

## CONCERNED CITIZENS GROUP

P.O. Box 287

Grand Cayman KY1-1301, Cayman Islands

19<sup>th</sup> July 2017

Hon. Samuel Bulgin, QC  
Attorney General of the Cayman Islands  
Attorney General's Chambers  
Government Administration Building  
Elgin Avenue, George Town  
Grand Cayman

**Re: Appeal under section 147 of the Registered Land Law (2004 Revision)  
regarding registration of public rights of way**

We are in receipt of your letter dated 27<sup>th</sup> March 2017 and respond as follows:

**Which appeal procedure to apply**

Paragraph 3 of the letter, which refers to the Statement of the Question, also says that: "Unless an Originating Motion is served on the Registrar, the Statement will not be filed with the Court."

We disagree with that position. First, you are conflating two separate procedures, either one of which can be used to bring the matter to a court. Once a party have given notice of intention to appeal under section 147(1) (which Section has not been amended), you are duty bound to prepare a statement under subsection (2). In our view, the rules of natural justice require that you afford us an opportunity to be "heard" by submitting our full legal arguments. We have not done so as yet as we are pursuing our application for legal aid. Further, we are of the view that the words "subject to the rules of court" in subsection (3) are used in relation to who may or may not be heard at the hearing. They are not intended to suggest that the whole filing of the case must be in accordance with Order 55.

Second, the Registered Land Law is principal legislation passed by the Legislative Assembly. It takes precedence over the Grand Court Rules, which is subordinate legislation. Thus, whereas the GRC have to be used where the particular statute does not provide for the procedure of appeal, where the particular statute provides for a special procedure for appeal, a party is free to use that procedure. Once the party chooses that procedure, all that remains is for the authority concerned (the Registrar in this case) to bring the matter before the Grand Court.

We also note that there has been an amendment to the section 9 of the Prescription Law (1997 Revision). Before the amendment, that section read as follows:

"9. Where the public or any class of the public have used any beach, land, road, track or pathway in the manner specified in section 4(1) for the period mentioned in the said subsection and such user is disputed, any person concerned in the dispute may lodge a plaint in the Grand Court under the Judicature Law (1995 Revision), and the said Law shall apply to the matter in dispute."

(Underlining added)

After the 2017 amendment, it now reads as follows:

“9. Where the public or any class of the public have used any beach, land, road, track or pathway in the manner specified in section 4(1) for the period mentioned in the said subsection and such user is disputed and application may be made to the Grand Court for settlement of the dispute by-

- (a) any person concerned in the dispute; or
- (b) the statutory authority or department or Governor or agency designated by Cabinet by order charged with the responsibility for ensuring access to public beaches on behalf of the public or any class of the public.” (Underlining added)

The only substantive change is the addition of paragraph (b). Our view is that the appeal procedure under section 147 of the Registered Land Law still applies.

#### **Date of writing and posting of letter**

We also would like to point out that the letter from the Attorney General’s Chambers to the Concerned Citizens Group (to which letter the *Statement of the Question in Issue* was attached) is dated 27 March 2017. It was sent by registered mail and collected from the West Bay Post Office on 24 April 2017. However, the date of posting, as per postmark, was 20 April 2017, more than 3 weeks after the date of writing. We ask why the letter was posted so long after it was written.

In that connection, we note that the date of the letter from the Registrar to us informing us of the decision we now impugn was 17 January 2017 (which letter received by us via her email of 20 January 2017) and that the 20 April 2017 postmark date (of your letter of 27<sup>th</sup> March 2017) was the 3-month period during which judicial review, if we chose that route, would effectively have been overdue. We further note your statement in the letter dated 27 March 2017 that you will not file the Statement of the Question says that unless the *Notice of Originating Motion* is filed, you will not file the Notice of Intention to Appeal. We have drawn our own inference as to why the date of writing and posting conveniently fit into this position. However, our position, as stated above, is that these are two independent alternative procedures. Our appeal is therefore in order and nothing in the recent amendment to the Law changes that.

Respectfully,

**CONCERNED CITIZENS GROUP**

Alice Mae Coe, Cert. Hon. (Mrs.)  
Chairperson

Annie A. Multon, Cert. Hon. (Mrs.)  
Executive Committee Member

Ezmie Smith, LLB, AS, LSA, NP  
Executive Committee Member