



LEADER OF
THE OPPOSITION
CAYMAN ISLANDS

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August 13, 2020

Rt Hon Dominic Raab MP
Foreign Secretary and First Secretary of State
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH

Email: dominic.raab.mp@parliament.uk

Via Email

Dear Foreign Secretary Rabb,

Since Governor Martyn Roper has not responded to my letter of the 6th August 2020 requesting a copy of the FCO's instructions to him I am writing to you in the hope that you will provide same, as well as the rationale for such a decision, in the interest of good governance, transparency, and partnership.

As you are aware, Governor Martyn Roper intends to use his powers under Section 81 of the Cayman Islands Constitution to assent to the Domestic Partnership Bill which was recently defeated in the Legislative Assembly of the Cayman Islands. Per the August 5th, 2020 statement issued by the Governor's Office:

"The failure of the Legislative Assembly to pass the Domestic Partnership Bill leaves me, as Governor and the UK Government, with no option but to act to uphold the law."

As Leader of the Opposition I am troubled by the Governor's statement and the unintended consequences that may follow.

"The failure of the Legislative Assembly" regrettably implies that the democratically elected members have done something wrong when this is far from the case. We discharged our duty in good faith (and with free conscience in the case of Government members).

The correct application of the word "*failure*" should apply to the Bill itself, which was badly drafted. It was presented to the public on the tail-end of a Government COVID-19 press release, without any notes, background papers, public meeting, or wider public engagement, despite being an emotive and contentious issue. You should also be aware that the enactment of the Domestic Partnership Bill will impact 11 pieces of domestic legislation which are in the sole remit of the Legislative Assembly. It should be noted that only 3 of the 11 laws were referenced during the presentation and debate of the Bill. I am sure that you, as the elected Member of



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Parliament for Esher and Walton, would agree that a Bill of this magnitude, that also impacts 11 other pieces of legislation, would have required more than 30 days for legislators and the general public to digest and become informed. To pass such a Bill, or any other Bill in this manner, would have been a dereliction of our Constitutional responsibilities as legislators and tantamount to legislative irresponsibility.

“...leaves me as Governor and the UK Government, with no option” implies a sense of urgency. However, the legal case for the implementation of same-sex marriage or its prequel, the Domestic Partnership Bill, has yet to be determined by the Privy Council. Furthermore, the 2019 UK’s Government response to the Global Britain and the British Overseas Territories: Resetting the Relationship Report was as follows:

“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.”

Clearly, if this position has changed then it needs to be communicated and the Caymanian people advised of the new policy.

“...to uphold the law.” The 2009 Constitution of the Cayman Islands, was laid before the House of Commons on the 17th June 2009 after being approved by the Caymanian people via a referendum in the General Election of 20th May 2009 and clearly states:

“The people of the Cayman Islands, recalling the events that have shaped their history and made them what they are, and acknowledging their distinct history, culture and Christian heritage and its enduring influence and contribution in shaping the spiritual, moral and social values that have guided their development and brought peace, prosperity and stability to those islands, through the vision, forbearance, and leadership of their people, who are loyal to Her Majesty the Queen.”

This is the law, agreed by the Caymanian people and approved by the UK Parliament, that the Governor is implying that the democratically elected members of the Legislative Assembly “failed” to uphold. Brexit is proof that the United Kingdom Government won the argument to determine its own course, including ending its constraints by its membership of the European Union. Why are the Caymanian people, therefore, being rushed into adopting a Bill to satisfy an EU law, which the UK government has made no secret it will repeal once it officially leaves the European Union on 31st December 2020?

The Governor’s use of Section 81, in this instance, is clearly contrary to the letter and the spirit of the Constitution and is also arguably the persistence of colonial governance and an attempt to bypass the democratic accountability of the duly elected Legislative Assembly.

This approach is also a great divergence from the *“modern relationship based on partnership”* that the 2012 White Paper: Security, Success and Sustainability proclaims and it calls into question the nature of the relationship of consent and mutual respect that we assume exists between our islands and the United Kingdom.



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I will assume that the Governor would have provided your office with a copy of the Hansards of the recent debate on the Bill and you would have realized that there is some consensus amongst a majority of Legislators that a framework is needed to protect the rights of people in the same-sex relationship. I am sure that you would also agree that our ability to govern can only come from the consent of the governed and the Bill that was presented did not provide sufficient time to obtain the people's consent, nor reflect a framework that was considered to be acceptable. The way the Governor is seeking to legislate directly for the Caymanian people amounts to an act of modern-day colonialism, which is unacceptable in this 21st century.

I would therefore, as a matter of urgency, like a reconciliation of how the Governor with the implied support of the FCO, can intervene on domestic policy issues, such as with the aptly named Domestic Partnership Bill. I would also welcome your assurance that the direction of travel for the constitutional rights of our islands and mutual relationship with the United Kingdom will continue to develop and not return to one of colonial governance.

I have copied in the other Caribbean Overseas Territories and Bermuda who, like the Cayman Islands, have their own unique history that has led to peace, prosperity, and stability while in partnership with the Government and people of the United Kingdom.

I look forward to your prompt reply.

Yours sincerely,

Hon. V. Arden Mclean
Leader of the Opposition

CC:

Hon. Baroness Sugg – Overseas Territories Minister
Hon. Dr. Ellis L. Webster, Premier, Anguilla
Hon. Cora Richardson-Hodge, Leader of the Opposition, Anguilla
Hon. Andrew A. Fahie, Premier, British Virgin Islands
Hon. Marlon Penn, Leader of the Opposition, British Virgin Islands
Hon. Joseph Farrell, Premier, Montserrat
Hon. Paul Lewis, Leader of the Opposition, Montserrat
Hon. Sharlene Cartwright-Robinson, Premier, Turks and Caicos Islands
Hon. Washington Misick, Leader of the Opposition, Turks and Caicos Island
Hon. David Burt, Premier, Bermuda
Hon. Craig Cannonier, Leader of the Opposition, Bermuda
Hon. Alden Mclaughlin, Premier, Cayman Islands