



CPR CAYMAN
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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



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which the judge considered (see [47] above) provided considerable support 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



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it possible. Through these proceedings, Shirley Roulstone and CPR Cayman have shown that the Government cannot run roughshod over people's rights and the 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 important 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."

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



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granted by the Honourable Justice Tim Owen Q.C. and as a result of these proceedings 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!



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Background (from the previous press release for reference):

The 20 February 2020 Grand Court ruling held that the Constitution required the legislature to enact a “general law” governing the conduct of people-initiated referenda rather than a specific law that it can tailor to suit its agenda in any particular referendum because “Section 70 of the Constitution confers a direct democratic right on the people to veto the policy choices of their democratic representatives” and “allowing the democratic representatives to change the ground rules every time there is a referendum risks the rules being changed to promote their policy choice”.

This decision shows that your voice counts and that your vote in the referendum will count. The citizens of the Cayman Islands can challenge the Government and challenge the status quo to bring about a precedent setting, positive outcome that protects the democratic rights of all citizens.

Shirley Roulstone was represented in the judicial review by Kate McClymont of Broadhurst LLC. Ms. McClymont stated: *“The fairness and effectiveness of referenda, like elections, is one of the cornerstones of democracy. This is a landmark decision that is likely to result in the referendum on the proposed cruise ship berthing facility, and future people-initiated referenda, being conducted more fairly than would otherwise have been the case. Provided the Legislature adopts the recommendations made by the Hon. Justice Owen QC, it is also likely to result in the public being provided with more balanced information on which to make an informed decision when the time comes to vote in the referendum”.*

The decision of the Court requires the Government to draft a general law that provides a framework for the conduct of all people-initiated referenda and made recommendations regarding some types of provisions that should be included in that law to protect the people’s constitutional right to have referendums conducted fairly. The Government has acknowledged that it would be preferable to have a general law in place, rather than passing specific legislation for each referendum as it did in this case, and that it has already started the process of drafting the type of general law that the court has said is required. Despite this, they have also indicated their intention to appeal today’s judgment.

Whether or not their appeal is successful, it appears the legislative is likely to pass a general framework law for the conduct of referenda. We encourage our elected officials to engage with



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stakeholders and seek input on the drafting before passing the next Referendum Bill into law; the next referendum legislation should strive for the highest standards of good governance and to provide equality, fairness, transparency, objectivity on the part of Government.

CPR's Johann Moxam said: *"We would like to thank Shirley Roulstone for her bravery, tenacity and dedication to her country as a humble, concerned citizen. She stood up against an attempt at injustice at the highest level and won. We are proud to include her amongst our executive committee and to have her represent us and the people of the Cayman Islands in this important case"*.

Ms. Shirley Roulstone said: *"Today's ruling is proof that citizens can and must monitor the actions of their Government and be ready to challenge the Government when its action or inaction is contrary to the standards of fairness, good governance and democracy that we have the right to expect"*. She added *"I would like to thank my legal team, Kate McClymont and Richard Parrish of Broadhurst LLC and Chris Buttler and Helen Mountfield QC of Matrix Chambers, for having the conviction to represent me despite political adversity and for providing clear, logical and legally sound advice throughout this process. I would also like to sincerely thank The National Trust for joining the judicial review proceedings as an interested party and providing important evidence on the devastating environmental impact that the proposed cruise berthing facility will have and the way the Government has misled the public about that impact."*

The issue of the proposed cruise berthing project, which brought more than 6,000 registered voters out to petition for a referendum, remains a current and critical threat to our islands. We are more convinced than ever that we can reach the threshold of >50% of registered voters voting NO in the referendum, which will prevent the Government proceeding with the project. All it takes is for the people of these islands to exercise their right to vote. Shirley has proven through today's decision that one person can make a difference. Your vote will count!

To ensure every Caymanian has the information they require to make a fully informed decision when it comes time to vote in the referendum we ask the Government to commission a fully updated environmental impact statement on the revised project, in consultation with the Department of Environment and the National Conservation Council, and encourage the Governor to convene a public enquiry to examine the economic, environmental and social implications of



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the proposed facility. We also ask that the elections office start now on the preparation of a document addressing the procedures and practices for the referendum including, amongst other things, economic assistance for overseas voters to return ballots; the need to audit the electors list to remove deceased persons, mentally impaired persons and anyone else not entitled to vote; the procedure to ensure anyone needing mobile voting assistance is provided with that assistance; a clear indication to employees of public authorities and statutory authorities that they have the right to campaign for either a “yes” or “no” vote without fear of retribution, recognizing that they are distinct from core civil servants and not bound to impartiality.

Finally, as we draw closer to an election year, CPR would like to acknowledge that it is not opposed to the referendum being held at the same time as the next general election, in May 2021. Campaigning, whether for a general election or a referendum takes government focus and energy away from the many other pressing social and economic issues currently faced by the community. There is therefore an economy achieved by consolidating those two campaigning periods into one.

As a non-profit organisation, we are guided by the principles of accountability, transparency and good governance and we will continue to question the referendum process and advocate to ensure the referendum is conducted fairly.

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

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