

# PRESS RELEASE

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## FOR IMMEDIATE RELEASE

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### **Privy Council Advises on Judicial Petition**

The Privy Council has ruled that it should not consider the constitutional issues put before it at this stage.

Chief Justice Anthony Smellie had petitioned for advice under the terms of the UK's Judicial Committee Act 1833 with regard to the tenure of judges and an aspect of procedures for resolution of complaints. The aim of the petition was to bring local provisions for judicial tenure and discipline in line with standards in the United Kingdom and elsewhere as a means of safeguarding the independence of the judiciary and ultimately rights to fair and impartial justice in Cayman courts.

The petition was heard by the Judicial Committee of the Privy Council in October. Today (Thursday, 15 November) the Privy Council issued its judgment. There has been a suggestion that the Lord Chief Justice of England and Wales might be invited to put forward a judge to hear the case.

"Great care will need to be taken as the next steps are explored," said Chief Justice Smellie, noting that having the matter resolved before the Privy Council would have been quicker, simpler and less costly than dealing with it locally. Ultimately, he said, the matter may go back to the Privy Council on appeal.

"The Government of the Cayman Islands and the Constitution have wisely preserved the power to refer issues to the Privy Council in London making it possible to bring difficult and important issues such as these before an expert tribunal for resolution," the Chief Justice said. "The need for this will always be rare but it is a very important safeguard of the Constitution of the Cayman Islands and therefore of the rights of persons appearing before the courts. I am therefore disappointed that it seems we must now first go through the protracted stages before the local courts as the Privy Council was not prepared to rule on the substance of the matters at this stage."

Explaining the background to the petition, the Chief Justice said the intention was to safeguard the independence and impartiality of the judiciary; the Bill of Rights of the Cayman Islands guarantees the fundamental right of every person to a hearing before an “independent and impartial” court.

The Cayman Islands Attorney General, in a notice accompanying the bringing into force of the Bill of Rights last week, had affirmed the importance of the role of an independent judiciary in deciding constitutional disputes. “It is fundamentally important that an independent judiciary ... is charged with the responsibility of interpreting and applying the constitution, consistent with the rule of law.”

An important assurance of those rights, said the Chief Justice, is firmly and indisputably established tenure (not including disciplinary action). Judges must be – and must be seen to be – unconstrained by any potential influences – however unlikely that may seem today, he said. “We took action now to avert any possibility of any attempted rogue influences in the future, whether real or perceived.”

Eliminating those possibilities has become standard practice in most modern democracies, he said. Notably, in the UK there is no discretionary renewal of appointments: all judges (full or part time) are appointed until age 70.

Locally, however, the Cayman Islands Constitution Order 2009 provides for judges to remain in office to age 65. After that, the Constitution declares, they *may* remain until 70 years, but only at the discretion of the Governor following advice from the Judicial and Legal Services Commission (JLSC).

The basis upon which that discretion can be exercised is what requires clarification as a matter of the proper construction of the Constitution. There is also a question about the nature and extent of the disciplinary power that may be exercised over the judges.

It is essential, the Chief Justice said, that the local provisions be consistent with international standards, and resolution was a matter of urgency.

“The matter needs to be resolved now, before difficult cases start to come before the court requiring an interpretation of the Constitution Order and the Bill of Rights,” Chief Justice Smellie said, explaining that resolving those cases will rest on the unquestioned independence and impartiality of judges and the avoidance of any perceptions to the contrary.

“Any potential for aspersions about the partiality of judges must be removed now, before it arises in other cases,” he continued. Waiting until it became an issue could bog down the court in protracted hearings that would ultimately be more costly and could bring the whole system to a halt.

➤ **Ends**