

PRESS RELEASE

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FOR IMMEDIATE RELEASE

Court Of Appeal Rules In Favour Of Preserving Civil Partnerships In The Cayman Islands

SUMMARY

Cayman Islands Court Of Appeal affirms former Governor Martyn Roper acted within his legal powers in upholding the Civil Partnership Act 2020.

ARTICLE

The monumental decision brought by the Cayman Islands Court of Appeal is today being celebrated by *Colours Caribbean*, and by the wider LGBTQIA+ community in all Caribbean British territories in our region. The ruling of this appeal has confirmed that former governor Martyn Roper, did, in fact, act within his legal powers with regards to his passing of the Civil Partnership Act (2020) and other legislation, in September 2020, in accordance with Section 81 of the Constitution. Not only this but it was made clear that the Governor actually had the constitutional duty to take action in circumstances in which Parliament failed to legislate civil partnerships for same-sex couples as declared by the Court of Appeal in *Chantelle Day and another v The Governor of the Cayman Islands*.

The Court of Appeal made it clear that the Cayman Islands Parliament does not have the same degree of power as the United Kingdom Parliament. Rather, the Constitution of the Cayman Islands is locally supreme and the Constitution grants the Governor the power to make laws. Furthermore, the Governor is granted the power—regardless of local parliamentary rule, and in prescribed circumstances—to introduce and agree to legislation [pursuant to Sections 81 and 55].

The Court of Appeal also offered essential clarity regarding the careful balance achieved in 2009 between the legislature and the judiciary: in terms of matters regarding the Bill of Rights, the court cannot disregard legislation passed after 2009 by Parliament. However, it was clearly stated that this does not mean that any court's declared omission to legislate or any court's declared incompatibility can be ignored by Parliament. The Court held that Section 23 of the Constitution places an obligation upon the Cayman Islands Parliament to provide a remedy. However, it is for the Parliament to decide on the nature of that remedy, not on whether or not a remedy is provided. The Court of Appeal stated that this obligation upon Parliament is precisely the reason why the Constitution also provides reserved power to the Governor and rejected Kattina Anglin's submission that "the Governor is powerless where an unremedied incompatibility results in the breach of an international obligation" on the part of the Cayman Islands.

Colours Caribbean hopes that the local courts will take note of this judgement with regards to legal aid. In future, more careful consideration should be given to determining whether it is the right legal procedure to reverse a decision of the Legal Aid Office. This is particularly important as it leads to public funds being wasted on a judicial review which, in the words of the unanimous Court of Appeal, was "bound to fail."

Colours Caribbean would also like to thank its Cayman Islands counsel, *Conyers*; in particular, Alex Potts KC and Alecia Johns and *Travers Smith* in London for their hard pro bono work.

It is worth noting that the Court of Appeal relied on many of our lawyers' submissions and expressed well-

deserved empathy with the 93 couples whose lives had been thrown into limbo due to these proceedings. In this regard, the Court shares, in its last paragraph, the concerns stated in our public complaint in January 2021 to the former Governor that the Grand Court should *not* have granted permission to proceed, among other reasons, because Kattina Anglin lacked standing to bring this case forward.

The Court of Appeal rightly admonishes the Grand Court for failing to invite the Governor at the permission stage—similarly, *Colours Caribbean* would like to remind the public that our requests to the former Governor to instruct his lawyers to challenge her standing were blatantly ignored.

It is our sincere hope that those with a difference of opinion can respect this judgement and this matter can now be laid to rest—at the end of the day, same-sex couples have a human right to build and nurture their families per the Civil Partnership Act and the Constitution. We as a society should support and respect the rights of the vibrant members of our LGBTQIA+ community.

BACKGROUND

- **COLOURS CARIBBEAN**

Colours Caribbean is a registered non-profit organisation locally operated in the Cayman Islands that aims to cultivate a bold and visible community for the lesbian, gay, bisexual, transgender, queer, intersex and asexual (LGBTQIA+) people of the Caribbean and Latin America by building a network of regional businesses and public venues free of discrimination and harassment towards anyone on the basis of their gender identity, or sexual orientation. *Colours Caribbean* advocates for LGBTQIA+ rights as human rights and promotes the inclusion and equality of LGBTQIA+ persons throughout the Caribbean and Latin America.

Colours Caribbean is and has been a member of the Equal Rights Coalition [ERC] since 2022.

The Equal Rights Coalition [ERC] is an intergovernmental body of 42 Member States dedicated to the protection of the rights of LGBTI persons. Member States provide leadership by actively engaging in thematic groups and commit to working closely with LGBTI civil society organisations who meet regularly as part of thematic groups.