

Attention: The Governor of the Cayman Islands

His Excellency Martyn Roper
Government Administration Building
Grand Cayman KY1-9000
CAYMAN ISLANDS

RE: PETITION REQUESTING THE GOVERNOR TO INITIATE AN INVESTIGATION PURSUANT TO SECTION 96(4) OF THE CONSTITUTION (THE “PETITION”)

1. *Colours Caribbean* wrote to Your Excellency’s Head of Office, Christine Rowlands, on 18 January 2021 (the “**Letter**”) regarding the above matter and then subsequently discussed the matter further in person with Your Excellency on Thursday 28 January 2021 (the “**Meeting**”).
2. The Letter raised serious concerns regarding, inter alia, the legal grounds for judicial review proceedings instituted in the Grand Court and, in particular and relevant to this Petition, the fact that decision of the court to authorise those proceedings to go ahead (the “**Judgment**”) had not been made available to the public for almost two months.
3. Your Excellency will no doubt be intimately familiar with the Constitution and will understand that this lack of publicity constitutes a breach of section 7(9) of the Constitution. Our Letter stated that this situation warranted further investigation pursuant to the powers of the Governor under section 96(4) of the Constitution and requested that Your Excellency initiate such an investigation.
4. On 21 January 2021, *Cayman News Service* published a copy of the Judgment, obtained from undisclosed sources, which had until then remained an undisclosed decision of Justice Williams to authorise the judicial review of your use of section 81 of the Constitution, pursuant to which the Civil Partnership Act 2020 and other consequential amendments had been implemented.
5. *Colours Caribbean* was also, since our Letter, provided with a copy of an email message from a Senior Clerk of Court, Shiona Allenger, sent to Wendy Ledger of *Cayman News Service* on 14 January 2021 (the “**Email of the Clerk of Court**”). A copy of the Email of the Clerk of Court is annexed at Tab 1. Please note that the Email of Clerk of Court has now been made public by Wendy Ledger and can be found on the *Loop Cayman* website.
6. For ease of reference, the message contained in the Email of Clerk of Court states:

I refer to your email below to the Court Administrator, please be advise that I have previously been in communication with Mr. Harris in relation to the above matter. As indicated earlier to him, the matter was filed as is all JR’s at the Leave Stage ex parte and therefore would not have been placed on our public registers whether in hard copy or electronically. Therefore a search of our Public Registers would not have yielded the results to which you are seeking.

Please be advised that when the request was put to me by Mr. Harris, I reached out the judge who was presiding over the Leave Application and based on indications received from the judge, the ex parte application was not made available to the public.

We recall a request from you to attend the proceedings, however before a decision could be made, the hearing was vacated by consent of the parties. If matters progress beyond the current stage and we are permitted to place the documents on the public register once granted by the Courts, please note, then at that time, we will update the register accordingly, we have not be granted permission to place any documents in relation to this matter on the public register at this time.

7. At the Meeting, Your Excellency's attention was drawn to the fact that at the time when our Letter was sent, *Colours Caribbean* did **not** have a copy of the Judgment nor any explanation as to why the decision was not, at that time, available to the public. During the Meeting, Your Excellency was provided with a copy of the Email of the Clerk of Court and was respectfully directed to two sections. The first section was the one in which Shiona Allenger states unequivocally:

"I reached out the judge who was presiding over the Leave Application and based on indications received from the judge, the ex parte application was not made available to the public."

The second section was the one in which Shiona Allenger further confirmed that, as of 14 January 2021, the Clerk of Court **"ha[d] not be[en] granted permission to place any documents in relation to this matter on the public register."**

8. *Colours Caribbean* respectfully submitted to Your Excellency during the Meeting that these assertions gave rise to very serious concerns in that they were made by an independent third party in writing. If the assertions were true, then they amounted to evidence to support our serious concerns raised in the Letter in that they could objectively equate to prima facie **misbehaviours** of Justice Williams within the scope of section 96 of the Constitution. At the end of the Meeting, *Colours Caribbean* beseeched Your Excellency to trigger the constitutional proceedings to investigate further these assertions. It was explained to Your Excellency that such investigation was warranted and apposite, even if simply to clear the name of Justice Williams and to protect the prestige of the Cayman Islands judiciary.
9. Since the Meeting, a statement was issued by the Judicial Administration dated 2 February 2021 (the **"Statement of the Court"**), a copy of the Statement of the Court is annexed at Tab 2. The Statement of the Court, for ease of reference, reads:

Following recent articles that have appeared in the Cayman News Service [21 January 2021 and 1 February 2021] and in Loop Cayman [1 February 2021] and following comments made in a public statement released by Colours Cayman, it has become necessary to correct the record.

