

I am a practising barrister and have been helping to support those involved with the Cayman Islands same-sex marriage case, in addition to supporting the first LGBTQI+ organisation in the Cayman Islands, Colours Caribbean, in its fight for equality in the jurisdiction. Having very detailed knowledge of the legal and political background to this case, I feel compelled to clarify certain comments made by Dinah Rose QC in her letter of 27 January 2021. The views expressed here are entirely my own.

At paragraph 5, Dinah Rose QC states: *“The Cayman Islands Government conceded before the Cayman Court of Appeal in 2019 that the Bill of Rights, like the European Convention, gives a right to civil partnership. As a result, the Cayman Islands now have a Civil Partnership Act, providing for civil partnerships which give legal rights equivalent to marriage. This makes the Cayman Islands one of the most progressive countries for LGBTQ+ rights in the Caribbean.”*

This is, in my opinion, partially accurate and to that extent may be misleading to the public for the following **THREE** reasons:

- The Court of Appeal declared in its judgment that the necessary legal framework, in a form “functionally equivalent to marriage”, had to be implemented “expeditiously” by the Cayman Islands legislature, noting the serious and multiple breaches of the Constitution and the European Convention that had been occurring over many years. The Court of Appeal went so far as to describe the legislators’ failures as “woeful”. Notwithstanding that, over 5 months later and after the passage of multiple other pieces of legislation, still no bill providing such a framework had been presented to the Legislature (now named Parliament). Colours Caribbean raised its concerns over this lack of progress with the Governor of the Cayman Islands. The Governor explained he was reluctant to force a legal framework on the Cayman Islands people and requested further time to work with the Cayman Islands Government to encourage action. Colours Caribbean acknowledged that request and agreed not to take any legal action to force compliance with the Court of Appeal judgment until the expiry of 3 months from that date. For this reason, Colours Caribbean took the step of writing a letter before action, requiring the Governor or the Secretary of State to legislate the required legal framework within three months if the Cayman Islands Government was unable or unwilling to do so itself. Following service of such letter before action, the Cayman Islands Government, only then, commenced work on a bill and presented it to the legislature for consideration. The bill did not pass and, ultimately the Governor was “instructed” by the Secretary of State to implement the legislation using a specific provision of the Cayman Islands Constitution – Section 81. The Constitutional crisis that had been created by the Legislature dictated that the UK step-in and act, which is precisely what the Court of Appeal had stated in its judgment should happen in the case of a failure by the Cayman Islands to implement a framework functionally equivalent to marriage. **The FIRST POINT, therefore, is that the Civil Partnership Act came into existence following, first, a refusal of the Cayman Islands Government to comply with the Court of Appeal judgment and then, when forced to comply following service of the letter before action, the legislature’s refusal to pass the bill, in stark defiance of the Court of Appeal judgment, the Constitution and the European Convention.**
- A permission to seek judicial review of the Governor’s power under the Constitution to implement the Civil Partnership Act has since been applied for and granted by Justice Richard Williams, sitting at the Grand Court of the Cayman Islands. The relevant authorisation to proceed was delivered in a written judgment on 20 November 2020.

This judicial review, in effect, enquires into the Governor's power to act upon "instructions" of the Secretary of State. If the judicial review were to be successful, the Civil Partnership Act and the consequential legislative amendments brought about with it may become void. **The SECOND POINT, therefore, is that representing that the LGBTQ+ people of the Cayman Islands have all the legal rights equivalent to marriage overlooks that such rights, which were given legal effect by the Civil Partnership Act, were already as of 20 November 2020 subject to a legal challenge. Access to those rights therefore may, ultimately, be taken away if the judicial review is successful.**

- For reasons that are unclear, Justice Williams presiding over the judicial review application instructed the court's administrative personnel **not to place any documents related to the matter of the judicial review on the public register** and, indeed, requests for a copy of the decision by journalists were persistently met with rejection. A copy of the decision was, however, finally obtained by the press from an undisclosed source and published on 21 January 2021. It was only then, over two months later, that the public in the Cayman Islands, including Chantelle and Vickie, became aware that a judicial review process in respect of the Civil Partnership Act had been authorised. The Judicial Website of the Cayman Islands, after publication of the judgment by the press, uploaded the judgment for public access. According to the rules that govern judicial review proceedings in the Cayman Islands, the applicant must issue, and serve upon, inter alios, the Governor (**via the Attorney General's Chambers**), the order for leave within 7 days of it being granted. The Governor confirmed in a meeting with Colours Caribbean on 28 January 2021 that this procedural step did in fact happen within the required time frame of the applicable rule. This is absolutely key, because it is the same Attorney General's Chambers that is instructing Dinah Rose QC. **The THIRD POINT, therefore, is that the Attorney General's Chambers had known, since the end of November 2020, full details of the judicial review relating to the Governor's implementation of the Civil Partnership Act.**

