

## Press Release

The case of *Kattina Anglin v. The Governor of the Cayman Islands* is of significant public interest. Case documents unjustifiably were not posted on the public website in a timely manner. The Clerk of the Court on 14<sup>th</sup> January 2021 explained, as she then understood it, why the *ex parte* Leave Application was not then on the website. The explanation was inadvertently misleading. On learning of her statement, I ensured the documents were made public and considered it necessary to issue a correcting statement setting out the accurate position. GIS did so on 2<sup>nd</sup> February 2021 at my direction. I hoped that setting out the correct position would reassure the public. The inconsistency of one with the other instead led to justifiable concern and some even questioned whether there might have been a deliberate attempt to suppress information. Unfortunately, some have also sought to impugn the integrity of Justice Williams and of the process.

I consider it vital that the public retains confidence in our Court system and consequently I instructed a Queen's Counsel to undertake an independent fact finding exercise to see how the situation arose.

Open justice is a core principle so I consider it right I give this detailed release with conclusions reached in the investigation:

- There are practical, public policy and legal reasons why *ex parte* applications for leave to bring judicial review proceedings should initially be kept off the public Register of Writs unless and until leave is granted. These reasons are set out in the 2019 Judgment of Justice Kawaley in Cause No. 30 of 2019. In this case, leave was granted and case documents should have been uploaded to the public website but were not.
- On the same day he issued it, 20<sup>th</sup> November 2020, Justice Williams' Personal Assistant sent a written Judgment on the Leave Application to the relevant person in the Court Administration for publication on the Website in accordance with usual practice and internal guidance. It was not uploaded immediately onto the Register of

Judgments, on the Website, because of inadvertent oversight by a member of the Court Administration.

- It is possible that the failure to upload the Judgment had a knock-on effect. Its absence may have reinforced a belief in the Court Administration that no leave had been given and no judicial authorization for publication of the proceedings that would allow them to upload other documents.
- No orders arising from the ex parte Application heard on 17<sup>th</sup> November 2020, (adjourning it for written judgment to come) or on the grant of leave on 20<sup>th</sup> November 2020, were filed because the Applicant's attorneys, who had carriage of the orders, failed to do so. This may have contributed to mistake.
- The intention of the judiciary to ensure open justice in this case and the approach of the judicial administration were at cross purposes as the administration followed a long standing but unsanctioned practice of requiring express judicial authorisation before publication of ex parte applications. Whilst initial withholding until decision was judicially accepted (at least in judicial review cases per Justice Kawaley's judgment (above)) the position post leave was not. This expectation of express notification of judicial permission for publication was contrary to Rule and Practice Direction whereby the default position is publication unless expressly prohibited.
- Justice Williams did not inhibit, prohibit or otherwise embargo the timely publication on the Website (or otherwise access to the public) of the Leave Application, the Judgment or other documents in the Cause. He made no order to that effect and understood, correctly, that no authorisation from him was necessary for such publication (at least after the grant of leave). In particular, the Clerk of the Court did not, as suggested in her 14<sup>th</sup> January 2021 email quoted in the press, "*reach out*" to him about the case on a request from the Cayman Compass or otherwise, and he gave no "*indication*" to her at any time that the Application (or indeed any other document) was not available to the public. The press criticisms of him are unwarranted.
- The Clerk of the Court may have confused the earlier history and progress of these proceedings or misremembered events of November 2020 but she in fact "*reached out*" to no Judge and received no "*indication*" from any Judge in the way she suggested in that email.

- There are contemporaneous emails demonstrating that both Justice Williams and the Chief Justice, in the interest of transparency, favoured press admission to the 15<sup>th</sup> December 2020 *inter partes* direction hearing (which in the event was vacated because the parties agreed an order). It is likely that had the parties not agreed directions and the hearing vacated it would have been open to the Press.
- Justice Williams gave a detailed judgment to explain not only to the parties but the public his reasons for grant of leave. The Judgment itself supports this. He was aware that his Judgment had been released for publication and circulated. It had no embargo header required to prevent publication. He was entitled to believe that the normal process would follow and the Judgment would be placed on the Website in the usual way. In fact, he had been insistent on the correct procedure being followed in the case.
- Justice Williams had no reason to believe that the case documents were not published on the Website until the CNS article of 21<sup>st</sup> January 2021. He did not speak to the Clerk of the Court about the release or non-release of information about the leave application. He did not have cause before that date to involve himself in or check the normal administrative process of publication and such involvement and checking was not the role of a Judge.
- On becoming aware of the issue, Justice Williams immediately contacted the Chief Justice about the inaccuracy concerning his supposed directions and challenged the narrative that he had been in contact with Court staff to prevent publication. He did everything he properly could to ensure a timely statement to the public of the true position.

I am now aware of weaknesses in administrative practice and they are being remedied. I am taking the necessary steps so that these unfortunate circumstances do not recur.



Hon Anthony Smellie  
Chief Justice

25 March 2021.