making out the case that the law is unconstitutional. Often 'interested parties' focus on a specific issue or concern in the case, while the principal litigants have a duty to address every single issue that arises.

---

#### Separate parties, each with an independent legal team

---

These organizations have a *separate legal team* from Orozco and UNIBAM led by Lord Goldsmith, a former Attorney General for the UK who is a member of the Belize Bar, with Mr. Godfrey Smith acting as their local counsel.

These organizations are neither in charge of Orozco & UNIBAM's case, nor have they taken it over. Their views on the legislation are likely to coincide with Orozco and UNIBAM's, but they remain separate—with Orozco and UNIBAM primary litigants and they secondary and 'interested' parties.

As is now clear from the joining of the churches, 'interested parties' can have widely divergent views and they stand separate from the main litigants. Likewise the churches have retained their own lawyers in Belize, separate from the government which will be represented by lawyers of its own choosing.

---

#### WHAT IS THE 'INTEREST' OF THESE INTERESTED PARTIES

---

These organizations all have a strong interest in bringing to bear the developments in international human rights law and the thinking of comparable courts in other parts of the world on this issue.

You might wonder if these are relevant to the case. Absolutely. Belizean courts have always looked to what neighboring courts say about their own constitutions. They are not bound by these views, but they find experiences elsewhere helpful.

In the very important case brought on behalf of the unmarried pregnant teachers who were dismissed by a catholic school by Mr. Dean Barrow SC, the Belizean courts relied on many cases from other parts of the world. You no doubt remember that he and those teachers succeeded against the Catholic school in arguing that the dismissal of the teachers violated their right under the Belize Constitution to work and to protection against sex discrimination.

International human rights law is also important. Most lawyers know the famous statement by Lord Wilberforce in a Bermudan case where he explained that the *antecedents* or background of the fundamental rights provisions in Caribbean constitutions are international human rights instruments. Because of that background, he said they should be interpreted in a very generous way. Judges in Belize now also look at the developments in international human rights law to help them determine the meaning of the Belize Constitution. One of the best examples of this is the *Cal* case in 2007 dealing with indigenous land rights.

---

#### IS THIS CASE ONLY ABOUT OROZCO AND UNIBAM?

---

Our legal system demands that litigation of this sort be brought by persons personally affected. This means cases of this type will always bear the name of some person affected and whose rights are infringed.

However where the case claims a law is unconstitutional, it is almost always the case that many others are equally affected too. Although the litigation bears the name of Orozco and UNIBAM who have been courageous enough to stand in the line of fire, it is

in the minds of all involved, including these applicants, an action brought on behalf of all the unnamed persons who are deeply affected by section 53.

From this point of view, Orozco and UNIBAM stand in place of *all* those personally affected by this law.

---

#### WHO ARE THE LAWYERS FOR OROZCO AND UNIBAM AND WHO IS PAYING THEM?

---

The legal team for Orozco and UNIBAM comprises of Belizean and regional lawyers who are all committed to promoting human rights and social justice through litigation. All of the lawyers are working on this case pro bono, which means they are not being paid.

The lead counsel for Orozco and UNIBAM is Mr. Christopher Hamel-Smith SC from Trinidad and Tobago who is also called to the Belize Bar. He is a very experienced advocate who has been involved in critical human rights litigation in Trinidad. Ms. Lisa Shoman QC is the ‘instructing attorney’, and is very well known to Belizeans as a forthright and commanding lawyer. She has undertaken the responsibility for filing all relevant documents and dealing with all procedural matters in the case.

The overall responsibility for the case rests with the Faculty of Law UWI Rights Advocacy Project which comprises of human rights lawyers and teachers at the Faculty of Law UWI working alongside student volunteers which has included two Belizean students.

---

#### WHY HAVE THESE LAWYERS PROVIDED THEIR SERVICES PRO BONO?

---

All of these lawyers in Belize and across the Caribbean have provided their services without cost because of their strong commitment to the human rights issues involved in this case and to securing social justice in the Caribbean.

---

## 4. HISTORY OF THIS LITIGATION

---

---

#### WHAT IS THE HISTORY OR BACKGROUND TO THE LITIGATION?

---

---

##### Blake’s Query in 2004

---

This litigation has always been Belizean and Caribbean led and can be traced back to 2004 and an excellent UWI LLB research paper by Conway Blake who graduated in 2004 with first class honors.

Blake noticed that the activist efforts of Caribbean LGBT organizations were very focused on legislative reform or constitutional reform and were meeting very little



success. He examined these challenges and questioned why constitutional litigation had not become one of the strategies being used for seeking legal change.<sup>1</sup>

This sort of public interest litigation of this sort has little precedent outside of death penalty work. And many questions arose: Which lawyers would champion this initiative and where? Where would a litigant be found, given the vulnerability to violence, discrimination and stigma that this sort of 'outing' would entail? And could litigation overcome structural challenges in Caribbean constitutions: thin protection of privacy and equality rights and the protections actually offered being substantially undermined by savings law and limitation clauses.

