

# **SAVE GUANA CAY REEF ASSOCIATION**

## **PRESS RELEASE**

### **Great Guana Cay Appeals Supreme Court Ruling**

June 1, 2005

The Save Guana Cay Reef Association Ltd. has today filed an appeal against the Judgment of Justice Isaacs in which the Judge refused an injunction and revoked leave to issue judicial review. The appeal seeks to reinstate the leave to issue judicial review and the injunction.

The appeal alleges that the Judge had no jurisdiction to revoke the leave which was granted on April 5, 2005. Such revocation was a breach of the Association's right to a fair hearing under Article 20(8) of the Constitution.

The appeal challenges the Judge's reasoning on the issue of standing and sufficient interest. It asks the Court of Appeal to find that the Judge was wrong on this issue. In particular, that there was no need for Save Guana Cay Reef Association Ltd. to have a private law cause of action against the Respondents, the Prime Minister, the Treasurer and Mr. Wendell Major.

The Notice of Appeal states that the Judge was wrong in finding that the Company did not have sufficient interest. It was a special purpose company, the shares of which were held in trust for hundreds of landowners and residents of Guana Cay affected by the gigantic and enormous scope of the development.

The Notice of Appeal claims that it was unfair to strike out the judicial review application when there was no forewarning of such an application.

The development is to occupy nearly 600 acres, over one third of the Island, which would obviously have huge impact on residents of Guana Cay.

The Notice of Appeal claims that the injunction hearing was not the proper time to go into the merits of the judicial review trial. The Association had been given time (which had not expired) to file further evidence at the trial. Therefore there had

been no opportunity to deal with the merits. In fact, on several occasions during the injunction hearing, the Judge prevented reference to the merits.

The Court of Appeal is asked to find that the Judge was wrong in holding that the National Economic Council was the Cabinet. The Notice complains that the Judge's reasoning was in error, specifically when the judicial review proceedings did not challenge any decision based on the Environmental Impact Assessment. The judicial review challenge was as to the purported execution of the Heads of Agreement.

As to public consultation, the Notice challenges the Judge's ruling on this point. The Association never submitted that there was a "**statutory requirement for consultation**". The Notice claims that the doctrines of irrationality and legitimate expectation are public law doctrines developed entirely apart from statute. Citizens' rights are protected under many laws, not only by statute.

As to the injunction application, the Notice claims that the Judge was wrong in refusing the injunction especially since no construction, development or permits had been issued. The Notice also states that the Judge took wrong factors into account in arriving at his judgment.

In particular, that it is wrong to penalize citizens' groups for not having sufficient funds to give undertakings in damages when seeking to uphold their public law rights.

The Association is committed to helping the people of Guana Cay to protect their rights and to nationally elevate the level of debate and appreciation on such local rights issues especially as they affect Crown Land, legitimate expectation of public consultation and importantly, protection of the environment.

Frederick R. M. Smith