

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 79 of 2022

BETWEEN

PORT OF BELIZE LTD.

CLAIMANT

AND

**CHRISTIAN WORKERS UNION
EVAN “MOSE” HYDE
GUY NEAL
WINFIELD DENNISON
KENTON BLANCO
JAMES NEAL
WENDELL WHITAKER**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT
FOURTH DEFENDANT
FIFTH DEFENDANT
SIXTH DEFENDANT
SEVENTH DEFENDANT**

Before the Honourable Madam Justice Geneviève Chabot

Date of Hearing: March 30th, 2023

Appearances:

Godfrey P. Smith, SC and Hector D. Guerra, for the Claimant

Magalie Perdomo, for the First Defendant

Darrell Bradley, for the Second to Seventh Defendants

**RULING ON PRELIMINARY QUESTION OF LAW
(Statutory Immunities)**

Introduction

1. Port of Belize Ltd. (the “Claimant”) filed a Claim against the Christian Workers Union (“CWU”), its President, Evan “Mose” Hyde, and five members of the CWU (together, the “Defendants”) for damages allegedly arising from a strike action carried out by the Defendants for a period of 8 days between January 20th and January 27th, 2022. The Claimant alleges that the strike was illegal, and claims damages for the tort of interference with economic interests by unlawful means against the Defendants.

2. In their Defences, the Defendants plead and rely on the statutory immunities, privileges, and defences they say are afforded to trade unions and their members under the *Trade Unions Act*¹ and the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*.² They also deny the allegations in the Claim.
3. The parties requested that the Court deal with the issue of statutory immunity as a preliminary question of law. The parties provided the Court with written submissions and made oral submissions. At the hearing of the oral submissions, the Court asked that the Hansard relating to the introduction of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* be provided and gave the parties an opportunity to make written submissions interpreting the Hansard.
4. For the reasons explained in greater detail below, this Court finds that the Defendants are not entitled to the immunity conferred by sections 33 and 34(1) of the *Trade Unions Act*. The First Defendant does not enjoy a statutory immunity. However, the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* incorporates the rights of workers under the *Belize Constitution*.³ Section 13 of the *Belize Constitution* encompasses a right to strike. The constitutional right to strike is subject to the standard of legality. A trial of this Claim is necessary to determine whether the strike at issue in this Claim was legal under the laws of Belize.
5. Pursuant to subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, the Second to Seventh Defendants are entitled to a statutory immunity for any act or omission done in good faith in the course of furthering the objectives of the CWU. The Court declines to determine, at this stage, whether the actions which have given rise to this Claim were done in good faith or bad faith.

Legislative Framework

6. The Defendants rely on the immunities provided to trade unions under two statutes: the *Trade Unions Act* and the *Trade Unions and Employers Organisations (Registration, Recognition and Status)*.
7. Sections 33 and 34 of the *Trade Unions Act* provide as follows:

33. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade business

¹ Cap. 300 Rev. Ed. 2020.

² Cap. 304, Rev. Ed. 2020.

³ Chapter 4 of the Substantive Laws of Belize.

or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills.

34.-(1) An action against a trade union whether of workmen or masters or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained in any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided by section 12 of this Act, except in respect of any tortious act committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute.

8. Subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* provides as follows:

16(2) No officer, representative or member of a trade union or an employers' organisation shall be personally liable for any act or omission of the trade union or employers' organisation if the act or omission was done by such officer, representative or member in good faith in the course of furthering the objectives of the trade union or employers' organisation.

(3) Subsection (2) of this section, shall not be read and construed as exempting from liability any trade union or employers' organisation, or any officer, representative or member thereof, from any contractual liability for goods, services and obligations incurred by the trade union or employers' organisation in the course of its operations.

Parties' Submissions

Defendants' Submissions

9. The Defendants first point out that the right to strike is recognized and protected by law in Belize and internationally. The *Belize Constitution* protects freedom of expression and conscience, the freedom to openly exchange ideas, the right to human dignity, the right to work, the right to property, and the freedom of assembly. Section 13 of the *Belize Constitution* specifically refers to the right to form or belong to a trade union. Belize is a state party to the United Nations' *International Covenant on Economic, Social and Cultural Rights*⁴ and the *Charter of the Organization of American States*,⁵ both of which protect the right to strike. Relying on *Saskatchewan Federation of Labour et al v Her Majesty the*

⁴ 993 U.N.T.S. 3.