---

#### 2007 Study on constitutional validity of Caribbean legislation criminalizing consensual adult same-sex sexual relations

---

In 2007 UWI Faculty of Law got support from the International Commission of Jurists whose programme on sexual orientation and gender identity was led by the Jamaican Philip Dayle, to hire an LLB student to research the content of the laws criminalizing same sex sexuality in the Caribbean and to begin to consider whether litigation was in fact an option given the structural impediments in Caribbean constitutions. Dayle was keen to use his position at the ICJ to support Caribbean led initiatives that would improve knowledge of these criminal laws and might lead to regional action. A very extensive 113 page report with detailed appendices was produced assessing the viability of constitutional litigation in Belize, Guyana, Trinidad and Tobago, Antigua and Barbuda and the Bahamas. The August 2007 report concluded that Belize and Guyana were the most favorable Caribbean countries in which to bring test cases on sexual rights.

---

#### 2008 Review of Study with representation from Belize (Legal Profession) and Guyana (LGBT organization)

---

In September 2008, a group of public law teachers in the Faculty of Law discussed this report and determine next steps. It was joined by a visiting Belizean lawyer and a representative of Society Against Sexual Orientation Discrimination (SASOD), Guyana. URAP is also involved in litigation on behalf of SASOD, along with some of the transgendered persons arrested for cross dressing. It was agreed that there was a unique opportunity for the Faculty to contribute meaningfully to Caribbean development by actively supporting and participating in public interest litigation in the area of human rights and particularly in relation to sexual minorities.

---

#### 2009 Formalization of U-RAP

---

On June 10, 2009, the group received the approval of the Faculty of Law Board to undertake this work under the auspices a Faculty of Law project named UWI Faculty of Law Rights Advocacy Project (U-RAP). U-RAP is an outreach and public service activity of the Faculty of Law. It relies of the provision of pro-bono legal services by the

---

<sup>1</sup> Conway Blake, 'Challenges at the frontiers of the gay rights movement in the Commonwealth Caribbean: the future of advocacy in the region' Thesis (LL.B.) - Faculty of Law, University of the West Indies, 2004 (on file, Faculty of Law Library UWI).

members and students of the Faculty of Law working alongside lawyers throughout the Caribbean. It draws on the legal skills and expert knowledge in Caribbean public law and human rights law of the members of the Faculty of Law.

---

#### 2007-09 Regional Human Rights Discussions and Consultations through CVC

---

Between 2007 and 2009, a number of discussions about constitutional litigation as a strategy for Caribbean LGBT organizations were held. All sponsored or co-sponsored by the Caribbean Vulnerable Communities Coalition (CVC). These include:

1. A Workshop on Human Rights conducted by Caribbean Vulnerable Communities Coalition in the Dominican Republic in September 2007.
2. A Workshop, "Sexualities in Conversation: Rights and Regulation in the Anglo-Caribbean" held 15 – 16 February 2008 at UWI Cave Hill, Barbados.
3. In June 1- 2, 2009, a Roundtable on Initiatives, Successes and Challenges for International Partnerships and Caribbean LGBT Communities was organized in Jamaica by CVC, titled "Human Rights, Access to Justice and Structural Change in Jamaica and the wider Caribbean"
4. Another CVC session on human rights was held in Trinidad in October 2009.

Caleb Orozco and UNIBAM as well as U-RAP members were participants in most of these meetings along with LGBT activists from the rest of the Caribbean. At these meetings discussions took place about the viability of litigation in Belize and possible litigants. Orozco and later UNIBAM agreed to serve as litigants and Lisa Shoman QC also agreed to serve as counsel in the case.

In July 2010, Orozco & UNIBAM v Attorney General of Belize was filed by Lisa Shoman QC.

#### WERE THERE ANY CONSULTATIONS WITH BELIZEANS BEFORE THIS CASE WAS FILED?

---

A partnership between U-RAP and CVC developed to ensure that this was a proper case to bring in Belize and support public education and communication around the litigation.

Before filing CVC and U-RAP sought the advice of a Belizean human rights consultant to formally assess the environment and the risks of litigation. That report noted that:

Belizeans have become visibly more conscious of their basic rights and freedoms. The Belizean population has been inspired by the compelling international human rights movement. Now, more than ever before many conversations in the public arena are rights based. You will routinely hear individuals on the nightly news saying that they were abused and their rights violated.

That assessment concluded the repeal of the unnatural crime law in the short term was unlikely. It reviewed the likely response of the public, the media, the church, civil society and the government and concluded that litigation was not without risks but it was a worthwhile option.

