

By Email Only

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Dear David,

I refer to your correspondence to the Premier read out at the press briefing on 13 May 2020.

I am encouraged to hear that CILPA is engaging with government on a “daily basis”, clearly NGOs such as CILPA have an important role to play in a functioning democratic society. As I stated at the outset of my paper published last week regarding those managing the response to COVID-19: *“their dedication, hard work and professionalism protecting public safety in these most challenging times is deserving of commendation in the highest terms”*, notwithstanding this, legal and academic scrutiny of legislation is a hallmark of democratic society and the foundation of the rule of law.

It was against this background that I was interested to hear you offer, on behalf of CILPA, unqualified support to the government: *“the legal profession is supportive of the Government’s handling of this crisis to date...As the representative body for the vast majority of attorneys, CILPA makes no criticism of the Government’s handling of the current crisis”* and suggest that CILPA’s view was also *“the shared view of the majority of attorneys”*. Disappointingly, CILPA’s support was then used as a political tool by the Premier who went on to completely mischaracterise, and misrepresent the legal analysis which I had circulated, wrongly implying that I didn’t care about other people’s lives which could be put at risk as I was healthy and had nothing to fear from COVID-19.

Regrettably, as you will appreciate, two separate issues have been conflated here: first, whether the ‘hard curfew’ is legal and second, whether it is acceptable to scrutinise its legality. As to the first, clearly experts may disagree in their legal analysis. I would welcome a reasoned response to the points I made in my paper and it is regrettable that the Premier chose not to provide one.

The second issue is, as you will appreciate, far more serious: and I make no apologies for repeating my earlier point which was so roundly ignored by the government: legal and academic scrutiny of legislation is a hallmark of democratic society and the foundation of the rule of law. Not only is the *right* to freedom of expression under the Constitution and ECHR engaged but it is strongly arguable that there is an *obligation* on opposition MLAs, the relevant Constitutional “Institutions Supporting Democracy”, the legal profession and its members to provide scrutiny of legislation. It is a matter of regret that, to date, this discussion has not taken place in any meaningful manner.

I note that on Sunday 17 May 2020 Lord Sumption (who until 2018 sat on Cayman's highest appeal court the Privy Council) criticised the British government's maintenance of their lockdown in far more strident terms than I had stating: "*The lockdown is now all about protecting politicians' backs. They are not wicked men, just timid ones, terrified of being blamed for deaths on their watch. But it is a wicked thing that they are doing.*" Many may disagree with Lord Sumption but the importance of informed scrutiny of the legality of the lockdown is beyond doubt.

Against this background, and as a body representing *lawyers*, can you clarify what steps CILPA took to ascertain the *legality* of the measures adopted by government before offering its unqualified support to the government? Was advice taken from leading human rights counsel? If so perhaps that advice can be published so that this important debate can be advanced?

Equally, regarding the legality of the measures adopted, I'm sure that CILPA will agree that as a matter of law the Governor and the Commissioner of Police must now publish the written authorisations for the extension of the 'hard curfew' as required by s.49 of the Police Law (2017 Revision)?

Finally, I note your assertion (which the Premier adopted) that the view you expressed reflected the shared view of the majority of attorneys. Can you clarify what steps CILPA took to ascertain the views of the majority of attorneys before purporting to speak for them? I do not recall receiving any communications from CILPA on this issue and neither does anyone else in the legal profession with whom I have spoken.

Given the importance of the issues raised and how widely your previous correspondence was disseminated and publicised I am also putting this correspondence in the public domain. I look forward to hearing from you at your earliest convenience.

Yours sincerely,

James