⁵ Organization of American States (OAS), *Charter of the Organisation of American States*, 30 April 1948.

Queen in Right of the Province of Saskatchewan,⁶ the Defendants add that the right to strike is a fundamental human right and is a normal part of industrial relations.

10. The Defendants argue that sections 33 and 34(1) of the *Trade Unions Act*, and subsections 16(2) and (3) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* expressly limit liability for tortious activities involving trade unions. According to the Defendants, these provisions show an intention on the part of the Legislature to remove liability for certain tortious actions and to provide immunities for union activities such as strike actions. This includes liability for the tort of interference with economic interest, as pleaded by the Claimant.
11. The Defendants contend that sections 33 and 34(1) of the *Trade Unions Act* provide complete protection against liability for the actions of a trade union done in contemplation or furtherance of a trade dispute. It is only when a union acts outside the context of the contemplation or furtherance of a trade dispute that its officials and members can be subject to liability. The *Trade Unions Act* defines a trade dispute as “any dispute or difference between employers and workmen or between workmen and workmen which is connected with the employment or non employment or the terms of employment or with the conditions of labour of any person”. Here, the evidence is clear that the actions taken by the Defendants were in contemplation of an existing trade dispute.
12. Counsel for the Defendants noted that all of the authorities relied upon by the Claimant in support of its position that the Defendants are not immune from these proceedings deal with situations where the rights of innocent third parties were affected. The Defendants contend that none of these authorities contradict their position that unions and their members are immune from liability as it relates to the employer. The policy reason underpinning this immunity is the protection of trade negotiations, which include the right to strike. If the Claimant is successful, it would be the end of legitimate negotiations because all strikes include some degree of illegality.

Claimant's Submissions

13. The Claimant argues that the Defendants cannot avail themselves of the immunities offered by the *Trade Unions Act*. The *Trade Unions Act* was impliedly repealed by the enactment of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, which was meant to supplant it. This is evidenced by the overlap between the two Acts, including, for example, the fact that both Acts provide for the registration of trade unions under different registries.

⁶ [2015] 1 RCS 245 (“*Saskatchewan Federation of Labour*”).

14. The Claimant notes that the Defendants plead that they are registered under the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*. They do not plead or allege that they are registered under the *Trade Unions Act*. To claim the benefits of the protection offered by sections 33 and 34(1), they would have to be registered under the *Trade Unions Act*.
15. Alternatively, the Claimant contends that from a constitutional perspective, blanket immunity should not be interpreted in such a way as to breach an individual's right to the equal protection of the law under the *Belize Constitution*. Individuals should not be denied the right to have access to the courts to determine whether a civil wrong has been committed. Courts should imply limitations to any immunity conferred on unions and their members. Relying on various precedents from common law countries, the Claimant states that the modern jurisprudence establishes that immunity only offers protection when the acts complained of are lawful acts.
16. With respect to subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, the Claimant says that statutory immunities must be strictly construed. Subsection 16(2) only applies if the act or omission was done by an officer, representative, or member in good faith in the course of furthering the objectives of the trade union or employers' organisation. Here, the strike was not done in good faith because the Tribunal process under section 15 of the *Settlement of Disputes in Essential Services Act*⁷ was underway, the First Defendant deliberately withdrew in order to railroad the process, the Defendants returned to work only after signing an MOU with the Government of Belize which did not resolve any of the three issues for which the Defendants went on strike, and the Tribunal award was entirely in favour of the Defendants.
17. In addition, the Claimant asserts that the strike was not "in the course of furthering the objectives of the trade union" because the Defendants' objective was already being "furthered" through the legal means of the Tribunal, they attempted to sabotage the process by withdrawing from it, their objective of resolving the dispute in their favour was achieved by the Tribunal award in their favour, and the Defendants called off the strike and returned to work without the three issues having been resolved. The Claimant adds that the Defendants were gifted \$1.5 million by the Government of Belize, thereby revealing that the motive to strike was never really the three issues, but to create a crisis forcing the Government to negotiate compensation.
18. The Claimant states that, based on the case law, the governing principle is that trade unionists may lawfully combine for lawful common purposes, even though their action

⁷ Cap. 298, Red. Ed. 2020.

inflict irreparable harm upon an individual, so long as they confine their activities to lawful methods. Failure to follow statutory procedure renders strikes unlawful.