Justice Williams heard the ex parte application for Judicial Review on 17 November 2020.

Having regard to the nature of the proceedings and his view that it was a matter of public interest, Justice Williams delivered a detailed reserved written judgment on 20 November 2020 to fully explain his decision. That judgment was not uploaded to the Judicial Website, as it was inadvertently overlooked, which has now been rectified. For the avoidance of doubt, Justice Williams did not direct that the publication of the judgment be restricted in any way.

The Earlier communication from Judicial Administration sent to CNS stating that (i) Justice Williams had been consulted by the Clerk of Courts concerning the application being made public and (ii) Justice Williams had indicated that the ex parte application was not to be made available to the public was not accurate. For the avoidance of doubt, Justice Williams was not consulted and he gave no such direction.

The application was not placed on the Public Register because it was ex parte in nature and in keeping with what is often done in such cases. This case being of genuine public interest ought not to have been embargoed in any way without an order from the judge, and no such order was made. On 22 January 2021, upon being informed that the ex parte application had not been placed on the public register, Justice Williams ordered that to be done.

10. The Statement of the Court denies the two assertions made in the Email of the Clerk of Court discussed at the Meeting in very emphatic and unequivocal terms:

“For the avoidance of doubt, Justice Williams did not direct that the publication of the judgment be restricted in any way.”

The Statement of the Court then adds:

*“The Earlier communication from Judicial Administration sent to CNS stating that (i) Justice Williams had been consulted by the Clerk of Courts concerning the application being made public and (ii) Justice Williams had indicated that the ex parte application was not to be made available to the public was not accurate. **For the avoidance of doubt, Justice Williams was not consulted and he gave no such direction.**”*

11. The alternative assertion advanced in the Statement of the Court to explain why the Judgment had not been made available to the public for over two months was:

*“That judgment was not uploaded to the Judicial Website, as **it was inadvertently overlooked.**”*

12. The Statement of the Court makes the situation even more complex and concerning than that which we had discussed at the Meeting. Let's recapitulate the uncontroverted relevant facts that we know so far:
- An application for Judicial Review was filed on 28 October 2020.
 - The application was not placed on the Public Register because it was ex parte in nature and, hence, in keeping with what is often done in such cases.
 - The application was heard, ex parte, by Justice Williams on 17 November 2020.
 - Justice Williams granted leave to proceed with judicial review in the Judgment, dated 20 November 2020.
 - The Judgment was made public by the courts only after being obtained by *Cayman News Service* from an undisclosed source and published in the press on 21 January 2021.
 - On 22 January 2021, upon being informed that the ex parte application had not been placed on the public register, Justice Williams ordered that to be done.

13. The reason for the heightened concern now is due to the strikingly opposing assertions as to the facts that led to the non-disclosure of the Judgment:

13.1. the Clerk of the Court unequivocally states that upon being consulted the judge directed so; and

13.2. Justice Williams, however, denies unequivocally to have given such a direction or even having been consulted at all; for the judge it was simply **inadvertently overlooked**.

14. To assist with these strikingly opposing assertions we set out below the Email of Clerk of Court and the Statement of the Court:

EMAIL OF CLERK OF COURT

"I reached out the judge who was presiding over the Leave Application and based on indications received from the judge, the ex parte application was not made available to the public."

"We have not be[en] granted permission to place any documents in relation to this matter on the public register."

STATEMENT OF THE COURT

"The Earlier communication from Judicial Administration sent to CNS stating that (i) Justice Williams had been consulted by the Clerk of Courts concerning the application being made public and (ii) Justice Williams had indicated that the ex parte application was not to be made available to the public was not accurate. For the avoidance of doubt, Justice Williams was not consulted and he gave no such direction."

"That judgment was not uploaded to the Judicial Website, as it was inadvertently overlooked... For the avoidance of doubt, Justice Williams did not direct that the publication of the judgment be restricted in any way."

