

CONCERNED CITIZENS GROUP
P.O. Box 287
Grand Cayman KY1-1301, Cayman Islands

By Email

October 27, 2016

Lands and Survey Department
Government Administration Building
Elgin Avenue, George Town
Grand Cayman

Attn: Ms. Sophia Williams
Registrar of Lands
Email: Sophia.Williams@gov.ky

Dear Ms. Williams

RE: Request under the Prescription Law (1997 Revision) for Registration of Public Rights of Way

1. We, the Concerned Citizens Group, now hereby respectfully demand the execution of registration, without further delay, of all Public Rights of Way to beaches and foreshore claimed and filed with Government in 2001 in accordance with the *Prescription Law (1997 Revision), Section 3: Effect of twenty years enjoyment of easements, ways, etc., over lands; Section 4: Effect of twenty years use by the public or any class of the public of a beach and of means of access thereto* and the *Registered Land Law (2004 Revision), Section 138: Acquisition of easements and profits by prescription 1997 Revision (sic) - [Read Prescription Law (1997 Revision)]*. Prior to the filings in 2001 the Concerned Citizens Group carried out research and gathered information in the 1990s from users of the claimed Public Rights of Way.
2. On September 5, 1996 in debating Private Member Motion 9/96 “...regarding access to and use of beaches by the public.” Acting Attorney General Mr. Ivor Archie stated: “the public under the Prescription Law can acquire right to use that part of the beach ... once it has enjoyed that uninterrupted use for a period of 20 years. Once this right is acquired it is indefeasible. In other words, a subsequent purchaser of the land will take title to the land subject to the right of the public to use as aforesaid. Similarly, the public by long user can acquire a prescriptive right of access to the beach over a road, track or pathway which passes over any adjacent or adjoining (sic) land.” - [Read “adjoining land”]
3. In about 2001 Mr. J. Robert Bodden (the then Chairman of the Concerned Citizens Group), submitted in multiple batches to Mr. Kenneth Ebanks, Director of Planning, Cayman Islands Government, over five hundred (500) affidavits claiming Public Rights of Way for registration pursuant to the Prescription Law (1997 Revision) and the Registered Land Law in Barkers, West Bay, West Bay peninsula (West Bay Beach and North Sound), George Town, South Sound and North Side. The claims were submitted to the Department of Planning because in discussions with Government on the subject of registering claimed Public Rights of Way the Department of Planning was identified as the correct department to receive the claims.
4. On January 30, 2003 Mr. Haroon Pandohie, Director of Planning sent a Memorandum (the “2003 Director of Planning Memorandum”), to Mr. Stephen Hall-Jones, Senior Crown Council (Civil), Government’s Legal Department. The 2003 Director of Planning Memorandum requested “...to have a number of historic accesses to the beach declared public under the Prescription Law...proposals are the result of a number of supporting affidavits signed by various members of the public attesting to the continuous use of these

access points over the past 20 years...The Department supports this move and would be most grateful if you could process these affidavits, and supporting documentation through the courts...As you are aware, the increased population and tourist arrivals result in decreased areas for residents. Ensuring that all residents are allowed...to access the beach and or sea without too much difficulty will significantly contribute to our social development." Attached for ease of reference is the 2003 Director of Planning Memorandum.