The Hansard

19. The Hansard relating to the introduction of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* was provided to the Court.

20. Hansards are helpful interpretive tools in matters such as this one, where the Legislature's intent in enacting legislation is in dispute. The use of Parliamentary materials in court proceedings was thoroughly canvassed in *Pepper (Inspector of Taxes) v Hart*,⁸ where after reviewing several precedents from England and other common law countries, Lord Browne-Wilkinson restated the previously exclusionary common law rule as follows:

I therefore reach the conclusion, subject to any question of Parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to Parliamentary materials where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (c) the statements relied upon are clear.

21. While the Defendants say that this is not a case where the Parliamentary debates would be helpful because there is no ambiguity in either legislation at issue in this matter, the ambiguity resides in the interplay between the two Acts. In *R. v Morgentaler*,⁹ the Supreme Court of Canada held that "provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation". This Court is permitted to consider the Hansard to help in determining the Legislature's intent in enacting the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, provided that the Hansard contains clear statements from a Minister or promoter of the Bill.

22. The Bill was introduced in 2000. In his remarks introducing the second reading of the Bill, the Hon. V. Castillo, Minister of Sugar Industry, Labour and Local Government stated that the purpose of the Bill was to "establish procedures for the registration and status of trade unions and employers' organizations; to promote and protect the recognition of trade unions; to encourage the orderly and effective collective bargaining; and to provide for matters connected therewith or incidental thereto".

⁸ [1993] A.C. 593 at 640.

⁹ [1993] 3 SCR 463 at 484.

23. In reading the Hansard, one would be forgiven for forming the impression that the Government of the time had forgotten about the existence of the *Trade Unions Act*. The *Trade Unions Act*, which was enacted in 1941 and was last amended in 1978, is not mentioned at all in the Minister's remarks. In fact, it appears from these remarks that the Government of the time considered that it was introducing legislation to displace the previous common law position under which unions were not recognized. This is evidenced by the following remarks from the Minister:

“Madam Speaker, the Trade Unions and Employers’ Organization (Registration Recognition and Status) Bill 2000, to be referred to as the bill arose out of the need to provide for union recognition where a majority of workers at a work place so choose”

[...]

“In the Caribbean countries, only the Bahamas, Trinidad and Tobago, Dominica, Grenada, Jamaica and Antigua have statutory provisions recognizing trade unions as the lawful bargaining agents for their workers in the work place. For all other jurisdictions including Belize the common law presumption against recognition of trade unions still applies. Furthermore, at common law, the collective bargaining agreements are unenforceable. This position applied in Belize, Barbados, St. Lucia, Montserrat and St. Kitts. Other countries in the Caribbean have passed laws making collective agreements valid and enforceable”.

24. It should be noted that the *Belize Constitution* was first enacted in 1981, three years after the last amendments to the *Trade Unions Act*.
25. These remarks are interesting because the *Trade Unions Act* does in fact recognize trade unions, does provide workers with a (limited) right of “peaceful picketing”, and does make collective bargaining agreements enforceable. Yet, the *Trade Unions Act* is not referred to at all in the legislative debates. The *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* was considered as establishing a new, comprehensive scheme to displace the previous common law position under which unions were not recognised and collective bargaining agreements were unenforceable. It was also considered as giving effect to the newly constitutionally protected freedom of association.
26. These remarks also suggest that the Legislature intended the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* to be compliant with international instruments. In his remarks, the Minister states that the Bill “gives effect to [...] the [International Labour Organization] standards” and was modelled after a harmonization bill prepared by a consultant with a view to harmonizing labour laws in the Commonwealth Caribbean countries.

27. Finally, in his remarks the Minister makes it clear that “only the trade unions and employers’ organizations which are registered under the [*Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*] shall enjoy the benefits and advantages under this Act”. No mention is made of the immunity conferred at subsection 16(2) of the Act.