15. Put simply, one of these two persons, one being a Grand Court Judge and the other being a senior civil servant of the judiciary, is not telling the truth. Their written messages are clear and leave no room for confusion or explanation: **either the judge was consulted and directed to keep the written authorisation away from the public as the Clerk of Court asserts or Justice Williams was not consulted and gave no such direction as the judge asserts.** Statistically, there is a 50:50 of one being truthful and the other untruthful.
16. The seriousness of this saga is now profound. The possibility that Justice Williams may be not telling the truth, given the constitutional role he has been assigned by Her Majesty, requires this matter to be immediately investigated. Particularly, doubts as to whether Justice Williams has been truthful are connected with a case in which he is sitting; arguably one of the most important judicial reviews that the Cayman Islands have ever had. The legal requirement for an effective remedy under article 13 of the European Convention of Human Rights is at risk of being breached. To be clear, if the judicial review is successful, the people of the Cayman Islands will be left with no effective remedy in this jurisdiction when a court declares an incompatibility with the Bill of Rights. The legislators have already demonstrated that they are prepared to ignore orders of the court. If section 81 cannot be used in the manner in which it was used to implement the Civil Partnership Act, this will make the Constitution itself illegal for being in breach of article 13 of the European Convention. A declaration of incompatibility under section 23 of the Constitution is simply a declaration; it does not stop the enforceability of the offending local law.
17. It is also in the interests of the United Kingdom that the judicial review not be successful since, for the reasons explained above in paragraph 16, an additional and new violation of article 13 of the European Convention of Human Rights will take place. Your Excellency has a constitutional obligation to prefer the interests of the United Kingdom to those of the Cayman Islands in these circumstances [section 31(3) of the Constitution] and although Your Excellency must not interfere with the judicial process, and this is not what *Colours Caribbean* is asking you to do, Your Excellency must make sure that there are no reasons to doubt the impartiality of the judge presiding over this case. Any doubt as to whether Justice Williams has been truthful in his assertions, if left to remain, make him unfit to continue hearing this case. Such remaining doubt will taint any judgement of Justice Williams regardless of whether he finds in favour or against the powers of Your Excellency under section 81.
18. It is difficult to avoid noticing that some aspects not yet mentioned but that featured in the Email of the Clerk of Court have been corroborated by a completely independent witness. For instance, the first paragraph of the Email of the Clerk of Court states that:

“Please be advised that I have previously been in communication with Mr Harris in relation to the above matter. As indicated earlier to him ...a search of our Public Registers would not have yielded the results to which you are seeking.”

In the *Cayman Compass*, Mr [Andre] Harris confirms that: “Between October 2020 and January 2021, the *Cayman Compass* requested several times, in person and via email, access to both the application itself and the subsequent judgement. Each time the *Cayman Compass* was told the documents were not to be made public.”¹

1. **“Judge denies withholding judicial review documents from public,”** *Cayman Compass*
3 February 2021
<https://www.caymancompass.com/2021/02/03/judge-denies-withholding-judicial-review-documents-from-public/>

19. This corroboration of aspects of the Email of the Clerk of Court must not in any way be taken as an attack to the integrity of Justice Williams or the judiciary, but rather a simple and unavoidable fact that flows from the written statements of different independent and reputable sources. It would be wholly wrong, of course, to favour the Clerk of Court assertions over those of Justice Williams or vice versa. Each assertion simply needs to be probed as a consequence of the Statement of the Court, which by its content dictates that one of the parties is being untruthful. As we stated in paragraph 15, **either the judge was consulted and directed to keep the written authorisation away from the public as the Clerk of Court asserts or Justice Williams was not consulted and gave no such direction as the judge asserts.**
20. Your Excellency has been given by Her Majesty the constitutional obligation of representing her in both good times and bad [section 43(2) of the constitution]. With that representation, Your Excellency has been vested with the power of overseeing and disciplining on Her Majesty's behalf the Civil Service of Her Majesty. Additionally, Your Excellency has been also vested by Her Majesty with the power of appointing judges and overseeing their behaviour, including the responsibility of initiating investigations where necessary. The final decision as to whether to discipline a judge lies with Her Majesty.
21. *Colours Caribbean* respectfully submits that Your Excellency will be failing Her Majesty if when faced, as you are, with the 50 per cent chance that a Judge has been untruthful, you were not to discharge your constitutional role and responsibility towards Her Majesty. Moreover, Your Excellency will be failing in the exercise of your functions if, in the case of an inconsistency between the interests of the Cayman Islands and the interests of the United Kingdom, you choose to favour the interests of the Cayman Islands. We refer here, in particular, to the consequences that may flow from a judicial review outcome that is not in your favour [paragraph 16 above], issued by a judge with an outstanding question mark hanging over him as sad consequence of these events.
22. *Colours Caribbean* therefore requests, based on the Email of the Clerk of Court, the Statement of the Judiciary and the *Cayman Compass* reported today 3 February 2021, that an investigation be triggered under section 96(4) of the Constitution to ascertain which of the assertions made in the statements of the Clerk of Clerk and of the judiciary is true. We further respectfully request that, upon conclusion of the constitutional process, appropriate action be taken.



Billie Bryan, Founder & President,
Colours Caribbean