5. On February 3, 2003, Mr. Stephen Hall-Jones, Senior Crown Council (Civil), Government's Legal Department in his Memorandum (the "2003 Senior Crown Council Memorandum") made statements that agreed with the Acting Attorney General Mr. Ivor Archie's statements in the Legislative Assembly during the September 1996 debate on the Private Member Motion 9/96 "...regarding access to and use of beaches by the public". The then Registrar of Lands was also issued a copy of the 2003 Senior Crown Council Memorandum. Attached for ease of reference is a copy of the 2003 Senior Crown Council Memorandum.
6. The 2003 Senior Crown Council Memorandum was self-explanatory instruction from the Legal Department for registration of the claimed Public Rights of Way to be immediately actioned in 2003 by Lands and Survey Department.
7. The Government kept both the 2003 Director of Planning Memorandum and 2003 Senior Crown Council Memorandum secret from the Concerned Citizens Group, who had continually followed up on the status to register the claimed Public Rights of Way and to wait these many years for a meaningful response to move the registrations forward. The Concerned Citizens Group was totally unaware of these memoranda until they were brought to light by the Hon. Kurt Tibbetts, Minister of Lands in the Legislative Assembly debate on a Private Member Motion in relation to Public Rights of Way which was moved and seconded respectively by MLA Arden McLean and MLA Ezzard Miller on Thursday, October 13, 2016 and which debate continued on Thursday, October 20, 2016.
8. Since about 2001 when those claims were submitted, no claimed Public Rights of Way have been registered pursuant to the Prescription Law (1997 Revision) and the Registered Land Law (2004 Revision), notwithstanding that the sole responsibility, obligation and accountability for processing registration of the claimed Public Rights of Way has always and still remains in Law with the Lands and Survey Department. It was therefore ultra vires in Law for the Registrar of Lands to involve the Minister or Ministry of Lands or to seek or to take directions from the Minister or Ministry of Lands in the decision making process to register the claimed Public Rights of Way. Both Acting Attorney General Mr. Ivor Archie and Mr. Stephen Hall-Jones, Senior Crown Council (Civil) agreed on this fact.
9. Clearly there is no justifiable reason for Government to further delay complying with the instructions contained in the 2003 Senior Crown Council Memorandum to proceed with registering all of the Public Rights of Way claimed by the Concerned Citizens Group against the land titles or to refuse to register the claimed Public Rights of Way. If the latter is the Registrar of Lands' decision, then we will consider our options.
10. Government also kept secret the Lands and Survey Department's September 2003 report titled *Beach Access – A way Forward, Establish Public Access to the Coast, Report to the Minister ("Beach Access Report 2003")* until an FOI Request was submitted by the Concerned Citizens Group in 2011 and it was then finally released to them. Subsequently the Beach Access Report 2003 was included amongst the documentation filed in the Grand Court in support of their case attempting to save a significant section of the West Bay Road from being given by Government to a major private landowner and developer, the Dart group.

11. The Beach Access Report 2003, which was in response to over five hundred (500) affidavits regarding Public Rights of Way, related to one hundred fifty (158) claimed Public Rights of Way in Barkers, West Bay, West Bay peninsula (West Bay Beach and North Sound), George Town and North Side.
12. The Beach Access Report 2003 omitted any consideration of the claimed Public Rights of Way in South Sound.
13. It was ultra vires the Law and the **Cayman Islands Constitution, Section 19: Lawful administrative action:**
 - 13.1. To prepare and submit the Beach Access Report 2003 only to the Minister of Lands, and
 - 13.2. Not to respond to the Concerned Citizens Group, and
 - 13.3. For the Registrar of Lands to take into consideration ownership by certain persons and potential development outside of the Prescription Law (1997 Revision) and the Registered Land Law (2004 Revision).

Accordingly, such failure to advise the Concerned Citizens Group of the Registrar of Lands decision is a deemed refusal of the claims.

To summarize, the decision to register or not register is not a political or policy decision to be made by the Minister or Ministry, it is ultra vires in Law to involve the Minister or Ministry in any way in the claimed Public Rights of Way registration process - all that is required is compliance with Law. Therefore as the 2003 Senior Crown Council Memorandum advice was received by the Registrar of Lands over thirteen (13) years ago, a final decision is respectfully demanded forthwith.

14. **On September 14, 2016** a letter from the Concerned Citizens Group was hand delivered **on September 19, 2016** to the Registrar of Lands, the Minister of Lands and others seeking action on the claimed Public Rights of Way. The Lands and Survey Department has not yet responded to the Concerned Citizens Group.
15. **On September 29, 2016**, after receipt of the Concerned Citizens Group's September 14, 2016 letter, the Hon. Kurt Tibbetts, Minister of Lands convened a meeting to hear complaints from the group against the inaction by the Registrar of Lands. The Lands and Survey Department was not represented at the meeting.
16. Distributed during the meeting by the Hon. Kurt Tibbetts was an email **dated September 27, 2016** from **Mr. Michael Whiteman, Chief Surveyor, Lands and Survey Department** to Mr. David Fawcitt, Ministry of Planning, Mr. Rupert Vasquez and Mr. Tristan Hydes, titled "**Timeline for the creation of a new beach access report**":
 - 16.1. Field reconnaissance and data gathering – September 26 to 30
 - 16.2. Report compilation – October 3 to 14
 - 16.3. Final checks and submission – October 17 – 21
 - 16.4. **Submission to the Minister** of a completed report should take place in the early part of the week of October 24.
 - 16.5. At the two week period (*i.e. about October 14, 2016*), an interim report will be sent out to keep all concerned of the progress being made.
17. The Lands and Survey Department's promised "**...two week ... interim report**", *i.e.* about October 14, 2016, has not been received by the Concerned Citizens Group.
18. The **2003 Senior Crown Council Memorandum's** legal advice stated that the lawful process is for the Registrar of Lands to comply with the Prescription Law (1997 Revision) and the Registered Land Law (2004

Revision) by registering the claimed Public Rights of Way or to advise the Concerned Citizens Group otherwise.