Analysis

28. Both the *Trade Unions Act* and the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* govern labour relations between employers, unions, and unionized employees in Belize. At issue in this Ruling is whether the Defendants are entitled to the immunities conferred by either, or both, of these Acts.
29. Given the obvious overlap between the two Acts, the Court must first determine whether the *Trade Unions Act* is in force. There is no evidence that the *Trade Unions Act* was expressly repealed by the Legislature. In fact, the *Trade Unions Act* “survived” the latest consolidation of the Substantive Laws of Belize in 2020 and remains, as noted by the Defendants, “on the books”. The *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* makes no mention of any repeal of the *Trade Unions Act*, and the Hansard does not show an intent on the part of the Legislature to repeal it by the passing of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*. Both Acts are currently in force.
30. The thorniest issue is whether subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* protecting union members from liability “for any act or omission of the trade union [...] if the act or omission was done [...] in good faith” impliedly repealed sections 33 and 34(1) of the *Trade Unions Act* conferring immunity on unions and their members against legal actions for interference with the “trade business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills” and against “any tortious act alleged to have been committed by or on behalf of the trade union”.
31. It is readily apparent that the immunity conferred by subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* is narrower than the immunity conferred by sections 33 and 34(1) of the *Trade Unions Act*. The immunity in sections 33 and 34(1) of the *Trade Unions Act* is near absolute; it applies to both trade unions and their members, and covers any act done “in contemplation or furtherance of a trade dispute”, whether the act is tortious in nature and/or leads to economic loss. By contrast, the immunity in subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* is only applicable to union members personally, and can only be relied upon where the act or omission at issue was done “in good faith in the course of furthering the objectives of the trade union”.

32. This Court finds that sections 33 and 34(1) of the *Trade Unions Act* were impliedly repealed by subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*. It is a principle of statutory construction that “where the provisions of an Act are inconsistent with the provisions of an earlier Act, the earlier provisions may be impliedly repealed by the later”.¹⁰ The classic statement of the test for implied repeal was set out in *West Ham (Churchwardens, etc) v Fourth City Mutual Building Society*¹¹ as follows:

The test of whether there has been a repeal by implication by subsequent legislation is this: are the provisions of a later Act so inconsistent with, or repugnant to, the provisions of an earlier act that the two cannot stand together?

33. In *Firebird Global Master Fund II Ltd v Republic of Nauru*,¹² the High Court of Australia specified that “for a court to conclude that a later statute impliedly repeals an earlier statute the court must be satisfied that the two statutes are so inconsistent that they cannot stand or live together. This will be so only if the provisions of the two statutes cannot be reconciled”.
34. In this Court’s view, the provisions at issue in both Acts cannot be reconciled with each other. It is clear that sections 33 and 34(1), and subsection 16(2), are meant to apply in the same circumstances. Section 33 and subsection 16(2) apply where acts done for the purpose of furthering the objectives of the trade union (which include the resolution of trade disputes) would normally attract civil liability on either the union or its members. Subsection 34(1) applies to any tortious act alleged to have been committed by or on behalf of a trade union. All three sections exist to confer immunity against liability in the context of labour actions.
35. However, the scope of the immunity conferred by the more recent subsection 16(2) is narrower than the immunity conferred by sections 33 and 34(1). As mentioned, subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* does not apply to trade unions, but only to their officers, representatives, and members. Under the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, trade unions do not enjoy any statutory immunity against civil liability. In addition, subsection 16(2) introduces a requirement of good faith to be entitled to the immunity it confers. Sections 33 and 34(1) do not have any such requirement. All three sections cannot be reconciled because the later subsection 16(2) clearly evidences a legislative intent to move away from a near absolute to a qualified immunity. A finding that the near absolute immunity in sections 33 and 34(1) continues to apply would result in the

¹⁰ D. Feldman, D. Bailey et al., *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed., Lexis Nexis, 2020 at 8.9.

¹¹ [1892] 1 QB 654 at 658.

¹² [2016] 3 LRC 157.

qualified immunity in subsection 16(2) to have no effect. This would go against both the legislative intent and principles of construction of statutes.