Given the legal relevance of the judicial review to the Cayman Islands Government's case before the Privy Council, it is fully expected that the Attorney General's Chambers would have conveyed all of the facts above to Dinah Rose QC including, critically, the judicial review authorisation to proceed dated 20 November 2020. Dinah Rose QC fails to mention any of these important background facts and circumstances in her public letter and, to that extent, in my opinion portrays to the public a partial and dangerously misleading picture of the case before the Privy Council that she is fighting for the Cayman Islands Government. Dinah Rose QC also fails to mention in her letter that this is a government that has for many years been unwilling to face up to its legal obligations under the Constitution and the European Convention, behaviour described by the Court of Appeal as woeful when they delivered judgment in the case that Dinah Rose QC successfully argued resulting in marriage equality being overturned. Worse still, now that the jurisdiction has been forced into compliance and has, at least, a Civil Partnership framework, a judge of the Cayman Islands has authorised a challenge to the legality of the means of achieving such compliance. This is a bold and contentious move, which on its face appears in breach of the Constitution – Section 31(4) – in a matter that itself is open and pending before the Privy Council. Again, this is a point that Dinah Rose fails to mention in her public letter.

One can debate as to Dinah Rose QC's motives for giving such a partial and incomplete picture to the public, but it would be fundamentally wrong and disqualifying to do so to the Privy Council for many reasons, not least because of a risk of miscarriage of justice and harm and

suffering that will be caused to Chantelle and Vickie, together with other LGBTQI+ people of the Cayman Islands. This is particularly so if the Privy Council were to be led to believe, as could easily be interpreted by Dinah Rose QC's statement, that the Civil Partnership Act is a permanent fixture on the statute books of the Cayman Islands. This is far from accurate since the means by which the rights conferred under the Civil Partnership Act came into existence are themselves being reviewed by the judiciary of the Cayman Islands and, disturbingly, until now in secret. I was present at the Court of Appeal hearings and listened to the final concluding remarks of Dinah Rose QC. Though mightily skilful, it was concerning to me to hear questions raised by Dinah Rose QC such as whether the Cayman Islands could really be considered a secular jurisdiction, whether marriage equality could lead to an open door for polygamous marriage and whether the Inter-American Court of Human Rights had, in fact, concluded that the Inter-American Convention on Human Rights requires equal marriage. For those familiar with the law on these points, it will be obvious that such questions were misplaced and unfairly timed.

Dinah Rose QC has a legal duty towards the court. This duty is paramount, above her duty towards her client, the latter of which she eloquently defends extremely well. Dinah Rose QC must disclose these facts and share with the Privy Council a copy of the non-public judicial review that has been taking place in the Cayman Islands. This may be embarrassing for Dinah Rose QC to the extent she has not done so yet given that the very existence of the laws upon which the Cayman Islands Government's case relies have been subject to challenge by judicial review in the Cayman Islands since last November. Of course, it must be acknowledged that the Attorney General's Chambers may not have disclosed this matter to Dinah Rose QC. That said, although being embarrassed by one's client is not uncommon, I would like to remind Dinah Rose QC that it is however a ground for a barrister to step down.

If Dinah Rose QC is handling the case before the Privy Council with a similar approach as the one with which she displays in her letter of 27 January 2021 such an approach would have nothing to do with "*the nature of a barrister's role, which goes to the heart of the protection of the rule of law and administration of justice.*" On the contrary, it undermines it. As an Old Member of University College Oxford, I maintain a strong connection and affection for the institution, and I am firmly of the view that Oxford deserves greater respect and transparency in these circumstances than has been demonstrated by Dinah Rose QC thus far.

Let us not overlook that while Dinah Rose QC is very much leading the appeal, it was Professor Sir Jeffery Jowell QC who first represented the Cayman Islands Government at the first instance and still remains member of the Government legal team. This is important in this context because I first approached Sir Jowell to represent Chantelle and Vickie back in June 2017 at a discounted rate and/or pro bono due to the circumstances of the lay client and of the case (i.e., due to his human rights expertise and noting that he had been knighted for his services for human rights). Sir Jowell declined to take the case because he was "*so over-committed*" at that time. He did, however, kindly refer the matter to a highly qualified and experienced colleague. It was only on the eve of the case being heard by the court of first instance that the Cayman Islands Government announced that it had instructed Professor Sir Jeffrey Jowell QC, the knighted advocate for human rights, presumably at his usual hourly rate.

Dr Leonardo J Raznovich, Barrister