Three members of CVC and U-RAP visited Belize and had consultations with some members of the LGBT community beyond those associated with UNIBAM, members of the NAC, representatives from women organizations, indigenous groups and other civil society groups, representatives from agencies involved in HIV related work, academics at UWI and University of Belize, lawyers and at least one person close to the government.

Only after both processes were completed and it was thought that litigation in Belize could be valuable to Belizean and others in the Caribbean and that some of the risks could be minimized by public education, public relations and capacity building, was the case launched in July 2010.

## 5. CHANCES OF SUCCESS

---

---

### WHAT IS THE LIKELY OUTCOME OF THIS CASE?

---

There is a very strong likelihood that this case will be won by Orozco and UNIBAM on the basis that section 53 violates their right to *privacy* and *human dignity*. This might happen in the Supreme Court or later on appeal to either the Court of Appeal or Caribbean Court of Justice.

In section 3(c), the Constitution of Belize provides for “protection for his family life, his personal privacy, the privacy of his home and other property and recognition of his human dignity”. Section 14 further elaborates, to say “A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”.

### HOW STRONG IS THE GOVERNMENT’S CASE?

---

It is expected that the government will argue that even if the law violates the right to privacy and human dignity, that this law ‘makes reasonable provision that is required in the interests of ... public morality’. The churches are also likely to focus on this as well.

But as has been shown powerfully in India and South Africa, it is very difficult to make a credible claim that public morality should outweigh someone’s human dignity. And we hope that one of the courts that hear this case says so clearly and upholds the privacy claim.

In the Indian 2009 case *Naz Foundation*, the Delhi court said that “Public disapproval or disgust for a certain class of persons can in no way serve to uphold the constitutionality of a statute.” The judge added that in any event the society was “vibrant, diverse and democratic”.

And there is evidence in Belize that homosexuals are ordinary citizens of Belize who occupy all social strata and all occupations, including positions in government and

politics. Public opinion against homosexuality is far from universal as can be seen from Facebook pages discussing the case. In 2000, the Political Reform Commission received several suggestions to include sexual orientation as a prohibited ground of discrimination and a majority of the Commission in fact recommended an amendment to this effect.<sup>2</sup>

That court then distinguished between ‘popular morality’ and ‘constitutional morality’. He said:

Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on shifting and subjecting notions of right and wrong. If there is any type of “morality” that can pass the test of compelling state interest, it must be “constitutional” morality and not public morality.

So what then is the constitutional morality of Belize: respect for human dignity and human equality.

---

## 6. KEY PRINCIPLES IN THE CASE

---

---

### WHAT ARE THE KEY PRINCIPLES IN THE CASE?

---

That criminalizing sexual activities between consenting adults *and* conflating adult sexuality with forced sex and sex with animals:

1. Treats some as less than fully human and is an affront to their ***right to human dignity***

*Constitution of Belize, Preamble*

*Whereas the people of Belize affirm ... the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator,*

2. Touches the ***most private human conduct***, sexual behavior, in the privacy of the home and interferes with the freedom to choose what sexual contact one wishes to have with who without being punished as criminals.<sup>3</sup>

*Constitution of Belize*

**3.** *Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-*

*C. protection for his family life, his personal privacy, the privacy of his home and other property and recognition of his human dignity; and*

---

<sup>2</sup> Belize, “Final Report of the Political Reform Commission” (Belize City, 2000) at 47.

<sup>3</sup> 539 US 558 (2003) at 567 (SC, US).

3. Fails to ***treat all as equals*** and gives other license to do the same thus making some more vulnerable to us to abuse and harassment from others.

In the similar South African Case *NCGLE v Minister of Justice*, Justice Sachs of South Africa's Constitutional Court explained:

Only in the most technical sense is this case about who may penetrate whom where. At a practical and symbolical level it is about the status, moral citizenship and sense of self-worth of a significant section of the community. At a more general and conceptual level, its concerns the nature of the open, democratic and pluralistic society contemplated by the Constitution.<sup>4</sup>

---

THE CHURCH IS NOW INVOLVED IN THE LITIGATION. IS THE COURT LIKELY TO GIVE EFFECT TO 'RELIGIOUS' MORALITY?

---

---

Religious freedom is protected by the Constitution, not religious intolerance

---

There is in Belize a formal separation of church and state. Freedom of religion is protected by the Constitution, but this is the freedom to exercise and practice a faith of your choice on your own and with others who share that faith. That freedom is quite distinct from the right to impose one's religious views on others in a plural, diverse and secular state.

It is assumed in Belize that there will be a diversity of beliefs and views as well as a diversity of people living in Belize. In the case involving the unmarried pregnant teachers brought by Dean Barrow QC, when the Chief Justice ruled in favour of the teachers he reminded everyone:

But Belize is a multi-ethnic, multi-faith and secular state, with a written Constitution which, among other things, provides in its Chapter 11 for the protection of fundamental human rights and freedoms.