36. Even if this Court is wrong and sections 33 and 34(1) of the *Trade Unions Act* have not been impliedly repealed by subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, the Defendants face another hurdle. As noted by the Claimant, section 8(1) of the *Trade Unions Act* provides that “every trade union to which this Act applies shall be registered under this Act”. The CWU is not registered under the *Trade Unions Act*. On its own evidence, the CWU is only registered under the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*. Pursuant to section 8(1), the CWU and its members are not entitled to the benefits of the *Trade Unions Act*.
37. The *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* does not provide for a statutory immunity in favour of unions. However, this statutory silence must be interpreted in context. It is clear from the legislative debates that the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* was not meant to restrict the freedom of association of Belizean workers, but rather to give effect to the *Belize Constitution* and to comply with various international instruments which Belize is a part of, including the International Labour Organisation’s *Freedom of Association and Protection of the Right to Organise Convention*, 1948¹³ and the *Right to Organise and Collective Bargaining Convention*, 1949¹⁴ (the “ILO Conventions”).
38. Interpreting the absence of a statutory immunity in favour of unions as a withdrawal of the near absolute immunity they previously enjoyed would be inconsistent with this legislative intent. It is important to note that the *Trade Unions Act* was first enacted in 1941, decades before the *Belize Constitution* would come into existence. At the time, the freedom of association was not constitutionally protected, and unions were not recognised. The *Trade Unions Act* was enacted to address this void by recognising unions and protecting them from liability for carrying out activities which would otherwise be considered illegal under the law. The immunity conferred by the *Trade Unions Act* was the sole protection afforded to unions and their members.
39. With the enactment of the *Belize Constitution* in 1981, the freedom of association and the right of workers to form or belong to trade unions are now constitutionally protected and must be read into laws governing the relations between employers, unions, and workers. Section 13 of the *Belize Constitution* provides as follows:

¹³ Convention No. 87.

¹⁴ Convention No. 98.

13.-(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests or to form or belong to political parties or other political associations.

40. That the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act* incorporates the rights of workers under the *Belize Constitution* is made explicit in paragraph 4(1)(g) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, which reads as follows:

4.-(1) Subject to section 13 of the Belize Constitution, Cap. 4, every employee shall have and be entitled to enjoy the basic rights specified in subsection (2).

(2) The basic rights referred to in subsection (1) of this section are,

[...]

(g) exercising any other rights conferred on employees by this Act or any Regulations made hereunder, the Belize Constitution, Cap. 4, or any other law governing labour and employment relations, and assisting any other employee, union representative, shop steward, safety representative or trade union in the exercise of such rights [emphasis added].

41. The freedom of association encompasses a right to strike. Like section 13 of the *Belize Constitution*, subsection 2(d) of the *Canadian Charter of Rights and Freedoms*¹⁵ protects the freedom of association. As noted by the Defendants, in *Saskatchewan Federation of Labour*,¹⁶ the Supreme Court of Canada held that the freedom of association includes a right to strike:

[75] This historical, international, and jurisprudential landscape suggests compellingly to me that s. 2(d) [of the *Canadian Charter of Rights and Freedoms*] has arrived at the destination sought by Dickson C.J. in the *Alberta Reference*, namely, the conclusion that a meaningful process of collective bargaining requires the ability of employees to participate in the collective withdrawal of services for the purpose of pursuing the terms and conditions of their employment through a collective agreement. Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. In this case, the suppression of the

¹⁵ Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.

¹⁶ *Supra*.

right to strike amounts to a substantial interference with the right to a meaningful process of collective bargaining [emphasis added].¹⁷

42. Although the *Saskatchewan Federation of Labour* decision is rooted in Canadian law, the Supreme Court of Canada relied on legislative instruments and precedents from several other jurisdictions, decisions of the European Court of Human Rights, and international standards such as those set out in the ILO Conventions and in the *International Covenant on Economic, Social and Cultural Rights*, in support of its finding. These authorities ought to equally apply in Belize.
43. The right to strike is recognised as a fundamental human rights in international law, including in the Americas. Belize is a state party to the Organization of American States. Article 45 c) of the *Charter of the Organization of American States* explicitly provides for the right of workers to strike. In its Advisory Opinion OC-27/21 dated May 5th, 2021 on the *Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, with a Gender Perspective* (the “Advisory Opinion”), the Inter-American Court of Human Rights held as follows:

95. The right to strike is one of the fundamental human rights of workers, and they can avail themselves of it even outside of their organizations. This is stated in Articles 45(c) of the OAS Charter (workers’ right to strike) and 27 of the Inter-American Charter of Social Guarantees (workers have the right to strike); it is also stated, and deliberately placed separately from the rights of union organizations, in Articles 8(b) of the Protocol of San Salvador and 8(1)(d) of the ICESCR (*supra*, par. 47 and 48, and 56 to 60). Otherwise, the negative dimension of freedom of association in the individual sense could be breached. It is also one of the leading rights of union organizations in general

[...]