19. In these matters, under the Prescription Law (1997 Revision) and the Registered Land Law (2004 Revision) the Minister has no legal function in the registration of the claimed Public Rights of Way.
20. The Minister's obligation to the Caymanian people is to ensure that all entities for which the Minister has responsibility function in compliance with their governing laws and, if not, then to ensure effective action is taken against the heads of those entities to bring them back to lawful administration. Over the past fifteen (15) years the Lands and Survey Department's involvement of successive Ministers or Ministry in the decision making process to register or reject the claimed Public Rights of Way is an abrogation of the Registrar of Lands' obligations - the decision to register or not register the claimed Public Rights of Way is by Law exclusively the mandatory lawful function of the Registrar of Lands. Compliance with Law ensures good governance.
21. This uncalled for refusal to register the claimed Public Rights of Way by the Registrar of Lands has been exacerbated by the following deplorable circumstances:
 - 21.1. Keeping the **2003 Senior Crown Council Memorandum** secret for thirteen (13) years and not acting on the instructions and advice contained therein; and
 - 21.2. Keeping the **Beach Access Report 2003** secret for eight (8) years and not acting for thirteen (13) years on the instructions and advice contained therein.
22. As a direct result of the Registrar of Lands' refusal to register the claimed Public Rights of Way, Caymanians' rights to access the beaches and foreshore are frequently being challenged with the intent to diminish and deny access, contrary to Law.

Please acknowledge receipt of this letter, advise us of the action to be taken and a timeline for the registration to be completed.

Respectfully,

CONCERNED CITIZENS GROUP



Annie A. Multon, Cert. Hon. (Mrs.)
Executive Committee Member
Email: ampm@candw.ky



Ezmie Smith, LLB, AS, LSA, NP
Executive Committee Member
Email: ezmie@candw.ky



Alice Mae Coe, Cert. Hon. (Mrs.)
Chairperson
Email: amcoe@candw.ky

CC: Hon. D. Kurt Tibbetts, OBE, JP, MLA
Minister for Planning, Lands, Agriculture, Housing & Infrastructure
Email: Kurt.Tibbetts@gov.ky

Memorandum



To: Solicitor General
 From: Director of Planning
 CC: CO, P, C, W, & IT
 Date: January 30, 2003
 Re: Beach Access and the Prescriptive Law.

Please find, under cover of this memo, proposals to have a number of historic accesses to the beach declared public under the Prescription Law as shown on the maps provided, and listed in the accompanying tables.

These proposals are the result of a number of supporting affidavits signed by various members of the public attesting to the continuous use of these access points over the past 20 years.

The Department supports this move and would be most grateful if you could process these affidavits, and supporting documentation through the courts, at your earliest convenience. As you are aware, the increased population and tourist arrivals result in decreased areas for residents. Ensuring that all residents are allowed to access the beach and/or sea without too much difficulty will significantly contribute to our social development.

If you have any questions or require any further information, please do not hesitate to contact the undersigned or myself.

Respectfully Yours,

Haroon Pandchie
 Planning Assistant I
 For Director of Planning

HP/hp

- Minister
- Senior Asst. Secretary
- Admin. Officer
- Assistant Secretary
- Personal Secretary
- Admin. Secretary
- Office of Telecomm.
- Mgr. Emerg. Comm Sys.

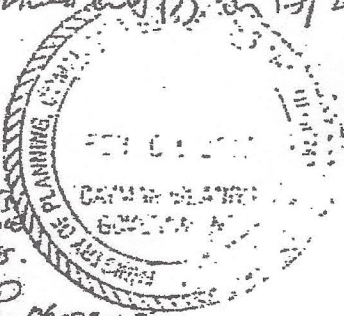


① you may HAVE SEEN
 my COMMENTS ON
 PREVIOUS CORRESPONDENCE.