---

Doesn't the Belize constitution speak about the supremacy of God

---

The Preamble states that the people of Belize affirm the supremacy of God. Canada has a similar provision in its Constitution but that has not prevented its courts from affirming the human dignity and equality of all Canadians, including sexual minorities.

It is not clear what 'supremacy of God' means, but one way of thinking about it is as an aspiration. It cannot be a means to privilege one religious view over others. There are many who believe in the supremacy of God who strongly support gay rights. Some of these persons are prominent members of the very churches who are opposing this claim.

---

<sup>4</sup> (1998) BHRC 127, para. 107 (CC, RSA).

In a letter to the Washington Post on March 12, 2010, Archbishop Desmond Tutu of South Africa and Anglican and Nobel Peace Prize winner, wrote an OpEd article which is quoted here almost in its entirety.<sup>5</sup>

Gay, lesbian, bisexual and transgendered people are part of so many families. They are part of the human family. They are part of God's family. And of course they are part of the African family. But a wave of hate is spreading across my beloved continent. People are again being denied their fundamental rights and freedoms. ...

Our lesbian and gay brothers and sisters across Africa are living in fear.

And they are living in hiding -- away from care, away from the protection the state should offer to every citizen and away from health care in the AIDS era, when all of us, especially Africans, need access to essential HIV services. That this pandering to intolerance is being done by politicians looking for scapegoats for their failures is not surprising. But it is a great wrong. An even larger offense is that it is being done in the name of God. Show me where Christ said "Love thy fellow man, except for the gay ones." Gay people, too, are made in my God's image. I would never worship a homophobic God.

... Sexual orientation, like skin color, is another feature of our diversity as a human family. Isn't it amazing that we are all made in God's image, and yet there is so much diversity among his people? Does God love his dark- or his light-skinned children less? The brave more than the timid? And does any of us know the mind of God so well that we can decide for him who is included, and who is excluded, from the circle of his love?

The wave of hate must stop. Politicians who profit from exploiting this hate, from fanning it, must not be tempted by this easy way to profit from fear and misunderstanding. And my fellow clerics, of all faiths, must stand up for the principles of universal dignity and fellowship. Exclusion is never the way forward on our shared paths to freedom and justice.

We should therefore read the opening paragraph of the Preamble which mentions supremacy of God in light of all that surrounds it and these principles of 'universal dignity and fellowship' as interconnected in the ways Archbishop Tutu suggests.

As a reminder that Preamble says:

Whereas the People of Belize:

- (a) Affirm that the Nation of Belize shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by the Creator.

**WE HAVE STOOD UP FOR PRINCIPLES OF "UNIVERSAL DIGNITY AND FELLOWSHIP" AT  
OTHER TIMES**

---

<sup>5</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/11/AR2010031103341.html>

No one today would reasonably suggest that because fornication is considered a sin by some churches that all non-marital sex should be a crime. Indeed we have gone much further and recognized that men and women in long term cohabitating relationships other than a marriage are worthwhile human beings and citizens who deserve to be treated as equal citizens. Today in Belize they enjoy:

- Equal protection under the Domestic Violence Act from intimate partner violence
- A right to go to court to resolve disputes about their property after the relationship has ended, as if they were married, under the Supreme Court of Judicature Act
- A right to apply for maintenance for their welfare similar to that enjoy by those who are married.

## 7. THE PROCESS OF LITIGATION

---

We will ask Lisa Shoman to answer these questions for you.

TELL US MORE ABOUT THE PROCESS OF LITIGATION. HOW LONG WILL THIS CASE TAKE? WHEN WILL TRIAL TAKE PLACE AND FOR HOW LONG? WE HAVE HEARD THAT THERE WILL BE PRETRIAL HEARINGS BEFORE THAT. WHAT IS THE PURPOSE OF THESE HEARINGS? WHAT KIND OF EVIDENCE WILL BE LED AT THE TRIAL? CAN WE ATTEND?

---

## 8. OUR ROLE

---

WHAT ROLE CAN WE PLAY IN THIS PROCESS?

---

In the assessment of viability of litigation we were advised as follows: “The challenge must, however, be strategic and brought in conjunction with an organized sustained education and media campaign.” You have likely already begun to determine how you can lead in these activities.

THE BEST CASE SCENARIO IS THAT WE WIN INITIALLY OR ON APPEAL, BUT IS THAT ENOUGH TO GUARANTEE THE HUMAN RIGHTS OF SEXUAL MINORITIES?

---

It will not and the LGBT community and civil society must identify what more will be required to improve the lives of sexual minorities and pursue those goals, using the case as a fulcrum.

Faculty of Law UWI Rights Advocacy Project

July 15, 2011