97. The Court also notes that, in addition to being broadly recognized in international *corpus juris*, the right to strike has also been recognized in the national constitutions and laws of OAS member states. It can thus be considered a general principle of international law [emphasis added].

44. In its Advisory Opinion, the Inter-American Court of Human Rights “upholds the standard of legality as a key factor to determine whether the right to strike can be exercised”.¹⁸
45. The Court is unaware of any Belizean precedents addressing the issue of whether the freedom of association protected by section 13 of the *Belize Constitution* encompasses a

¹⁷ *Saskatchewan Federation of Labour*, *supra* at para. 75.

¹⁸ Advisory Opinion at para. 100.

right to strike. The Claimant provided this Court with a decision from the Court of Appeal of Trinidad and Tobago, *Collymore and Abraham v The Attorney General*,¹⁹ in which the Court held that the Constitution of Trinidad and Tobago does not protect a right to strike. *Collymore*, however, was decided in 1967. Despite the fundamental nature of the right to strike having been raised by the Defendants, the Claimant has not provided any recent authority showing that this right is not, or should not be recognized in Belize.

46. The authorities cited above show that the winds have changed since the 1960s, and these winds are steadily pushing towards the recognition of the right to strike as a fundamental human right. By enacting a *Constitution* protecting the fundamental human rights of Belizeans, including the freedom of association and the right to form or belong to trade unions, and by adhering to international instruments such as the ILO Conventions and the *Charter of the Organization of American States*, which protect the freedom of association and the right to strike, Belize has clearly signaled its commitment to safeguarding the rights of workers to promote and protect their rights through unionization and labour actions.
47. This Court therefore declares that the freedom of association and the right to form or belong to trade unions protected under section 13 of the *Belize Constitution* encompass a right to strike. In accordance with the Advisory Opinion of the Inter-American Court of Human Rights, the exercise of the constitutional right to strike is subject to the standard of legality. Only strikes that are legally carried out under the laws of Belize are constitutionally protected.
48. The answer to the preliminary question of law this Court has been asked to address is therefore the following: the Defendants are not entitled to the immunity conferred by sections 33 and 34(1) of the *Trade Unions Act*. The First Defendant does not enjoy a statutory immunity under the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*. The First Defendant does, however, enjoy a constitutional right to strike which is incorporated by reference in the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*. This constitutional right to strike can only be exercised where a strike is legally carried out pursuant to the laws of Belize.
49. As officers, representatives, or members of the CWU, the Second to Seventh Defendants are entitled, pursuant to subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*, to a statutory immunity for any act or omission of the CWU if the act or omission was done in good faith in the course of furthering the objectives of the CWU.

¹⁹ (1967) 12 WIR 5 (“*Collymore*”).

50. The Court declines to determine, at this stage, whether the strike that took place between January 20th and January 27th, 2022 was carried out legally or illegally under the laws of Belize. A trial of this Claim is necessary to make that determination.
51. Despite the Claimant's invitation to do so, the Court also declines to determine, at this stage, whether the actions which have given rise to this Claim were done in good faith or in bad faith by the Second to Seventh Defendants. While the Claimant made reference to decisions made and actions taken by the Second to Seventh Defendants which may impugn their good faith, in their witness statements the Defendants provide an alternative version of what transpired during and after the Essential Services Arbitration Tribunal process which may support a finding that they acted in good faith. A trial of this Claim is therefore necessary to test the credibility of the witnesses and determine whether the actions complained of by the Claimant were undertaken in good faith or in bad faith.
52. There will be no order as to costs.

THIS COURT DECLARES THAT:

- (1) The Defendants are not entitled to the immunity provided for in sections 33 and 34(1) of the *Trade Unions Act*.
- (2) The Second to Seventh Defendants are entitled to the immunity provided for in subsection 16(2) of the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*.
- (3) Section 13 of the *Belize Constitution* protecting the freedom of association and the right to form or belong to trade unions encompasses a right to strike.
- (4) The constitutional right to strike is incorporated by reference in the *Trade Unions and Employers Organisations (Registration, Recognition and Status) Act*.
- (5) The exercise of the constitutional right to strike is subject to the standard of legality.
- (6) No order as to costs.

Dated May 29th, 2023

Geneviève Chabot
Justice of the High Court