②
 05.02.03

- Director
- Chief Exec. Secretary
- Admin. Officer
- Asst. Secy
- Secy
- Admin. Secy
- Office of Telecomm.
- Reg. Secy, Crown

Amended by [Signature] on 12/2/03



Government Legal Department

PLEASE NOTE my Comments on PREVIOUS Correspondence LET'S SPEAK TO THIS.

LR/L(A)

Memo

RD - 06-02-03

To: Director of Planning (Attn: Haroon Pandohie)

From: Stephen Hall-Jones – Senior Crown Counsel (Civil)

CC: Solicitor General; Registrar of Lands

Date: 5th February 2003

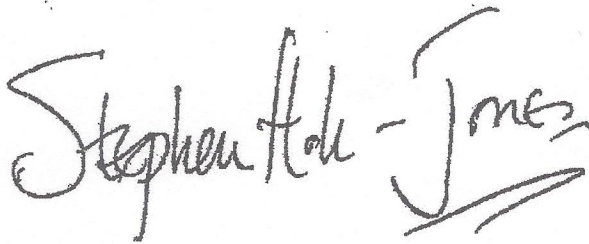
Re: BEACH ACCESS - PRESCRIPTION

1. Your memo of the 30th January 2003 with attachments refers. (Copy of memo only attached to this reply).
2. I am not sure that you need to, or even can, take positive pro-active steps to achieve your aim.
3. The Prescription Law (1997 Revision) (the "Law") has the effect (indeed as does common law prescription) of *creating* new rights in land. (Contrast the concept of adverse possession which has the effect of *extinguishing* rights).
4. Thus under both section 2 (in relation to profits and easements generally) and section 4 (in relation to beaches and beach access) of the Law, provided the conditions in each of those sections are satisfied, the rights are created good as against all the world.
5. There is no need to "perfect" title to the rights by a court application (even if such a thing were possible) because the Law does it for you.
6. The only time envisioned by the Law when the Court will adjudicate on the question is in relation to a s.4(1) prescriptive right where there is a "dispute". Section 9 of the Law provides that a party to the dispute may lodge a plaint in the Grand Court.
7. That doesn't mean that the "owner" of a prescriptive right (whether the owner of a dominant tenement or a member of the public in relation to a PROW) could not seek a declaration from the Grand Court as to his acquisition of a

prescriptive right but it would not be possible for there to be some kind of "class action" for a universal declaration brought by a "representative" of the class. There would have to be individual applications in respect of each PROW brought by an individual member of the public.

8. In the case of a private easement of way, the litigants would have to be the owners respectively of the dominant and servient tenement and usually comes about because the owner of the servient tenement has somehow obstructed the way so that the owner of the dominant tenement cannot exercise his rights and has to litigate to get a remedy.
9. In the case of a "public right of way" under section 4 a member of the public who has been obstructed in his use of the access way to the beach or of the beach itself (i.e a dispute has arisen) would be able to seek a declaration that the public have acquired prescriptive rights over the access or the beach.
10. However, I do not think that a Government Department could be a Plaintiff in an action seeking a declaration under s.9 that any given access was a PROW under s.4. I think the Plaintiff would have to be the very member of the public who was in dispute.
11. However, a member of the public claiming on behalf of the public that he had acquired a right of way under s.4 of the Prescription Law could apply to the Registrar for the registration thereof under s.138(2) of the Registered Land Law (R) of a public right of way although since a PROW is not technically an easement he may be better off seeking a declaration from the Grand Court that the track, path etc was a PROW together with an injunction restraining the owner of the land over which the PROW runs from preventing a member of the public from using the way etc.
12. What I am really getting at is that individual members of the public must launch individual law-suits against the individual landowners for individual declarations by the Court. Neither the Department of Planning nor L&S could be a Plaintiff because the Government Department is not a member of the public or a class of public.
13. The problem is that individual law suits are expensive and individuals may not be willing to spend lots of money establishing a public right of way on behalf of the public generally. The answer is for him to form an association to raise money from the public to fund all the law suits needed, unless the Ministry is willing to commit Government revenue to funding the legal actions.
14. It may be that some of the actions could be consolidated where the facts are identical, the disputes identical, the defences identical, the claim under s.4 identical, etc etc. Unlikely to be the case in most actions.

15. For the reasons explained, I have no instructions to seek Grand Court declarations in any case contained in your memo and attached documents. I am afraid that individual persons who are "in dispute" will have to seek the appropriate Order of the Court.



Stephen D. Hall-Jones

Senior Crown Counsel (Civil)