

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CICA NO 6 of 2020
CAUSE NO: GC 195 OF 2019

BETWEEN:

AND:

(1) THE CABINET OF THE CAYMAN ISLANDS
(2) THE LEGISLATIVE ASSEMBLY OF THE CAYMAN ISLANDS

Appellants

AND:

SHIRLEY ELIZABETH ROULSTONE

Respondent

THE NATIONAL TRUST OF THE CAYMAN ISLANDS

Intervening Party

**SKELETON SUBMISSIONS
ON BEHALF OF THE
INTERVENING PARTY**

Suggested Pre-Reading if time permits:

The 1st, and 3rd affidavits of Nadia Hardie (Tabs 24 and 31)

Exhibit NH-1 (separate bundle): App J1 of 2015 Environmental Statement at NH-1
pp734 - 797, CIG's Referendum "brochure" NH-1 pp 945-988

NH3: Letter before action NH-3 pp 22 – 24 (Tab 32)

Submissions

1. These submissions are filed on behalf of the Intervening Party, the National Trust of the Cayman Islands ("the **National Trust**"). The National Trust is a corporate

body established pursuant to the National Trust Law (2010 Revision) (the “**National Trust Law**”). The National Trust is required under Section 4 of the National Trust Law to protect and preserve the historic, natural and maritime heritage of the Cayman Islands and to protect the native flora and fauna.

2. The Court will have had the benefit of detailed submissions prepared and filed on behalf of the Respondent, Shirley Roulstone. While the National Trust’s primary interest in these proceedings is to uphold its statutory duties and remit under Section 4 of the National Trust Law, for the avoidance of doubt, the National Trust as intervener fully supports and adopts the arguments advanced in the written submissions prepared on behalf of the Respondent.
3. In summary, the National Trust’s position on this appeal is that a vote under Section 69 or 70 must be an *effective* vote. Whatever the rights and wrongs may be of having a general law, this Referendum Law was not fit for its constitutional purpose without provisions which contains sufficient guarantees of fair play (see Venice Commission Tab 37 pp8 and 17 esp. [3.1]). This Referendum law did not guarantee that at all. In particular, certain practices such as the use of public funds to flood the airwaves and the enlistment of civil servants ought to have been regulated. Publication of misleading material ought to have been prohibited. What was liable to happen can be seen by what clearly went wrong in this case.
4. The environmental issue was probably the central question in the referendum debate. The George Town Reef is the home of a world-renowned marine park with a vibrant marine community which contains many species of corals, sponges and fish which are internationally recognised as critically endangered. What is being proposed by the Government will necessarily involve the destruction of that marine park and risk of fatal damage to nearby reefs. It will have to dredge channels to accommodate the berths of even larger ships than currently moor offshore. The marine park is described in Hardie 1 Tab 24 pp7-9).
5. It appears to have been recognised by the CIG that the port development cannot be built without infringing the National Conservation Law (the “**NC Law**”) and the

Constitution. The evidence on behalf of the CIG appears to accept that in order to accommodate the presently proposed cruise berthing facility and enhance the cargo facility, action will need to be taken to remove the protected status of George Town Harbour. This action would offend against section 41 (1) of the NC Law in that it would jeopardise protected species and their critical habitat.

6. Given that CIG, which is a strong advocate of the Port Development, admitted (but only in these proceedings) that substantial environmental damage would be occasioned by the dredging, the misinformation as exemplified by its “Brochure” was surprising. The false or misleading statements are explained by Miss Hardie in her first affidavit (see Tab 24 p31ff.). Social media (also run by the Ministry of Tourism) was also full of misleading lobbying of the public (see Tab 24 p34ff.). This was little short of official propaganda. This is precisely the sort of conduct which should be regulated by a Referendum Law. This is not merely a case of a campaign bus being used by a party: CIG procured “Support our Tourism” brochure to be produced by civil servants.
7. The CIG has published a proposed revised Marine Protection Plan which would allow the CIG to treat George Town Harbour as a non-protected area. In the same way, it is submitted that any such change in status would be a derogation of Section 18 of the Constitution.
8. In respect of the concerns as set out in the paragraph above, the court is finally referred to pages 22 – 24 of NH-3 (Tab 32) which is a letter before action sent to the CIG by the National Trust on 10 January 2020 seeking assurances from CIG that it will not take action to remove the protected status of the George Town Harbour, and the need for a further referendum to sanction an amendment to section 18 of the Constitution before that could take place.
9. On 24 January CIG responded. CIG failed to address the substantive concerns raised, instead suggesting that the complaint was “wholly premature” until the determination of this appeal and also purporting that there is currently no decision or law to be challenged in fresh judicial review proceedings.

10. It is apparent from the response that CIG does not accept its actions would be in breach of section 18 of the Constitution or section 41(1) of the NC Law and therefore there remains an immediate threat to George Town Harbour.

Tom Lowe QC
Nicholas Dixey
Colm Flanagan