



LEADER OF  
THE OPPOSITION  
CAYMAN ISLANDS

93 Smith Road, #4B Windward Centre  
PO Box 545 | Grand Cayman KY1-1502 | CAYMAN ISLANDS  
+1 (345) 743-2222 | arden.mclean@officialopposition.ky

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Baroness Sugg, CBE  
Minister with responsibility for Overseas Territories and Sustainable Development  
Foreign and Commonwealth Office  
King Charles Street  
London  
SW1A 2AH

Email: [fcocorrespondence@fco.gov.uk](mailto:fcocorrespondence@fco.gov.uk)

Dear Baroness Sugg,

Thank you for the courtesy of your reply dated 28th August, which was forwarded to me three days later on 31st August from the Governor's Office. Although the Governor has now assented to a Civil Partnership Law, I couldn't help but notice that it goes contrary to your instructions on 5<sup>th</sup> August where you authorized him to "publish in a Government Notice bills on domestic partnerships which is in compliance with the Court of Appeal's judgment of 7 November 2019." I have also noticed that there were many changes to the original Bill that was published, which now begs the question of the legality of his actions. Section 81 of the Cayman Islands Constitution is very clear with the 21 days requirement. The approach taken by the Governor suggests that he can publish one Bill and assent to a completely different Bill in name and substance which is not what the Constitution requires. Suffice it to say, the approach taken thus far, coupled with the reasons outlined below, clearly indicates that this matter is far from over.

Additionally, I believe it speaks volumes that the Governor did not afford me the courtesy of a reply to my letter of 6<sup>th</sup> August 2020 requesting a copy of your instructions. You may recall from my letter to the Hon. Minister Raab that it was the failure of the Governor to respond to my original letter which forced my hand in reaching out to him in the first place. I am also curious as to how the Governor after his failure to act, could release the correspondence addressed to me last Friday, on which he was not copied. Proper protocol requires that such a letter be released by either you or me. Whilst the Governor and I clearly favour a different approach on the issue, I am sure you will agree, and will perhaps remind him, there is indeed much capital to be gained from the sage saying "manners maketh man." Indeed, the very privileged position that he holds makes his discourtesy and failure to respond even more disappointing and does not bode well for a constructive relationship going forward until his departure.



I must confess that like millions of others I tuned in to watch President Obama, during his presidency, address both houses of Parliament and the point from his speech that resonated the most with me was the reminder that the UK Parliament was the birthplace of democracy. As he eloquently, said:

"Centuries ago, when kings, emperors, and warlords reigned over much of the world, it was the English who first spelt out the rights and liberties of man in the Magna Carta. It was here, in this very hall, where the rule of law first developed, courts were established, disputes were settled, and citizens came to petition their leaders."

It is with these words in mind that I will address the key points you have made.

**"I also believe that the rule of law must be upheld in the UK and all of the Overseas Territories."**

We agree here, but where we are clearly differing is appreciating that the Rule of Law is a democratic principle and "Democracy" means government by the people, either directly or through representation. Democracy recognizes that there will be differences, disagreements, discord, and discontent but it also requires us to have discussion, debate, and dialogue to arrive at a consensus. As noted by President Obama, to which he received a standing ovation at the end of his speech – the UK Parliament created the framework to settle disputes and ended decrees issued by kings, emperors, and warlords.

Ignoring the fact that both legislative members and the public were clearly misled on the extent and the impact of the Domestic Partnership Bill - it was, as you noted, debated and failed. If we are committed to democratic values, then a minority right should not be given special claim outside the political process and thereby trampling on the rights of the majority.

However, as I clearly said in my letter, there is a consensus that a framework needs to exist. Accordingly, we should have allowed the judicial process to either reach its natural conclusion or establish a working commission to find an acceptable solution, as we must also rightly seek to protect minority rights. Instead, we were given a colonial decree, which has no place in the 21st century and erodes the democratic principles, which many in the Overseas Territories and former colonies also gave their lives fighting for in the World Wars.

"Take back control" is a mantra that both the current Prime Minister and his predecessor used to gain support for the decision to leave the EU, and I believe was largely responsible for the Conservative party gaining a majority in the December 2019 election. The UK interfering with the process for its ultimate goal of same-sex marriage



in all its Overseas Territories is no better than China's treatment of its citizens in Hong Kong and a violation of Article 73 of the United Nations Charter. There is no doubt that the blatant double standard being applied here has everything to do with race and ethnicity just like the treatment of the Windrush generation!

**"I was disappointed that the Legislative Assembly felt they could not comply with the Cayman Islands Court of Appeal judgment, notably as the remit of the Legislative Assembly is to uphold the law."**

I noticed that the Governor indicated that his actions are consistent with the UK Government's response to the report from the Foreign Affairs Committee on this issue. For ease of reference, the House of Common Foreign Affairs Committee: **Global Britain and the British Overseas Territories: Resetting the relationship Report** dated 21 February 2019 Para 63:

*"It is time for all OTs to legalise same-sex marriage and for the UK Government to do more than simply support it in principle. It must be prepared to step in, as it did in 2001 when an Order in Council decriminalised homosexuality in OTs that had refused to do so. The Government should set a date by which it expects all OTs to have legalised same-sex marriage. If that deadline is not met, the Government should intervene through legislation or an Order in Council.*

The response from the UK Government under Prime Minister Theresa May was:

*"The British Overseas Territories are separate, largely self-governing jurisdictions with their own democratically-elected representatives. Our relationship with the Overseas Territories is based on partnership and therefore as policy on marriage law is an area of devolved responsibility it should be for the territories to decide and legislate on. As has been demonstrated by recent LGBT cases, the Territories' justice mechanisms and processes should be allowed the space to address these matters. We are working to encourage those Territories that have not put in place arrangements to recognise and protect same sex relationships, to do so, and continue to engage with all the Overseas Territories to ensure that their legislation is compliant with their international human rights obligations. LGBT rights and broader human rights obligations are consistently raised with the leaders of Overseas Territories—both bilaterally and at the Overseas Territories Joint Ministerial Councils. This is also a matter that is raised by Governors' Offices. We have no plans to introduce an Order-in-Council on this issue."*



I appreciate that we now have a new Prime Minister, and that this position might have changed. If it has, then it needs to be clearly spelt out to the Caymanian people and not done by duplicitous means, as is the current case. Either it is a judicial matter or a political matter. If it is a judicial matter, then it must be allowed to reach its natural conclusion via the courts. If it is a political matter, then the democratic process and principles need to be followed.

Furthermore, the elected Members of the Legislative Assembly voted in accordance with the Cayman Islands Constitution - a Constitution approved not only by referendum, but also by the UK Government. I appreciate that both you and the Governor are not elected but appointed officials and may not appreciate the trust that had to be earned from a wide cross-section of the population, as opposed to loyalty that comes from being a member of a party or from your professional peers.

Thus, the use of section 81 indicates that the UK Government has no regard for our Constitution – our paramount law. The Caymanian people should have clear written confirmation of where the UK's position has changed so as to afford us the opportunity to debate staying under arbitrary colonial rule where laws can be imposed by colonial decree, or take the necessary steps to ensure a prosperous and secure future for our people. Are the lives and the interest of the Caymanian people any less than those in the UK?

You allude to the issue being controversial and feelings running high on both sides. You are not wrong. I have never before heard such strong sentiments being expressed on a local issue, nor for a Governor to be recalled. It is indeed an unfortunate state of affairs, something you will not be made aware of through your diplomatic channels. I can assure you, rightly or wrongly, that your Governor has lost all goodwill with the majority of the Caymanian public.

**“In November 2019 The Cayman Islands Court of Appeal ... indicated that the Legislative Assembly should act quickly to that effect...”**

On Thursday, 23 June 2016 the EU referendum took place and the people of the United Kingdom voted 52% to 48% to leave the European Union. On 29th March 2017, the UK triggered Article 50 signalling its intention to leave on 29th March 2019. The UK Government has since negotiated three extensions to the leaving deadline and given that has yet been agreed, one can only speculate whether a fourth will be requested at the last minute!

My point here is this - to date the EU has allowed multiple extensions given the various legal challenges - which although played out very embarrassingly on a global stage - played out nevertheless to the end. A declaration was rendered by our Court of Appeal, so why has (1) the decision been taken to obstruct the judicial process from reaching its natural conclusion, or better yet, (2) the Legislative Assembly been given a timetable to reach an agreement? Why was this level of good faith and courtesy not extended to us?



**“I do not agree that there was insufficient time to discuss the Domestic Partnerships Bill.”**

I note that the latest consultation opened on the UK Government website on 31st August is for Managing Pavement Parking and that it closes 11:59 pm on 22 November - 82 days later:

[https://www.gov.uk/search/policy-papers-and-consultations?content\\_store\\_document\\_type%5B%5D=open\\_consultations&order=updated-newest](https://www.gov.uk/search/policy-papers-and-consultations?content_store_document_type%5B%5D=open_consultations&order=updated-newest)

So, UK residents can have 82 days to respond on a parking issue. However, somehow 28 days for people in the islands to discuss a Bill that will affect 11 significant pieces of domestic legislation and shakes the foundation of our Constitution is sufficient? This level of disparity clearly comes from a deep seed in the colonial foundation and is blatantly racist and discriminatory.

When considering the above, it is now clear why the Governor felt comfortable when he gave his outgoing Head of Office a framed photo of Grand Cayman outlined in acronyms and phases including “The Plantation. It’s all going to s\*\*t.” This may have been an inside joke as he maintains, but perhaps there is more truth to the public sentiment that it reflects how we in the Islands are really perceived by the UK Government. What is even scarier is that if this is what is transmitted in public, we shudder to think what is said and done in private.

Britain’s previous attempt to disregard the need to proceed with respect, sensitivity, and humility lead to the fall of the British Empire. As your revered former Prime Minister, Winston Churchill, once said: ‘Those who fail to learn from history are condemned to repeat it.’ It is clear that the UK Government hasn’t learned from the Chagos Islands incident which resulted in an unfavourable ruling of the UK’s actions by the International Court of Justice and why 116 member countries in the United Nation supported a resolution against the UK’s actions. Will the ruling by the International Court of Justice be given the same level of importance as the Cayman Islands Court of Appeal? Will the UK Government respond to that ruling in an expeditious manner?

I look forward to your response, particularly when the UK government’s position of working to encourage those Territories that have not put in place arrangements to recognise and protect same-sex relationships, changed to forcing their hands and overriding the will of the democratically elected representatives.

Yours sincerely,



Hon. V. Arden McLean

Leader of the Opposition