



the Cayman Islands Constitution Order 2009, but who was not a servant or agent of the First Respondent, but who was nevertheless under a duty as per section 24 of the Constitution Order 2009, to refer the question such as was being sought clarification on, to the Attorney General, and further erred in law, when she on the 7<sup>th</sup> of October 2013, wrote to one Janice McLean asking her to review documents, which included the very document that the Secretary of the First Respondent asserted she had **“never seen before”**, and by such conduct therefore, deliberately acted to ignore the constitutional provision that the ...”**Attorney General shall be the principal legal adviser to the government**”... which act manifested itself, when she forwarded the said document to Janice McClean and Christine Wright, who were for all intents and purposes, Public Officials and therefore severally held a duty under section 24 of the said Constitution, McClean thereafter writing to Christine Wright in the Office of the Deputy Governor on October 4 2013, regarding the Certificate certifying that the Appellant was a British Dependent Territories Citizen, which document was issued by the office of the then sitting Governor of the Cayman Islands, her stating to wit ...”**Miss Clarke was issued with a Travel Document no 42/84 by the CI Government to travel to Jamaica, on 8/6/1984, this was signed on behalf of the Governor. The “words” British Dependent Territories Citizen should have been crossed out (human error) leaving her nationality as a Commonwealth citizen. My opinion is she is neither Caymanian nor a British Overseas Territories Citizen...She was only born in the CI on the 28/1/1983 with no claim to C/S or BOTC. To the best of my knowledge at this time she does not qualify to apply for C/S**”...thereby offering legal advice on what for all intents and purposes, was a matter of law, to wit the classification and authenticity of a legal document, by which the Appellant was seeking to obtain, a legal right under the provisions contained in section 22(3) of the Immigration Law 2012 Revision, and which was admittedly asserted by the Secretary of the First Respondent, that she had **“never seen...before”**; which act was in direct breach of section 56(2) of the Cayman Islands Constitution Order 2009 and therefore erroneous, unqualified, presumptive, unreasonable, biased, discriminatory and unlawful in all the circumstances. (see Exhibits **“DB2”**; **“DB3”** and **“DB4”**)

3. An Order setting aside the Decision by the Second Respondent that it was of the view that the Certificate which declared that the Appellant was a British Overseas Territories Citizen dated June 8<sup>th</sup> 1984 and issued by the Office of the Governor of the Cayman Islands, was a **“letter”** and that the Appellant’s absence from the islands for the purpose of education, to attend **“public school as opposed to university...does not amount to the educational purposes as stated in the law”**.

## **BACKGROUND**

The proceedings before the Immigration Appeals Tribunal to which this Appeal refers, was conducted over a period of time, commencing with the Tribunal's review of the Notice of Appeal Statement dated December 27 2013, Appeal Statement dated 31 July 2014 and the Detailed Grounds dated September 19 2014, determined that insufficient grounds of appeal had been made out pursuant to sections 15(2) and 16(4) of the Immigration Law (2013 Revision)

The appellant was born in the Cayman Islands on the day of 1983. On the 8<sup>th</sup> of June 1984 she was issued a Certificate from the Office of the Governor of the Cayman Islands declaring her a British Overseas Territories Citizen. In 1987 the Appellant travelled to Jamaica the native country of her parents and her father died during that time under tragic circumstances. Her mother thereafter enrolled her in school in Jamaica, and the Appellant remained in that educational system until her return to the Cayman Islands in the year 2005. She provided the required proof of enrolment in the various schools she attended, to certify that her absence from the islands was in fact for the purposes of education as is provided for under section 2 of the Immigration Law 2013 Revision. By a letter dated her application under section 22(3) of the Immigration Law 2012 Revision was refused. This refusal was formally appealed to the Immigration Appeals Tribunal on September 19 2014, following on from the fact that there had been no response to the Notice of appeal, filed by the Appellant, on December 27<sup>th</sup> 2013; from the said Tribunal. It was only after counsel for the Appellant wrote to the Chairman of the Tribunal that the disclosure necessary for the Appellant to file grounds of appeal and this was done on the 19<sup>th</sup> of September 2014.

By a letter dated October 29 2014 the Tribunal informed the Appellant that her appeal had been dismissed on the basis that the Tribunal had found "insufficient grounds of appeal"....and that... "It was of the view of the Tribunal that the Appellant upon receiving the **letter** from the Governor's office dated 8<sup>th</sup> June 1984, should have remained in the islands for at least five years instead of **returning** to Jamaica to attend public school as opposed to university. It was determined that attending public or high school does not amount to the educational purposes as stated in the Law. Accordingly, the appeal was dismissed".

## GROUNDS

It is as a consequence of this decision by the Tribunal, by which the Appellant's Appeal was dismissed, that the Appellant now appeals against same; on the following grounds:

### 1. ERRONEOUS APPLICATION OF LAW

- (a) **THAT** the Second Respondent erred in law by dismissing the Appellant's appeal, when having reviewed the Appeal Statement dated July 31 2014 and the Detailed Grounds of Appeal dated September 19 2014, which outlined the reasoning behind the decision by the Caymanian Status and Permanent Residency Board, (**"the Board"**) to refuse the application by the Appellant for the grant of the Right to be Caymanian and the Tribunal deciding that **"no valid grounds of appeal had been made out pursuant to section 15(2) and 16(4) of the Immigration Law 2013 Revision"**, and accordingly dismissing the Appeal brought by the Appellant; was done in error and in disregard of the provisions contained in Section (2) of the Immigration Law 2012 Revision and section 22(3) of the Immigration Law 2013 Revision as well as the Immigration (Amendment No. 2) Law 2013, (**"the Relevant Laws"**) as relates to the mandatory provisions whereby the Appellant qualified for legal and ordinary residence; at the time that the Appellant made application for the Right to be Caymanian.
- (b) **THAT** the Second Respondent erred in Law by finding that there was **"no valid grounds of appeal"**, when clearly the Caymanian Status and Permanent Residency Board had failed to or adequately take into account during their deliberations, concerning the Appellant's application for the Right to be Caymanian, the provisions contained in Section 2 and Section 22(3) of the Relevant Laws, as well as the Certificate issued by the Office of the Governor of the Cayman Islands, on June 8<sup>th</sup> 1984 declaring that the Appellant to be a British Dependent Territories Citizen, and that this failure resulted in the Appellant not being regarded as such by neither the Board or the Tribunal, to qualify under the provisions contained in Section 22(3) of the Immigration Law (2012 Revision), for the Right to be Caymanian; which decision was wrong in law and in all the circumstances.
- (c) **THAT** the Second Respondent further erred in law when it came to the decision of dismissing the Appellants appeal against the said refusal, by supporting the Caymanian Status and Permanent Residency Board's finding that the Appellant was not possessed of the classification of British Dependant Territories Citizen, by finding that the said certificate dated June 8<sup>th</sup> 1984 was a **"letter from the Governor's office"** which classification and decision was unsupported by any evidence, wrong in law and in all the circumstances.

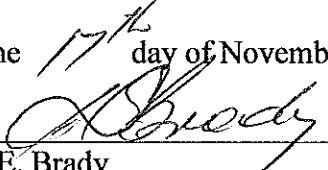
- (d) **THAT** the First Respondent who is defined in section 28 of the Cayman Islands Constitution Order as a “public official”, erred in law by ignoring the provisions of Section 56(2) of the Cayman Islands Constitution Order 2009, in that the Respondent deliberately ignored the constitutional provision that the ...”**Attorney General shall be the principal legal adviser to the government**”...which act occurred when the Secretary of the Caymanian Status and Permanent Residency Board, who had a duty under section 24 of the said Constitution, wrote to Christine Wright in the Office of the Deputy Governor on October 4 2013, seeking legal advice on what for all intents and purposes, was a matter of law, to wit classification of a legal document, by which the Appellant was seeking to obtain, a legal right under the provisions contained in section 22(3) of the Immigration Law 2012 Revision, and which admittedly the said Secretary asserted she had “**never seen...before**”; which act was in direct breach of section 56(2) of the Cayman Islands Constitution Order 2009. (see **Exhibit “DB1”**)
- (e) **THAT** the First and Second Respondents erred in law and acted unreasonably and unlawfully, when the Respondents acted upon and was influenced by, in coming to its decision to deny the Appellant her claim for the Right to be Caymanian, the erroneous, unqualified, presumptive and biased opinions of Christine Wright and Janice McClean, both persons who themselves were acting in breach of the law to wit, section 56(2) of the Cayman Islands Constitution Order 2009, and the Respondents thereafter came to the decision to refuse the Appellants claim for the Right to be Caymanian, consistent with such opinions, by which act the Respondents was acting erroneously in law and unreasonably in all the circumstances.(see **Exhibit “DB5”**)
- (f) **THAT** the First and Second Respondents erred in law by mis-applying the intent and purpose of the British Nationality Act, and its coming into effect on January 1 1983, to make its provisions, particularly that contained in Part II section 15(3)(b) inapplicable to the Appellant, in the face of and despite the existence of a certificate issued under the hand of, and emanating from the Office of the Governor of the Cayman Islands and numbered 42/84, which document certified that the Appellant was a registered British Dependent Territories Citizen, and on the basis of which certification she was allowed entry into the Island of Jamaica , and that the First Respondent thereafter purported to refuse the said application for the Right to be Caymanian to the Appellant, on this basis that it had “**no power**” to grant the said application, and on the basis that the Appellant had “**not meet the criteria as set out in section 22(3) of the Immigration Law 2013**”; was wrong in law, in the face of the submitted supporting evidence and in all the circumstances. (see **Exhibits “DB6 – DB7”**)

(g) **THAT** the First and Second Respondents failed to adequately consider or at all the authenticity of the Registration Certificate issued under the hand of the Governor of the Cayman Islands at the time to the Appellant, numbered 42/84, and unlawfully disregarded its legal effect, and also to honour its authenticity, without effecting a proper and effective investigation to determine the said authenticity, and thereafter failed to apply the legal force of the said certificate to the crucial issue of the determination of the Appellant's claim for the Right to be Caymanian; under section 22(3) of the Immigration Law 2012 Revision, which act was wrong in law, in principle and in all the circumstances.

**AND THE APPELLANT THEREFORE PRAYS THAT:**

1. The Decisions of the First and Second Respondents purporting to refuse to grant the Right to be Caymanian application, submitted by the Appellant, be set aside as being wrong in law, by virtue of the erroneous application of the law, in principle and in all the circumstances Wednesday unreasonable.

Dated the 17<sup>th</sup> day of November 2014

  
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Dennis E. Brady  
Attorney-at-Law for the Appellant

**TO:** The Clerk of the Court  
**AND TO:** The Chief Immigration Officer  
**AND TO:** The Attorney General

**THIS NOTICE OF MOTION** was **FILED** by Dennis Brady, Attorney-at-Law for and on behalf of the Applicants whose address for service is that of their said Attorney-at-Law, Trinity Square, Building A-3, Eastern Avenue, P.O. Box 1671, Grand Cayman KY1-1109, Cayman Islands.