



Statement on Court of Appeal ruling

By Premier Hon. Alden McLaughlin, MBE, JP, MLA

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Legislative Assembly

Madam Speaker,

Earlier today the Court of Appeal ruled that, contrary to the earlier ruling of Acting Grand Court Judge Owen, section 70 of the Constitution does not require a general framework law for a people-initiated referendum.

Madam Speaker, as you are aware the ruling of Justice Owen in March this year that the Port Referendum Law was unconstitutional effectively put an end to the Port Project and the loss of millions of dollars. The plaintiff was not required to give an undertaking in damages and therefore the Government will not be able to recover any of the funds spent on the project up to then or the large sums spent by the Elections Office in preparation for the referendum.

Madam Speaker, this Legislative Assembly enacted the Port Referendum Law 2019 and preparations were well advanced for the holding of the referendum.

Ms. Shirley Roulstone as a proxy for CPR; and the National Trust judicially reviewed the decision of the Legislative Assembly and the Cabinet. Justice Owen found in their favour-holding, among other things, that S.70 requires a general law and therefore the specific piece of legislation passed for the Port Referendum was unconstitutional.

Madam Speaker, the Government was always of the opinion that the ruling was wrong. Hence the reason why we appealed to the Court of Appeal.

Today the Court of Appeal agreed with the Government. The Court ruled that the absence of a general law does not in itself prevent or inhibit the right of every Caymanian voter to participate in a fair and effective people-initiated referendum and the Port Referendum Law 2019 was therefore not unconstitutional.

Of significance to the Government and this Legislative Assembly is the Court of Appeal's observation to the effect that the Section 70 power given to the Cabinet to set the question and fix a date and also the responsibility given to the Legislative Assembly thereunder to enact a law shows that the form of direct democracy created by S. 70 does not oust the representative elements of democracy.

Madam Speaker, the reference there to the roles of the Cabinet and Legislative Assembly is of enormous significance when read in the context of what Ms. Roulstone and the CPR would have us believe.

Indeed the court was firm in its rejection of their arguments to the effect that the Cabinet's role in setting the wording of the referendum question was limited to "drafting details" and the Legislative Assembly is no more than a party to the debate.

Madam Speaker, of immense relief to the Government is the Court of

Appeal's clarification of the doctrine of the separation of powers. The court, in its judgment reminds us all of the wise counsel of Lord Nicholls of the United Kingdom Supreme Court when he said that courts must abstain from any course, which might have the appearance of judicial legislation.

The Americans refer to that as judicial activism.

The Government accepts and supports the independence of the Judiciary and its role in interpreting the laws. And Madam Speaker the doctrine of separation of powers requires that the courts in return, respect the role of the legislative branch to enact laws. What form a particular piece of legislation takes is a matter for the legislature, provided it is otherwise constitutional.

The Government therefore welcomes this clarification by the Court of Appeal. We also welcome the court's clarification of Section 70 of the Constitution. A clarification and an interpretation that the Government has always advocated.

Madam Speaker, it is only appropriate to observe that the government accepted before the Court of Appeal that there had been a number of "false starts" by government in seeking to enact the law. This is to be expected given that it was our first attempt at using S. 70 and there was not much precedent to guide us. However, the government was always of the firm view that because S.70 makes no express language about whether it should be a general or a bespoke law therefore it was open to the Legislative Assembly to enact a specific law for each referendum provided it was otherwise constitutional, and therefore that the Port Referendum Law 2019 was always constitutional.

Since we got the ruling I have seen a press release by CPR and stories on CNS about the ruling. CPR is still claiming victory. Without question their actions have had the effect of derailing the port project. For that they are celebrating and a number of people along with them.

One of the great ironies of this exercise is that CPR were arguing all along that what they were seeking to do is protect participatory democracy in this country to enable everyone who is entitled to vote to do so in the context of this project and the referendum, which it has triggered. But they have achieved the opposite result.

I do not think they were ever interested in the referendum and the people having the right to vote; instead, they had the narrow interest in stopping the project. They have prevented the electorate from being able to register their view on whether that particular cruise port project and ancillary cargo port project was a good thing or not. The country is no closer to knowing one way or the other whether this is something that should go ahead.

Those who labour under the misconception that the Port Referendum Law and the petition that triggered it will survive the next general election do not understand the basics of the election process or the constitution. Whichever administration comes in will come in with a fresh start. If it is their policy to press ahead with a cruise port that will be a matter for them.

What CPR have done is two things: they stopped the project but they also prevented the people from having the opportunity to vote whether it should go ahead or not. If that is not a perversion of the democratic process, I don't know what else would be. This government is not going to pursue the project during the balance of the course of this term. But this project is not going to go away whether I am here or the Deputy Premier or any member of my government.

This is a crucial issue and a national decision that a future government is going to have to make; whether or not we want to resume a cruise industry in this country. We are going to have to provide proper facilities for those who come via cruise ship if this is a business we want to keep. That is a decision that is going to have to be part of the campaigns of the platforms of those who seek to contest the next elections. It is not going to go away.

The thousands of people who are unemployed who this government is trying to help are all going to need jobs, not just now, but in the future. If they do not have the opportunities offered by the cruise industry they will have to find work somewhere else.

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