



CPR CAYMAN
Cruise Port Referendum Cayman
cprcayman@gmail.com | 345-926-1432

PRESS RELEASE

CPR Statement on Referendum Judicial Review Appeal Ruling

2 July 2020

On Thursday 2 July 2020, the Court of Appeal issued its decision setting aside the earlier decision of Justice Tim Owen Q.C., Acting Judge of the Grand Court, in which he ruled that the law enacted by Government to establish the process and procedure for the conduct of the referendum on the proposed cruise ship berthing facility was unconstitutional.

The judicial review challenge was brought by Shirley Roulstone, one of the executive members of CPR Cayman, with the support of CPR Cayman.

At the Grand Court level, Justice Owen Q.C. found that the law that was passed by Government was inconsistent with the requirements of the Cayman Islands Constitution, which he said confers a right on the people of the Cayman Islands to have referendums carried out in a manner that is fair and effective, not just to have referendums. He found that in order for referendums to be carried out fairly, the Government must pass a standing or general law setting out how all people-initiated referendums should be carried out, rather than a different law for each referendum, which would allow Government to stack the odds of success in the referendum in its own favour - something it appears to have attempted to do in the law it passed to govern the referendum on the proposed cruise berthing port.

The Court of Appeal overturned the Grand Court decision, finding that Judge below had gone too far in finding the Port Referendum Law to be unconstitutional. However, the Judges of the Court of Appeal also made the following observations:

“In the circumstances of this case we can understand why the judge reached the decision that he did. These included what were from a legal point of view false starts by the Government in relation to settling the referendum question and date before enacting the Port Referendum Law, and evidence on the substantive matters relied on by the Respondent which the judge considered (see [47] above) provided considerable support



CPR CAYMAN
Cruise Port Referendum Cayman
cprcayman@gmail.com | 345-926-1432

for the argument that “an unequal playing field which was heavily stacked in favour of the Government side” had been created. They also included an apparent failure [by Government] to consult the Constitutional Commission before deciding how to respond to this the first people-initiated referendum and a background of very surprising non-responsiveness [by Government] to two significant and highly relevant documents prepared by the Commission. However, for the reasons set out in Part V, we have been driven to conclude that this appeal must be allowed. ...”

Shirley Roulstone was represented in the judicial review proceedings by Kate McClymont of Broadhurst LLC. Ms. McClymont stated:

“While Court of Appeal found that the judge at first instance had gone further than he was entitled, this decision was not a recognition or vindication of the Government’s position on the port referendum or the law it passed to govern the referendum process. The Court of appeal were sympathetic with the reasons why the application was brought and why the Judge in the Grand Court felt constrained to decide the matter as he did.

Overall, the proceeding has been a success. We achieved a number of victories along the way that will ensure the referendum on the port project, when it takes place, is conducted in a manner that is likely to be much fairer than might otherwise have been the case. In particular, the Government has amended the wording of the referendum question to make it clearer and more neutral and has agreed to pass a general referendum law to govern the process by which all future referendums will be conducted, rather than using legislation that is specific to this particular referendum and, therefore, inherently more likely to create an uneven playing field in favour of the Government position.

I’m grateful to Shirley Roulstone for having the courage and tenacity to pursue this matter, which is in the public interest and from which she has nothing personal to gain. I would also like to thank CPR Cayman for everything they have done to make it possible. Through these proceedings, Shirley Roulstone and CPR Cayman have shown that the Government cannot run roughshod over people’s rights and the



CPR CAYMAN
Cruise Port Referendum Cayman
cprcayman@gmail.com | 345-926-1432

people can stand up against Government for what is just, fair and equitable; they can achieve great things.”

Ms. Shirley Roulstone’s statement:

“The Cayman Islands owes a debt of gratitude to the CPR founding members who had the foresight to start a petition and to see this process through because the Government may have won an appeal but the people of the Cayman Islands have won so much more than CPR ever even set out to accomplish. The biggest one being that Caymanians realise that they do have a voice and they can stand to protect their environment and other things that are near and dear to them; and the other one of equal importance is that if not for the work of CPR and this process we would now probably have all of our marine environment in the harbour destroyed and maybe a partially built pier sticking out in the water that may or may never be completed so we have WON no matter what. Now it is of the utmost importance to register to vote in 2021. It is the only way to participate in what goes on in our country!”

While the outcome of the appeal is disappointing, the objectives of the legal action brought by Ms. Shirley Roulstone, a member of CPR Cayman, have largely been achieved in any event. The main objectives were to:

- Ensure there would be a general framework law passed to govern the process for future referendums – The Attorney General’s Chambers accepted in the course of the proceedings that they would do this, irrespective of the outcome of the appeal.
- Expose the inequality and unfairness of the process that the Government put in place to govern the petition process and referendum on the proposed cruise berthing process – That inequality and unfairness has been exposed by these proceedings and acknowledged in the judgment of the Grand Court and the Court of Appeal.
- Ensure the referendum on the proposed cruise berthing project would not take place on the date originally proposed by Government, being 19 December 2019, which would have disenfranchised many voters – This objective was achieved by the injunction granted by the Honourable Justice Tim Owen Q.C. and as a result of these proceedings



CPR CAYMAN
Cruise Port Referendum Cayman
cprcayman@gmail.com | 345-926-1432

we hope the Government will take note, when setting the date for future referendums, that the people of the Cayman Islands will not accept any attempt by Government to infringe upon their democratic right to vote.

Taken as a whole, the work of CPR Cayman, including bringing this legal challenge, has also had the effect of delaying progress on the port project. Were it not for those efforts, there is every chance that George Town Harbour might already have been decimated by the start of construction work on the cruise berthing project and our historic and world-famous coral reefs already destroyed, with no prospect of completion of that project on the horizon, due to the uncertainty to the cruise industry caused by the Covid-19 pandemic. For this reason, and those outlined above, this is a time for the people to reflect on how far this case has brought us and for Government to start respecting it's people and acknowledging that they are our representatives, elected to do carry out the will of the people, not to ignore our voices.

While the future of the proposed cruise berthing port and the cruise industry as a whole is now far from certain. The Premier has acknowledged that the referendum on the cruise berthing project will not be carried out during the term of this Government; however, it is not over. The referendum still needs to take place as it will determine whether future governments are permitted to proceed with the project. Accordingly, we urge this Government to minimise the cost of the referendum process by engaging with stakeholders in respect to the general referendum legislation that they have agreed to pass and confirming that the Referendum will be held at the same time as the May 2021 election. Given the strain on public funds caused by the pandemic, proceeding in any other way would be fiscally irresponsible.

Provided the new general referendum legislation strives for the highest standards of good governance and to provide equality, fairness, transparency and objectivity, we are cautiously optimistic that the referendum on the port project, when it occurs, will be fair and effective. That is what the people campaigned for and what this court proceeding was all about. Let the people have their say on Election Day 2021!

For more information the public can contact cprcayman@gmail.com or visit www.cprcayman.com

END